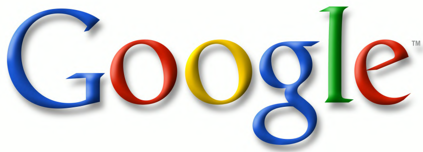


This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

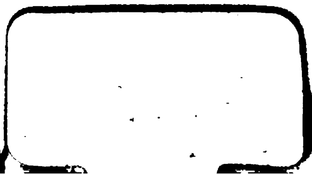
About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at http://books.google.com/

3 2044 106 251 333

Google

HARVARD LAW LIBRARY



Digitized by Google

Digitized by Google

Digitized by Google

Cor 4

22

THE

IRISH LAW TIMES

AND

SOLICITORS' JOURNAL:

A

WEEKLY GAZETTE OF LEGAL POSTINGS,

AND

Miscellaneous Legal News and Information;

TO WHICH ARE ADDED

THE IRISH LAW TIMES REPORTS,

WITH A

DIGESTED INDEX

OF ALL DECISIONS REPORTED IN THE IRISH LAW TIMES REPORTS, AND IN CONTEMPORANEOUS LEGAL REPORTS OF IRISH CASES, DURING THE YEAR 1874;

AND AN APPENDIX OF

THE PUBLIC GENERAL STATUTES RELATING TO IRELAND

(37° AND 38° VICTORIA).

Pro Rege, Grege, Lege.

VOLUME VIII.—1874.

DUBLIN:
PRINTED AND PUBLISHED BY THE PROPRIETOR,
JOHN FALCONER, 53, UPPER SACKVILLE-STREET.

1874.

KDK 63 .A2 I74

Digitized by Google

Rec Sept. 30, 1889.

Digitized by Google

GENERAL INDEX.

A

PAGE

Actions for breach of promise - - - - - - 555
Admission of Advocates in Bengal - - - - - 438
——— of Attorneys in Victoria - - - - - 405
Admissions to the Bar in America - - - - - 404
Alteration of sums payable in cheques - - - - 610
Appointment of the Irish Judges - - - - - 346

APPOINTMENTS AND PROMOTIONS:—

Bayly, E. R., 240.
Cairns, W. Wellington, 159.
Elrington, Joseph F., 201.
Farrell, 419.
Grant, Dawson E. J., 263.
Huggard and Denny, Messrs., 396.
M'Kenna, P. J., 93.
Mooney, William. 34.
O'Meara, John, 263.
Palles, A., 132—Plunkett, Kenny, 643.
Small, J. F., 654—Smart, William 34—Sullivan, W., 159.
Walker, T. J., 240—Wynne, Owen, 549.

Arbitration, International, lawyers on - - - - 514
Armstrong, Mr. Serjeant, serious accident to - - - 623
Attorneys and Solicitors - - - - - - - 351
Attorneys and Solicitors of Ireland, the Society of, and the Judicature Bill - - - - - - 301, 320
——— Society, half-yearly meetings of 226, 609, 618

B

Bail - - - - - - - - - - 65
Bankers as Bailees - - - - - - - - 127
Bankrupt, can an infant be made a - - - - - 103
Bankruptcy - - - - - - - - - - 211
——— Court, Halifax—debtors' summons—application to dismiss--claim arising out of partnership disputes—staying proceedings on summons without security - - - 71
——— the Court of, Ireland –order regulating fees - 169
——— decisions, recent - - - - 126, 405, 534
——— Jurisdiction - - - - - - - - 199
——— laws - - - - - - - - - 548
BANKRUPTS, 1874 (See separate Index, p. xi.)
Banquet to the judges at the Mansion House - - - 619
Bar, liberty of the - - - - - - - - 89
Baron Martin - - - - - - - - - 33
Barristers and Attorneys - - - - - - - 630
——— new - - - - - - - - - - 47
——— of Lincoln's Inn, and their liability to fees - - 114
Bastardy law, a point in - - - - - - - 464
Bench, the, and the Bar - - - - - - - 137
Bills of exchange and proof in bankruptcy - - - 494
Blackburne, the late Right Hon. Francis, testimonial to - 298
Blake, Q.C., Mr., and the Land Act - - - - 377
Bodkin, the late Sir W. H. - - - - - - 167
Breach of covenant to repair—measure of damages - - 421
Brewster, the Right Hon. Abraham, funeral of - - - 424
Brussels Congress, the - - - - - - - 465

C

Case-law and inductive science - - - - - - 515
Cases under the Betting House Act - - - - - 408
Catholic Holidays, Mr. Clarke, Q.C., on - - - - 10
Chancellorship of Ireland, the - - - - - - 576
Charge against a barrister - - - - - - - 548
Chief Baron Pigot, funeral of the late - - - - 2
Choses in action before and after insolvency, assignments of - 78
Clerical members of parliament - - - - - - 87
Codification of international law, the - - - - 519
Companies and their Shareholders - - - - - 223
Compensation of lawyers - - - - - - - 539
Conclusiveness of appellate decisions - - - - 639
Conditions in restraint of marriage - - - - - 442
Confession of guilt, - - - - - - - - 395
Contracts by corporations and their agents - - - 44
——— by infants - - - - - - - - 360
Contributory negligence by infants - - - - - 185
Conversion, essential elements of - - - - - 154
Coroners' Inquests, *in re* Marshall - - - - - 18
——— a bill to amend the laws relating to - - 208
Corporation of Dublin and its law agents - - 529, 554
——— the office of law agent to - - - 502
Corporations and *subpœna duces tecum* - - - - 45

CORRESPONDENCE:—

Admission to the Irish Bar - - - - - - 423
Answers to examination questions - - - - - 227
Bankruptcy Ireland Amendment Act, 1872 - - - 458
Barrister in the United States, what is necessary to become a - - - - - - - - - - 334
Civil Bill Court Admiralty Jurisdiction - - - - 469
Clerks of the Peace - - - - - - - - 240
Discrepancy, a - - - - - - - - - 612
Divorce - - - - - - - - - - 334
Final examination, Michaelmas Term, 1874 - - 396, 410
Landed Estates Court Judgeship - - - - - 457
Land transfer - - - - - - - - 24, 68, 91
Legal education - - - - - - - - 306, 642
Legal examinations, the - - - - - - - 592
Notice to quit under the Land Act, 1870 - - - 641
Petitions of Right (Ireland) Act, 1873, the - - - 46
Sessional examination, 1874 - - - - - - 458
——— the - - - - - - - 496
Stamping of fee-farm grants - - - - - - 632
The Attorneys and Solicitors' Act (Ireland), 1866 - - 277
Wright *v.* Montgomery - - - - - - - 569

County Court Judge, a, fined for assault - - - - 465
Court of Appeal for Ireland, the coming - - - - 193
Court of Chancery Appeal - - - - - - - 652
——— regulations to be observed at the chambers of the Lord Chancellor, in relation to the business of the released Masters, transferred pursuant to the general order of the 4th July, 1874 - - - - - - - 602
Court of Final Appeal for Ireland - - - - 110, 123, 138
——— of Judicature Ireland Bill, the - - - 272, 332, 378
Cruelty by the wife - - - - - - - - 467

D

Damages for breach of promise of marriage - - - 566
Debts provable in bankruptcy - - - - - - 170
Defamation - - - - - - - - - 125, 144
Digest of recent English decisions - 395, 434, 458, 468, 504, 518, 549
Disclaimer by trustees in bankruptcy - - - - 304
Divorce case, the Mordaunt - - - - - - 349
Dowse, Mrs., death of - - - - - - - 602
Drogheda election petition, the - - - - - - 317
Dublin metropolitan police court (*see police court*)
Duties payable by reason of death - - - - - 389

E

Easements; and covenants for quiet enjoyment - - - 391
Election of a bencher - - - - - - - - 192
——— cases, the Launceston and the Galway - - - 345
——— petitions, the coming - - - - 102, 201, 221
——— petition, county Leitrim - - - - - - 91
——— Taunton - - - - - - - - - 79
English debtors in Ireland - - - - - - - 638
——— lawyers - - - - - - - - - 206
Execution creditors, the right of, to proceeds of goods sold - 305
——— holding garnishee order, rights in bankruptcy of - - - - - - - - - - - 358
——— creditor and trustee in bankruptcy - - - 320
Expiring laws continuance bills - - - - - - 430
Extradition treaty with Austro-Hungary - - - - 170

F

Felony by carriers' servants - - - - - - - 198
Fraudulent misrepresentation of agents - - - - 474
Future of the profession - - - - - - - 528

G

Galway election petition, the - - - - - - 221
——— and Mr. Justice Lawson - - - 238
——— Mr. Justice Lawson's report on - 298
Garnishee orders in cases of bankruptcy - - - - 364
General words in a conveyance - - - - - - 390
Geographical names as trade marks - - - - - 566
German criminal law, the - - - - - - - 649

Digitized by Google

H

PAGE
House of Lords, the appellate jurisdiction of - - - 402
—— the judicial business of the - - - 158
Humorous phases of the law - - - - - 181
Husband and wife as contracting parties - - - - 43

I

Identity, singular case of - - - - - - - - 148
Implied warranties - - - - - - - - - 464
Imprisonment for debt - - - - - - - - 481
Incorporated Law Society, the half-yearly meetings of 261, 609, 618
Index, Quarterly, to subjects of cases - - 165, 359, 525, 650
Inns of Courts, the, and legal education - - - 387
Inspection under the Ballot Act - - - - - - 222
International law, outline of - - - - - - 557
Invalid adjudications in Bankruptcy - - - - - 608
Irish affidavits in England - - - - - - - 33
—— Judiciary, the - - - - - - - 416, 429
—— Juries - - - - - - - - - 527
—— Jury system, the - - - - - - - 391, 462
—— Law Officers, the - - - - - - - 640
—— Law Students - - - - - - - - 577
—— and Scotch Peerages - - - - - - - 456
Is a residuary devisee still specific - - - - - 420

J

Joint-stock companies, some decisions on the law of - 513, 556
Judge, the new English - - - - - - - - 44
Judges, the number of in the Superior Courts of Common Law in Ireland - - - - - - - - - 30
—— registration of - - - - - - - 17
—— the wear and tear of - - - - - - - 19
Judicature Act, the - - - - - - - - 317
—— and Appeal Bill, the Irish - - - - - 235
—— Bill, the Irish - - - - - - 192, 439
—— Resolutions of the Home Bar on the - - 261
—— the new, and the Incorporated Law Society - 285
—— the—intituled an Act, &c, - - - - 249, 272
—— and the Irish Bar - - - - - 299
—— Commission - - - - - - - - 487
—— the, and the Irish County Courts 55, 66
—— Rules, the - - - - - - - - 428
Judicial muddle, a - - - - - - - - - 9
—— Staff in Ireland, the - - - - - - - 402
—— work in England and in Ireland - - - - - 417
Jurisprudence and the amendment of the law - - - 546

K

Kenealy, Dr. - - - - - - - - - 386, 622
—— the case of - - - - - - - - - 432

L

Lady Lawyers - - - - - - - - - 144, 535
Land Act, Bright, clauses of - - - - - - - 238
—— laws of Ireland, Mr. Butt's bill to amend - - - 238
—— titles and transfer - - - - - - - 152
—— transfer - - - - - - - - - 3
—— bills - - - - - - - - - 164
Landlord and tenant arbitration clause - - - - - 101
Law appointments - - - - - - - - - 577
—— and equity - - - - - - - - - 589
—— Clerks of Ireland, the Associated 11, 73, 129, 174, 212, 226, 278, 306, 321, 352, 434, 496, 535, 549, 558, 568, 580, 639, 654
—— of powers, new act to amend the - - - - - 524
—— the, in 1873 - - - - - - - - - 20
—— of homocide - - - - - - - - - 418
—— and literature - - - - - - - - - 144
—— officers in Ireland, the new - - - - - - 123

LAW STUDENTS' JOURNAL:—

King's Inns, Henrietta-street—
Candidates, Hilary Term, 1874 - - - - - - 47
—— Easter " " - - - - - - 214
—— Trinity " " - - - - - - 47
—— Michaelmas " - - - - - - 581
Debating Society, Law Students' 11, 26, 82, 104, 118, 131, 159, 187, 202, 227, 263, 277, 292
Examination, Easter Term, result of - - - - - 267
—— Trinity Term, results of - - - - - 291
Lectures for Easter Term, 1874 - - - - - 184

Solicitors' Hall, Four Courts—
Apprentices' Prize Examination Papers - - - - 582
Examination Papers (Final) Michaelmas, 1874 - - - 655
—— " Hilary, 1874 - - - 47, 73
—— " Easter. " - - - 215
—— " Trinity, " - - - 335
—— (Preliminary) Hilary, 1874 - - - 34
—— " Easter, " - - - 215
—— " Trinity, " - - - 334
—— " Michaelmas, 1874 - - - 581

LAW STUDENTS' JOURNAL—*con.*

Solicitors' Hall, Four Courts— PAGE
Examination (Prize) - - - - - - - - 593
Examinations (Preliminary), Hilary, 1874, result of - - 47
—— " Easter " " - - - 215
—— " Trinity " " - - - 292
—— " Michaelmas " - - - 593
—— (Final), Hilary, result of - - - 47
—— " Easter - - - - - 215
—— " Trinity - - - - - 292
—— " Michaelmas - - - - 593
Examination by Law Professor, notice of 352, 549, 559, 570, 583
—— results of - - 352, 520
Lectures by Law Professor, notice of 11, 25, 174, 187, 202, 521, 530, 540, 656
Legal and Literary Debating Society, Meetings of 35, 48, 59, 82, 93, 104, 263, 277, 623, 629
Notices to Candidates for examination 118, 131, 147, 202, 216, 227, 240, 504, 521, 530, 540, 632, 640, 656

Lawyers in Parliament - - - - - - - - 151

LEADING ARTICLES—
After sittings, the - - - - - - - - - 607
Amendment of the Married Women's Property Act (1870) - 343
Appeals, the right of, as affected by *Tobin* v. *Cleary* - 617
Appointments, new legal - - - - - - 99, 108
Associated Law Clerks of Ireland, the - - - - 30
Attorneys and Solicitors Acts (Ireland), 1866, the - - 283
Bailee, the obligations of a, for hire - - - - 191
Bar, the Irish, and the Judicature Bill - - - - 248
Barristers, Irish - - - - - - - - - 205
Bench, the Irish - - - - - - - - - 628
Bill proposed for reforming the county courts - - - 39
Bright, clauses of the Land Act and Sir John Gray's amendment - - - - - - - - - 234
British Association, the, at Belfast - - - - - 562
Building societies - - - - - - - - - 564
Carriers, the duties of, in the protection of goods - - 597
Chairman, the, and the Land Act - - - - - 374
Chairmanship of the county Limerick - - - - 553
Chamber practice in Chancery - - - - - - 386
Chancellorship, the vacant - - - - - - - 607
Chancery and Civil Bill Courts - - - - - - 573
Chancery lettings - - - - - - - - - 297
Cheques, forged - - - - - - - - - 573
Chief Baron, the new Lord - - - - - - - 98
Church Commissioners, Irish, legal business of - - - 248
College Historical Society, the - - - - - - 588
Committal for contempt of court, the power of - - 122
Conditions exempting railway companies from liability 97
Contempt of court, the power of committal for - - 122
Contracts between husband and wife, effects of divorce on - 107
Corporation of Dublin, law agent to the - - - - 554
Costs, security for, by English and Scotch plaintiffs - 316
County court jurisdiction, the extension of - - - 509
County courts, proposed bill for reforming the - - 40
Court of Exchequer, the - - - - - - 16, 30, 40
Covenants to repair, the measure of damages for breach of - 637
Damages, the measure of, for breach of covenants to repair - 637
Decisions on the Parliamentary Elections Act, 1868—I., II., III., IV., V. - - - - - - 15, 30, 53, 63, 77
Divorce, effect of, on contracts between husband and wife - 107
Drogheda election petition, the - - - - - - 315
Ejectment for non-payment of rent, - - - - - 472
Elections, Irish municipal - - - - - - - 461
Election petitions—Inspection of voting papers and registers 205
Election petition, the Drogheda - - - - - 315
Errors, judicial—I., II. - - - - - - 135, 151
Examinations, preliminary - - - - - - - 617
Exchequer, the Court of - - - - - - 16, 30, 40
Frauds, life insurance - - - - - - - 399, 413
Forged cheques - - - - - - - - - 573
Garnishee orders - - - - - - - - - 385
Goods, the duties of carriers in the protection of - - 597
Gun, carrying a, without a ten-shilling licence - - 629
Hackney election petition - - - - - - - 192
Hire, the obligation of a bailee for - - - - - 191
Historical Society, the College - - - - - - 588
Incorporated Law Society, the - - - - - - 608
Infanticide, the amendment of the law relating to - - 163
Infants' contracts - - - - - - - - - 533
Invasion, an impending - - - - - - - - 17
Invitation to railway passengers to alight - - - - 329
Irish barristers - - - - - - - - - 205
—— Bench, the - - - - - - - - - 2
—— Land Bills—the session of 1874 - - - - 269
—— Law Times Reports - - - - - - - 1
Judicature Bill, the - - - - - 270, 284, 330, 344
—— the Irish - - - - - - 233, 247
—— the, and the Irish Bar - - - - - 248
—— the Irish, between "the Houses" - - - 371
—— costs under - - - - 372, 428
Judicial errors—I., II. - - - - - - 135, 151
—— statistics - - - - - - - - - 587
Kenealy, Dr., Q.C. - - - - - - - - - 178
Land Act, the, Sir John Gray's amendment of the Bright clauses of - - - - - - - - - 234
Land Act (1870), the effect of upon tenancies for a year certain - - - - - - - - - 437
—— Tenancies for less than a year certain—Notices to quit - - - - - - - - 657

Digitized by Google

PAGE

LEADING ARTICLES—*con.*
Land Bills, Irish—the session of 1874 - 269
Land legislation - 16
Law officers, the new - 638
Law relating to infanticide, the amendment of - 163
Law Society, the Incorporated - 608
Lawyers in Parliament - 87
Legal appointments - 544
—— appointments, new 99, 108
—— business of the Irish Church Commissioners - 248
—— education - 374
—— examinations - 358
—— literature - 177
Legislation, land - 16
—— railway - 233
Lettings, Chancery - 297
Liability, conditions exempting railway companies from - 97
—— of married women to be made bankrupt - 219
Life insurance frauds 399, 413
—— insurance law and legislation 427, 447
Literature, legal - 177
Lord Chief Baron, the new - 98
—— Justice Christian - 648
Married women, liability of, to be made bankrupt - 219
—— Women's Property Act - 553
—— (1870), amendment of the -
Municipal Elections, Irish 461, 563
Notice to quit 638, 648
—— to quit under the Land Act, 1870 - 627
Parliament, lawyers in - 87
Parliamentary Elections Act, 1868, decisions on the—I., II., III., IV., V. 15, 30, 53, 68, 77
Petitions, election – Inspection of voting papers and registers 205
—— of Right, the (Ireland) Act, 1873 - 39
Railway legislation - 233
—— passengers—invitation to alight - 329
Reports, the Irish Law Times - 1
Revision of the statute law, and codification of the common law - 330
Right of appeal, the, as affected by *Tobin* v. *Cleary* - 617
—— Petitions of, (Ireland) Act, 1873 - 39
Ships, unseaworthy - 121
Social Science Congress, the - 533
Solicitor-Generalship of England - 192
Statistics, judicial - 587
Statute of frauds, the, effect of the, upon sales by auction - 357
Statutes, revised, the 523, 534
Tenancies for a year certain, effect of the Land Act (1870) upon - 437
—— for less than a year certain - 647
Ten-shilling licence, carrying a gun without a - 629
Term, commencement of - 564
Unseaworthy ships - 121
Vendors and purchasers - 499
Legal appointments in Ireland - 416
—— appointments, expected - 438
—— new - 99
—— Bibliography - 225
—— reform and the Social Science Congress - 536
—— curiosities - 357
—— education, the reform of - 7
—— items 159, 410
—— legislation of the present session - 331
Legislation, proposed Irish - 168
Liability of an execution creditor to refund - 128
—— of carriers - 443
—— of infants to bankruptcy - 140
—— of married women to be made bankrupt - 180
—— of master for injuries inflicted upon one servant through the negligence of another servant - 157
—— railway companies for delay - 599
—— for unpunctuality - 578
—— of returning officer and candidates for expenses of Parliamentary elections - 333
—— of solicitor to make good worthless security - 125
—— of solicitors for misconduct of partners - 648
—— of trustees to costs - 185
—— for non-performance of trusts - 407
Libel, charge of, against Mr. Plimsoll - 168
Life assurance, the principles of - 463
—— insurance companies - 467
Light, extent of right to, acquired by the disposition of the owner of two tenements - 482
Lodger franchise, the - 577
Lord Chancellor, address to - 99
—— of England, the new - 101
—— retirement of - 99
—— Chief Justice of England, the, and Mr. Whalley - 168
—— Cockburn on appellate jurisdiction - 405
—— on the character of Brougham - 419
—— Colonsay, death of - 65
—— the late - 78
—— Justice Christian and the Judicature Bill - 303
—— O'Hagan on the operation of the Land Act - 450
—— Westbury's will - 124

M

Magistracy, the Irish - 17
Magistrates acting as commissioners of the common law courts 469
Marking ballot papers - 360
Married Women's Property Acts of 1870 and 1874 - 590
—— Woman's Property bill, the - 206
Marshall, *re* - 57
Master and servant - 479
Mayo election, the - 239
Modification of contracts within the statute of frauds - 363
Morally a fraud - 422
Malice - 442
Mortgages including fixtures, the non-registration of - 90

N

Napier, Mr., death of - 623
National Bank, the, *v.* M'Kenna and others - 640
Nephew and niece - 589
Newspapers and the legal profession - 170
Non-assignability of stipulations annexed to a parol demise - 391

NOTANDA AND NOTES OF CASES:

Affidavit; supplemental, in support of conditional order. *Re Kearse* - 54
Appeal from Q. S.; power to adjourn to next Assizes. *Hughes* v. *O'Donnell* - 137, 448
Attorney; articled clerk of, holding office while serving. *Re Anon.* - 54
—— practising without certificate; penalty; 37 & 38 Vict., c. 68, s. 12. *Re R. D. Law* - 558
—— privilege of; production of documents. *Sankey* v. *Alexander* - 136
Bankruptcy; absconding bankrupt; expenses of trying to arrest; escape. *Re Payne* - 402
—— act of; imprisonment for non-payment of money; arrest under Debtors Act, sec. 7. *Re B. ex p. Hester* - 109
—— arrangement; advertisement of sale of premises. *Re J. N.* - 64
—— bankrupt in prison under warrant of Court of Bankruptcy; bringing up for examination. *Re Beahan* 486
—— conveyance to purchaser of leasehold, by official assignees and mortgagee of bankrupt lessee; covenant by purchaser to pay rent reserved; exemption from liability of property of assignees and mortgagee; warranty of title. *Re O'Connor* - 511
—— certificate of conformity; failure to pay 10s. in £1; audit meeting not held. *Re Parker* - 109
—— creditor withdrawing proof of debt; costs of proof. *Re E. R.* - 178
—— debt of petitioning creditor; judgment-debt, costs, and interest. *Re T. Irwin* - 54
—— debts barred by statute of limitations; proof. *Re J. F. B.* - 109
—— disclaimer of lease by assignee in bankruptcy; time for, extended. *Re Boyle* - 88
—— election; proof of debt; discharge of bankrupt from arrest. *Girond* v. *Burke* - 450
—— opposing; creditor who has not proved; claimant returned on schedule. *Re W.* - 565
—— report of Chief Registrar; objections to report; appeal. *Re Nolan* - 472
—— reputed ownership; goods bought when purchaser insolvent. *Re T. O'Connor* - 64
—— scale of fees 169, 179
—— trade assignee, appointment of; nominee having no personal interest; creditor out of the jurisdiction. *Re Bromfield* - 137
—— witnesses residing in London; order for examination before London Court of Bankruptcy. *Re Dymoke* - 565
Bills of Exchange Act; leave to defend; affidavit in reply showing matter of replication. *Rowan* v. *White* - 54
—— motion, on notice, for leave to defend; defective copy of affidavit served. *Morrow* v. *Madine* - 554
—— motion for leave to defend; copy affidavit not served. *Dillon* v. *Eastwood* - 448
Certiorari; showing by affidavit question of title arose before magistrates. *R.* v. *Js. of Donegal* - 136
Contempt of Court; attachment; discharge from custody. *Murray* v. *Tracey, Gallagher* v. *Gallagher* - 400
Contract; parol, for sale of goods; Statute of Frauds; subsequent memorandum of bargain, omitting price; parol evidence of price; part-performance. *Jeffcott* v. *N. B. Oil Co.* - 565
Costs; against the Crown; administration; question of legitimacy. *Good* v. *Jaynt* - 415
—— short-hand report; construction of model; sheriff's fee for jury-panel; briefs for new trial motion. *Jameson and Co.* v. *Royal Insurance Co.* - 375
Debtors Act; conditional order for committal; non-service within time limited for showing cause; evading service; making order absolute. *Wilson* v. *Donnell* - 554
—— debt accruing before passing of Act; rent due after, under written agreement of tenancy *(for a term of years)* executed prior to Act. *King* v. *Keenan* - 574
—— judgment for debts before and after Act; amendment. *Shaw* v. *Dunlop* - 88
—— 1872; judgment on writ of revivor; costs. *Wogan* v. *Chamney* - 220
—— order for payment by instalments; proof of means. *Sommet* v. *Dormoy, ib.* n.; *Moore* v. *Gaussen* - 108

Digitized by Google

NOTANDA—*con.* PAGE

Debtors Act; order for payment; costs of motion. *White* v. *Power* - 375
Election (Parl.); inspection of ballot papers. *Re Athlone Petition* - 83
Ejectment; for non-payment; demurrer; traverse of tenancy *Billing* v. *Arnold* - 450
——— on title; defence, after time for expired; affidavit of merits, *Galvan* v. *Nunan* - 109
——— waiver of temporary bars; jurisdiction to order in Consolidated Chamber. *Lord Castletown* v. *Wingate* - 179
Evidence; bill to perpetuate; marriage within prohibited degrees. *Molony* v. *Molony* - 574
False pretences; obtaining goods by; cheque on bank where drawer had no account. *R.* v. *Hazelton* - 601
Game, trespass in pursuit of; reservation in lease; complainant. *Bourke* v. *Head* - 221
Garnishee; money lodged under garnishee order in Court of Common Pleas; subsequent garnishee order in Queen's Bench, and motion by judgment-creditor to draw money; jurisdiction. *Curtin* v. *Fitzgerald* - 472
——— order, money lodged under, in C. P.; motion to draw, by judgment creditor in Q.B.; jurisdiction; notice of motion in three causes. *Curtin* v. *Fitzgerald* - 545
Greyhound; keeping without qualification. *Russell* v. *Dwyer* 415
Habeas Corpus Act; trial of issues in Court of Bankruptcy; witness in prison; *habeas corpus ad test.* *Re Smith* - 564
——— ad test.; affidavit of attorney that witness can give material evidence. *Darragh* v. *Graham* - 486
——— supplemental affidavit in support of. *Re Kearse* - 54
Homicide; negligent driving; onus of proof. *R.* v. *Cavendish* 415
Husband and wife; divorce *a mensa et thoro*; domicile; jurisdiction. *Gillis* v. *Gillis*, - 414
Interpleader; real estate. *Gardiner* v. *Hinds* - 401
Judgment, final, marked for unliquidated demand; interest. *Minors* v. *Purvis* - 108
——— setting aside; writ served on agent, but not forwarded. *Pim* v. *Sheehan* - 108
Land Act, 1870; town-parks; notice to quit; stamp. *Trustees of Lord Kilmorey* v. *Anderson* - 109
——— compensation for disturbance; Ulster custom; purchaser of tenants interest, with notice that he would not be accepted. *Lappin and Little* v. *Coote* (App.) 416
——— compensation for disturbance; discretion of Chairman as to amount awarded; reviewing on appeal. *Lord Mountmorris* v. *Hamilton and Kyne* - 486
——— compensation for disturbance; maximum allowance; tenant not in actual occupation. *M'Neill* v. *Adams* - 501
——— compensation for disturbance; townpark, not so named. *Wilson* v. *Earl of Antrim* - 501
——— s. 59; appointment of administrator for purposes of Act. *Re Barron* - 565
——— s. 58: L. & T. Act, 1860, s. 6; alternative notice to quit. *Ferguson* v. *Daly* - 501
——— s. 46; purchase of holding in Landed Estates Court, by occupying tenant *Sherlock's Estate* - 544
Landlord and tenant; change of tenants' names in rent receipts; evidence; new tenancy; transfer of previous rights. *Bourke* v. *Bourke* - 502
——— writ of restitution; L. & T. Act, 1860, s. 70; jurisdiction. *Stackpoole* v. *Hogan* - 564
Lodgment of money in court; new trial pending; drawing out, when new trial directed. *Cosgrave* v. *Trade Auxiliary Co.* - 221
Magistrates; jurisdiction ousted by question of title. *R.* v. *Js. of Donegal* - 136
Mandamus; magistrates refusing to issue summons; previous summons dismissed without prejudice. *R.* v. *Js. of Meath* - 415
Parties; bill to perpetuate testimony; marriage within prohibited degrees. *Molony* v. *Molony* - 574
Poor-rate; exemption of building for public purposes; town-hall. *Sligo Board of Guardians* v. *Wynne* - 472
Production of documents; privilege; solicitor. *Sankey* v. *Alexander* - 136
Presentment; agrarian crime; Peace Preservation Act, 1870, s. 39; presentment; amount of compensation; alteration of area; costs. *Killeen* v. *Whiteford* - 571
——— coroner's inquest; death of inmate of workhouse; fee to medical officer. *Anon.* - 375
——— coroner's inquests; presentment. *Re Tullamore Presentments* - 545
——— county printing; lowest tender; discretion of grand jury as to acceptance. *Anon.* - 376
——— maintenance of Lunatic Asylum; presentment. *Re Limerick Presentments* - 545
Principal and agent; agent responsible for misfeasance of duty, for which principal, also, responsible. *Harriman* v. *Stowe* - 465
Probate Court; attesting witness refusing to make any affidavit; *subpœna ad test.* *Goods of Dorgan* - 486
Record of Title Act; equitable mortgage of lease; subsequent acquisition of lessor's interest, and title recorded. *Re O'Keeffe* - 178
Remittal of action to inferior court; question of title; visible means. *Stamp* v. *Hickey* - 485
——— under C. L. P. Act, 1870, s. 6, though notice of motion framed under s. 6. *Macdermot* v. *Cox* - 448

NOTANDA—*con.* PAGE

Remittal of action to inferior court; remittal by consent after time for moving; appeal from chairman. *Rodgers* v. *Larmour* - 220
——— breach of promise of marriage. *Cudden* v. *O'Brien* - 89
——— plaintiff resident abroad. *Clarke* v. *Pelling* - 54
——— scandalous matter in affidavits. *O'Driscoll* v. *Blackwell* - 54
——— unliquidated damages; power of appeal. *Walsh* v. *M'Manus* - 109
——— visible means. *Ennis* v. *Murphy* - 89
——— where question of forgery raised. *Hacket* v. *M'Neill* - 89
——— where question of forgery raised; no means of recovering under decree against defendant. *Flanagan* v. *Watson* - 54
Security for costs; affidavit of merits, what sufficient. *Chaigneau* v. *O'Gorman* - 179
——— after defence filed; special circumstances. *Oates* v. *Caraher* - 64
——— after extension of time to plead. *Oates* v. *Culkeen* - 64
——— by married woman, suing by next friend. *Savage* v. *James* - 88
Sale of goods; misrepresentation of ownership; true owner reclaiming; recovery of price from vendor. *Thompson* v. *Gamble* - 500
Solicitor; renewal of certificate; conveyancing without licence; non-statement in affidavit. *Re Parsons* - 510
Subpœna to witness out of jurisdiction; power of courts of Equity to issue. *Underwood* v. *Darracott* - 64
Substitution of service; by registered letter. *Barrett* v. *M'Neight* - 64
——— plaintiff residing abroad; service through registered letter. *Kelly* v. *Mason* - 472
——— where part of cause of action arises in jurisdiction. *Macken* v. *Ellis* - 88
Special jury, certificate for; delay in application. *Coote* v. *Meredith* - 449
Temporary bars, waiver of, ejectment on title; jurisdiction of judge on circuit. *Comyn* v. *Comyn* - 375
Venue, change of; county where cause of action arose. *O'Toole* v. *Mulhall* - 375
Venue, change of; delay in applying for. *Blayney* v. *Kirwan* 137
Notes of English decisions {10. 34, 46, 58, 73, 104, 117, 130, 145, 186, 201, 213, 228, 263, 306, 367, 529, 558, 591, 654.

O

OBITUARY:—
Alexander, A. M., Esq. - 103
Brewster, the Right Hon. Abraham - 423
Graham, F. J. - 649
Jenkins, W., Esq. - 103
Leahy, Q.C., - 549
Lord Romilly - 649
O'Malley, Q.C., P. F. - 649
Smyth, John - 321
Obtaining money by false pretences - 406
O'Grady, the - 18
Order of Lords Commissioners, relating to the business in Masters' offices - 431

P

Parliament, the law of - 155
Partners in bankruptcy, the estates of - 4
Passengers' Luggage - 123
Payment to a third party not proved by his receipt - 8
Peace Preservation Act, the - 431
Petition of Right (Ireland) Act, the first petition under - 71
POLICE COURTS, DUBLIN METROPOLITAN:—
County cess; waterworks; evidence of liability; mode of raising question of exemption. *Alma* v. *Corporation of Dublin* - 195
Licensing Act, the; *bona fide* travellers; onus of proof. *Re Cantwell* - 167
Sale by auction; *bona fide* purchaser; piano hired under "three years' system;" sale by hirer before payment of last instalment; goods obtained by felony, purchased without notice thereof; trover; jurisdiction of police magistrate to order re-delivery by purchaser, or payment of value; 5 Vict., c. 24, s. 68. *Cramer & Co.* v. *Morton* - 503
Trade guarantees by workmen against loss of employer's goods no defence against criminal proceedings for illegally pawning such goods; proceedings should be under Summary Act, 25 & 26 Vict., c. 50, and not for felony under the Larceny Act. *Winstanley* v. *Caravan and Kirwan* - 639
Press and bar, the, *v.* Dr. Kenealy - 332
Prisoner attacking a judge - 631
Prisons and Prisoners - 441
Profession of the Law, the - 403
Proposed new rules of court, the, and the practice in England - 451
Prosecutions for libel - 439
Prosecutions under the Companies Act, - 535

Digitized by Google

PAGE
Postponed legal reforms, the - - - - - - 430
Public management, the, of private business - - - 457
Public prosecutors - - - - - - - 490
Purcell, Q.C., Mr. Theobald - - - - - - 589
Purchasers, *bona fide*, without notice - - - - 200
Puzzles of evidence - - - - - - - 298

Q

Qualification to vote, loss of, after registration - - - 100
Quarterly index to subjects of cases - - 165, 359, 525, 650
Queen's Bench, Court of - - - - - - 577
Queen's Counsel (England), new - - - - - 78

R

Railways and their time tables - - - - - - 142
Rational law-making - - - - - - - 417
Registration, the, of mortgage deeds as bills of sale - - 630
Registry of Judgments, Ireland - - - - - 290
Religious education of infants - - - - - 440

REPORTS OF CASES:

Attorney; liability of, to make good worthless security. *Mackett* v. *Baylis* - - - - - - - - 125
——— striking off the roll for misappropriation. *Re Anon.* - - - - - - - - - 93
Ballot Act; inspection of ballot papers; mandamus to Clerk of Crown office to allow. *Stow* v. *Jolliffe* - - - 210
Bankruptcy; debtor's summons; claim arising out of partnership disputes; staying proceedings without security. *Ex p. Bowers* - - - - - - - - 71
——— debtor's summons; proof of indebtedness. *Re M'Donald* - - - - - - - - 433
——— debts, proof for; bill of costs, not taxed. *Ex p. Nicholl* - - - - - - - - 93
——— debts, proof for; bills of exchange; production of, on proof. *Ex p. Jacobs* - - - - - 156
——— execution against bankrupt; rights of execution creditor; sheriff having notice of act of bankruptcy. *Re Condon* - - - - - - - 392
——— infant; liability of, to be made bankrupt. *Re Landon* - - - - - - - - - 115
——— liability of married woman to be made bankrupt. *Re Lyons* - - - - - - - - - 180
——— married woman; liability of, to be made bankrupt. *Ex p. Holland* - - - - - - 124
——— restraining action; debt incurred by fraud. *Re Barrett* - - - - - - - - 144
Bills of Sale Act; conditions to be written on bill; payment by instalments. *Ex p. Southam* - - - - - 156
Carrier; value of goods, what constitutes within Carriers' Act. *Moscrop* v. *L. & Y. Ry.* - - - - 33
Carriers by rail; delay; condition, not to be accountable for; traffic impeded by fog. *Clough* v. *L & Y. Ry.* - - 212
——— delay; wilful misconduct. *Russell* v. *G.W.Ry.* 210
Costs; several defendants; bill of costs; severance. *Watson* v. *Row* - - - - - - - - 407
County cess; waterworks; evidence of liability; mode of raising question of exemption. *Alma* v. *Corporation of Dublin* - - - - - - - - 195
Damages, measure of, for breach of covenant to repair; where only nominal recoverable, new trial granted. *Morony* v. *Ferguson* - - - - - - 637
Debtors' Act; lapse of twelve months after arrest; discharge from custody. *Nally* v. *Aylett* - - - - 444
Deed, preparing, without having conveyancing licence; 27 Vict., s. 3. *Anon.* - - - - - - - 518
Election (Parl.); abatement of petition on dissolution of Parliament. *Re Exeter Petition* - - - - - 81
——— agents, unlawful acts of; liability of candidate for. *Taunton Petition* - - - - - 79
——— bribery; notice; disqualification. *Drinkwater* v. *Deakin* - - - - - - - 361
——— particulars; time when to be furnished. *Wakefield Petition* - - - - - - - 156
——— polling booth; right of returning officer to exclude candidate from. *Clementson* v. *Mason* - - 156
——— returning officer; action for penalties. ——— v. *Langley* - - - - - - - 422
Garnishee; attaching judgment debt; costs not taxed. *Webb* v. *Graves*; *Reynolds* v. *Graves* (C. P.) - - - - 385
General Orders relating to business in Masters' Offices - 431
Guarantee by workmen against loss of employers' goods; goods illegally pawned; criminal procedure. *Winstanley* v. *Caravan and Kirwan* - - - - - - 639
Husband; action by, for injuries sustained by wife through defendant's negligence; evidence of wife; declarations of injured person to physician. *Harriman* v. *Stowe* - 465
——— and wife; wife's earnings; Married Woman's Prop. Act; action for breach of contract. *Summers* v. *The City Bank* - - - - - - - - - 407
Landlord and Tenant Act, 1870; compensation for disturbance and improvements; tenant under a Chancery letting, pending the cause. *Rogers* v. *Fitzgibbon* - - - 297

REPORTS OF CASES—*con.* PAGE

Landlord and tenant; compensation for disturbance and improvements; amendment of claim; unreasonable conduct of landlord; demanding increased rent; Ulster custom; acquiring tenant right. *Wright* v. *Montgomery* - - 569
——— tenancy until six months' notice, but at least for three years; option to renew; notice to quit, expiring with a year. *Garbutt* v. *Naughton* - 496
Licensing Act; *bona fide* travellers. *Anon.* - - - 81
——— *bona fide* traveller; onus of proof. *Cantwell's case* - - - - - - - - - 167
——— *bona fide* traveller; onus of proof. *Cantwell* v. *Dowling* (on App). - - - - - - 577
Magistrate; trover; jurisdiction to order delivery of goods or their value. *Cramer & Co.* v. *Morton* - - - 503
Married Women's Prop. Act; husband tenant of, and resident in house where wife carries on business. *Cosstick* v. *Laporte* - - - - - - - - - 23
——— legacy bequeathed to wife before marriage; separate use. *Lane* v. *Oakes* - - - 115
——— non-liability of married woman to be sued; carrying on business apart from husband. *M'Govern* v. *Hinkey* - - - - - - 41
Master and servant; injury to servant by negligence of fellow-servant. *U. P. Ry.* v. *Fort*; *V. W. U. P. Co.* v. *M'Cue* - - - - - - - 157, 158
Race; "gentleman rider." *Burton* v. *Walker* - - 611
Railway; loss of passenger's luggage; condition exempting from liability; reasonableness of condition; reference to condition, endorsed on ticket, not read by passenger; "through ticket." *Kents* v. *M. Ry.* - - - 631
——— liability to passenger for unpunctuality; notice restricting liability; wilful misconduct. *Becke* v. *G. W. Ry.* - - - - - - - - - 578
Remittal of action to inferior court; trover, remitting action of. *Chapman* v *Obin* - - - - - - 240
Sale of Goods by auction; piano hired on "three years' system;" absolute sale by hirer, before payment of last instalment; trover. *Cramer and Co.* v. *Morton* - 503
Security for costs; notwithstanding Judgments Extension Act, *Raeburn* v. *Andrews* - - - - - 81
Service of bill out of jurisdiction; form of order; forum. *Phospho Guano Co.* v. *Guild* - - - - - 173
Trade union; claim by member for payment of a sick allowance; jurisdiction of magistrate. *M'Queen* v. *Quirk* 393
Will; legacy, specific or demonstrative. *Mytton* v. *Mytton* 631
Returning officers' fees, - - - - - - - 222

REVIEWS:—

Blake, E. N.—*The Ballot Act*, 1872, (35 & 36 *Vic.*, *Cap.* 33). *An Act to Amend the Law relating to Procedure at Parliamentary and Municipal Elections; with a Copious Index; and Explanatory Introduction.* Dublin: John Falconer -
Deane, H. C.—*Principles of Conveyancing: an Elementary Work for the use of Students.* London: Stevens and Haynes - - - - - - - - 611
Halliday, R.—*A Digest of the Questions asked at the Final Examination of Articled Clerks in Common Law, Conveyancing, and Equity, from the commencement of the Examinations in* 1836 *to the present time; with Answers, arranged as far as practicable, in the same order as the text books from which they are taken; also a Common Law and Equity Time Table; and the Mode of Proceeding, and Directions to be attended to, at the Examination.* London: "Law Times" - - - - - 469
Haynes, F. O.—*The Supreme Court of Judicature Act*, 1873, *with Explanatory Notes.* London: Wm. Maxwell and Son. Dublin: Hodges, Foster and Co., and E. Ponsonby. 483
Holland, T. E.—*The Institutes of Justinian: Edited as a Recension of the Institutes of Gaius.* Oxford: at the Clarendon Press - - - - - - - 592
Holland and Shadwell. Part I.—*Select Titles from the Digest of Justinian.* Oxford: at the Clarendon Press - - 173
Hutchinson.—*The J. P.'s Pocket Guide.* Dublin: J. Ireland and Son - - - - - - - - 624
Indermaur, J.—*An Epitome of Leading Common Law Cases; with some short Notes thereon: chiefly intended as a Guide to "Smith's Leading Cases."* London: Stevens and Haynes - - - - - - - - 298
Indermaur, J.—*Self-preparation for the Final Examination Containing a complete course of Study, with Statutes, Cases, and Questions: and intended for use, during the last four months, of those Articled Clerks who read by themselves.* London: Stevens and Haynes - - 469
Junner R. G.—*The Practice before the Railway Commissioners under "The Regulation of Railways Act,* 1873," *with the Law applicable thereto, and the General Orders, Forms, Table of Fees, Statutes, &c.* London: Wildy and Sons - 201
Kirkpatrick, H. C.—*Court of Queen's Bench (Ireland). Report of the Action for Libel brought by the Rev. Robert O'Keeffe, P.P., against His Eminence Cardinal Cullen; with an Introduction.* London: Longmans, Green, and Co. - - - - - - - - - - 173
Perrin, M.—*Registry of Judgments, Ireland. General Orders of the* 11th *day of May*, 1874, *together with Observations thereon.* Dublin: Alexander Thom - - - 276
Reed, A., B.A.—*The Liquor Licensing Laws of Ireland, containing the Licensing Acts*, 1872-1874, *&c.*, Dublin: Alexander Thom - - - - - - - 602

Digitized by Google

REVIEWS—*con.* PAGE

Richardson, R. H.—*A Practical Treatise on Solicitors' Book-keeping by Double Entry; with Descriptions and Forms of the Several Books and Examples of their Working, with full Instructions for Posting, Balancing, &c.* London: the Author; Reeves and Turner - - - - 612
Snell, E. H. T.—*The Principles of Equity, intended for the Use of Students and the Profession.* London: Stevens and Haynes - - - - - - - - 592
Thom, A.—*Supplement to Thom's Irish Almanac and Official Directory of the United Kingdom for* 1874 (*20th March,* 1874) - - - - - - - - 227
Revision of the statutes - - - - - - - 349
Rights and duties of carriers as warehousemen - - - 408
——— of landlords to distrain - - - - - 390
——— and liabilities of foreign principals - - - - 41

S

Salaries of judges - - - - - - - - 598

SALES IN THE LANDED ESTATES COURT:—

In the Matters of the Estates of—

Armstrong, William, 60—Aylmer, Gerald J., 50.
Baxter, Sir David, Bart., 633—Beatty, F., 594—Bell, Thomas, 132—Beresford, R. H., 337—Bergin, Anne, 94—Blackall, Robert, 633—Bowles, George, 104—Boyce, Joseph, 137—Brennan, O'N., 50—Brinkley, Richard Graves, 132—Burke, Redmond, trustee of M. Roseingrave, 60—Burke, Antonio Jane Belinda, 633—Butcher, Most Rev. Samuel, Lord Bishop of Meath, and others, trustees of Vice-Admiral Samuel Butcher, 594—Butler, Francis D., 216.
Cahill, Michael, 147—Campbell, W. W., trustees of, 337, 643—Campion, Charles T., 308—Campion, Henry, 594—Carroll, M., 643—Clarke, Anne, 84—Comyn, W. N., 216—Cooper, Ellen J., 60—Crofton, Duke, and others, trustees of Wm. Jones, 638.
D'Arcy, Dominick, and Joseph M'Donnell Darcy, and others, 633—Daily, Denis, 132—Desart, Lord, trustees of, 216—Dignam, John, 104—Dooley, Michael, 264—Dwyer, Henry Law, 603.
Falkiner, B. W., 95—Fawcett, Anthony Molloy, 264—Ferrall, John Nolan, 618—French, Right Hon. Fitzstephen, 604—Fitzgerald, Margaret, 50—Fitzsimons, Mary, administratrix of Joseph Plunkett, 230—Fitzsimons, Walter, 104—Forde, E. Rose, 50—French, Thomas Patrick, 633.
Gabbett, W., 84—Gandon, James A., 643—Gibbings, Robert E., 84—Geary, Francis, 322—Gaggin, R. M., trustees of, 84—Gorman, Rev. W. C., 594—Graham, William John, 132—Graves, Rev. R. H., 50—Greer, Thomas H., 293.
Hackell, James, 244—Hagerty, T. S., 94—Hague, William, 264—Hall, John, 593—Hall, John H., 216—Hammond, William, and others, 603—Hastings, Bridget, 594—Hawksworth, R. S., and others, trustees of W. W. Despard, 94—Hawksworth, Richard Steel, and others, trustees of J. T. Moore, 264, 603—Heinekey, Lewis, as trustee, 230—Hone, Nathaniel, 292.
Innes, Anne, administratrix of Christopher Humphrey, 593.
Jackson, Samuel, 243.
Kemmis, Elizabeth Anne, 147—Kemmis, William, trustee of Thomas Kemmis, 147—Kemmistree, William, and Thomas Kemmisden, 216—Kidd, George, 293—Kidd, John, 60, 293—King, Sir James W., Bart., 60, 230—King, Robert, 94, 264—Kirwin, Nicholas, 94—Knox, M. Wilson, 230.
Lambert, Henry, 94—Langdall, Charles, 95—Lannigan, Trevor T., 321—Lawton, Julia, 104—Lees, Harcourt, 593—Lemass, Joseph, 94—Lowry, Isabella, otherwise Moody, and James Moody Lowry, 594.
Mason, John Leland, 293—M'Cormick, Wm., 230—M'Creery, James, 84—M'Donnell, Mary, and others, 594—M'Mahon, Arthur, 132—M'Manus, Margaret, and others, 337—M'Nally, James, 594—M'Nulty, Daniel, assignees of, 84, 244—Morgan, Edward, 633—Mullins, John, 132—Murphy, Gregory, 94.
Niddrie, Grace, 264—Noble, William, 593.
O'Connor, Rev. John Hutton, and Edward Carolin, trustees of Richard Jones Pratt, 293—O'Connor, Maurice, 95—O'Donel, C. J., trustee of J. M. O'Donel, 84—O'Ferrall, Gerald, 94—O'Kelly, M. A. E., 293—O'Neill, Anne, 94—O'Reilly, Drake C., 132, 293—O'Shaughnessy, Mark Stephen, trustees of Richard Bernard Mullins, 264.

SALES IN THE LANDED ESTATES COURT—*con.* PAGE

In the Matters of the Estates of—

Parnell, Henry Tudor, 308—Pentland, George H., 50—Pim, Lydia, 643.
Quinn, Susanna, administratrix of Michael Quinn, 147.
Raleigh, G., 50—Read, Letitia, and others, 264—Reynolds, John, trustees of, 60—Richards, Rev. Edward, and others, 337—Riddick, John, 603—Ridley, John Henry Ellis, 593—Ryan, James H., 337.
Sampey, H. V., 643—Sheil, Grace J., 60, 322—Sherlock, John, trustee of Anne Maria Elizabeth O'Brien, 308—Smithwick, Martin H., 132—Sothern, Alfred, 230—Stack, Rev. T., 50—Stirling, Rev. John Blair, trustees of, 337.
Tate, John, trustees of, 132.
Underwood, Thomas M., 60—Usher, Richards, 244.
Walker, John Thomas, 60—Wallace, Sir Richard, 337—Warre, Arthur Braithwaite, and others, 321—Widdup, Elizabeth E., 94, 244—Wilme, Anne, administratrix of Benjamin Wilme, 132—Wilson, C., and another, 643—Wingfield, William, 50—Wood, Thomas M., 94.

Scene between a county court judge and a solicitor - - 443
Scotch bench, the - - - - - - - - 65
Security for costs by English and Scotch plaintiffs - - - 63
Sergeant-at-law, historical sketch of the office of - - - 491
Settled Estates' Act, the new - - - - - - 580
Sheriffs, list of, for 1874 - - - - - - - 117
Short rule for life insurers - - - - - - - 419
Shylock *v.* Antonio - - - - - - - - 21
Solicitors' Benevolent Association, meeting of - - - 63
——— annual dinner - - - 69
——— bill, taxation of, after twelve months - - - 93
——— cases affecting - - - - - 420, 512
——— recent cases affecting - - - - - 40, 185
——— lien - - - - - - - - 78
Spoilt stamps - - - - - - - - 185
Statistical and Social Inquiry Society of Ireland - - - 344
Statistics of bankruptcy in England - - - - - 223
Statutes and Parliamentary Papers - - - - - 410
Stockbroking case, the late - - - - - - 576
——— another - - - - - - 577
Stock Exchange fraud, New York - - - - - 143
Strange law suit in Paris - - - - - - - 224
Supreme Court of Judicature Act (1873) Amendment Bill 319, 378, 388
Sureties, the discharge of - - - - - - - 5

T

Tacking in a register county as against a subsequent registered incumbrance - - - - - - - - 364
Tenant-right - - - - - - - - 128
Text-books, careless - - - - - - - - 127
Tichborne case, legal aspects of the - - - - - 153
——— estates, the - - - - - - - 495
Trade-mark prosecution - - - - - - - 517
Transfer of shares to paupers - - - - - - 183
Tribunals of commerce - - - - - - - 196
Trustees and the commutation of East India stock - - 72
Trustees, sales by - - - - - - - - 45

U

University election, the - - - - - - - 652
Unqualified practitioners - - - - - - - 558

V

Vendor and Purchaser's Act, 1874 - - - - - 653
Void marriages in America - - - - - - - 351
—— post-office orders, *alias* unclaimed post-office orders - - 559

W

Warranty of care - - - - - - - - 378
Wills and bequests - - - - - - - - 580
—— probate of - - - - - - - - 159

Digitized by Google

INDEX

TO

PETITIONS IN BANKRUPTCY,

FILED OR HEARD

IN

1874.

☞ The name printed in *italics* is that of the place in which the business or trading was carried on.

A

	PAGE
Abbott, Henry Railgard, *Castlecomer, Kilkenny*	175
Allison, James, *Cornwallis-street, Limerick*	425
Armstrong, James, *Stephen's-green, Dublin*	244
Armstrong, Simon Peter, *Main-street, Tipperary*	95
Armstrong, William, *Hollywood, county Down*	634

B

Baillie, Alexander, *Little Patrick-street, Belfast*	293
Barton, Folliott, *Tullaghan, Sligo*	309
Bell, Richard, *Loughbawn, Newbridge, county Kildare*	397
Bergin, William, *42, Wentworth-place, Dublin*	383
Berkeley, Ludlow, *Oldchapel-lane, Cork*	244
Blunt, George, *Belfast*	188
Boak, Aaron, *Bowhillion, Burt, Donegal*	353
Boland, Catherine, *Parsonstown, King's County*	470
Boyton, Mary Anne, *Thurles, Tipperary*	293
Brady, Bernard, *15 and 16, Brennan's-terrace, Bray, county Wicklow*	397
Brennan, James, *Bridge-street, Waterford*	279
Brittain, Patrick, and Henry O'Toole, *Connaught-place, Dalkey*	105
Broderick, Michael, *Loughrea, Galway*	148
Brooks, John, *Knockagis, near Castleblaney, Monaghan*	353
Broomfield, David, *15, York-road, Belfast*	95
Brown, Ebenezer E., *The Valley, Roscrea, Tipperary*	541
Buckley, Timothy, *Shandon-street, Cork*	309
Burns, John Delins, *72, Talbot-street, Dublin*	161
Byrne, Charles, *Arbutus Lodge, Blackrock road, Cork*	634
Byrne, John, *The Green Hills, Dublin*	217
Byrne, Patrick, *22, Victoria-street, Belfast*	133

C

Callaghan, John, *Middleton, Cork*	85
Campbell, William, *Triton, Bettystown, county Meath*	506
Cannon, William, *26, Aungier-street, Dublin*	338
Cardiff, James, *Wexford, county Wexford*	85, 95
Carnegie, Mary E., *Charleville-road, Rathmines, Dublin*	383
Chamney, John, *Four Courts Marshalsea*	411
Clarke, Patrick, *Wicklow-street, Dublin*	497
Clarke, Thomas, *Ballaghaderreen, county Mayo*	383
Coady, James, *Wexford*	133
Coffey, Daniel, *Athy, county Kildare*	595
Collister, Robert Henry, *14 & 15, Main-street, Clonmel, county Tipperary*	217
Connaghton, William, *Athlone, county Roscommon*	322
Connor, Luke, *Roscommon, county Roscommon*	470
Cooke, Thomas, *Baltinglass, county Wicklow*	322
Coppinger, Thomas, *Castlebar, Mayo*	279
Coulter, Robert, *Kesh, Fermanagh*	658
Courtney, Robert, *Dundrum*	368
Coyne, William J., *Lower Gardiner-street, Dublin*	188
Crawford, Thomas Reginald, *Glenageary, co. Dublin*	584
Creswell, Joseph, *Whitecastle, Londonderry*	353
Creswell, William, *Ramelton, Donegal*	368
Crone, Robert, *Newry, Armagh*	388
Crowley, Michael, *Kilcronin, Cork*	105
Cullen, Daniel, junr., *17 & 18, High-street, Kilkenny*	105
Curran, Denis, *4, Longwood terrace, Dublin*	531
Curtis, Thomas Joseph, *Donegal-street, Belfast*	217, 281

D

Daly, Keevan, *Moate, Westmeath*	644
Darcy, Henry, *Belfast, county Antrim*	470
Davey, John, *Ballaghaderreen, county Mayo*	279
Davies, George Henry, *The Barracks, Ennis, county Clare*	541
Deegan, John, *Ballinakill, Queen's County*	175
De Savigney, Louis, and Ashe, Henry, *31, Abbey-street, Lower, Dublin*	322
Dever, John, *Castlebar, Mayo*	61
Dillon, John, *Stradbally, Queen's County*	95
Dolan, Mary, *Shannon-bridge, King's County*	244
Domvile, Sir Charles Compton William, *Santry Court, Dublin*	383
Donnelly, Peter, *33, North-street, Newry*	95
Donovan, George R., *South Main-street, Youghal, county Cork*	411
Donovan, Patrick, *21, Strand wall or street, Irishtown, Dublin*	323
Dowler, Charles, *Curragh Camp, Kildare*	27
Doyle, Philip, *Elizabeth-place, Dublin*	323
Duggan, John Robert, *Christchurch-place, Dublin*	411
Dunne, William, *Main-street, Bray, county Wicklow*	279
Dwen, Joseph, *Naas, Kildare*	383

E

Ellis, Edward, *61, South Great George's-street, Dublin*	615

Digitized by Google

F

PAGE

Farrar, Joseph, *Eden-quay, Dublin* - 383
Farrell, John, *Newbridge, county Kildare* - 338
Farrelly, Michael, *Virginia, Cavan* - 75
Ferguson, George and Robert, *Londonderry* - 105
Fitzsimons, Walter, *Seafield Cottage, Sandycove, Kingstown* - 85
Flannery, Francis, *Ballaghaderreen, county Mayo* - 595
Flood, Patrick, *197, North King-street, Dublin* - 244
Forde, John, *Ballygar, county Galway* - 36
Fortune, James, *Churchtown, Wexford* - 203
Foxall, William, *Commercial Buildings, Dame-street, Dublin* - 203

G

Gallivan, John, *Farranenagh, Kerry* - 584
Gardiner, Samuel, *Belfast* - 521
Garland, Patrick, *Carrickmacross, county Monaghan* - 625
Garroway, James, *Castle-lane, Belfast* - 584
Gilshenan, John, *Virginia, county Cavan* - 244
Ginney, Hugh S., *Killyleagh, county Down* - 470
Gleeson, John, *Killarney, county Kerry* - 484
Gordon, Ellen, *Lisliddy, Knockmurray, county Roscommon* - 541
Gordon, Patrick, *Lisliddy, Knockmurray, county Roscommon* - 541
Grady, George, *Ballybough Road* - 658
Grant, Michael, *King-street, Waterford* - 584
Greer, John M., *68, Apsley-place, Belfast, co. Antrim* - 604
Griffin, Michael, *Lismore, Waterford* - 161

H

Hackett, John, *Omagh, county Tyrone* - 75
Hamill, George, *Anne-street, Belfast* - 531
Hamilton, James, *Enniskillen, county Fermanagh* - 595
Hamilton, Henry, *Kilrea, Londonderry* - 625
Hanley, John, *Main-street, Longford* - 497
Hanlon, Patrick, *Waltherstown and Murney, county Kildare* - 75
Hanna, Joseph, *Outlack, county Armagh* - 323
Harris, William H., *100, Middle Abbey-street, Dublin* 521
Hay, Arthur Graham, *Redbarns House, Dundalk, Louth* 203
Heeney, Patrick, *Mell, near Drogheda* - 470
Hennessy, John James, *Kenmare, county Kerry* - 353
Hetherington, Martin J., *Beakestown Mills, near Thurles, Tipperary* - 244
Hickey, James F., *48, Lower Mecklinburgh-street, Dublin* - 425
Hickey, Martin, *John-street, Kilkenny* - 75
Hickey, Michael, *Balbriggan, Dublin* - 51
Hildebrand, Henry, *Turlough, county Mayo* - 634
Hillsworthe, William Henry, *5, Breffin-terrace, Sandycove* - 531
Holland, Catherine, *Togher, Louth* - 161
Holland, Matthew, *Dromart, Armagh* - 584
Hood, Samuel, *Newtownstewart, Tyrone* - 309
Horan, Patrick, senr., *Tullamore, King's County* - 411
Hughes, Michael, *22, Waterloo-street, city and county Londonderry* - 323

K

Kappock, Michael, *Navan, county Meath* - 470
Kealy, James, *Newtown Mills, Trim, county Meath* - 605
Keegan, Francis, *12, Lower Baggot-street, Dublin* - 244
Keeney, Neal, *Dunkineely, county Donegal* - 323
Kehoe, Andrew, *Newtownbarry, Wexford* - 36
Kehoe, John, *24, Hanover-lane, Dublin* - 634
Kelly, John, *Rathfragan, Fintona, county Tyrone* - 368
Kelly, Martin, *Athlone, county Roscommon* - 584
Kennedy, Catherine, *Glenties, county Donegal* - 265
Kennedy, John, *Abbeyleix, Queen's County* - 338
Kilbride, Daniel, *Tomaline, Limerick* - 369
Kinahan, James, *Park-street, Dundalk, Louth* - 644
Kirwan, John, *Clonroch, Enniscorthy, Wexford* - 175

L

PAGE

Labertouche, Abel William, *18, Fleet-street, Dublin* - 279
Lancashire, John, *Bailieboro', Cavan* - 309
Laffan, Thomas, *late Sandville, Limerick* - 531
Leahy, Daniel, *Grand Parade-market, county Cork* - 411
Leahy, Mary, *Ballinasloe, Galway* - 231
Lofthouse, John S., *126, Capel-street, Dublin* - 625
Logan, James, *Ballymacarret, county Down* - 27
Logue, William, *Ballyare, Ramelton, Donegal* - 634
Lynam, James, *Tomona, Tulsk, Roscommon* - 353
Lynch, Owen, *Oldcastle, county Meath* - 595
Lynch, William Henry, *Butcher street, Derry* - 506

M

Magrath, George Ponder, *23, Temple-lane, Dublin* - 358
Maguire, Charles and Patrick, *High street, Omagh, county Tyrone* - 36
Maguire, John F., *Fivemiletown, county Tyrone* - 506
Malcomson, James, *Main-street, Cavan, county Cavan* 584
Malet, Laurence M., *Moville, county Donegal* - 595
Marsden, John, *Annalee House, Cootehill, county Cavan* 484
Marshall, George, *Lower Salthill, Galway* - 353
Martin, Lewis Vaughan, *Newry, county Armagh* - 203
Mason, John, and Looby, Patrick, *Templemore, county Tipperary* - 425
Meares, George, and Co., *Crampton-quay Dublin* - 585
Metcalf, William, *William-street, Dublin* - 644
Miller, Mathew, *Coolnamuck, county Kilkenny* 644, 658
Miller, Peter, *Poolbeg-street, Dublin* - 265
Milligan, David, *Newry, Down* - 644
Molloy, John, *Middle Gardiner-street, Dublin* - 507
Monaghan, Michael, *Dromod, Cootehill* - 634
Morrow, Thomas, *Trillick, Tyrone* - 231
Murphy, Malachi, *28, Ranelagh, county Dublin* - 507
Murray, James, *87, Harold's Cross, Dublin* - 293
Murray, Thomas, *95, Harcourt-street, Dublin* - 497

M'

M'Aleenan, James, *North-street, Belfast* - 338
M'Bride, James, *Londonderry, county Londonderry* - 470
M'Carthy, Henry, *Ballinahinch, county Down* 605, 625
M'Connell, Thomas, *Talbot-street, Dublin* - 497
M'Crory, John, *Castlederg, county Tyrone* - 338
M'Cusker, John J., *Dundalk, county Louth* - 507
M'Cusker, Philip, *Enniskillen, Fermanagh* - 369
M'Cutcheon, Thomas Henry, *Lisnaskea, Fermanagh* - 531
M'Donald, Francis H., *5, Great Patrick-street, Belfast, county Antrim* - 497
M'Donald, John, *Athy, Kildare* - 615
M'Donnell, George, *Whitegate, Galway* - 383
M'Donnell, Iver, *13, Anglesea-street, Dublin* - 309
M'Donnell, Thomas, *3, Richmond-avenue, Fairview, county Dublin* - 595
M'Fadden, John, *Cross-roads, Donegal* - 217
M'Ghee, Mary L., *Granby-row, Dublin* - 507
M'Kee, Joseph, *31, Waring-street, Belfast* - 203
M'Kenna, James, *Drumlish, Longford* - 105
M'Kerihan, Hamilton, *Dromore, Tyrone* - 625
M'Loughlin, James, *13, Upper Stephen-street, Dublin* - 36
M'Nulty, Anthony, *Swinford, county Mayo* - 36
M'Quitty, James, *Hill-street, Belfast* - 644

N

Nagle, Luke J., *Nenagh, Tipperary* - 658
Neil, John, *Cherryville, Kildare* - 51
Nolan, Daniel, *Knocknagashil, county Kerry* - 541
Nolan, John, *North Earl-street, Dublin* - 119
Nolan, John, *Gowran, county Kilkenny* - 411
Norris, Michael, *Drogheda* - 605

Digitized by Google

O

PAGE
O'Beirne, Edmund, *Kells, county Meath* - - 595
O'Beirne, Edward S., *Smithfield, Dublin* - - 595
O'Beirne, James, *Elphin, county Roscommon* - - 323
O'Brien, John, *1, Shelbourne-road, county Dublin* - 85
O'Brien, Thomas, *King-street, Fermoy, county Cork* - 470
O'Connell, Ellen, *The Mall, Tralee, Kerry* - - 85
O'Connell, Wm. James S., *St. John's-square, Limerick* 658
O'Connor, Richard, *45, Queen-street, Dublin* - - 161
O'Donnell, Walter, *Waterford, county Waterford* - 36
O'Dwyer, William, *Kilkenny* - - - - - 133
Ogle, Robert F., *Kells, Meath* - - - 531
O'Grady, Richard Rose, *Rookwood, Rathfarnham* - 658
O'Hagan, Patrick, *Dundalk, county Louth* - - 541
O'Leary, Cornelius, *Pope's quay, and Nile-street, Cork* 658
O'Shea, Thomas, *Croom, county Limerick* - - 634
O'Shea, Patrick, *Blackpool-street, Dungarvan, county Waterford* - - - - - - - 265
O'Sullivan, Eugene, *Main street, Dungarvan county Waterford* - - - - - - - 605
O'Sullivan, Michael, *Clonakilty, county Cork* - - 484

P

Page, Henry, *Grafton-street, Dublin* . - - 411
Palmer, Samuel, *10, Capel-street, Dublin* - - 644
Parsons, John, *Drogheda, Louth* - - 585
Philipson, William Francis, *Wellington-quay, Dublin* - 105
Pigott, Francis, *Baltinglass, Wicklow* - - - 105
Pollard, Patrick, *Durrow, Queen's County* - - 644

Q

Quigley, Edward, *Clonmany, county Donegal* - - 484
Quinan, Edward Johnston, *Harcourt-street Dublin* - 605
Quinn, Arthur, *Tandragee, Armagh* - - - 634
Quirey, James, *York-street, Belfast, and Hollywood, Down* - - - - - - - 279

R

Reilly, Patrick, *Ballinamuck, Longford* - - 615
Rickard, Stephen, *Howth, Dublin* - - - 175
Roche, James, *Corn Market, Wexford* - - 658
Roche, Patrick, *Cornmarket, Wexford* - - 338
Roland, Miles, *Woodlawn, Galway* - - - 36
Rose, William, *35, King-street, Waterford* - - 585
Rowan, J. W. & R., *St. Paul's-mills, Belfast* - - 460
Russell, Michael, *Ballyporeen, Tipperary* - - 460
Russell, Robert, *Donegal-square, North, Belfast, county Antrim* - - - - - - 497
Rutledge, David, *Manorhamilton, county Leitrim* - 309
Ryan, Anne, *Cashel, Tipperary* - - - - 51
Ryan, James, *Dunmore, Galway* - - - - 585
Ryan, Michael, *Boggan, Tullaroan, county Kilkenny* - 244
Ryan, Michael, *Loader's Park Mills, Harold's-cross, Dublin* - - - - - - - 217

S

PAGE
Sadlier, Richard Moore, *Normanby Lodge, Curragh Camp, county Kildare* - - - - - 338
Scott, Robert Dickson, *Phœnix Hill House, Islandbridge, Dublin* - - - - - - 615
Scott, Thomas, *Greenbank, county Donegal* - - 265
Scott, William J., *Castle-place, Belfast* - - 625
Seale, John D., *Rathdowney, Queen's County* - - 595
Shallow, James, *Stokerstown, Wexford* - - 634
Sheridan, Anthony M., *Ballyjamesduff, Cavan* - 148
Shevlin, Thomas, senr., and Shevlin, Thomas, junr., *Leeson-street, Belfast, county Antrim* - - 497
Silk, Eyre, *Upper Mountpleasant-avenue, Dublin* - 383
Silk, Robert, *Loughrea, connty Galway* - - 605
Singleton, Thomas, *Lurgan, Armagh* - - - 244
Slattery, Timothy, *late Ballynorig, Kerry* - - 309
Sloan, Joseph, *Shercock, Cavan* - - - 105
Smith, Matthew, *Corrahoe, Stradone, Cavan* - - 625
Smith, Peter, *Rooskey, Ballinagh, Cavan* - 521
Spring, James J., *1, Foster-place, Dublin* - - 531
Stanley, Michael, *26, City quay, Dublin* - - 521
Stapleton, William, *1, Lower Mount street, Dublin* - 585
Stevenson, Mercer, *Ballynary, Armagh* - - 119
Stewart, Alexander D., *44, Upper George's-street, Kingstown, Dublin* - - - - - 397

T

Tallon, Patrick, *Graugeeth, Meath* - - - 634
Thompson, Henry Morgan, *Drumondbeg, Armagh* - 133
Thompson, Joseph S. N. T., *Barny, Wexford* - - 658
Thompson, Robert Kirkpatrick, *Downpatrick Gaol* - 383
Thornton, William Henry, *Cadamstown, King's County* 497
Tomlinson, Samuel, *Passage West, Cork* - - 460
Twomey, Timothy, *Clashroe, Cork* - - 644, 658

W

Walker, William, and Trevor, John, *Drury-lane, Dublin* - - - - - - - 279
Walker, William, *Muninabane, Down* - 148, 161
Wallace, Hugh, *Leighnmohr*, and Magill, Thomas S., *Greenfield, county Antrim* - - - 369
Walsh, Bridget, *Dungarvan, Waterford* - - 161
Walsh, John, *Bandon, Cork* - - - - - 585
Walsh, John Charles, *50, Great Britain-street, Dublin* 27
Walton, Pierce, and Nolan, Richard, *Callan, county Kilkenny* - - - - - - - 323
Waring, Richard, *Ligoniel, county Antrim* - - 541
Warnock, Robert, *Gransha, county Down* - 217, 231
West, Lewis R., and Tisdall, William, *49, Middle Abbey-street, Dublin* - - - - - 188
Whitford, Ellen, *Athy, county Kildare* - - 595
Whitney, Philip, *Longford, county Longford* - - 595
Williams, Mary, *Old George's-street, Cork* - - 369
Wilson, Edward Samuel, *Belfast* - - - 541
Wright, Peter, *Capel-street, Dublin* - - - 161

Digitized by Google

Digitized by Google

INDEX

TO

LEGAL POSTINGS.

COURT NOTICES.

HIGH COURT OF CHANCERY.

Advertisements for Creditors.

In the Matters of—

	PAGE
Billing, Theobald	660
Blake, Thomas	286
Byrne, Mathew	266
Coote, Major Chidley Downes	636, 660
De Bode, Josephine	296
Diamond, Henry	245
Elcock, James	354
Green, Patrick	636
Harden, Rev. Archibald	384
Higgins, Patrick	636
Kearney, Edward	606
Lawe, Alexander Wrightson	86
M'Neale, Alexander	52
Murphy, Edward	436
Roan, Patrick	324
Ryan, William	134
Sinnott, Nicholas	86

LANDED ESTATES COURT.

Miscellaneous Notices.

In the Matters of the Estates of—

	PAGE
Bailey, Thomas Andrew	310
Blake, Charles	280
Dane, Richard	280
Gaynor, George, and others	355
Jackson, John	310
Martin, John	12
Maxwell, The Rev. Robert Walter	370, 398
Molony, The Rev. Charles W.	280
Phayre, Frederick Richard, and another	355
Pim, William Harvey	384
Ritchie, William Barry	626
Stuart, The Right Hon. Thomas Granville Henry	314
Thornton, John	267, 280
Tombe, Gordon Evelyn	646
Warre, Arthur Brathwaite, and others	426, 552
White, Hans Thomas Fell	562

Notices of Sales.

In the Matters of the Estates of—

	PAGE
Bailey, Thomas A.	246, 267, 280, 294
Blackall, Robert	313, 327
Cahill, Michael	96
Crofton, Duke, and others	279

Notices of Sales—*con.*

In the Matters of the Estates of—

	PAGE
Crofts, Thomas Hennesy, and another	626, 660
Day, Kate Rosalind, and others	314, 341, 356
Dartrey, The Right Hon. the Earl of	384, 532
Dooley, Michael	162
Elliot, William	266
Evans, John Ogle	282, 328
Fawcett, Anthony Molloy	176, 204
Ferrall, John Nolan	542
Gaynor, George, and others	311, 325, 342, 355
Hamilton, William Tighe, and another	532, 586
Hawksworth, Richard Steele, and another	52
Heinekey, Lewis, and another	134
Hutton, Stamford, and another	281, 324
Jackson, John	282
Jones, Frederick	436
Kidd, George	189
King, Robert	28, 37
Longdale, Charles, and others	14, 38, 52, 62, 324, 339, 356
M'Cormick, William	106, 169
M'Manus, Margaret, and others	282
M'Nulty, Daniel, and another	28
May, Mary, and others	339
Morgan, Edward	552, 572
Murphy, Laurence, and another	282
Noble, William	522, 562
O'Connor, The Rev. John Hutton, and another	176, 190, 204
O'Donel, Charles Joseph, and another	12, 37
O'Farrelly, The Rev. Peter Edward, and another	13, 28, 325, 342, 354
O'Reilly, Drake Christopher	76, 86, 162, 189
Phayre, Frederic Richard, and another	310
Quinn, Susanna	86
Redmond, John Edward	339
Richards, The Rev. Edward, and others	268
Riddick, John	585
Ridley, John Henry Ellis	552
Sheehy, Bryan	162
Stack, The Rev. Thomas	13
Stack, The Rev. Thomas	13
Stevenson, Henry, and others	190, 204, 281
Stirling, George Claudius Beresford, and another	267, 296
Temple, The Right Hon. William Francis Cooper	295, 312, 326, 340
Thornton, John	232
Toole, Charles	13, 38
Usher, Richarda	176
Walker, John Thomas	14
Warre, Arthur Balthwaite, and others	218, 266
Widdup, Elizabeth Eleonora	86
Wilme, Anne	86
Wilson, Chistian, and another	328, 341, 562, 572

Notices to Claimants and Incumbrancers.

In the Matters of—

	PAGE
Beggs, Thomas, and another	106
Cowden, Isaac, and another	134
Kiernan, Louisa Maria, and others	203
Patten, John, and another	606
Wilson, Robert, and another	311

Digitized by Google

BANKRUPTCY COURT.

Miscellaneous Notices.

In the Matters of--

	PAGE
Bailey, Thomas	246
Bell, Richard	398
Bergin, William	384
Britain, Patrick, and Henry O'Toole	106, 246
Byrne, Patrick	134, 238, 246
Cappock, Michael	586
Chamney, John	412
Coady, James	134
Cresswell, Joseph	339
Davies, Geoffrey	552
De Savigny, Louis, and Henry Ashe	328
Duggan, John Robert	398
Dunne, William	282
Flynn, Christopher	412
Garroway, James	586
Gelshenan, John	268
Geraghty, Martin	328
Gordon, Ellen	542
Hall, Hugh John	646
Hennessy, John James	356
Holmes, William	218
Hughes, Michael	356
Irwin, Richard Trevor	356
Johnson, Peter	176
Kehoe, John	636
Kilbride, Daniel	370
Leadbeater, Richard Shackleton	646
Lenehan, Daniel	246
Logan, William	636
Lynch, John	572
MacDonnell, Iver	314
Malcomson, James	586
Metcalfe, William	646
Molloy, John	522
Monaghan, Michael	636
Morrow, Thomas	232
Murray, James	296
M'Connell, Thomas	498
M'Cosker, John J.	508

Miscellaneous Notices—*con.*

In the Matters of—

	PAGE
M'Hugh, John	162
M'Quitty, James	646
Nolan, John	106
O'Beirne, Edward S.	596
O'Donnell, Walter	218
O'Grady, Jeremiah	246
O'Sullivan, Michael	498
Palmer, Samuel	660
Pollard, Patrick	646
Quinan, Edward Johnstone	606
Reilly, Lawrence	328
Richardson, Samuel Marshall Joseph	398
Stevenson, Mercer,	120
Thompson, Joseph T.	660
Thornton, William Henry	498
Walsh, Bridget	162
West, Lewis R., and William Tisdall	176
Williams, Mary,	356

Notices of Sale.

In the Matters of—

	PAGE
Courtney, Robert	508
Doherty, Denis	498, 508
Harris, William Henry	27
Harris, William	85
Nolan, Patrick	28, 37
O'Neill, Thomas Francis	268

STATUTORY NOTICES TO CREDITORS.

	PAGE
Holloway, Joseph	542, 562
Menary, William	232

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JANUARY 3, 1874. No. 362.

THE IRISH LAW TIMES REPORTS.

"As soon as a report is published of any case, with the name of a barrister attached to it, the report is accredited, and may be cited as an authority before any tribunal." The charter thus expounded, in the declaratory language of Lord Westbury, is, in truth, coeval with the foundation of our jurisprudence. And those who look deeper than into the mere surface of things will need no suggestion from us as to the policy of this privilege, which the wisdom of our ancestors inaugurated in the public interest, and which, in that interest also, the Bar should ever cherish and maintain. To the Irish Bench the acknowledgment is due that never have they permitted crude conceptions of a new-fangled exclusiveness to intervene between the right and its enjoyment, between merit and its palm. The Irish Law Times Reports, indeed, in the maturity of their now assured position, need no *pièce justificative;* but it were easy in the pages also of those Reports to find illustrations germane to our statement. It has happened that the authority of the Irish Law Times Reports has been, on one occasion, disputed at the Bar; we would point to the result. In the case of *Ashworth* v. *White* (5 IR. L. T. R., 189; Ir. R., 6 C. L. 570), counsel on either side relied on two opposing authorities; but, said one of the counsel (who, himself, has since contributed valuable reports to our pages), "the case in 3 Ir. Com. Law is an authorized report—that reported in 2 IR. LAW TIMES has not such weight." "I cannot agree with you," rejoined Whiteside, C.J.; "we can see no reason to doubt the propriety of the report in the IRISH LAW TIMES. The Reports in that publication are very well done, and appear to be furnished by legal gentlemen who very well understand the cases reported. It is a very useful publication." And there the case in the Irish Law Times Reports was followed, though in opposition to the case, in the same court, reported in the Irish Common Law Reports. In another case, *Leonard* v. *Brownrigg* (6 IR. L. T. R. 9; Ir. R. 6 C. L.), the report of *Palmer* v. *Garrett*, in 5 Irish Law Times Reports, 165, was questioned; but said Whiteside, C.J., "I cannot agree in the observation made, when counsel desire to get rid of the effect of that case, that it has been inaccurately reported. I think it has been very well reported in the IRISH LAW TIMES." Now, *Palmer* v. *Garrett*, the case questioned, was a case in the Court of Common Pleas, in which a long and elaborate judgment was delivered by Monahan, C.J.; and it again came under the consideration of the Court of Common Pleas in a subsequent case of *Byrne* v. *M'Evoy* (6 IR. L. T. R., 23; Ir. R. 6 C. L., 568). "*Palmer* v. *Garrett*," observed Morris, J., "is very fully reported in the Irish Law Times Reports;" and, added Monahan, C.J., "I may mention that I have been handed a proof-sheet of the report of *Palmer* v. *Garrett* for the *Irish Reports*; but it is unnecessary to refer to it. I have read through the judgment as given in the IRISH LAW TIMES, and it is there most accurately reported." Again, we may refer to the observations of the Court in *re M'Aleese*, Ir. R., 7 C. L., 148, upon the accuracy of another report which appeared in this Journal; in fact, we might multiply complimentary citations *ad nauseam*. But rather should we observe that, *in no case*, has any one of our Reports been stigmatized as inaccurate or unreliable. It was easy for the sophist to eulogize Hercules; but why all this to-do, said a bye-stander, "*quis vituperavit?*"

Our Subscribers, however, having been apprized of the exigency which has arisen in reference to the increase in the amount of the yearly subscription to this Journal, to which, for the last three years, Law Reports have been added at considerable expense and supplied gratuitously with the Journal, some remarks upon the subject may not be considered inopportune. Not only has there occurred a rise in material and wages, but the proprietor, anxious to ensure the most careful supervision of the Reports, has, to that end, at a very considerable cost, secured the additional services of a gentleman whose acknowledged skill and attention will be assiduously devoted to the editing of the Reports. Particular attention will be paid towards rendering the Reports valuable to both branches of the profession; and for that purpose members of the Bar, competent reporters, have been appointed to represent the Law Times Reports in each of the Courts, without exception, henceforth. Indeed, it is on all hands admitted that the reports in this Journal of cases decided in the Landed Estates, Probate, Admiralty, and Bankruptcy Courts, afford almost the only means of learning the law and practice of their several jurisdictions. We may further point to our Land Sessions' Cases as an important *specialité* of the Irish Law Times Reports. Nor are these the only cases not to be found reported elsewhere. Every single case, as yet reported, upon the operation of the Debtors Act has appeared exclusively in the Irish Law Times Reports. Of the cases reported under the recent Act for remitting actions to the Civil Bill Courts (and collected in the work of Messrs Kavanagh and Quill), about an entire third has appeared exclusively in the Irish Law Times Reports; the remaining two-thirds, with but one or two exceptions, having been also fully reported in this Journal. While, in the Court of Bankruptcy, not only has every single case under the recent Amendment Act, as yet reported, appeared in the Irish Law Times Reports (never less fully, and sometimes much more fully than elsewhere), but a large majority of these cases, also, are exclusively reported in our pages, and in an authentic form. We, on our part, also, have found room for the Reports of Assize and Quarter Sessions cases, and yet, with all this additional and mostly exclusive matter, we have been enabled, furthermore, to present complete Reports (sometimes the only complete reports) of the lengthiest and most important decisions in the Superior Courts of Law and Equity, including those of the Court of Land Cases Reserved. Neither have we spared pains or expense to render the miscellaneous portion of the Journal both interesting and practically useful—in some instances practically useful in the highest degree.

Have we taken more credit than, whatever it be, is but justly the due of this, the only Law Journal established in Ireland? May we not solicit an increased support from the profession, not only as regards the number of subscribers, but, also, as regards the contributions of legal postings from many of our subscribers

Digitized by Google

and from the different Courts? If it is desirable that the IRISH LAW TIMES, hitherto found efficient, should survive for many a new year yet to come, what we necessarily seek, and what we submit we have earned, should needs be conceded.

THE IRISH BENCH.

A SCOTCH Member of the House of Commons, Mr. M'Laren, has just been looking over the statistics of the Irish legal establishment, with the object of getting his countrymen to raise a cry of "justice to Scotland," or rather to attempt to reduce the public expenditure in Ireland. The worthy Scot finds that in Ireland there are twenty judges in the Supreme Court; there are seventeen of them who get from £3,600 to £8,000. There is one Probate judge at £3,500, and two in the Landed Estates Court get £3,000 each. There are twenty judges, therefore, in Ireland, in what might be called the Supreme Courts, and they get £80,600. In Scotland there are thirteen judges, who receive from £3,000 to £4,000 each, and they get £41,300 among them. Our censor finds that the Irish judges get about twice the amount of public money which the Scotch judges get, and his opinion is that there is far less law and justice required to be dispensed in Dublin than there is in Edinburgh.

It is rather inopportune, we confess, to have to meet this statement, but the difference in the number of the population, 3,500,000 against 5,500,000, and particularly the different social conditions arising out of the history of the country since the Revolution, or, indeed, since the Cromwellian settlement, fully account for the necessity. In Scotland there are few judges, but sufficient in proportion to the legal business and population. In England there are not sufficient judges for the work, nor are they sufficiently paid, as is amply proved by the fact that in a late instance an English judge actually lost his reason from overwork; others have lost their health and lives from the same cause. Secondly, the business is much in arrear; and, lastly, the leaders of the Bar are not willing to accept the dignity with its emolument, in exchange for their professional income with its attendant exertion. We shall return to this subject next week in reference to the vacancy on the Bench created by the lamented death of the late Chief Baron.

FUNERAL OF THE LATE CHIEF BARON PIGOT.

The remains of this distinguished and revered Judge were removed on Friday morning, the 26th ult., from his late residence, 14, Merrion-square, East, for conveyance by train to Kilworth, county of Cork, the family burial place. The high estimation in which he was held, as an upright courteous Judge and good citizen, was to be seen in the vast concourse, composed of persons of all creeds, who attended the funeral. Nearly all the members of the judicial bench—those who were absent being prevented from attending by causes which they could not control—were present on the mournful occasion, as were also the leading and many of the junior members of the bar, a number of the profession of attorneys and solicitors, and representatives of several of the literary and scientific institutions of the city. The general body of the citizens were fittingly represented by the Right Hon. the Lord Mayor, who was present in his state chariot, and several other prominent gentlemen. The remains were enclosed in a massive polished oak coffin, bearing a large plate containing the inscription—"The Right Hon. Chief Baron Pigot, died December 22nd, 1873, aged 76 years—R.I.P." The chief mourners were Dr. Lyons, son-in-law; David Pigot, Master of the Court of Exchequer; and Mr. Thomas Pigot, sons of the deceased, and three grandsons, Mr. David Pigot, Mr. Edward Pigot, and Mr. Louis Pigot. The funeral *cortege* left Merrion-square at a quarter to eight o'clock, and proceeded by Nassau-street, Dame-street, Parliament-street, and the quays, to the King's Bridge Terminus.

Amongst those present we observed:—The Right Hon. Abraham Brewster, Right Hon. the Lord Mayor, the Right Hon. William Cogan, M.P.; the Lord Chief Justice of the Queen's Bench, Chief Justice Monahan, Right Hon. Sir Joseph Napier, the Lord Justice of Appeal, the Vice-Chancellor, Mr. Justice O'Brien, Mr. Justice Lawson, Mr. Justice Morris, Baron Fitzgerald, Baron Deasy, Mr. Justice Fitzgerald, Mr. Justice Barry, the Provost of Trinity College, Hon. Justice Flanagan, Rev. Professor Jellett, Hon. Justice Miller, Hon. Justice Harrison, Dr. Banks, Sergeant Armstrong, the Right Hon. the Attorney-General, the Solicitor-General, Mr. H. O'Hara, Q.C.; Hon. Judge Warren, R. D. Kane, solicitor; Mr. Pilkington, Q.C.; Mr. Jellett, Q.C.; Mr. Purcell, Q.C.; Mr. John Lentaigne, Mr. Murland, Crown Solicitor; Mr. John O'Hagan, Q.C.; Mr. Monahan, Q.C.; Mr. Robinson, Q.C.; Mr. C. J. Coffey, Q.C., Chairman, county Londonderry; Mr. Joshua Clarke, Q.C.; Master Coffey; Mr. Bruce, barrister; Mr. Samuel Ferguson, Q.C.; Mr. Kane, Q.C.; Sir F. W. Brady, Q.C.; Mr. Cree, barrister; Mr. Harris, Q.C.; Mr. John Harris, barrister; Mr. W. Griffin, barrister; Mr. D. Lynch, barrister; Mr. Wm. Armstrong, barrister; Mr. Peter O'Brien, barrister; Mr. P. Martin, barrister; Mr. Weir, barrister; Mr. Neligan, Q.C.; Mr. Dalton, solicitor; Mr. Kenny, barrister; Mr. W. Short, barrister; Sir Robert Kane, Mr. Blackburn, Mr. P. J. Smyth, M.P.; Mr. Arthur O'Hagan, Mr. Wm. Roche, Sergeant Sherlock, M.P.; Mr. Storey, Secretary Queen's Colleges; Mr. David Coffey, Mr. Wm. Napier, Mr. Reeves, barrister; Mr. Andrew Palles, C.E.; Mr. Ignatius Kennedy, Mr. Wm. O'Brien, Q.C.; Mr. Yeo, Master Burke, Mr. Beytagh, Q.C.; Mr. Greene, Q.C.; Mr. Mathew Cane, solicitor; Mr. Thomas Fitzgerald, Crown Solicitor; Mr. Coppinger, barrister; Mr. Constantine Molloy, barrister; Mr. J. A. Curran, barrister; Mr. Nicolls, barrister; Mr. Charles Meldon, barrister; Mr. William O'Connor Morris, Mr. Gerald Fitzgibbon, Q.C.; Mr. Samuel Walker, Mr. A. M. Porter, Q.C.; Mr. Arthur P. Clay, barrister; Mr. D. C. Heron, Q.C., M.P.,; Mr. John Chute Neligan, Mr. Michael O'Loghlen, barrister; Mr. George Perry, barrister; Charles Kelly, Q.C., Chairman, County Longford; Mr. A. C. Palles, Mr. Charles Kennedy, Mr. A. D. Gusty, barrister; Stanislaus J. Lynch, Registrar Landed Estates' Court; Mr. George Arbuckle, Registrar to the deceased judge; John Vincent Legge, Chief Clerk Court of Exchequer; Mr. Henry J. Monahan, Mr. Arthur Greene, Master Lane, Mr. Thomas R. Crawford, J. O. Overend, Trevor Overend, Thomas H. Kane, solicitor, Mr. J. W. Murland, Mr. James Martin, J.P.; W. Findlater, Dr. R. R. Madden, and Dr. T. Madden, &c.

On the arrival of the funeral cortege at the railway terminus, the remains were removed to a van, which was then attached to the nine o'clock train, and conveyed to Cork.

The remains were brought to Mallow by mail train at half-past one, and were conveyed direct to Fermoy, arriving at half-past two. They were received by a large number of friends and tenantry of the deceased, the road about the station being thronged by carriages and cars, while numbers of the farmers attended on horseback. At three o'clock the funeral procession was formed, and started for the old graveyard at Kilgullane. The *cortege* was of great length. Amongst those present were:—David R. Pigot and Thomas Pigot, sons of the deceased; M. O'Brien, J.P.; J Gavin, W. E. O'Brien, Captain Barry, N. Morrogh, Kilworth; S. Gillman, Crown-Solicitor, Cork; E. Rice, Kilworth; T. Dennehy, R.M.; A. Herley, J. Downing, Ashfield,; Dean Mahony, P.P.; Rev. Dr. Rice, Charleville; Rev. J. Fitzpatrick, P.P., Kilworth; Rev. M. Burden, C.C.; Rev. T. Higgins, Rev. M. Russell, Rev. D. Casey, P.P.; Rev. D. Keeffe, J. Newstead, J. O'Sullivan, M. Moloney, &c. The funeral passed through Fermoy and Glanworth, and reached Kilgullane about five o'clock. The funeral service was read by Dean Mahony, and the remains were interred amid marked demonstrations of respect and sorrow.

Digitized by Google

LAND TRANSFER.

Transfer of Land and Registration of Title: as the question stands A.D. 1873 in England and Ireland. By R. DENNY URLIN, of the Middle Temple, Barrister-at-Law, Principal Officer of the Record of Title, Ireland.

[Read at the Social Science Congress, Norwich, October, 1873.]

Although the subject of land transfer and registration of title has on several occasions been brought under the notice of this Association, that subject has hardly received more attention than it merits. It is intrinsically a difficult one, requiring much time and many experiments for its proper elucidation. To state the mere history and present position of the question would be in itself no slight task, and therefore I shall assume that this department of the Association is not oblivious of the facts and arguments which have from time to time been presented to its notice. They will be found scattered through the annual volumes of "Transactions;" and many of them were clearly and ably brought to mind by Sir R. R. Torrens in his paper read before the Association so lately as the meeting of 1872.

As far back as the year 1859 some of the most eminent lawyers in England had come to the conclusion that the only mode of simplifying titles to real estates, and of facilitating the sale and transfer of them, was to establish a new register which should disclose the *actual ownership* of land. Registration of the contents of *deeds* had been introduced for certain English counties—York and Middlesex—early in the last century; also a central office of exactly similar character for the whole of Ireland, which is still in operation. It would have been strange if this legislation of the time of Queen Anne were found sufficient for the exigencies of modern times: suffice it to say that the principle of the registration of deeds has been condemned by all competent authorities, notably by the Royal Commissioners of 1857, whose Report, contained (with the evidence) in a ponderous blue book, is a valuable repertory of information. In Ireland, so far back as the year 1849, the complication of titles had become a public evil of the greatest magnitude; and the remedy was found in the establishment of the "Incumbered Estates Court," which, during the nine years of its duration under that name, absolutely and indefeasibly cleared the titles of lands of the aggregate value of twenty millions sterling. In 1858 this tribunal was rendered permanent under the designation of "Landed Estates Court," with enlarged jurisdiction. Power was given to give conveyances and declarations of title of land of all tenures, incumbered or otherwise. This court is now usually resorted to whenever an Irish estate is to be sold, for purchasers insist on that perfect guarantee of title which the court alone confers. On an average about 200 estates of various sizes pass through its hands annually, and of these the value may be roughly estimated at a million sterling.

In 1859 two bills, very carefully drawn by Sir H. Thring, were introduced by Lord Cairns (then Solicitor-General), whose elaborate speech on bringing them forward in the House of Commons (February 11, 1859) may be referred to as an admirable summary of the evils existing and of the remedies proposed. One of these bills was for the establishment of a Landed Estates Court for England. to be presided over by "Judicial Conveyancers," who, without assuming the dignity and state of vice-chancellors, would have gradually cleared off those complications of title which render many estates unsaleable, and render all estates only saleable under conditions more or less injurious, and at considerable expense. The second bill was to establish a register of the titles so judicially ascertained, in order that future complications might be impossible. Unfortunately these two bills (although favourably received) were dropped, and have never been re-introduced. Most of the advantages which they would have secured for English titles were about the same time secured for property in several of our colonies, under the system with which the name of Sir R. R. Torrens is so honourably associated. "The Real Property Act" of South Australia, prepared under his directions in 1858, was the beginning of a series of measures which, although at first meeting with strong opposition, have worked most successfully and beneficially.

The Act of 1862 (25 & 26 Vic., c. 53), known as Lord Westbury's, established, as is well known, a register of indefeasible titles open to such landowners as chose to submit their titles for examination. No judicial powers were conferred, and the absence of such powers appears to have militated against the success of this measure, which has not worked extensively. Sir R. R. Torrens showed last year that there were other defects in the Act of 1862. Instead of simply stating the *ownership* of the land, this registry admits of deeds and instruments of any kind being brought in; from which it follows that many of the titles will in course of time become again involved in complication. Lord Westbury, who can no longer vindicate his handiwork, probably deemed it judicious to give latitude to the conveyancers, not imposing on them any new and inflexible method which might prove distasteful. Hence his Act allowed deeds of any kind to be registered, although the immense preponderance of authority then was, and more distinctly is now, in favour of a register of *simple ownership*, as in the case of Government stock and railway shares.

All who are familiar with this inquiry will remember that other defects were brought to light by the latest commission of inquiry, that which reported in 1870. The blue book issued by those commissioners contains a mass of information on the working of Lord Westbury's Act, and the hindrances of all kinds in the way of its working. It also contains proposals for remedying the defects, and greatly enlarging the scope, of the land registry. It is not too much to expect that for many years to come any legislation on the subject will be devised with a view to carrying out these recommendations.

It is observable that by the learned and acute persons who conducted this inquiry, as by Sir R. R. Torrens, the *simplicity* of the register is held to be a matter of supreme importance. Trusts should (they consider) be altogether excluded: property in settlement should be transferred into the names of the trustees: if any improper dealing is to be guarded against, this must be done by a *caveat*. Only short statutory forms of deeds are to be accepted for registration, as in the case of Government stock. Special clauses must be embodied if they are required in separate instruments, of which the Registrar will make no note on the register, although they may be deposited for safe custody.

These recommendations, and many others which cannot here be noticed, have been kept in view in the preparation of the bill by the present Lord Chancellor, which proposes to repeal Lord Westbury's Act, re-enacting many of its clauses, and making such changes in the land registry as long experience and full considerations have suggested. The Lord Chancellor's bill, after being read a first time in the House of Lords in April, 1873, made no further progress, but it can hardly be doubted that it will be re-introduced; and in the meantime it is most desirable that the intelligent criticism of legal minds, conversant with the difficulties which surround this question, should be directed towards it, with a view of perfecting a measure the importance of which can hardly be over-estimated.

This is no fitting opportunity for examining the details of a bill containing 173 clauses; some of them seem to require amendment, and the scheme as a whole ought to be carefully revised in view of the experience lately gained in Ireland under a system which now calls for a brief notice.

In the year 1865, after many years working of the tribunal which has jurisdiction over titles to land in Ireland, a bill was passed, opening, for the use of such as chose to avail themselves of it, a register or record of indefeasible or parliamentary titles. The project was of a very limited and tentative kind. The Government of that day refused to establish any new department, and required certain of the existing officials of the Landed Estates' Court to undertake the duties and responsibilities imposed by this Act. Evidently this was inaugurating a new system under conditions as unfavourable as could well be imagined; and there were many other discouragements in addition to active opposition. Perhaps there is no such instance on record of a new and most important function thrust upon a public department already occupied with other business, and without adequate machinery of any kind. If the Government had ordered

Digitized by Google

the Trinity House to conduct a deep-sea exploration, or had ordered that Armstrong guns should (for economical reasons) be cast in the workshops at Woolwich, in which the anchors are forged, the absurdity would have been obvious. The public mind acknowledges it as axiomatic that new and important work shall be committed to willing as well as to competent hands, furnished with all things necessary for the undertaking.

Law reforms have little interest for the general public, and amongst the ranks of the lawyers, where there is a better comprehension of the matter, there is much silent repugnance to simplification of processes. Far be it from me to say that complication and consequent expense are preferred for their own sake by lawyers, or valued from any motive arising out of self-interest. The truth is, that old and well-known paths are as a rule preferred to such as are untrodden; and that from tradition, usage, and *vis inertiæ*, the profession is for the most part found arrayed against even so evident an improvement as registration of title to real property.

Recurring to the experiment now for some years past in trial in Ireland, it is found that the legal practitioners prefer the old system of registering deeds under the statute of Anne, because they understand it. The purchasers of land in the Estates' Court are (with very rare exceptions) wholly ignorant of the points of difference between the two rival systems, and they place the matter entirely in the hands of their solicitors. The solicitors, willing to go in the groove to which they are accustomed, and in some instances not even making themselves acquainted with the new Act, send the clients for signature a form of "*requisition excluding the Act.*" Hence it follows that in about nine instances out of ten the new proprietor shuts himself out of the advantages which the Act was designed to confer upon him.

Such is the practical working of a voluntary and permissive Act. The fact that it *is* voluntary and permissive militates against its success. Over and over again the question has been asked—If Parliament really approves of this system of registering titles, why is it not made general and compulsory? The permissive clause may be regarded as merely a weak-minded evasion of responsibility on the part of the legislature, and as imposing undue responsibility on individuals. The solicitor, therefore, declines the responsibility of advising his client to come within the scope of a new law, as to which the legislature has spoken in so doubtful a manner, and which has not been construed and expounded by the Courts of Justice. In short, both in England and Ireland, the question has hitherto (to use plain language) been unworthily dealt with, if not shirked. A vastly improved system has been sanctioned in such a feeble and half minded way that people are afraid of it: and on the whole they prefer evils to which they are accustomed, to benefits placed before them in an unattractive and inadequate manner.

The Report of 1870 shows that there was a notion abroad that Lord Westbury's Act "was not intended to work;" and in Ireland, when the legal profession saw that even offices and clerks—the ordinary machinery of business—were denied, they refused to believe that the new system was really intended to supersede the old registration of deeds, and many thought it unnecessary even to inquire into its merits. In short the limited operation of the Act is distinctly chargeable on the unfavourable conditions under which it was introduced. Yet I must emphatically deny that the Acts introducing registration of title in England under the Act of 1862, and in Ireland under the analogous Act of 1865, have proved to be failures. It is true that not more than five or six hundred separate properties altogether have been registered under each of those Acts. It is true that the rate of progress is so slow that centuries would be required for bringing the landed property of the country generally under the new system. What has been effected is little more than experimental, but the experiment has been tried and is found successful. If a new steam-plough is found effective in its working over an area of 50 acres, the conclusion naturally arrived at is that similar machinery would prove effective over the entire county. Large quantities of material are not regarded by chemists and other scientific enquirers as necessary for the purposes of experiment. As regards the Irish registration of title (that with which I am most intimately acquainted), it can be shown that notwithstanding some defects in the Act, and many difficulties thrown in the way of its working, the result is highly promising. The machinery is found to work smoothly and satisfactorily, and so far it fulfils the hopes of its inventors. A Parliamentary return of the session of 1872 shows that ordinary dealings with land may by its means be enormously simplified. A sale or mortgage may in ordinary cases be begun and completed within the space of one hour, and with absolute security to the purchaser or mortgagee. The new register even now is almost as simple in working as the bank register of Government stock. A few formalities as to due execution of instruments, identification, &c., are strictly observed, and very brief and simple forms of transfer and of charge may be used. I say *may* be used, because as the Act stands the parties are at liberty to draw up their instruments in any form which they may prefer. Sometimes long and complicated deeds are brought to the office, and as the officer is obliged carefully to read them over, in order that he may make a correct note of their contents and legal effect, delay is in such a case unavoidable. But where the short statutory forms are used, transactions are completed with hardly more delay than is involved in the transfer of Three per Cent. Consols, or of the stock of a railway company.

After careful consideration, extending over some years, and aided by practical knowledge, I have come to the conclusion that Sir R. R. Torrens is right in requiring that simple forms of transfers, &c. should *alone* be accepted. Experience has shown that the business of a transfer office cannot be readily got through if the conveyancing forms are uncontrolled. Last month, *e.g.*, a deed dealing with an estate on the Irish record of title, and which occupied 14 folio pages of parchment, was brought for registration. It was, in fact, a settlement of no simple kind, and to any officer who had not been legally trained it was all but unintelligible; while the trained lawyer would hardly undertake to read and make a correct abstract of such a deed in much less than an hour. Such an incident would impede all the business of a public office, in which arrears must not be allowed to accumulate.

This option of bringing in deeds of any length, and in any form, is therefore one of the main defects of the system, as it is now in operation both in England and Ireland. The permissive character of the legislation hitherto effected is the other important defect. There are minor defects: but it is unnecessary to prolong this paper by entering into details which involve no principle, and which are only intelligible to such as are perfectly conversant with the existing act.

THE ESTATES OF PARTNERS IN BANKRUPTCY.—III.

It will have been seen, as of course might have been expected, that the first question arising when members of an alleged partnership fail, must be one of evidence, what is partnership and what is separate property. Apart from the common law doctrine that a partnership may be created by parties holding themselves out to the world as such, *Re Rowland and Crankshaw* (L. Rep. 1 Ch. App. 421), referred to in our first article, shows that where it is proved that no partnership in effect existed, the property which was the subject of joint dealing will be considered by the Court of Bankruptcy as joint assets. And the partnership may possibly be proved to have extended to particular dealings, and not to have been a general partnership, and the complicated question may arise, to meet which sect. 37 of the last Bankruptcy Act was enacted.

Having discussed the general principles regulating the liability respectively of joint and separate estates, and the right of proof of joint and several creditors respectively, we will here shortly notice the procedure provided by the statute for dealing with insolvent partners and partnerships. By sect. 108 of the Act, any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm, may present such petition against any one or more partners of such firm, without including the others. This is a useful alteration of the old law, it formerly being essential to the validity of a joint adjudica-

Digitized by Google

tion that it should include all the members of a firm, and if for any reason a commission could not be maintained against one partner, a joint commission against the other could not be supported. It was, therefore, necessary to take out separate commissions against each partner. A further reform is provided by sect. 101, by which power is given to dismiss a petition against some respondents only. Mr. Robson says (p. 574) that it would seem doubtful whether the above provisions authorize a petition against some only of the members of a partnership founded on a debt jointly due from them.

This is a point of some interest, and we are inclined to consider it clear that a joint creditor might present a petition against a single partner. The law, as we have already stated it, is, that where there is no joint estate the joint creditors prove with the separate creditors against the separate estates of the partners. Suppose, therefore, that notoriously there is no joint estate of a partnership, but one of the partners has considerable separate property. It surely is open to the joint creditor to select that partner and present a bankruptcy petition against him, so as to procure the administration of his separate estate. When we consider the practice established by decided cases as to separate adjudications, there ought, it appears to us, to be no doubt on the point. Mr. Robson himself tells us (p. 575) that "although a joint adjudication cannot be founded on a separate debt, still a joint debt will support a separate adjudication against any member of the firm. For this purpose an adjudication of bankruptcy is regarded as in the nature of an execution, which, in respect of a joint debt, may be levied on the separate estate of each partner, although an action for recovery of the debt must be brought against all the partners." Further, upon the separate adjudication of a partner his share of the partnership property, after payment of partnership debts and the claims of his co-partner, vest in his trustee. If there were no analogous case, we should be decidedly of opinion that one partner might be made bankrupt on a joint debt; but in *Ex parte Chambers* (2 M. & A. 440), a case decided on the 97th section of the Bankruptcy Consolidation Act of 1849, where the whole of the partnership property belonged to two of the partners, and the third had little or no property, an adjudication against the two, founded on a debt due from them jointly, was held a valid adjudication.

But although we think that, on a joint debt, a creditor might obtain a separate adjudication, any voluntary action upon the part of the partners to divert partnership property to secure separate debts, is contrary to the policy of the law. This point arose in *Ex parte Snowball; Re Douglas* (26 L. T. Rep. N. S. 295, 894; L. Rep. 7 Ch. 534). There one partner gave a power of attorney, authorizing the sale of a particular ship, which was partnership property. In pursuance of this power, a deed was executed, to which the other partner was a party, mortgaging the ship, to secure a private debt of such partner. The Chief Judge held that the power of attorney was rendered invalid by an act of bankruptcy committed by the partner who gave it in going abroad, and that therefore the mortgage was never executed by such partner. But the point in the case in which we are now interested is that decided by the Lords Justices, that the execution of a deed professing to pledge partnership property for the present and future separate debts of the partners, made the execution of the deed by the partner who remained in England an act of bankruptcy. Lord Justice Mellish, delivering the judgment of the court, said: "We are of opinion that it is a fraud upon the creditors of a partnership for a partner who knows that his firm is insolvent to transfer partnership assets to a creditor of his own, or to give a security over the partnership assets for his own private debt. Such a transfer necessarily tends to defeat the creditors of the partnership, and to prevent the proper distribution of the assets under the bankrupt law. It was admitted in the argument before us that the deed would not give Mr. Snowball a valid security on the partnership property for private debts owing to him by Martin Douglas; but it was contended that the deed might notwithstanding be valid, so far as it gave a security for partnership debts. We do not see how, upon the question whether the execution of a particular deed is an act of bankruptcy, one part of the deed can be separated from the rest. If by any part of a deed authority is given to apply partnership property, transferred by the deed, to purposes which are a fraud upon the creditors of the partnership, we think the execution of the deed makes a fraudulent transfer of property, and is, therefore, an act of bankruptcy." The Lord Justice further remarked that, if the partner giving the power of attorney had executed the deed, the partnership property would plainly have been transferred as a security for the several debts of the partners, unless they were held to have committed acts of bankruptcy; and the case of *Bowker* v. *Burdekin* (11 M. & W. 128) is a direct authority that, where a deed to which all the partners in a firm are made parties, would operote, if executed by all, as a fraudulent transfer of partnership property, each party commits an act of bankruptcy at the time he executes the deed, unless he executes it as an escrow."—*Law Times.*

THE DISCHARGE OF SURETIES.

It is somewhat difficult to gather exactly from the decided cases what are the principles which govern the discharge of sureties in cases where the agreement between the person whose solvency or fidelity is guaranteed and the person in whose favour the guarantee is given, has been altered. The *dicta* in the various text-books on the subject are likewise characterized by a certain amount of vagueness, the decisions on the subject being sometimes treated as depending upon the fact that the surety's risk was increased, and sometimes on the view that the contract as altered was no longer the contract in respect of the performance of which the surety undertook to be responsible, quite independently of any question whether the risk of the surety was thereby increased or not.

The case of *Sanderson* v. *Aston* (21 W. R. 293, L. R. 8 Ex. 73, noticed 17 S. J. 441) raised an interesting discussion in respect of the principles which regulate the law on this subject. In that case the declaration was on a bond given to the plaintiff by the defendant, which recited that by an agreement of even date the plaintiff had agreed to admit J. into his service as "clerk and traveller" (not further stating the terms of the agreement), and was conditioned for J.'s accounting for and paying over to the plaintiff all moneys he might receive on the plaintiff's account, and the breach alleged was the not accounting by J. for such moneys. The second plea on equitable grounds was that the original agreement between the plaintiff and J. was that it should be terminable by one month's notice, and that the plaintiff and J. afterwards, and before the defaults sued for, made it terminable by three months' notice without the defendant's consent. Martin, B., was disposed to hold that this plea was good, thinking that the true construction of the contract, as alleged in the declaration, was that the defendant was to guarantee J.'s fidelity in the service he entered on under the original agreement, and not another or different service, and consequently that the alteration was fatal. Kelly, C.B., and Pigott and Pollock, BB., thought, on the contrary, that the plea was bad.

A distinction was adopted by Pigott and Pollock, BB., between cases where the original contract is made the basis of the contract of suretyship, in which case they laid it down that any alteration whatever, even in the most immaterial particular of the terms of the contract, will discharge the surety, and those where the terms of the original contract are not made part of the contract of suretyship, in which case they held that the alteration must be in some material particular as affecting the risk. Kelly, C.B., it may be noticed, contented himself with putting his decision on the ground that the term as to notice was made no part of the contract of suretyship, without saying whether the materiality or immateriality of the alteration affected his decision. The distinction laid down served very well for the purpose of deciding the case in hand in a manner consistent with the equity of the thing, for the alteration in that case was wholly immaterial and the defence on that head most unmeritorious. It does not certainly commend itself to one's sense of justice that the surety should be permitted, when it can be avoided, to wriggle out of his liability on the plea that an alteration has been made in the terms of the service which did not in the least increase his risk, and to

Digitized by Google

which, if applied to, he would probably have made no objection. We have before remarked that this distinction appears to have been to some extent suggested in previous cases, though not so definitely expressed as in the case at present under discussion, and, for the reasons above stated, it seems to be just. It must be confessed, however, that certain difficulties suggest themselves with regard to its future application. It is very obvious that if a man guarantees the performance of a particular contract and no other, any alteration of the contract must be fatal, for even though the fresh contract be no more onerous, it is nevertheless not the contract he guaranteed. The difficulty will be, in many cases, to say when the guarantee is such, or so made, as to incorporate the terms of the contract between the party receiving the guarantee and the party whose fidelity is guaranteed. If the surety is made a party to the original contract in respect of the performance of which he is to become surety, it is tolerably clear that it is with reference to that particular contract only that he undertakes the responsibility, but there are many cases short of that, as, for instance, when the contract, or some term of it, is more or less particularly referred to or indicated in a separate contract of suretyship. Kelly, C.B., seems, in his judgment, to suggest that if the guarantor merely knows of the terms of such contract he must be taken to become surety on the basis of those terms only, and is discharged if they are in anywise altered. But if this be so the only case to which the second branch of the distinction can apply is the case where the guarantor does not even know of the terms of the original contract, and has not framed his guarantee with reference to them. In such case it is somewhat difficult to see why he has any equity to be discharged, even if an alteration be made in a material particular. He would rather appear to have undertaken any risk with reference to the fidelity and conduct of the party guaranteed while in the service, on whatever terms it may be carried on.

The decisions with reference to the subject of the discharge of a surety by alteration of the contract are not entirely satisfactory, and some of them, such as *Franks* v. *Edwards* (8 Ex. 214), and *London and North Western Railway Company* v. *Whinray* (2 W. R. 523, 10 Ex. 77), seem somewhat hard to reconcile on substantial grounds. In the former case the lowering of the salary of an assistant overseer was held not to amount to a re-appointment to the office so as to make the tenure of office a different one from that in respect of which the guarantee was given; in the latter case it was held that the alteration of the mode of payment of a clerk from a fixed salary to a per-centage on orders, made the contract of employment a different one, and discharged the surety. In the latter case the recitals of the bond happened to refer to the fact of the appointment being at a fixed salary, though the operative part of the condition did not make any stipulation as to salary. The distinction seems a little narrow. It may surely be urged very forcibly if *Whinray* v. *North Western Railway Company* be correct that whenever a guarantee is given with respect to an employment or service, it must be open to the guarantor to show what was the service or employment with reference to which the guarantee was given—*i.e.*, to identify the subject matter of the contract, whether there be a recital of the terms of the employment or not, and, if so, where is the substantial distinction between the cases? There seems to be this difficulty with reference to the doctrine laid down by the Court of Exchequer in *Sanderson* v. *Aston*. It may be said that a contract of suretyship must be construed like any other written contract, *i.e.*, with reference to its own language only, except in so far as parol evidence may be admissible to identify the subject matter, or show the surrounding circumstances under which it was entered into, with a view to explaining the meaning in which the parties employed the terms they have used, and the relation of those terms to the things to be dealt with, and that, if so, the only question can be what upon the face of the contract is it that the surety has guaranteed? If, on the true construction of the contract, construed in connection with the circumstances, he has guaranteed performance of a particular agreement, then he cannot be bound in respect of any fresh agreement, however trifling the difference. But if, on the true construction of the contract, he has guaranteed more than the mere performance of a particular agreement, as for instance fidelity as long as the *employé* continues in the service of the employer as a clerk, is there sufficient ground in law for implying on the part of the employer an agreement that he will not change the terms of the service in any material particular? In *Stewart* v. *McKean* (3 W.R. 216, 10 Ex. 675) it was held that when the guarantee did not specify any particular course of dealing in the employment between the employer and servant, a change in the mode of accounting did not discharge the surety; the decision does not seem to have turned on whether the surety's risk was increased or not, but went on the footing that the terms of the guarantee were general, and the guarantor did not stipulate as to any particular mode of dealing.

The old cases on this subject, in which it has been held that the surety was discharged, seem to have gone rather on the ground that the surety guarantees the performance of a particular contract and cannot be liable with respect to any other, however slightly different, rather than on the notion of an equitable right to have no material alteration made without being consulted. It may be urged, on the other hand, that the existence of such a right, even where the terms of the instrument do not exclude liability in respect of the contract as altered, is not altogether inconsistent with the principles governing the law of suretyship. Undoubtedly considerations of an equitable nature, rather than mere considerations drawn from the exact terms of the written contract, do form part of the law on the subject, for in many cases the conduct of the party to whom the guarantee is given may discharge the surety without reference to the terms of the guarantee, as, for instance, in *Phillips* v. *Foxall* (20 W. R. 900, L. R. 7 Q.B. 666), where it was held that continuing a servant in employ with knowledge of dishonesty or irregularity on his part will discharge the surety from liability for future defaults on the guarantee. The exact limits and nature, however, of the kind of equity here in question are not very accurately to be gathered from the cases, which seem always to some extent to confuse the question whether the service as altered comes within the terms of the guarantee, and the question whether the surety is discharged by reason of an equitable consideration apart from the terms of the contract. There may be cases where the terms of the guarantee required by the employer are designedly made broad and general, with a view to preventing any alteration of the terms of the principal contract discharging the surety. Is it in such cases altogether consistent with the correct principles governing the case of written contracts that the surety, who had full opportunity of considering the effects of the terms of the writing before executing it, should be entitled to turn round and say that he had no idea on entering into the guarantee that he was to be liable in respect of an employment on the altered terms? The case of *Phillips* v. *Foxall* (*ubi sup.*) differs somewhat, and part of the Court treated the case as analogous to one of concealment or fraud. They appeared to think that in the case of a continuing guarantee where there was a breach of duty by the servant, the guarantor would have an equity to withdraw from any further liability, and therefore the non-communication of the servant's misconduct to him, and his consequently continuing, after such default, to undertake liability, might be treated on the same footing as a fraudulent concealment practised on him before entering into the contract at all. Blackburn, J., did not altogether assent to that view, and put the case on the ground that the surety has a right in equity, after default once made by the servant, to the exercise of any remedy which the master might have in his power against the default of the servant, and consequently to have the servant discharged or be freed himself from further liability.

Neither of these grounds can very well be said to apply to a case where the operative words of a contract of suretyship, which *ex hypothesi* on their bare construction are large enough to include the service or contract as altered, are to be narrowed and cut down in effect by the doctrine that as against the surety you cannot alter the terms of the service in any material particular. So far as the words of the guarantee are concerned, it seems difficult to see an alternative between the guarantor's undertaking to be liable in respect of a particular contract only, in which case the first branch of the distinction suggested by the Court of Ex-

Digitized by Google

chequer applies, and any alteration is fatal, and his undertaking to be liable in respect of any contract or service which the general expressions of the guarantee will cover without reference to the terms of the existing contract. But it seems clear that there are cases in which though the mere terms of the guarantee might cover the altered employment, it is inequitable that the surety should be liable in respect of the employment as altered, by reason of a substantial alteration in the risk which he cannot be considered as having contemplated on entering into the guarantee. These cases seem to be those which properly fall within the second branch of the distinction suggested by the Court of Exchequer in *Sanderson* v. *Aston*. There may, however, conceivably be a third class—viz., where the terms of the guarantee might cover the employment as altered, and no circumstances exist from which the guarantor can be considered as having contemplated anything in the nature of a stipulation as to the particular point on which the terms of the employment are altered, or as having been given to understand, or from other circumstances being entitled to assume, that on the point in question the mode of employment should be of a particular character. In such cases it is rather hard to see on what grounds there is an equity that a material alteration should discharge the surety.

It appears to us that it would be highly desirable if in future cases the grounds on which sureties are to be discharged could be more thoroughly analysed and the questions discussed, how far such discharge depends on the ordinary common law principles with regard to the construction of contracts, and how far it depends on an equity recognised by the common law, and if so, what the nature and limitation of such equity may be. We cannot help thinking that if there is such an equity as the judgment in *Sanderson* v. *Aston* seems to assume, it will turn out that there are three classes of cases—viz., (1) those in which any alteration, however trifling, will be fatal; (2) those in which a material alteration only will be fatal; and (3) those in which an alteration, whether material or immaterial, will not be fatal. If so, it will not be sufficient, in cases of the second class, merely to show that the contract has been altered in a material particular so as to prejudice the surety, but the *onus* will lie on the surety of showing circumstances proving that it is inequitable that the person to whom the guarantee is given should be allowed to alter the terms of the employment behind the surety's back without discharging him from further liability.—*Solicitors' Journal.*

THE REFORM OF LEGAL EDUCATION.

A very distinguished body of barristers and solicitors has for the past few years laboured, under the name of the Legal Education Association, to improve and widen the established systems of legal teaching at present provided for students of law by the public endowments of the Inns of Court, and by the private action of what is called "the lower branch of the profession." Until the work of this Association began to be felt, and the demands it put forward had got a hearing in Parliament and a hold upon the public mind, the Inns of Court, it may be said, afforded no instruction in law whatever, and exacted no adequate tests for admission to the profession over which they traditionally enjoyed a controlling power. The voluntary action of the attorneys and solicitors, through the Incorporated Law Society and the Metropolitan and Provincial Law Society, was most creditable to those who initiated it, was highly efficient as far as it went, and had produced the best practical results. But it laboured under a certain deficiency in prestige, and this was felt by none more than by the more active promoters of legal education, with the help of the existing machinery, among the leading solicitors of London and the great provincial towns. There has always been a certain impulse towards a movement for the more effective teaching of law among the members of the bar; and the principal advocates of a similar movement in the other branch of the profession perceived how greatly they might strengthen their case and extend the scope and service of their scheme by combining the two demands. Hence the foundation of the Legal Education Association, which very soon obtained the adhesion of nearly all the leaders of the bar and that of the greatest and most powerful legal firms throughout the country. Sir Roundell Palmer lent the movement his support and became the first President of the Association. Several eminent judges and Queen's counsel took a prominent part in its deliberations, and almost all the recognized professors and teachers of law in the kingdom warmly supported the project. Sir Roundell Palmer accordingly, in the session of 1872, was able to bring the demand for a general school of law before the House of Commons, backed by a petition signed by 900 members of the bar and by a considerable majority of the practising solicitors of England and Wales. The Government opposed the resolutions on the ground that there was no time then to deal with them practically, and they were rejected by a majority of thirteen in a house of 219 members; but both Mr. Gladstone's and Sir John Coleridge's pleas for delay gave the Association reason to hope that the Ministry did not look unfavourably on the substance of the scheme. Sir George Jessel, it is true, in one of his most fractious and sarcastic speeches, had scornfully put the scheme aside as the concoction of unpractical doctrinaires; but he was known to be unfriendly to any change either in the law itself or the conditions of its administration. Sir Roundell Palmer's elevation to the woolsack necessarily removed him from the presidency of the Association; but, on the other hand, his position in the Cabinet allowed him an opportunity of advocating, if he so desired, the claims of the proposal to be taken up as a Ministerial measure. In the last session Lord Selborne did not do this, and, in fact, before its opening he had intimated to the Association that he could not hope to do so. The Judicature Bill gave him, as it proved, quite enough to do, and the Legal Education Association determined to make no further movement until Lord Selborne could definitively promise to take the matter in hand.

Lord Selborne's reception of a deputation from the Association on Friday was cordial and encouraging, and he did not disguise his permanent and strong sympathies with the objects the reforming party had in view. But it is sufficiently manifest that the Lord Chancellor cannot hope to take the same leading part in the settlement of this question that was taken by the member for Richmond. In the House of Commons the proposals for a General School of Law were the special property of Sir Roundell Palmer, and on this, as on all kindred questions, he was recognized as an authority of the first order. But in the House of Lords, though Lord Selborne is both popular and powerful in the management of legal affairs, he does not stand a head and shoulders above his peers as he did during the last few sessions in the House of Commons. Lord Cairns may be said, at the least, to divide authority with him, and even since the loss of Lord Westbury there is no lack of able and severe critics. A measure affecting the educational machinery which exists for the training of English legal practitioners cannot be carried through the Upper House by Lord Selborne with the same bold tactics that Sir Roundell Palmer might have used in the Lower House. Moreover, the Lord Chancellor's attention must be divided among many subjects. He has a Land Transfer Bill in hand, as he reminded the deputation of lawyers on Friday; he may possibly have to pilot through the Lords the measure for the Consolidation of the Law of Evidence which the late Attorney-General took up only to lay down. He will have to bear his part besides in the general political business of the day, in the discussions of the Cabinet, and the conflicts of an assembly where his party is outnumbered. Thus Lord Selborne had reason to point out to the Legal Education Association that though his zeal in their cause did not flag, he could not promise absolutely to bring forward their plan as a Government measure, much less hold out any hope of carrying it in the course of next session. But Lord Selborne added what is a much stronger and better reason for predicting the probable delay of the scheme, and what, as we hold, gives his proposals now, for the first time, really the character of a popular and logical measure of reform. In the former operations of the Association, and in Sir Roundell Palmer's appeals to the intervention of Parliament, the privileges of the Inns of Court were left carefully untouched and unthreatened. This course was taken, doubtless, with the hope of disarming the opposition of the benchers; but, if so in-

Digitized by Google

tended, it failed in its aim. They continue to reject absolutely the principle of a General School of Law, and were only moved, by the progress the Association was making, so far as to found at last out of their princely revenues a teaching staff and an examinational system of the most meagre kind, for "the higher branch of the profession" alone. This unwilling concession does not satisfy the Association, which claims the establishment of "a central school of law, not only open to students for both branches of the profession, but to the general public, and governed by a public and responsible body." To our judgment it appeared absurd both when Sir Roundell Palmer first brought forward the matter three years ago, and now after the action taken by the Inns of Court, that any such project for the improvement of legal education should be attempted without a revision of the rights and duties of public foundations which, like the Inns, have no reason of existence except as teaching and testing bodies. To have set up at Oxford or Cambridge twenty years ago a new academical organization, and to have allowed the colleges, while retaining all their wealth, to degenerate into private clubs, would have been justly censured as a pusillanimous and illogical policy. Yet the course that Sir Roundell Palmer and his Association desired during two years to pursue was precisely analogous to this. Lord Selborne now sees that the question cannot be treated upon so narrow a basis, and he pledges himself to legislate, whenever he finds an opportunity, upon the relation of the Inns of Court to legal education and on their rights and duties in general. This is the only sound and rational policy; but it is easy to see that it makes the task a much more difficult one than that which the Association originally contemplated.—*Pall Mall Gazette.*

PAYMENT TO A THIRD PARTY NOT PROVED BY HIS RECEIPT.

The case of the *Carmarthen and Cardigan Railway Company* v. *The Manchester and Milford Railway Company* (L. R. 8 C. P. 685) illustrates (notwithstanding the actual decision) the inadmissibility of a good deal of evidence which in many cases is allowed to pass without question.

The facts were these:—At a junction of the two companies' lines it became necessary to use Messrs. Saxby & Farmer's system for interlocking the points of the rails and the signals. The defendants' company having refused to make the alterations, the plaintiffs' company employed Messrs. Saxby & Farmer to make them. The plaintiffs' company, under the powers of the Railway Clauses Act, 1863 (s. 12), sued the defendants' company for the amount of Messrs. Saxby & Farmer's bill, and it may be taken that the defendants' company were liable. The only question was as to proof of payment to Messrs. Saxby & Farmer. At the trial evidence was given of the account sent to the plaintiffs' company by Messrs. Saxby and Farmer. The account was put in, and the secretary of the plaintiffs' company proved that after the account had been received by post, he sent a cheque by post to Messrs. Saxby & Farmer. The cashier of Messrs. Saxby and Farmer proved that he received a cheque from the plaintiffs' secretary, and that the same was in due course *paid into the bank* (nothing more), and that he sent *by return of post* a receipt. The cheque was not produced, but the receipt, which purported to be for the sum claimed for doing the work in question, was produced. Its admissibility was objected to by the defendants' counsel, but the judge allowed it to be put in and read. There was a verdict for the plaintiff for the amount of the bill. How all the other evidence came to be admitted, or how, if this evidence was admitted, it should have been thought worth while to object to the production of the receipt, it is not at all easy to understand. In fact, however, this seems to have been the only piece of evidence objected to, and its reception was the only ground on which the rule for a new trial on the ground of the improper reception of evidence was argued. The rule was argued before Bovill, C.J., and Keating, Brett, and Grove, JJ. The Chief Justice thought that the objection ought to prevail; the rest of the Court thought there ought not to be a new trial; but it would be too much to say that they held the receipt admissible. On the contrary, Grove, J., agreed with the Chief Justice in thinking it in inadmissible, but thought it had nothing to do with the verdict. Keating, J., in substance held the same, for he thought that the *contents* of the receipt were inadmissible (though how without knowing its contents it could be known to be a receipt at all is not very clear), but thought the case was proved without them. The only difference of opinion, therefore, between Grove and Keating, JJ., and Bovill, C.J., was, that the Chief Justice thought it could not be assumed that the receipt had nothing to do with the verdict, and that there ought therefore to be a new trial. Brett, J., however, seems to have gone further than the rest of the Court, and expressed himself in the following terms:—

"The fact to be proved here was the payment of a sum of money by the plaintiffs to Messrs. Saxby & Farmer. . . There are other modes of mercantile payment even more common than the handing over the money; for instance, by giving a cheque and getting a receipt. *The two facts constitute the payment.* Here the fact of the sending of the cheque was proved by the person who sent it—the plaintiffs' secretary—who was authorized by the plaintiffs to send it. The person who received the cheque—the cashier of Messrs. Saxby & Farmer—was called, and he proved that he received the cheque . . . and that he received it as payment, and sent the plaintiffs a receipt for the amount by return of post; and the plaintiffs' secretary proved that he received the receipt on that day."

This is a very remarkable statement. The fact of payment could consist in nothing but payment—that is, the giving of the money on the one side, and the receiving it on the other. If, in truth, the money was so given and received, then payment was made, whether any receipt was signed or not; if the money was not so given and received, then payment was not made, and the giving of a receipt would not help the matter; it would be *prima facie* evidence which the facts would contradict, a statement or admission by the creditor which he might show to be mistaken or erroneous. This being the real nature of the transaction, it is not apparent how it is altered by dignifying the sending of a receipt by the title of a "mercantile fact." Nor is it clear in what respect "a mercantile payment" is different from a payment pure and simple. Had the transaction in question been the making of a contract, the reasoning would have been intelligible; for a letter accepting an offer is that expression of assent which is essential to and in fact constitutes the contract, but the giving a receipt is not essential to nor does it constitute or complete a payment; all that is true of the one is false of the other; yet this false analogy seems to be the ground of the judgment. Neither, again, does the giving of a cheque, either with or without a receipt, constitute payment, but the paying of the cheque so given.

Now, if no receipt had been given, but Messrs. Saxby & Farmer had written to the plaintiffs to this effect, "Hearing that the cause of *Cardigan and Carmarthen Railway Company* v. *Milford Railway Company* is coming on for trial, we write to say that you have paid us for the work done by us at A. station," would that have been evidence? It is certain that it would have been far better evidence than the receipt produced; for that receipt was given *against the cheque*, and the cheque, which was not produced, might, if produced, have appeared not to have been paid, but to have "no assets" written upon it; whereas a subsequent admission would preclude that supposition. No doubt Messrs. Saxby & Farmer are respectable people, and such a letter might have been fairly taken by the other side as evidence; but would it be legal evidence? Suppose it were a bill of exchange case, and the acceptor pleaded fraud in the drawer, and want of consideration in the holder, would a letter from the indorser to the plaintiff, saying that he had received consideration, be evidence against the defendant? It does not need the cases referred to by Bovill, C.J., to show that it would not. Yet what real difference is there between the cases?

There is another observation by the same learned judge (Brett, J.) which seems to contain somewhat indifferent reasoning. "If," says his Lordship, "the cheque had been in court, it would clearly have been evidence of the payment; and in that case the receipt would have been unobjectionable. The person who sent the cheque and the person who sent the receipt having been both called, the

Digitized by Google

evidence of the two facts did not make the receipt the less evidence because the cheque was not produced." Now, in fact, though a cheque, being merely an order by the drawer on his banker, can be no evidence in his favour, yet the production of a cheque by the drawer with the usual banking marks upon it showing it to have been paid, would, no doubt, have been accepted even by the defendants in this case, as (though not strictly evidence) it is universally accepted as good proof of payment. Why the plaintiffs had not armed themselves with this ordinary and simple means of proof it is not easy to understand; their not doing so would not unnaturally lead to unfavourable inferences as to the *bona fides* of the transaction. If the cheque talked about, but not produced, had actually been produced marked as paid, the receipt would have become of very little consequence, indeed of none at all.

The result of the case, at any rate, is not that the receipt was admissible, only two of the four judges who decided the case holding it to be so, and the reasoning of both being, to say the least, exceedingly obscure.

Before parting with the case we cannot but observe that the phrase *res inter alios acta* seems very improperly to be used as expressing the ground on which evidence is rejected in this and similar cases. No doubt such a use of the phrase is common. In Taylor on Evidence (ed. 5), vol. i. p. 333-4, the author says, "The rule confining evidence to the points at issue not only precludes the litigant parties from proving any facts not distinctly controverted by the pleadings, but it limits the *mode* of proving even the issues themselves." He speaks then of the difficulty of applying this rule so as "to reject as too remote every fact which merely furnishes a fanciful analogy or conjectural inference, and to admit as relevant the evidence of all those matters which throw a real though perhaps an indirect and feeble light upon the question in issue." Then he proceeds to say, "The most important class of cases which are excluded on the ground of *irrelevancy*" (he italicises the word) "are the acts and declarations either of strangers or of one of the parties to the suit in his dealings with strangers. These, which in the technical language of the law are denominated *res inter alios actæ*, it would be manifestly unjust to admit, since the conduct of one man under certain circumstances or towards certain individuals, varying as it will necessarily do according to the motives which influence him, the qualities he possesses, and his knowledge of the character of those with whom he is dealing, can never afford a safe criterion by which to judge of the behaviour of another man similarly situated, or of the same man towards other persons." Then he gives instances, such as these :—In a question between landlord and tenant whether the rent was payable quarterly or half-yearly, evidence of the mode in which other tenants of the same landlord paid their rent was rejected. Where a brewer had to prove that he had supplied good beer to a publican, other publicans were not allowed to show that he had supplied them with beer of a superior quality. It is evident that this use of language, though sanctioned by custom, is most unfortunate. To take the instances given, it is plain that the phrase *res inter alios acta* in no way expresses the ground of the rejection of the evidence. Suppose in the first case the evidence had been that the landlord let a house to the tenant who was a party to the cause at a quarterly rent, how could this prove that he let another house to the same tenant at the same rent? Yet this would be *res inter eosdem acta*. Or how could the brewer prove that a particular lot of beer supplied to the defendant was not bad, by showing that he had supplied other beer to him that was good? Yet the same observation applies here. The evidence is inadmissible because it is wholly irrelevant; for though various instances may show the nature of a course of dealing, they cannot show the way in which the dealing was in any particular instance carried on, and that this is the real ground of its exclusion is strongly shown by the case of *Griffits* v. *Payne* (11 A. & E. 131), which is cited by the learned author in immediate connexion with the instances already given, and where the evidence rejected was clearly rejected on no such maxim as *res inter alios acta*, but only because the bill sued on was not brought into connection with the forged bills.

The true meaning of the phrase is, that a transaction which is not done between the litigant parties cannot affect the rights of that one of them who is no party to it, and the rule is not properly a rule of evidence at all, but a rule of substantive law. It means, in effect, that a man cannot have a burden imposed upon him, or his rights diminished, by the acts of strangers.

Now in the case under discussion the question between the plaintiffs and the defendants was, whether payment of a certain sum for certain work had been made by the plaintiffs to a third party. This transaction was not immaterial on the ground that it was *res inter alios acta*, because the statutory relations between the litigant parties had created a liability on the defendants contingent on this particular payment being made. The plaintiffs were not in respect of this payment strangers to the defendants, because they had this statutory power to bind the defendants, by getting the work done and paying for it. The function of the maxim implied in the phrase *res inter alios acta* was exhausted; the only question was whether the payment was to be proved by the best evidence or without it.—*The Solicitors' Journal.*

A JUDICIAL MUDDLE.

The makeshift arrangement by which Lord Selborne sat for some time as Master of the Rolls has produced a curious conflict of authority. We will mention two cases. The first involves rather a nice point of equity, but perhaps may be made intelligible out of Lincoln's-inn. A portion of certain land devised to a tenant in tail is taken by a railway company by virtue of its compulsory powers. The purchase-money is paid into the Court of Chancery under the provisions of the Lands Clauses Consolidation Act. Ought the court to allow this fund, representing land, to be paid to the tenant in tail without requiring the execution of a disentailing deed? The late Master of the Rolls held that under like circumstances no such deed was necessary. So also did Vice-Chancellor Malins, and the practice was generally regarded as settled. Lord Selborne, however, declined to follow the cases upholding this doctrine, and made the order for payment conditional upon the production to the registrar of a properly executed disentailing deed. A case involving the same question came before Vice-Chancellor Malins recently, and he adhered to his own decisions. "I consider," said his Honour, "that I am bound to regard the Lord Chancellor when sitting for the Master of the Rolls simply as if he were the Master of the Rolls, and only therefore as a judge of the first instance"—that is to say, of no higher authority than the Vice-Chancellor himself. His Honour had previously held the same language in another class of cases, where the two courts upon the same facts unhappily also came to diametrically opposite conclusions. Lord Selborne, at the Rolls, decided, in opposition to recorded cases, that the purchase-money of land sold under the Settled Estates Act is not to be regarded as "cash under the control of the court," the result of which decision is that, for the purposes of interim investment, the money can only be laid out in the purchase of Exchequer Bills or in the Three per Cents. Sir Richard Malins, on the other hand, treats such purchase-money as cash which is under the control of the court, the result of his decision being considerably to enlarge the power of investment. "It appears from the reported cases," said the Vice-Chancellor—referring no doubt to successive decisions at the Rolls by Lord Romilly and Lord Selborne—"that the Master of the Rolls has first held that such purchase-money is cash under the control of the court, and has subsequently decided the opposite way. I have always treated it as cash under the control of the court, and I adhere to my previous decisions. I should be very sorry to see any disposition to narrow the construction of the Act under which the power of investment has been extended." Technically, of course, Lord Selborne, while sitting for the Master of the Rolls, may for the time have divested himself of his authority as Lord Chancellor. But as it is more than probable that his opinions in the Lord Chancellor's Court would be the same as those he held at the Rolls, it is clear that the unsuccessful litigants in the two cases we have mentioned would appeal against Sir Richard Malins' decisions with a cer-

Digitized by Google

tainty that they would be reversed. Perhaps the respective suitors, having in view the costs of appeal, will hardly be comforted by this knowledge. Meanwhile it seems that, for judicial purposes, a Lord Chancellor is not always a Lord Chancellor, but in a lower court may lose his dignity as a Judge of Appeal, and be regarded, both in theory and practice, as somebody else.—*Pall Mall Gazette.*

MR. CLARKE, Q.C., ON CATHOLIC HOLIDAYS.

On Thursday the Quarter Sessions for Maryborough were resumed before Joshua Clarke, Esq., chairman, who briefly addressed the jury, when

Mr. John Cullen, one of the grand jurors, addressing the chairman, said that he, as a Catholic, had what he considered a serious injustice, if not an outrage, to bring before his worship, and that was the fact of Catholics being summoned as jurors on solemn holidays such as the present, and being thereby excluded from the observance of those religious duties to which the Church bound them on such days.

The Chairman—The fact is, I do not know what your holidays are, not being a member of your Church. On recognized holidays, such as the Easter-time, Good Friday, Christmas Day, &c., such things are never done.

Mr. Cullen—Oh! I see. You recognize the Protestant holidays and no others. But I am surprised that, in the present advanced age of enlightenment and progress, you should not be acquainted with the others as well.

The Chairman—I assure you I am not; but I feel myself bound and act by the practice of the other courts. However, I think if you had got up early this morning, you would have had time to attend to your religious duties, as you were not summoned to attend here until eleven o'clock. In any case, if you go to your spiritual director, and tell him that you were summoned here to discharge a public duty, and keep another day holy instead of this, I have no doubt but you will make it up in another way. In Italy, where I have been for some time, every third day appeared to me to be a holiday of some description or other; and in France, before the first great Revolution, it was well known that the people did not work more than two days in the week. If such a rule were attempted to be carried out in this country it would be found a most serious inconvenience to both public and private business. Let me add that, notwithstanding what you say about this age of enlightenment, I really am ignorant of the entire of the holidays observed by your Church in Ireland. The business of the court will not allow of us going more fully into the discussion of this matter at present, but if you will wait until the business of the day is over, and come here to me this evening, I will sit with you, if you like, until twelve o'clock to-night, and go fully into the consideration of this important question. The subject then dropped.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

DEED OF GIFT—POWER OF SALE—ALTERATION OF USUFRUCT BEFORE SALE.—By a deed of gift in May, 1827, a widow gave to her son C., to take effect as an immediate gift, the enjoyment and usufruct of lands in Montreal, for his life, and after his death to his legitimate children; in case of his death without children, to his brothers and sisters, or any of them, during their lives; and if at C's death his brothers and sisters should be dead, the property should belong to their legitimate children *per stirpes* (*par souches*). Power was given to the donee to sell the property for a rentcharge, if it should be judged by experts to be advantageous to the succession. C. died childless in 1861, having survived all his brothers and sisters. Two brothers, J. and B., left children. B died before the deed of gift of 1827. In 1844, C., desiring to exercise his power of sale, filed a petition in the Court of Queen's Bench, Canada, stating his desire, and praying the court to nominate a council of the family to appoint a tutor to represent the substitutes, and to act with C. in nominating experts to certify as to the advantage of sale. The tutor appointed having refused to nominate an expert, C. brought a suit against him to compel him to do so. The court compelled the nomination of experts, who reported to the court in favour of a sale; and the court ultimately declared C's right to exercise the power of sale "*en observant les formalities requises.*" This judgment was affirmed on appeal, after a long delay, in 1857. It was then thought that a sale in lots would be an advantage, and C., on the tutor's opposition to such sale, petitioned the court to appoint an expert for the tutor to value the property for such sale. The experts duly reported their valuation to the court, but no further proceeding, prior to the sale, was taken in the suit. Pending these proceedings, in April, 1857, C. sold his life interest in the usufruct to L., who was subrogated in all C.'s rights, under the deed of gift and the judgment of the courts. In Sept., 1857, C. sold the *corpus* of the property. Held (reversing judgments of the Court of Queen's Bench, Lower Canada): First, that the execution of the power of sale by C. was not, in the absence of fraud, invalidated by C.'s previous alienation of the usufruct and the subrogation of his rights in another. Secondly, that judical sanction was not necessary to the exercise of the power of sale; and that the clause "*en observant les formalities requises,*" was directory only of the formalities imposed by the deed, and did not make necessary the formalities required on judical sales. Thirdly, that the tutor's participation in the sale was not essential to its validity. Fourthly, that on the terms of the deed of gift, all the grandchildren of the donor, including the children of B., were entitled to share *per stirpes*: (*Sutere* v. *Beaudry*, 29 L. T. Rep. N. S. 410. Priv. Co.).

WILL—ILLITERATE PERSON—INDEFINITE ESTATE.—CHARGE OF GROSS SUM.—A testator who died in 1806, by his will gave two freehold houses to one of his sons without any words of limitation, subject to legacies and annuities, with a gift over, in case of alienation or death without issue, to his brothers and sisters, nomination also subject to the legacies and annuities, and with a direction to pay sums of £4 to each of certain grandchildren as they attained twenty-three. Held, that on James's death without issue, and without barring any estate tail he might have had, the brothers and sisters took as joint tenants, and as the gift was coupled with a direction to pay several gross sums, their estates would in a case coming under the old law, be enlarged to a fee simple: (*Wilkinson* v. *Wilkinson*, 29 L. T. Rep. N. S. 416. M. R.)

STATUTE OF LIMITATIONS—POSSESSION UNDER INVALID WILL—RIGHT AGAINST OTHER DEVISEES—ESTOPPEL.—The Statute of Limitations cannot give a person who has entered into a life estate under an invalid will, a right against other devisees of the will. A testator devised lands, of which he was seized only as tenant by courtesy, to his daughter for life, remainder to her son, subject to legacies to the testator's heir and others. The daughter entered under the will, paid the legacies, and continued in possession for more than twenty years. She afterwards conveyed the premises in fee to the defendant. Plaintiff, who had acquired the interest of the remainderman under the will, brought ejectment. Held, that the defendant was estopped from disputing the plaintiff's claim under the will: (*Board* v. *Board*, 29 L. T. Rep. N. S. 459. Q. B.)

WILL—CONSTRUCTION—GIFT OVER—PERIOD OF VESTING—PRIOR LIFE INTEREST.—A testator bequeathed his residuary personal estate to trustees, upon trust to pay the income to his wife for life; and after her decease upon trust (in the events which happened) to pay the income to his daughter (naming her) for life; with a gift over in the event of her death without issue to his two sons (naming them); with a gift over in the event of both his sons dying without issue to Mary H.; with an ultimate gift over in case Mary H. should die without leaving any issue living at the time of her decease. The testator's widow died in 1823. His two sons survived her, and died without issue in the lifetime of his daughter, who died without issue in 1866. Mary H. survived the daughter, and died without issue in 1872. Held (reversing the decision of Malins, V. C.): that the representatives of Mary H. were entitled to the fund, as she did not die without issue in the lifetime of the tenant for life: *Edwards* v. *Edwards* (15 Beav. 357), approved and followed. (*Re Heathcote's Trusts*, 29 L. T. Rep. N. S. 445. Chan.)

Digitized by Google

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY.

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inn's, on Monday evening, January 5th, 1874, when the following subject will be debated:—"That Charles Dickens is a greater novelist than W. M. Thackeray."

SPEAKERS:

Affr. Mr. J. F. Moriarty,	*Neg.* Mr. L. P. Dillon,
Mr. E. J. Cooper.	Mr. H. J. De Burgh.

The Chair will be taken at Eight o'clock by HUGH HOLMES, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

HILARY SESSION, 1874.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Hilary Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at 10 minutes before 10 o'clock a.m.

The first Lecture will be delivered on *Thursday*, the *15th day of January, 1874.*

The course will consist of *Twelve* Lectures, Three-fourths of which *must* be attended, so as to entitle Candidates to Professor's Certificate.

By Order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.
January, 1874.

The Professor of Law has fixed upon the following Book for Lectures, viz., "Broom's Commentaries on the Common Law."

THE ASSOCIATED LAW CLERKS OF IRELAND.

List of Subscriptions received towards the Formation of a Library and Reading Room.

	£	s.	d.
William Findlater, Esq.,	10	0	0
Leonard Morrogh, Esq.,	5	0	0
Do., do. (annual),	2	2	0
A. M. Porter, Esq., Q.C.,	5	5	0
Edward Gibson, Esq., Q.C.,	5	5	0
R. S. Carton, Esq.,	5	5	0
Wm. Roche, Esq.,	3	0	0
J. D. Meldon, Esq.,	3	0	0
Charles Teeling, Esq.,	2	2	0
Aid to Self-help,	1	1	0
Edmond Leahy, Esq.,	1	1	0
John Mathews, Esq.,	1	0	0
W. M'L.	1	1	0
Wm. Short, Esq.,	1	1	0
P. J. Kelly, Esq.,	1	0	0
— Colclough, Esq.,	1	0	0
Piers F. White, Esq., Q.C.,	0	10	0

All subscriptions received are invested in the names of Messrs. William Findlater and Leonard Morrogh, who have kindly consented to act as trustees of the fund. Further donations will be received by the Treasurer of the Association, the Royal Bank, Foster-place, or by

ALEXANDER R. JERVIS, *Hon. Sec.*,
212, Gt. Brunswick-street.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Peter Woods	Vouch assignee's acct.	*Larkin & Co.*
Thomas Delany	Prove debts	*Larkin & Co.*
James Delany	do	*Larkin & Co.*
Thomas F. O'Neill	Examine witnesses	*Maxwell & Weldon*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Pender	Final examination	
John M'Clelland	do	
John Rea Payne	do	
Patrick Neill	do	
John Quinn	Final examination and appoint assignee	
Peter Breen	Sale	*Perry & Co.*
Joseph Parsons	Audit and dividend	*Bradley & Son*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Sir Wm. Palmer	Prove debts	*Molloy & Watson*
Joseph Parker	do	*Oldham & Eaton*
Nathaniel Evans	do	*Oldham & Eaton*
James Coffey	Prove debts and vouch	*Leachman*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas F. O'Neill	Prove debts	*Maxwell & Weldon*
John F. H. Smith	do	*Bradley & Son*
John Quinn	do	*Cronhelm & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Nicholas Dormoy	1st public sitting	*M'Govern*
Patrick Ahern	do	*Larkin & Co.*
Francis Harvey	do	*Rosenthal*
Timothy O'Shea	do	*Furlong*
Francis Cusack	do	*Colman*
John W. Dillon	Composition	*Perry & Co.*
do	Final examination	*Twomey*

DIVIDENDS IN BANKRUPTCY.

Anderson, Henry, of Rooskey, Londonderry, Esq. Composition dividend of 12s. 6d. in the £. C. H. James, official assignee. *Lett*, solr.

Davison, Alexander, of Knockboy, Antrim, flax spinner and power loom weaver. 1st dividend of 1s. 4¼. in the £. C. H. James, official assignee. *Carson & Leachman*, solrs.

Hogan, John, trading as John Hogan and Co., Tipperary, coal merchant and shopkeeper. 1st dividend of 1s. 4½d. in the £. L. H. Deering, official assignee. *Forsythe*, solr.

Johnston, William, Londonderry, boot and shoe-maker. 1st dividend of 1s. 2½d. in the £. C. H. James, official assignee. *M'Cully*, solr.

Kisswick, James, Littleton, Thurles, farmer and cattle dealer. Dividend of 20s. in the £. L. H. Deering, official assignee. *Oldham & Eaton*, solrs.

Madden, Daniel (James), Belisle, Clare, farmer. Dividend of 20s. in the £. L. H. Deering, official assignee. *Larkin & Co.*, solr.

M'Laughlin, James, trading as James M'Laughlin and Co., St. James'-place, Kilkenny, and Abbeyleix, Queen's County, general merchant. 1st dividend of 20s. in the £. L. H. Deering, official assignee. *Scallan*, solr.

Mitchell, Patrick, Portumna, Galway, ironmonger. 1st dividend 7s. 11d. in the £. L. H. Deering, official assignee. *Tincler*, solr.

Potter, Harold, Artogas W., Randalstown, Antrim, bleacher. 1st dividend 2½d. and ½ of a penny in the £. C. H. James, official assignee. *Meldon & Sons*, solrs.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	DECEMBER Fri. 26	Sat. 27	Mon. 29	Tues. 30	Wed. 31	JAN Thur. 1
	Government.						
—	3 p c Consols	—	—	91⅞–2	91⅞	$91\frac{15}{16}$	—
—	3 p c Reduced	—	—	—	90⅞	—	—
—	New 3 p c Stock ..	—	—	$90\frac{15}{16}$	$90\frac{15}{16}$	$90\frac{15}{16}$	—
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	—	—
	Banks.						
100	Bank of Ireland ..	—	—	297½	—	298½	—
25	Hibernian Banking Co. ..	—	—	$56\frac{11}{16}$	$56\frac{11}{16}$	—	—
3½	Munster Bank (Limited)	—	—	—	8¾ 9	—	—
30	National Bank	—	—	58	58¼	57⅞–8	—
15	National of Liverp'l (Li'd)	—	—	14 ⅛	14 ⅛	14⅛	—
25	Provincial Bank ..	—	—	96⅞–7	—	—	—
10	Do. New ..	—	—	—	—	—	—
10	Royal Bank	—	—	27⅝	27⅝	—	—
2½	Ulster Banking Co. ..	—	—	—	—	—	—
	Steam.						
50	British & Irish	—	—	—	—	—	—
100	City of Dublin	—	—	—	—	—	—
50	Dublin & Liverpool Steam Ship Building Co.	—	—	—	—	—	—
50	Dublin and Glasgow ..	—	—	—	63	—	—
10	Dundalk (Limited) ..	—	—	—	$8\frac{13}{16}$	—	—
	Miscellaneous.						
10	Alliance & Dublin Cons.' Gas, viz.:—A ..			9 ⅛	—	—	
10	B ..	HOLIDAY	HOLIDAY	—	9	—	HOLIDAY
10	No. 2 C ..			—	9	—	
8½	Dublin Tramway ..			7⅞ 8	—	—	
100	Grand Canal			—	—	—	
25	National Assurance ..			—	—	47	
9-4-7	Patriotic Assurance ..			—	10¼	—	
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	—
50	Cork and Bandon ..	—	—	—	—	—	—
100	Dublin and Belfast Junct.	—	—	—	$90\frac{11}{16}$	—	—
100	Dublin and Drogheda ..	—		113	—	—	—
100	Dublin and Kingstown ..	—	—	—	—	—	—
100	Dublin, W'klow, & W'ford	—	—	—	—	—	—
100	Gt. Northern and Western	—	—	—	—	—	—
100	Gt. Southern and Western	—	—	—	$112\frac{11}{16}$	112¼	—
100	Midland Gt. Western ..	—	—	—	—	90¼	—
50	Waterford and Limerick ..	—	—	—	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p. c.	—	—	—	—	—	—
6½	Cork & Bandon, 5½ p c ..	—	—	—	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	D., W., & W., 6 per cent ..	—	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	54	—	—	—
50	Do. do. (1865)	—	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	98	—	—
10	Irish North West'n, 5 p c, A	—	-	—	—	—	—
100	Mid. Great Western, 5 p c	—	-	—	—	—	—
	Railway Debentures.						
—	Gt. South'n & West'n, 4 p c	—	—	—	—	-	-
—	Midland Gt. West'n, 4½ p c	—	-	—	—	—	—
—	Do., 4½ p c ..	-	-	—	—	—	—

* Shares not fully paid up are here given in different figures from rest of list.

Bank Rate—Of Discount—5 per cent., 4th December, 1873.
Of Deposit—3 per cent., 4th December, 1873.

Name Days—January 14th and 29th, 1874.

Account Days—January 15th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

MACINERNEY—December 12, at 7 Herbert-place, the wife of Michael C. MacInerney, Esq., barrister-at-law, Brooklyn, U.S.A., of a daughter.

MARRIAGE.

NORMAN and HEWSON—December 30, at Danganstown Church, by the Lord Bishop of Cork, assisted by the Rev. Thomas Hare, Vicar of Stradbally, Luke Alexander Norman, only son of the late Alexander Norman, Esq., Q.C., to Frances Charlotte, third daughter of the Rev. Francis Hewson, Rector of Danganstown, Co. Wicklow.

DEATHS.

DUFFY—December 16, at 9 Argyle-square, London, after a tedious illness, Edward Michael Duffy, Esq., solicitor, late of 46 Mountjoy-square, Dublin, and for several years Town Councillor for the Mountjoy Ward.

KEANE—December 19, at his residence, 36 North Frederick-street, Dublin, Robert Keane, Esq., solicitor, fifth son of the late Robert Keane, of Beech Park, Ennis, County Clare.

RICHARDS—December 15, at his residence, 16 Tritonville-road, Sandymount, after a short illness, Samuel Richards, Esq., aged 76 years. He was for many years an officer of the Prerogative Court.

TULLY—December 25, at Beresford-place, Dublin, Thomas D. Tully, youngest son of the late Jeremiah Tully, Esq., solicitor, County Galway.

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE OF DECLARATION OF TITLE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of John Martin, Owner and Petitioner.

WHEREAS the said John Martin has made application to the Landed Estates' Court, Ireland, for a Declaration that he has a good and sufficient Title in Fee-simple to the Plot of Ground in Ann-street, with the Houses and Premises thereon, known as Nos. 27, 29, and 31, Ann street; the Plot of Ground in Church-lane, with the Houses and Premises thereon, known as Nos. 21, 23, and 25, Church-lane; the Plot of Ground in Police-square, with the Houses and Premises thereon, known as Nos. 18 and 20, Police-square, and a certain Fee-farm Rent of £130 a year, issuing out of Houses and Premises in Church-lane and Cole's-alley, and created by an Indenture of Fee-farm Grant, dated 6th July, 1866, and made between John Martin of the one part, and William Gordon and John Gordon of the other part, all said Plots of Ground and Premises being situate in the Town of Belfast, Parish of Belfast, Barony of Belfast, and county of Antrim. Now this is to give Notice, that the Court has investigated the Title to the said Lands, Rent, and Premises, and has decided that the said John Martin has a good and sufficient Title in Fee-simple to the said Lands, Rent, and Premises, subject only to the tenancies and easements set forth in the Rental; and to the Incumbrances set forth in the Schedule of Incumbrances, which Rental and Schedule of Incumbrances are now lodged in my Office, and may be inspected by any person. And further take Notice, that a Draft Declaration of such Title has been settled, and may be inspected in my Office; and that on the expiration of one month, from the publication hereof, the Court will proceed to sign such Declaration, subject only as aforesaid. And all persons objecting to such Declaration, or having any Tenancy, Claim, or Incumbrance, not admitted in said Rental Schedule, are hereby required, within the said period of one month, to show cause as they may be advised against the signing thereof; and no Appeal against such Declaration of Title, on behalf of any person, will lie after the signature and registration of the same.

Dated this 23rd day of December, 1873.

C. E. DOBBS, Examiner.

D'ALTON & SMITH, Solicitors having carriage of the Proceedings, No. 11, Stephen's-green.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MAYO.

SALE,

On FRIDAY, the 30th day of JANUARY, 1874.

In the Matter of the Estate of Charles Joseph O'Donel and John Nolan Ferrall, Esquires, Trustees for Sale under the Will of Judith Mary O'Donel, Deceased, Owners and Petitioners.

TO BE SOLD, On FRIDAY, The 30th day of JANUARY, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, At the Hour of Twelve o'clock noon. In Two Lots,

The following Valuable Fee-farm Estate, situate in the Barony of Gallen, and County of Mayo:—

LOT 1.

That part of the three divided fifth parts of the Lands of Lissdoran, known on the Ordnance Survey as Knockavilla, and part of Lisdurraun, containing 205a 1r 33p statute measure, held under fee-farm grant, dated 24th July, 1867, and subject, in conjunction with Lot 2, to the fee-farm rent of £10 3s 1d, with 12d per pound Receiver's fees. This Lot produces a net annual rental of £83 2s 11d, and will be sold primarily, subject to the entire fee-farm rent and Receiver's fees, and bound to indemnify Lot 2 from payment thereof. The Ordnance Valuation is £54 15s 0d.

LOT 2.

The other part of said three divided fifth parts of said Lands of Lissdoran, known on the Ordnance Survey as part of Ballintemple, containing 142a 1r 16p statute measure, held under said fee-farm grant, and subject, in conjunction with Lot 1, to said fee-farm rent and Receiver's fees. This Lot produces a net annual rental of £61 14s 3d, and will be indemnified against payment of said fee-farm rent by Lot 1. The Ordnance Valuation of this Lot is £48 10s 0d.

Dated this 19th day of December, 1873.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The foregoing Lands are situate within one mile of Swinford, five of Kiltimagh, five of Foxford, seven of Charlestown, and nine of Ballyhaunis, all first-class market towns and fairs.

There is a station on the Great Northern and Western Railway at Foxford.

The lands are of good quality, in the hands of industrious tenants, and well circumstanced as to roads, turbary, and water.

There is excellent fishing in the River Moy, which bounds the lands of Ballintemple on the North West.

The lands are not subject to any arterial or other drainage charge, and will be sold discharged of quit rent.

Proposals for purchase by private contract will be received by the Solicitor having carriage of Sale, and submitted to the Court for approval, up to the 17th day of January, 1874, after which day no private offer can be entertained.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inns-quay, Dublin;

Mr. PATRICK KEANE, the Agent over the Estate, Kilduff, Swinford; and to

JOHN R. COLFER, Solicitor having carriage of Sale, 17 Merchant's-quay, Dublin.

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

In the Matter of the Estate of The Rev. Thomas Stack, Owner; William Forbes Johnson and Arthur Lee Barlee, Petitioners.

TO BE SOLD, In One Lot, At the Landed Estates' Court, Inn's-quay, In the City of Dublin, Before the Honourable Judge Flanagan,

On FRIDAY, the 16th day of JANUARY, 1874, At the hour of Twelve o'clock, noon,

That part of the Lands of Puckstown, known on the Ordnance Map as part of Artane West, also known as Elm Park House, containing 34a 1r 8p, statute measure, held under fee-farm grant, dated the 23rd day of March, 1867, under the Renewable Leasehold Conversion Act, subject to a head rent of £160 a-year, and situate in the Barony of Coolock and County of Dublin.

Dated 24th November, 1873.

C. E. DOBBS.

The premises are conveniently situated within about 3 miles of the General Post Office, Dublin, about a mile from the village of Drumcondra, and within a very short distance of the public road leading from Drumcondra to Dublin.

There is a spacious Mansion House, standing in the centre of the grounds, which contains 4 reception-rooms, 7 principal bedrooms, and 5 servants' bedrooms.

There is attached to the house a large conservatory, 2 coach-houses, stabling for 7 horses, 2 loose boxes, cow houses, and spacious poultry yard, &c.

The Grounds surrounding the house are tastefully laid out, and planted with beautiful shrubs and trees, and the house is approached by a fine avenue, about 300 yards in length, leading from the entrance lodge through the grounds.

There is also a walled-in Garden on the grounds, comprising about one acre in extent, which is beautifully laid out, and planted with the choicest description of fruit trees of every variety.

The Garden also contains spacious green-houses, stove-houses, pits, vineries, melon stands, &c., &c.

The remaining portion of the premises consists of arable and pasture land of the very primest description.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Dublin; or to

ARTHUR L. BARLEE, Solicitor having carriage of the Sale, 30 Westland-row, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

In the Matter of the Estate of The Reverend Thomas Stack, Owner; Louisa Maria Digby Nugent, Petitioner.

TO BE SOLD, In Two Lots, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, Before the Honourable Judge Flanagan, On FRIDAY, The 16th day of JANUARY, 1874,

At the hour of Twelve o'clock noon,

The Dwelling-house, Offices, Garden, Orchard, and Demesne of Puxtown, otherwise Puckstown, known by the name of Thorndale, containing 72a 1r 13p statute measure, held under lease dated 28th April, 1844, for the term of 99 years, from the 1st May, 1844.

And also that part of the Lands of Puxtown, otherwise Puckstown, containing 47a 0r 17p statute measure, held under lease dated 28th April, 1844, for the term of 99 years, from the 1st May, 1844, all said premises being situate in the Barony of Coolock, and County of Dublin.

On Lot 1 there is a commodious dwelling-house, containing three reception rooms, eight bed-rooms, large conservatory, with ample accommodation for servants. There is attached to the house a coach-house, stabling for three horses, loose-box, dairy, wash-house, and cow-byre, &c. There is a walled-in garden in the grounds attached to this Lot, containing about half an acre, planted with a variety of the choicest fruit trees, and within which are also green-houses, stove-house, and pits. There is also a farm-yard some distance from the house, containing barns and accommodation for horses, cows, pigs, &c., and there are also separate cottages for the steward, gardener, and yardman at the farm-yard. The grounds on which the house stands are well wooded, and there is a sheet of ornamental water facing the house. The remaining portion of this Lot consists of arable and pasture land of the richest description. The tenement valuation of this Lot is £179 15s

Lot 2 consists of 47a 0r 17p statute measure, of pasture and arable land of the richest description, to the whole of which, save the 9a 3r 3p set on lease to Denis Doyle, and the small cottages stated in rental, the purchaser will be entitled to immediate possession. The tenement valuation of this Lot is £95 10s.

Dated this 24th day of November, 1873.

C. E. DOBBS, Examiner.

The Premises comprising Lots 1 and 2 are situate within a short distance of the public road leading from Santry to Dublin, and are within three miles of the General Post Office, Dublin.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Dublin; or to

ARTHUR L. BARLEE, Solicitor having Carriage of the Sale, 30, Westland-row, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

IN THE CITY OF DUBLIN.

The Rev. Peter Edward O'Farrelly, and Thomas Fitzpatrick, Trustees for Sale under the Will of Rose Ellen Forde, deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Dublin,

On FRIDAY, the 16th day of JANUARY, 1874, At the hour of Twelve o'clock noon. In Three Lots, The following Fee-farm Rent and Valuable Property:—

LOT I.

The House and Premises, No. 3 Ely-place, in the Parish of St. Peter, and City of Dublin, held under a Fee-farm grant dated 3rd December, 1855, and subject in conjunction with Lots 2 and 3, to the Fee-farm rent of £38 15s 0d. The Premises are held by a tenant under a Lease at a rent of £80, leaving a profit rent of £41 5s.

This Lot will be sold subject to the entire head rent of £38 15s, and bound to indemnify Lots 2 and 3 from payment of any portion thereof.

LOT 2.

Fee-farm Rent of £9 6s 0d, issuing out of the Houses and Premises, Nos. 140 and 141 Lower Baggot-street, in the parish of Saint Peter, and City of Dublin, held under Fee-farm Grant of 3rd December, 1855, subject to the rent of £38 15s 0d, but indemnified against the payment of any portion thereof by Lot 1.

The Government Valuation of this Lot is £95.

LOT 3.

House and Premises, No. 4 Ely-place, in the Parish of Saint Peter, and City of Dublin, held under same Grant as Lots 1 and 2, and indemnified against rent by Lot 1. These premises are held by a tenant, under a Lease for lives renewable for ever, at a rent of £36 18s 4d, and the Government Valuation of the Lot is £60.

Dated this 28th day of November, 1873.

C. E. DOBBS, Examiner.

For Rentals, Maps, and further particulars, apply at the Landed Estates' Court; or to

Messrs. WM. ROCHE & SON, Solicitors having the carriage of the Proceedings, 4 Stephen's-green North, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

IN THE CITY OF DUBLIN.

In the Matter of the Estate of Charles Toole, Owner and Petitioner.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Dublin,

On FRIDAY, the 13th day of FEBRUARY, 1874, At the hour of Twelve o'clock noon, In Three Lots, The following Valuable Property:—

LOT 1.

The House and Premises, No. 2 College-street, in the Parish of St. Mark and City of Dublin, held in Fee-simple, the estimated value of which, according to the valuation of Messrs. Brassington and Gale, is £120 per annum.

LOT 2.

The Houses and Premises, No. 1 College-street, in the Parish of St. Mark and City of Dublin, held under Lease for Lives renewable for ever, and last renewal thereof, all the lives in which are in being, subject to the yearly rent of £9 sterling, and to a perpetual annuity of £46 3s 1d.

The Premises have been valued by Messrs. Brassington and Gale, at the annual rent of £80, which would leave a net annual value of £24 16s 11d. Immediate possession will be given to a purchaser.

LOT 3.

House and Premises, No. 41 Westmoreland-street, in the Parish of St. Andrew and City of Dublin, held under Lease for Lives renewable for ever, and last renewal thereof, subject to the yearly rent of £28 5s 7½d.

These Premises have been valued by Messrs. Brassington and Galef at the yearly rent of £200, which leave a net annual rental o, £171 14s 4½d. Immediate possession will be given to a purchaser.

The aforesaid premises are situate in the leading thoroughfare, and best part of the City of Dublin for business.

For the last seventy years a very extensive and lucrative seed business has been carried on on the premises, which are in thorough repair. The premises, 41 Westmoreland-street, consist of large shop, having frontages in Westmoreland-street and College-street, and are at the corner of the street facing the Bank of Ireland; the upper part of the house contains eight large rooms, which are well suited for either a dwellinghouse, or could be let with great advantage and profit as offices. There is also a good basement story to the premises. Immediate possession will be given.

The premises, No. 1 College-street, are well suited for business purposes, and contains an office on street floor, four rooms over, and a basement story. Immediate possession of this house will be given.

The premises, No. 2 College-street, consist of a good shop and back offices, and upper portion consists of eight large rooms, used at present as seed stores, well suited for storage of all kinds of goods. Immediate possession of the upper and basement stories will be given to the purchaser, and the tenancy of the shop and back office, which are at present let at £120 per annum, will terminate on the 27th day of May, 1874.

Dated this 23rd day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates Court; or to

Messrs. WM. ROCHE and SON, Solicitors having carriage of Sale, 4 Stephen's-green, North, Dublin.

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF CAVAN AND CITY OF DUBLIN.

In the Matter of the Estate of Charles Langdale, Esq., Sir John Esmonde, Bart., and others, Owners and Petitioners. And in the Matter of the Estate of Frances Maria Horne and others, Owners: And the Partition Act, 1868.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, On FRIDAY, The 13th day of FEBRUARY, 1874, In Thirteen Lots, The following Valuable Property:—

COUNTY OF CAVAN RENTAL,

LOT 1.

The Lands of Derrylane, containing 57a 3r 35p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett rental of £36 9s 7½d. The Government Valuation of this Lot is £40 5s 0d.

LOT 2.

The Lands of Garranrush, known on the Ordnance Survey as the Lands of Garryross, containing 332 acres and 10 perches statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £248 11s 0d. The Government Valuation of this Lot is £224.

LOT 3.

Part of the Lands of Barecony, known on the Ordnance Survey as Bareconny (Grattan), containing 44a 2r 15p statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £33 3s 3d. The Government Valuation of this Lot is £29 5s 0d.

LOT 4

Consists of part of the Lands of Ballycroft, known on the Ordnance Survey as Lower Lackan, containing 70a 3r 25p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental (paid by one tenant who holds under a Lease) of £78 2s 10d. The Government Valuation of this Lot is £69.

LOT 5

Consists of other Part of the aforesaid Lands of Lower Lackan, containing 262a 0r 26p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £120 0s 9d. The Government Valuation of this Lot is £123 12s 0d.

LOT 6

Consists of Part of the Lands of Leggiwitt, known on the Ordnance Survey as Legawell, containing 114a 2r 38p statute measure, situate in the Barony of Clonmahon and County of Cavan, and producing a nett annual rental of £73 14s 7d. The Government Valuation of this Lot is £71 0s 0d.

LOT 7

Consists of Part of the Lands of Leganny, known on the Ordnance Survey as the Lands of Legaginny, containing 178a 3r 21p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £67 10s 3d. The Government Valuation of this Lot is £93 16s.

The Lands of Derrylane, Lacken Lower, Legaginny, and Legaweel, are situate within one mile of Crossdoney, a station on the Midland Great Western Railway, and 4 miles from the Town of Cavan.

The Moorland on Legaginny and Legaweel is capable of much improvement by a small outlay. The Lands are cheaply set, the tenants industrious, and pay their rents with punctuality.

The Lands of Garryross and Barconey (Grattan) are situate within two miles of Oldcastle, a station on the Dublin and Drogheda Railway, and a good fair and market town. The Lands are of nice quality. The tenants are industrious, and pay their rents with punctuality.

RENTAL OF THE CITY OF DUBLIN PROPERTY.

LOT 1.

Houses and Premises, Nos. 72, 73, 74, 76, 77, 78, and 79, Queen-street, and Nos. 1, 2, and 3, Tighe-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject, in conjunction with Lots 2 and 3 on this rental, to a rent-charge of £6 12s 4d sterling. This Lot will be sold primarily, liable to the entire of the rent-charge of £16 12s 4d, and bound to indemnify Lots 2 and 3 from payment of any portion thereof. This Lot produces a nett annual rental of £70 12s 3d, and the Government Valuation is £127.

LOT 2.

House and Premises, No. 75 Queen-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rental of £25. The Government Valuation is £22.

LOT 3

Consists of the Houses and Premises, Nos. 71 and 72 Queen-street, and Nos. 1, 2, 3, 4, and 5 Hendrick-street, in the Parish of Saint Paul, and City of Dublin, held in fee, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rent of £39 13s 10½d. The Government Valuation is £84 0s 0d.

LOT 4

Consists of the Houses and Premises, Nos. 71, 72, 72½, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90, Cork-street, and Cozy Lodge and Vauxhall Lodge, Cork-street, and Houses and Premises, 48 Marrowbone-lane, all in the Parish of St. Catherine, and City of Dublin, held in conjunction with Lots 5 and 6 under a Lease for lives renewable for ever, and subject to the yearly rent of £46 3s 1d, and producing a nett annual rental of £42 16s 10½d.

This Lot will be sold subject to the entire head rent, and bound to indemnify Lots 5 and 6 against the payment of any portion thereof. The Government Valuation is £157.

LOT 5.

Consists of the House and Premises, No. 73 Cork-street, in the parish of St. Catherine, and city of Dublin, held in conjunction with Lots 4 and 6 under Lease for lives renewable for ever, subject to the rent of £46 3s 1d, and producing a nett annual rental of £44 15s per annum. The Government Valuation of this Lot is £31 10s. This Lot will be sold indemnified against the payment of any portion of the head rent of £46 3s 1d by Lot 4.

LOT 6.

This Lot consists of Houses and Premises, Nos. 46 and 47 Marrowbone-lane, situate in the parish of St. Catherine, and city of Dublin held in conjunction with Lots 4 and 5 under Lease for lives renewable for ever, and subject to the rent of £46 3s 1d, but indemnified against the payment of any portion thereof by Lot 4.

This Lot produces a net annual rental of £29 15s. The Government Valuation is £31.

A draft Fee-Farm grant, in lieu of the Lease for lives renewable for ever, under which Lots 4, 5, and 6 are held, has been approved of on behalf of grantors, and will be executed to the purchaser at the expense of the estate.

The rent in the grant will be £48 10s 2d.

Dated this 20th day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates' Court; or to

Messrs. WILLIAM ROCHE & SON, Solicitors having the carriage of the Proceedings, No. 4 Stephen's-green North, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

CITY OF KILKENNY.

In the Matter of the Estate of John Thomas Walker, Owner; Robert Holmes, continued in the name of Robert Arbuthnot Holmes, Petitioner. John Thomas Walker, Owner; Robert A. Holmes, Petitioner.

TO BE SOLD, In Five Lots, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, The 23rd day of JANUARY, 1874, At the Hour of Twelve o'clock noon,

The Owner's Estate in the following Premises, viz.:—

LOT 1.

Houses and Premises situate in Coal Market, now called Parliament-street and New Buildings' Lane, in the parish of St. Mary, and city of Kilkenny, held under Lease for lives renewable for ever, dated 4th of April, 1738, and subject to 11s. 4d. for yearly rent, accates and receiver's fees, and to 9s. 2¼d. as a renewal fine, and producing a profit rent of £79 4s. 9¼d.

LOT 2.

Houses and Premises in Lower John-street, in the parish of St. John, city of Kilkenny, held in Fee-farm under Indenture, dated 2nd of March, 1722, and subject to £2 2s. 6¼d. yearly rent, accates and receiver's fees, and producing a profit rent of £62 17s. 5¼d.

LOT 3.

Houses and Premises situate in Back-lane, now known as King's-street, in the parish of Saint Mary, city of Kilkenny, held under Lease for lives renewable for ever, dated 26th of April, 1787, at yearly rent of £41 10s. 9¼d., and a peppercorn renewal fine, and producing a profit rent of £33 15s. 4¼d.

LOT 4.

A House and Premises in Coal Market, now called Parliament-street, in the parish of Saint Mary, city of Kilkenny, held in Fee-farm under an Indenture, dated 8th February, 1722, at yearly rent of £6 3s. 1d., 3s. 8¼d. in lieu of accates, and 3s. 2¼d. receiver's fees, and producing a profit rent of £21 3s. 10d.

LOT 5.

The Three Inclosures or Parks commonly called Part of Grantsthorn, containing 11a. 3r. 2p. statute measure, and known on the Ordnance Survey as Part of Lower New-street, Upper New-street, and New-road, in the parish of St. Canice, and Liberties of the city of Kilkenny, held under Lease for lives renewable for ever, at yearly rent of £16 12s. 3¼d., subject to a peppercorn renewal fine, and producing a profit rent of £16 7s 8¼d.

Dated 1st day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals and other particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, Dublin; to

Mr. RICHARD CASSIN, Upper Patrick-street, Kilkenny; or

Mr. EDWARD FETHERSTONHAUGH, Solicitor having carriage of Sale, 20, Clare-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, January 3*, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JANUARY 10, 1874. No. 363.

DECISIONS ON THE PARLIAMENTARY ELECTIONS ACT, 1868.—I.

MESSRS. O'MALLEY and HARDCASTLE have brought out the second part of their second volume of Election Reports. These Reports come down to the Gloucester case—the latest decided by an election tribunal. As it is extremely improbable that a fresh part will appear before the general election, we take this opportunity of calling the attention of our readers to the modification which the law relating to elections has received since the passing of the Parliamentary Elections Act. The existence of these Reports at all is one of the not least important effects of the Act, as the decisions of the Committees of the House of Commons, being delivered by laymen, were not capable of being collected as systematic reports, with the reasons and principles upon which the cases were decided set out in accurate legal language. The publication of these Reports—in which the doctrines of the election law are set out in the luminous and elaborate judgments of the election judges—relieves a want which was generally felt by those of the profession who were in any wise concerned with the laws on electioneering. The law of agency in Parliamentary elections has been much illustrated, if not altered, by these judgments. Some apprehension was felt, at the time of the passing of the Act, as to the principles on which the Judges would proceed in deciding a question of agency, as the Act contained no express provision as to agency; and the principles of agency, as understood at Common Law, and those which were acted on by the Committees of the House of Commons in election matters, were in many respects different. These apprehensions, however, were dispersed by the decision of Baron Martin in the Norwich case (1 O'M. & H. 10.), in which he decided "that the law of agency which would vitiate an election is utterly different from that which would subject a candidate to a penalty or an indictment, and the question of his right to sit in Parliament has to be settled upon an entirely different principle. The relation is more on the principle of master and servant than of principal and agent." There can be little doubt that such a decision was based on the principles of common sense, and that if the Common Law principle of agency had prevailed in election matters, transactions like those which were revealed at Norwich and elsewhere would have taken place with almost perfect safety to the successful candidate, and our elections would have become even more corrupt than they sometimes are. The general tendency of the decisions seems to be to render the principal more liable for acts done by his agents than he was before. Where £11,000 was lodged by the candidate in the hands of one person, with directions to spend the money honestly, but no control was exercised over him as to the way of spending the money, it was held that such an extensive employment renders the candidate responsible not only for the acts of the agent himself, but for the acts of all those whom he employs: Bewdley case (1 O'M. & H. 18). In the Galway case (2 O'M. & H. 53), a letter written by the respondent to a Roman Catholic clergyman, in which he proposed a conference of the clergy to determine how far the clergy should go in asking the tenants to vote against their landlords, and also to organize a popular meeting, was held to be sufficient to render every bishop and every priest who acted at the meeting an agent. In the Taunton case (1 O'M. & H. 181) where an association had been formed for the purpose of conducting the registration and the election, and during the election this association acted as an election committee usually does; and the respondent, by his agents, knew that the association was actively canvassing in his behalf; it was held that when things are openly done, which would not be done in the ordinary course of things, except with the cognizance of a candidate who sanctioned them, the natural inference, in the absence of proof to the contrary, would be that they were done by a person acting as agent for the candidate. In this case such a degree of benefit was derived from the assistance of this association, and its assistance was so important that it fairly established that if the candidate took the assistance and did not hold the association off or repudiate it, he must abide the consequences, and be responsible for the malpractices of the association. Acts of bribery having been proved against this association, the candidate was held responsible for it, and he was unseated. But on the other hand, in the Westminster case (1 O'M. & H. 91), the sitting member was held not answerable for the acts of an agent employed by an association formed for political purposes of which the respondent had been a member, and to which he had subscribed large sums, but from which he had withdrawn on becoming a parliamentary candidate. As to individual agents, some remarkable decisions have been come to, which are rather favourable to the interests of the sitting members, and those electors of lax political principles who keep a sharp look out for "the man in the moon" at the eve of an election; for instance, it has been held that messengers cannot be regarded as agents. Windsor case (1 O'M. & H. 3). And in case of treating after the election by the agent of the candidate, it is necessary to prove that he had a continuing authority from the candidate to act after the election: Norfolk case (1 O'M. & H. 243). The doctrine of limited agency, about which some doubt seems to have formerly existed, may be taken to have been finally decided in the Westbury case (1 O'M. & H. 48), and the Norfolk case (1 O'M. & H. 237), by which it appears that a limited authority to canvass makes the respondent only liable to that limited extent. In the Stafford case (1 O'M. & H. 231), Mr. Justice Blackburn decided a question which might have caused anxiety and danger to a candidate conducting his election on *bona fide* pure principles. In that case it was proved that certain electors, really adverse to the respondent, had gone to a committee of the respondent, with a pre-determination to take any bribe that might be offered on the respondent's side, and to go and tell about it. Evidence was given to show that one of the respondent's agents was cognizant of this plot, and was himself planning to betray the respondent; Mr. Justice Blackburn, in his judgment, said, as to this, "if a paid agent of the respondent was planning to betray him, I do not think that he could be considered an agent, so that his acts could vacate the election. If a candidate employs an agent, and that agent, contrary to his wish and contrary to his direction, commits a corrupt act, the candidate is responsible for it; but where he employs an agent, and

Digitized by Google

the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act, it would not vacate the seat, unless it is proved that the corrupt act was at the special request of the candidate himself, or some untainted and authorised agent of the candidate, who directed the act to be done. We propose in a future number to consider the effects of these decisions on the question of treating and undue influence.

THE COURT OF EXCHEQUER.

It is not our custom to canvass the merits and claims of candidates for positions, judicial or otherwise, in Ireland. When appointments have been made we criticise them honestly, and express our opinion of the choice of the Government. But within the last few weeks a strange controversy has arisen concerning the vacancy in the Court of Exchequer. The lamented death of the Chief Baron Pigot took place at a time when no appointment could possibly be made, and when it was not necessary that there should be any haste in the matter. Some of our contemporaries, however, inferred that the Government have determined not to appoint another Judge, but to promote an existing one, and thus to diminish the judicial staff of the Bench. This inference was strongly supported by a certain article in the *Times*, which, whether inspired or not, was probably intended to try the feelings of the public on the subject; and we trust that the response it elicited from all quarters in Ireland, and from the most influential and (which is more important) independent papers in London, will show that if the Government ever intended to act in the manner shadowed forth above, they would not receive the support of any section in Ireland, and would be strongly opposed even in England. For ourselves we have not hitherto noticed the subject, because we do not believe that any Government would attempt, during the Parliamentary recess, of its own motion, to make such a change as to permanently reduce the number of Judges in a Superior Court from four to three Judges. This would be clearly unconstitutional, in the best sense of that term, clearly inexpedient in the present state of business, and we had almost said impossible, from the duties to be performed by each member of the Court. It is unnecessary to add that it would in some sense be a breach of faith with those who by custom have a right to consider themselves entitled to promotion. When we say that to reduce the number of Judges from four to three in each Court would be unconstitutional, we do not mean that it would be illegal or impossible—the prerogative is doubtless strong enough for greater interference—but we do say that without a radical change in the circuits, and in the method of transacting business, suitors would be prevented from enforcing their rights and remedying their wrongs, and so the great charter itself would be broken—"We will not deny or *delay* to any man justice or right." That it would be inexpedient, even in a political sense, no one can deny who is acquainted with the state of business and society in this country. We have six circuits, on each of which two Judges go twice a year (and we shall probably soon require a winter assize in Belfast and Cork), and thus the circuit arrangements should be modified; but, in addition, the Exchequer, and, indeed, each of the Common Law Courts, has an exclusive jurisdiction which precludes Judges of one Court from discharging the functions of another. Thus it sometimes happens that we have to wait out of term for some time to obtain an order in a bail motion from a Judge of the Queen's Bench, or an order under the 4 & 5 Will. IV., c. 92, from a Common Pleas Justice. The absolute as well as relative duties of the Judges of all the Superior Courts are considerable, and each year increasing. Several late Acts have vastly increased their duties—for instance, the Act which transferred the trial of election petitions from Committees of the House of Commons to the Courts of Law—the Land Act of 1870, which has given rise to much circuit business, and requires the attendance of a majority of the judges in the Court for Land Cases Reserved, and which indirectly, by its influence in increasing the available wealth of the country and in discouraging emigration, is each year increasing the amount of litigation. We need hardly refer to the Report of the Commissioners in 1862, who reported against diminishing the number of judges. But we venture to say that in anticipation of a Judicature Bill for Ireland in a few years, and the necessary changes to be then introduced, it would be a piece of wanton extravagance to alter and re-model the present system to found one which could necessarily only exist for two or three years. The profession and the public showed a fatal apathy in the matter of the vacancy in the Landed Estates' Court; but yet the Government did not proceed with their proposed Bill to render a further appointment unnecessary, and we trust they may yet, by a combined effort, be induced to fill up the vacancies, and thus preserve for Ireland the complete advantages of, perhaps, the most excellent institutions we owe to the English connexion. Economy is most wise when wisely pursued, and this limitation, we think, would be broken through if anything were done to impair the strength and symmetry of our legal system, or to alienate the feelings of the most enlightened and influential members of the community.

LAND LEGISLATION.

Sir William Harcourt, the Solicitor-General for England, was, before his election, an independent member, with a strong proclivity towards disturbing subjects. He chose to ride the hobby of Legal Reform, and was tolerably successful in his attempts, though they were slightly *doctrinaire*, to induce the House of Commons to pass the Judicature Act, endorsed as it was with the approval of Lord Selborne and Lord Cairns. Since his promotion, however, he appears to think that the rôle of a legal reformer is yet open, and that he is expected to play an important part still in that character. But if we may judge by his latest utterances at the meeting of the Druids in Oxford, he will require to have his theories kept well in check by the more practical sense and experience of his colleagues. It would appear from the report of his speech that he proposes to abolish primogeniture and the power of creating entails—that is, he would create the greatest revolution in our legal and social systems, compared to which the changes introduced by the Judicature Act are a mere bagatelle. As to the latter proposal it is usually the cry of Liberals that individual liberty should be interfered with as little as possible, and it has to be proved that the power of creating entails is such a public nuisance that an admitted principle of jurisprudence should be overthrown to abate it. Other nations may not have entails, but those other nations also have not our evenly-balanced Constitution, to the support and maintenance of which a landed proprietary (only to be kept up by entails) is absolutely necessary to protect the State against the encroachments of popular numbers on the one side, and the prerogatives of the Crown on the other. From economic points of view, much may, doubtless, be said against the power of entailing estates,

Digitized by Google

but a jurisprudent is bound to consider the question from every side, as it bears on the constitution and social conditions, as well as its economic aspect. In fact, if we are to abolish entails, we must get rid of the whole theory of *estates* and *tenures*, and supply a substitute for them. Of course laymen do not generally know the meaning of these terms or their necessity, and so a popular cry is got up and taken advantage of by interested parties. As to primogeniture, no objection can be successfully made to adopting the principles of Mr. Locke King's Bill, whereby it was proposed that real estate should descend like personal estate, so long as persons entitled shall be allowed to dispose of their property both by acts *inter vivos*, such as settlements, and by wills. We say no successful opposition, because hardships of the present law of primogeniture result almost entirely from the carelessness of persons in dying intestate. That popular feeling is really in favour of "making an eldest son," is shown by the fact that the property of families, personal as well as real, is almost invariably given to the eldest son, subject to charges, when it might even at present be subject to equal distribution. It is capable of demonstration that more benefit is derivable by the family when the property is thus held by one member—and others have annuities and rent-charges issuing from it—than would accrue if it were to be equally divided.

AN IMPENDING INVASION.

If the report be true, which is going the rounds of the papers, that there is a young lady residing in Lincoln's Inn, with a view to being admitted a member of one of the Inns, and finally being called to the Bar, we may expect to have a very sensational argument. In America ladies have forced open the doors of legal exclusiveness, and practise with success; but we doubt whether they will be equally successful with the Benchers in England, who have not hitherto shown themselves very tolerant of modern views of progress, and are not likely to be amenable to those softer feelings of admiration which, doubtless, induced their younger brethren in America to admit ladies to their Society. Seriously, Barristers and Solicitors must bestir themselves if they would not have their profession invaded by the gentler sex. In Ireland the Barrister*esses* would, doubtless, soon monopolize much business. In Nisi Prius they would be invincible; and, for the sake of justice, we should require lady-jurors to outweigh the lady-advocates' influence—for, happily, each sex has less influence on its own than on the other sex.

THE IRISH MAGISTRACY.

A question has lately been raised by Mr. Mitchell Henry in the *Times* which has brought out a considerable body of evidence as to the working of the mixed jurisdiction of paid and unpaid magistrates in Ireland. It has been maintained, on the one hand, that the two classes are separated by a not unnatural jealousy; and, on the other hand, it has been said that they act together most cordially and harmoniously. It may be presumed that the truth lies between these extremes. It is pretty clear that there does exist a feeling of jealousy which is generally kept in control, though it sometimes breaks out in scandals like that to which Mr. Henry has drawn attention. But the stipendiary magistrates, as at present chosen and paid, are not in a position to maintain the social independence of their unpaid coadjutors. It was originally intended that the post should be one of reasonable dignity and consideration, and if this branch of the public service had fair play its advantages would have been, not diminished, but increased, as the cost of living grew larger. The zeal for economy, however, which appears to be practised somewhat erratically in Ireland, led to a diminution of the salaries of the "residents," as they are called, and to a consequent deterioration in the standard of competence and of popular trust. Some forty years ago, when the stipendiary system was first introduced, the emoluments were fixed at £700 a year, and £200 a year for house or office allowance. Now they have been cut down to a scale commencing at £300 per annum, and rising after twenty or twenty-five years' service to £500 per annum without any house allowance. It is manifest that the services of persons competent to discharge what is in fact judicial business cannot be obtained for this rate of pay. The consequence is that the Irish Government, after in vain attempting to supply the needs of the service by giving the appointments to half-pay millitary and naval officers, have fallen back on the practice, which is altogether an objectionable one, of making the stipendiary bench a step in promotion for officers in the constabulary. When a man has risen through the various grades of sub-inspectorship and has served with credit as a county inspector, he now looks forward to become in good time a resident magistrate. The semi-military character of the Irish police force does not tend to make an experienced officer of constabulary an impartial or judicious judge; and the relation between the unpaid justices and the police officers promoted to the bench cannot be one of equality. Moreover, it is natural that the Irish peasant should see in a resident magistrate of this class merely a sort of glorified policeman, invested with judicial power.

There are many reasons why we should not fall back again upon the unpaid magistracy in Ireland. The first is the deficiency of proper material; but another and not less forcible one is that such material as exists is not judiciously or even fairly used. The appointments to the commission of the peace are practically in the hands of the lords-lieutenant of counties, and the lord-lieutenancies are political prizes given by Governments, Conservative or Liberal, to political friends. Then, again, jobs are common, and in many parts of the country, where there is really no resident gentry, the agents of the large proprietors are the only justices of the peace. This is not by any means a satisfactory state of things, but the best way of mending it is to improve the position and augment the numbers of the stipendiary magistrates, insisting on the maintenance of a high standard of qualification.—*Pall Mall Gazette.*

RESIGNATION OF JUDGES.

Mr. Baron Martin has sent in his resignation. The learned judge succeeded Baron Rolfe, and has held the appointment for a period of twenty-three years.

Lord Cowan, who has been ill for some weeks past, has resigned his Judgeship in the Court of Session at Edinburgh.

Judicial Changes in 1873.—Besides the judicial changes involved in the apointment of a new Chief Justice of the Common Pleas and a new Master of the Rolls, there have been others both in the courts of law and equity. The retirement of Baron Channell from the Court of Exchequer, which was soon followed by his death, rendered necessary the selection of a puisne judge, and the choice fell upon Mr. Charles Pollock, a son of the late Lord Chief Baron of that name. Early in the year Mr. Justice Byles, having completed his fifteen years of judicial service, resigned his seat in the Court of Common Pleas, and was succeeded by Sir George Honyman. By the death of Sir John Wickens a Vice-Chancellorship fell in, which was given to Mr. Charles Hall. The post of Chief Baron of the Court of Exchequer in Ireland is now vacant through the death of the late Mr. David Pigot.—*Daily News.*

Hints on Court Etiquette.—It would be well for lawyers to know where they should stand when they address the court, and to learn that they should keep out of the seats of the sheriff, crier and clerk; and not talk to each other in undertones or sit with their feet on chairs or tables n court rooms.—*Albany Law Journal.*

Digitized by Google

THE O'GRADY.

The death is announced of William de Courcy O'Grady, Esq., "The O'Grady," of Kilballyowen, county Limerick, barrister-at-law; he died recently, at his residence near Bruff, in the county of Limerick, in the 58th year of his age. The deceased was the eldest son of "The O'Grady," of Kilballyowen, a magistrate and deputy-lieutenant, and formerly high sheriff of the county of Limerick, who died in 1862. His mother was Anne, only daughter of William Wise, Esq., of Cork, and he was born in the year 1816. He was educated at Winchester, and at Trinity College, Dublin, where he took his B.A. degree in 1837, and proceeded M.A. in 1840; he was called to the Irish Bar in 1840. The Milesian family of O'Grady, of which the deceased gentleman was the representative, is, says Sir Bernard Burke, one of the most ancient in the far west of Ireland; and Dr. O'Brien, the late Roman Catholic Bishop of Cloyne, in his "Irish and English Dictionary," assigns Conal-Eachluath, King of Munster, A.D. 366, and sixth in descent from Oiliol-Olum (of the race of Heber, eldest son of Milesius, King of Spain, who colonized Ireland), as the common ancestor of the O'Gradies and the O'Briens, the latter of whom is now represented by Lord Inchiquin, of Dromoland, county Clare. The same authority tells us that "when the latter house, subsequently, in the person of Brian or Brien Boroimhe, the renowned monarch of Ireland, established an ascendancy of power in north Munster or Thomond, of which they became hereditary rulers, the O'Gradies came to acknowledge their paramount sway, and were arrayed as dynasts, or chiefs of a 'sept,' under the banners of these provincial princes." Sir Bernard Burke, however, traces their actual descent no further back than the interval between A.D. 1276 and 1309, when the "chieftainship of the sept vested in Donald O'Grady, who fell in battle in the latter year, leaving a son, Hugh O'Grady, who acquired the property of Kilballyowen (which has ever since vested in the family) by his marriage with the daughter and heiress of a local chief named O'Kerssick." The O'Grady married, in 1841, Anne Grogan, daughter of Thomas De Rinzi, Esq., of Clobemon Hall, county Wexford, by whom he has left, besides other children, a son, Thomas De Courcy, born in 1844, who now becomes "The O'Grady."

CORONERS' INQUESTS.

In re MARSHALL.

Issue has, again, been taken on the question of the right of prisoners to be present at Coroners' inquests in which they are concerned. *In re Marshall*, decided on last Tuesday, has been—like the previous case of *re Reardon—exclusively* reported as a law report for this journal, and will appear in a subsequent issue. It pushes the law considerably further in favour of prisoners, and in aid of the Coroners' Courts. We abstract some comments of our contemporaries upon the subject:—

"It is a matter of notoriety that, within the last year or two, the law officers of the Crown in Ireland have refused to allow persons accused of murder to be brought before the Coroners' juries, empannelled to investigate the cause of death, and the alleged circumstances attending the crime. In a recent case, Mr. Justice Fitzgerald decided that the person accused, then in custody of the police, was entitled to appear before the Coroner's jury, because he was anxious to give evidence on the subject under inquiry. The learned judge, however, went a step further on Tuesday, and decided that it was the absolute right of the prisoner to be present at the Coroner's inquest. Mr. E. N. Blake, who appeared on behalf of the prisoner, argued the question very forcibly. He showed that the inquisition of the Coroner might be traversable on the ground of irregularity, as, for example, if there were any indirect proceeding of the Coroner, or if the evidence were not on oath, or if the jurors had not heard the whole of the evidence—a circumstance by no means improbable, as we know of our own knowledge of a very important inquest in the Island of Anglesea, where the jurors absented themselves from time to time, and where the inquiry had to be suspended more than once, until the errant jurors were brought back. If, however, the prisoner be not present at the inquiry, he may be unable to avail himself of any such irregularity, because the coroner has the right to exclude counsel or attorney from the investigation. Another argument used by Mr. Blake was that any depositions taken behind the back of an accused person, at a Coroner's inquest, would not be admissible at the trial if the witness died in the meantime. Having heard the Solicitor-General in reply, Mr. Justice Fitzgerald decided that the prisoner had a right to be present at the Coroner's inquest. After this decision, we hope the law officers of the Crown will not persist in treating the Coroner's Court with contempt. Let them abolish Coroners' Courts if they can—we have no objection—but as long as the institution exists its rights should not be overridden at the caprice of the Castle, the law officers, or the police. It has now been decided, by one of the ablest constitutional judges that ever sat on the Bench, that a person accused of causing the death of any individual has a right to be present at the inquest. If on any future occasion the Executive authorities do not recognize this right, but impose on the accused person the necessity of applying to the Court of Queen's Bench for a writ of *habeas corpus*, we shall arraign them as teaching the people of Ireland to despise and contemn the law. We must say we are astonished at the course that Mr. Pallas and Mr. Law have taken on this occasion. They ought to have known, as Mr. Justice Fitzgerald has decided, that the prisoner had a right to be present at the Coroner's inquest, and if they *did* know it we cannot excuse their resistance to the application. If, on the other hand, they opposed the application, believing that it was untenable, what can be said of their legal knowledge or their intelligence?"—*Saunders's News-Letter.*

"Mr. Blake, who appeared for the prisoner, contended that the principles on which the *habeas corpus* was asked were much more extensive than those which governed the late case of Reardon. There the writ was granted on the affidavit of the prisoner that he desired and *intended* to give evidence. Mr. Blake urged first that it was, according to Lord Hale, the bounden duty of the accused to attend the Coroner's inquest; that the inquisition is traversable for irregularity, but the irregularity cannot be discovered if the party be not present; next, the accused is, on principle of natural justice, entitled to be present to cross-examine the witnesses and aid his counsel by suggestions; further, the main evidence before the Coroner is the body, and it is the right of the accused to see the body, its position, and accessories; and important suggestions of guilt or innocence may be derived from the accused's demeanour in presence of the body. It was also a very doubtful and serious question whether the depositions of witnesses, taken in the absence of the accused, and who subsequently die, can be received at the trial. The Solicitor-General, on the contrary, contended that the practice should be the same in this country as in England. It appeared to be settled in England that a *habeas corpus* should not issue unless the interests of justice required it. It was idle to suppose that it was really intended to examine the prisoner as a witness. He did not see what the object of having the prisoner present was. The practice of bringing prisoners from the magistrate to the Coroner's inquiry was found to be wholly illegal, and if it was desirable that in all cases the prisoner should be present, that was a matter for legislation. His Lordship, in giving judgment, agreed with the Solicitor-General that if the law were to be changed it should be by legislation. These proceedings with reference to the Coroner's Court presented an unseemly aspect to the public. If the Coroner's Court existed at all, they ought to give it their assistance. The Coroner's Court was a very ancient one. He was of opinion that there should be some mode of having persons brought before the Coroner's Court more simple than by applying for a *habeas corpus*, and that there was a great defect in the law even in final trials in a prisoner not being allowed to tender himself as a witness, and give evidence. He was of opinion that the present case, being one of circumstantial evidence, was just the one where it was desirable that the prisoner should be present."—*Morning Mail.*

Digitized by Google

"Mr. Justice Fitzgerald on Tuesday granted a writ of *habeas corpus*, moved for by Mr. Blake, in the case of Anne Winifred Marshall, charged with having caused the death of Colin Donaldson. The Solicitor-General, on the part of the Crown, opposed Mr. Blake's motion, chiefly on the ground that it was desirable to assimilate the Irish to the English practice. It is not denied that it was the custom for centuries in both countries to place a person charged with murder before the Coroner, whose office can be traced to an age when there were no such officers as Attorneys or Solicitors-General. Mr. Justice Fitzgerald significantly noticed that the process of petitioning for a writ of *habeas corpus* was a very expensive one, and therefore beyond the means of ordinary parties. The costs incurred on behalf of the Crown are paid by the people; the costs of the accused must be defrayed by his or her resources, or those of friends. Mr. Justice Fitzgerald pointed out that Mrs. Marshall's case was precisely one in which her presence at the Coroner's inquest was desirable. The evidence, so far, given against her is circumstantial; her testimony, if tendered by her advisers and accepted by the Coroner, may explain what is urged against her. She may, on hearing the witnesses, advise her counsel or suggest questions. At all events, every accused person has the ancient and inalienable right of hearing all the adverse testimony given before the oldest form of a judicial court known to the British law. It is very remarkable that when the English magistrates learned they had no power to surrender an accused, that he or she should be removed from the custody of the police to be brought before the Coroner, arrangements were made that the accused should be brought before the Coroner in the first instance, but this is precisely what Irish law officers have not done. In his present judgment Mr. Justice Fitzgerald went further than in Reardon's case. In that he granted the writ on affidavit that Reardon's evidence was necessary; in Mrs. Marshall's case it depends upon her legal advisers whether her evidence shall be tendered or not. We heartily agree with Mr. Justice Fitzgerald in thinking that if the powers and jurisdiction of the Coroner's Court are to be shorn or altered, the change should be effected by the Legislature, and the Legislature alone. It is also advisable that some summary and costless mode of proceeding should be adopted to prevent this apparent conflict between two jurisdictions, and an expensive as well as roundabout appeal to a third. Every step of a proceeding in the Crown Court is, we believe, double the cost of proceedings in other Courts, and it is certainly a curious illustration of our judicial progress that any accused person should be deprived of a natural right through want of funds to pursue a process in her Majesty's Court of Queen's Bench."—*Irish Times.*

"Up to recently, when a person charged with causing the death of another was under arrest, he was carried in the custody of a policeman to the inquest. This was a very simple way of meeting the difficulty, though doubts have arisen as to its legality. When discussing a similar case some weeks since, we pointed out that one of the functions of the Coroner was to inquire, not alone how death was caused, but who caused it. The genius of the Constitution, the tenor of our criminal procedure, and the instincts of fair play, all indicate that the man who is charged with an offence has a right to be present when the inquiry into that offence is going on. Surely it is unjust to compel a man claiming a right to go to all the trouble and expense of a writ of *habeas corpus*."—*Freeman's Journal.*

"It is to be hoped that at length a stop has been put to the unseemly contest between the Crown and the Coroners, which the law officers have provoked. With singular obstinacy the law officers of the Crown persisted in offering every possible opposition to the old mode of procedure, although the Coroners were sustained in the attitude they assumed, not only by the force of public opinion, but by the calm judgment of so eminent a lawyer and so constitutional a Judge as Mr. Justice Fitzgerald, who, on a former occasion, expressed his disapproval of the course taken by the Crown. His Lordship, on this occasion, after hearing the argument of the Solicitor-General, urged with all his ability and perseverance against the motion, granted a writ of *habeas corpus*, expressing his opinion that it was desirable that the prisoner should be present in the Coroner's Court, and that the application for her attendance ought to have been made by the Crown itself."—*Daily Express.*

"We are not so presumptuous as to question the perfect legality of a ruling made by so learned and discreet a Judge as Mr. Justice Fitzgerald; but we confess we should have been better satisfied if he had taken a more comprehensive view of the nature and jurisdiction of Coroners' Courts when that subject was brought before him on Tuesday. What the Court is constitutionally empowered to do is to examine and identify the body of the deceased person, and to record facts tending to show the cause of death, performing this duty as soon as possible after the decease, before natural decay should render such an inquiry difficult or impossible. We are as anxious to maintain the Coroner's jurisdiction as any one can be, and it is because we see a great danger to its existence in the present proceedings that we regret the pertinacity with which they are carried on. If any proof were needed of the inconvenience of a *quasi* trial by jury of a suspected person, not actually in charge of the Court, it is surely to be found in the rambling, incoherent proceedings at the inquest on Wednesday, and the manifestly injurious tendency to the suspected person, of the loose evidence which was to some extent sanctioned by her presence and silence. All this will, of course, go for nothing if a real trial before a Criminal Court shall be instituted; but any insubstantiality in the administration of justice is to be regretted, and, as it is now evident that the Court of Queen's Bench was led into a snare, we trust the result may be a full re-consideration of the Coroners' jurisdiction at the earliest possible opportunity."—*Evening Mail.*

THE WEAR AND TEAR OF JUDGES.

Our judges come and go very rapidly. Not many weeks pass by without some occupant of the Bench quitting his dignified position. Within the last three years the *personnel* of the Court of Chancery has been completely altered. Sir James Bacon and Sir Richard Malins are the sole survivors; and some of the Courts, such as the Lords Justices and Vice-Chancellor Hall's, have seen several transformations. In the Common Law Courts, also, the changes have been great, though not perhaps so great. The profound Byles, the genial Channell; Bovill, quick and vivacious; Willes, the most learned of English lawyers, have disappeared; and we are told that the Courts will soon lose the manly common sense, and forcible, incisive intelligence of Baron Martin, once a leader of the Northern Circuit, and for twenty years a tower of strength in the Court of Exchequer. Turn to Scotland, and we see there large changes on the Bench. It is not long ago since the Scotch Judicature lost the services of Lord Mackenzie, a distinguished Civilian, and of Lord Curriehill, the last of the Feudal Lawyers. It is but a few years since Lord Justice Clerk Hope perished by his own hand; and the decease of Lord Kinloch, known to religious literature, is but recent. In Ireland, too, there have been recently vast changes. We have seen the chief of the Court of Exchequer, Baron Pigot, pass away. Justice George has been replaced by Justice Barry; and in room of Baron Hughes sits the witty Baron Dowse. Lefroy and Pennefather had gone before. Thus, within a few years, the entire face of the Judicature has been changed, and a new race administers justice.

We do not entirely regret this. Far from thinking that these changes are too rapid, we should gladly see it more customary than it is for Judges voluntarily to quit the Bench before death or infirmities compelled them to retire. They are peculiarly tempted to linger on long after they have lost the vigour of their faculties. As a rule, they come to the Bench late in life. They are elected after having attained success in a profession the steps in which are won painfully and tediously. It was well to make the Bench independent of the Crown, and to declare that "during

Digitized by Google

good behaviour" was the condition on which the Judges held office. But are we not finding that we need some yet unprovided means of removing a Judge who is deaf or blind and who will not believe it? How few have the good sense to be guided, as Mr. Justice Patteson was, by the advice of his physician and friends, and to resign, after some infirmity has befallen them, but before it has led them into error or extravagance? How many Judges would receive so calmly as Lord Denman did the counsel to retire, firmly but kindly given him by his friend, Lord Brougham? Now-a-days there seems to be no such counsellors or such Judges. We would not dig up old stories about Chief Justice Lefroy; but many have heard—and we do not allude to very remote times or distant places—of a worthy Judge whose practice it was quietly to slumber or vacantly stare throughout a long argument, and who was accustomed to rouse himself, after his more active brothers had delivered their opinions, to say "I concur." We have heard of another Judge in high position, who, after a day's argument, has exclaimed to a counsel expecting to be complimented on his lucidity—"Now, Mr. So-and-So, *do* explain for whom you appear—for the plaintiff or defendant?" There circulate vague stories of a Judge who had lost all notion of judicial capacity except an idea that dates were in every case the all-in-all and universal key of justice, and concerning whom an irreverent colleague audibly declared on the Bench that he wished his chronological brother in the desert of Arabia, stuffed with dates. "Have we got all the dates?" "Yes, my lord, all but the irrelevant dates." "Then, let us have them, too, by all means," is a dialogue which circulates in Westminster Hall. In short, it is pretty plain that there are no known means of inducing gentlemen up in years, and in the sere and yellow leaf, to retire in time. Whether, however, it would be safe to lay down a hard and fast rule, and to say that after seventy no Judge should sit, seems more than doubtful, when we think of Wensleydale and Lyndhurst.

The vacancy in the ranks of the Irish Judges has directed attention to the state of the Irish judicature, and some anomalies have been discovered. It is not at all easy to understand why the Judges of the Irish Supreme Court should receive £80,600, while the Scotch Judges receive only £41,300. It is scarcely less hard to understand why Ireland should require the services of no fewer than twenty Judges. But we should be indisposed to advocate any changes which would destroy the dignity or much lessen the emoluments of the Bench. That department, economy should last touch. It is poor parsimony in the end to lower the character of the Judicial Body; and if greater ease in earning their pensions will induce Judges to retire when retirement is necessary and becoming, we shall be glad to see such facilities given.—*The Echo.*

THE LAW IN 1873.

The year 1873 will be memorable in the history of English law. The Judicature Act, which received the Royal Assent on August 5 last, may be fairly described as revolutionary in its daring attack upon venerable customs and traditions, and in its comprehensiveness. There was very little public interest manifested in what turned out to be the measure of the session. Happily, despite many shortcomings, the administration of justice is so important that it is impossible to get up an agitation upon the subject of Law Reform. We do not say this in depreciation of Law Reform, of which we have always been the steady and unswerving advocates; but, on the contrary, we contend that, in the matter of Law Reform, the public requirements should be anticipated. In politics an abuse may be tolerated until the people are goaded into a loud demand for redress; but it would be highly dangerous to allow any grievance respecting the administration of justice to arrive at the stage that provokes popular agitation. It has often been said that lawyers are the blind worshippers of custom and tradition, and that they are obstinately opposed to reform. The charge, at least in the present day, is untrue, and is refuted by the Judicature Act. No one will pretend that the Judicature Act was forced on the profession. On the contrary, it is the work of the profession; and proves that, although the legal mind is inimical to change for the mere sake of change, it has the grasp, honesty, and vigour to suggest and effect desirable reforms. The only incident of the debates on the Judicature Bill that arrested public attention was the question of privilege raised by Lord Cairns, and which gave Mr. Disraeli an opportunity of delivering, on July 14, one of the most exhaustive and brilliant constitutional speeches ever heard in the British Parliament.

But no lawyer can forget that many of the changes involved by the judicature Act are foreshadowed and not defined, and that the year 1874 will be eventful to the profession. Terms, so far as they relate to sittings, are to be abolished, and the vacations are to be altered and regulated. When the rules are published, and not before, we shall know when the courts are to sit, and what will remain to us of the time-honoured Long Vacation. May we express a hope that the rules will recognize the necessity of one long annual holiday! An annual rest of a month or six weeks from professional toil and care is essential to health and longevity.

In glancing at the legal events of 1873, we are called upon to note the Tichborne Trial, which began on April 23, and, after 148 days of sitting, is not yet concluded. During that time, three judges have been kept from the general business of the Court, and we need not add that great inconvenience, and even loss, has ensued to litigants and to the profession. However, the 450 witnesses have been disposed of, and the counsel for the defence is saying his last words to the jury. Therefore we are cheered by the prospect of the trial ending long before the winter melts into spring.

Death has stricken several eminent English lawyers. Lord Westbury had ceased to exercise any judicial function except the incidental work of arbitrator for the European Assurance; but as a member of the House of Lords his great ability and his ripe judgment were invaluable. Besides it was impossible to forget his brilliant forensic career, which eventuated in his being leader of the bar, and finally Lord Chancellor.

Lord Chief Justice Bovill was taken from us at what we all hoped to be the beginning of a useful and honourable judicial career. Those who had the opportunity of closely watching him were the least surprised at the melancholy announcement of his death. When he presided at the trial of *Tichborne* v. *Lushington* it was too manifest that the health of the learned Judge was failing.

The death of Vice-Chancellor Wickens was not only a grief to his friends, but a disappointment to the profession, and we may add to the public. His judicial capacity was conspicuous, and by his decease the Court of Chancery sustained a heavy loss.

Dr. Lushington, Judge of the Admiralty Court, died at an advanced age; as did the Hon. Sir George Rose, ex-Judge of the Court of Review.

Sir John Coleridge, now Lord Coleridge, has succeeded Sir W. Bovill as Lord Chief Justice of the Common Pleas. As Attorney-General he had the right to the appointment, and in his case the rule of the profession has given us an able and justly-respected Judge. We are glad that he has accepted a peerage, for besides being an orator he will be an eminently useful member of the House of Lords.

Lord Romilly retired from the Mastership of the Rolls, and his successor is Sir George Jessel. It is needless to remark that the appointment is very satisfactory, for already the learned Judge has given proof of vigour combined with thorough knowledge and due discretion.

Vice-Chancellor Hall, who has succeeded Vice-Chancellor Wickens, was entitled to the promotion by his position at the bar.

Sir Henry James took the Solicitor-Generalship after Sir George Jessel, and is now, in consequence of the promotion of Lord Coleridge, Attorney General. Sir W. Vernon Harcourt is now Solicitor-General. Although the hon. and learned gentleman had at no time a large practice at the Common Law Bar, no one questions his ability to discharge the duties of his office and to advise the Government. It will be borne in mind that the law officers of the Crown are now paid by salaries in lieu of fees, and there is some indication that they will give less time than formerly to private practice.

Digitized by Google

Sir John Karslake has again become a member of Parliament; and men of all parties admit the propriety and advantage of his presence in the House of Commons.

During the past year two or three legal subjects of public and professional importance have been discussed. We presume that the speech from the Throne will promise a Land Transfer Bill, a measure that will provoke an animated discussion. Parliament will be called upon to consider the Criminal Law Amendment Act and other Acts which concern the relations between employers and employed. Lord Selborne is not less zealous for the establishment of a central school of law; and that scheme involves the virtual obliteration of the Inns of Court by taking from the benchers nearly all their present authority. However, as next is presumably the last of the present Parliament, it is not likely that the subject of legal education, which can wait awhile, will be discussed.

In 1873 both branches of the profession have had to complain of a limited business. We hope that our friends will do better in 1874; for we repeat, what we have often said before, that the prosperity of the lawyer is a sure indication of general prosperity.—*The Law Journal.*

SHYLOCK *v.* ANTONIO.

This was an appeal from the judgment of the general term of the first district, affirming the report of a referee, which report contained directions for very peculiar and unusual legal remedies. The facts are sufficiently stated in the opinion of the Court.

John Graham for the appellant.

Charles S. Spencer for the respondent.

By the Court: In order to fully understand this case it will be necessary to refer to certain facts, not very material perhaps to its final determination. The defendant, Antonio, is an Italian merchant, doing an extensive business in the city of New York, as an importer. Prior to the transactions which resulted in this suit, he had been remarkably successful, had made much money, which he spent in a princely manner, and stood well in society, in spite of a decided tendency of mental unsoundness. We say 'mental unsoundness,' though there is no direct proof on the subject, because it seems to be conceded that he lent money to his friends without interest, which would, in most business circles, be considered evidence to warrant a commission *de lunatico*. He had a sporting friend of the same nationality, by the name of Bassanio, who, having been completely 'cleaned out' (as the vile phrase is), by a season at Saratoga, conceived a novel method of restoring his fortunes. It seems that an eccentric resident of Venango county, Pennsylvania, having made a large fortune by speculating in oil lands, left the whole of it to his daughter, on condition that she should take for her husband the suitor who should prove most proficient in the ancient and noble game of 'Thimble Rig.' As Bassanio had been accustomed to witness this game at horse-races, he felt confident that if he had an opportunity he could tell in which box the 'little joker' was. But he had no money to take him to Venango county, and his acquaintance with Colonel Thomas A. Scott was not sufficiently intimate to justify him in asking for a pass. In this extremity he applied to the defendant for a loan. Antonio would gladly have complied; but, just before, he had invested every dollar he could raise in contraband goods and vessels built for running the southern blockade. Bassanio naturally suggested a note at six months, but the defendant was prohibited by his partnership articles from making or endorsing commercial paper outside of the business of the firm. The two friends then applied to the plaintiff, a gentleman of the Hebrew persuasion, doing business in Chatham-street, for a loan of three thousand dollars upon Antonio's credit. For several reasons the plaintiff was little inclined to look upon the defendant with favour. Besides his unjustifiable habit of lending money without interest, which, as Shylock very properly observed, had a tendency to 'lower the rate of usance,' Antonio chewed tobacco freely, and expectorated with great carelessness upon all objects in his vicinity. Indeed, it appeared in evidence, without objection, that the defendant had frequently spit upon Shylock's 'Jewish gaberdine.' The Court is not exactly certain as to what a 'gaberdine' is—no definition was attempted by either counsel upon the argument; but we may safely assume that it is a garment which is not improved by contact with tobacco juice, and such incidents will go far to excuse, if they do not justify, the somewhat vindictive manner in which this suit was prosecuted. The plaintiff, however, at the time of this application, concealed his feelings, and told Antonio that he would charge him no interest, but would merely take a bond conditioned to the effect that, if the loan were not paid when due, the borrower would forfeit a pound of flesh nearest his heart. Bassanio pretended to demur, but Antonio was confident that the loan would be paid when due, and this somewhat singular business transaction was concluded as above stated. Bassanio went to Venango county, guessed the right box, and married the heiress. Antonio's fate was far different. He quarrelled with several members of Congress about the division of the expected profits of his venture, his understanding with the Government was broken up, and his ships were sunk by the blockading squadron. And when Bassanio returned from his wedding tour, he found all Antonio's effects sold out by the sheriff, and numerous executions returned unsatisfied. He found, too, that the plaintiff had already commenced this action to enforce the forfeiture in the bond. As soon as the cause was at issue, it took the usual course of cases in New York city—*i. e.*, it was referred to James H. Coleman, Esq.; but, that gentleman being indisposed, all parties agreed to accept as referee a young and unknown lawyer by the name of Balthazar, which arrangement was the more singular, as he does not appear to have been a relative of any of the judges.

And just here arises one of the most curious questions in this case. It is asserted, by the counsel for the appellant, that this referee was, in fact, a woman, that her maiden name was Mary Jane Portia, and that she was the same oleaginous heiress whom Bassanio had just married.

The Court has been accustomed to give little weight to the assertion of the counsel since the M'Farland trial; but the decision itself furnishes the strongest internal evidence that it is the work of one of that pernicious sex which "brought sin into the world, and all our woe," and has been bringing sinners into the world ever since, with a similar disregard of the consequences. We trust that this most extraordinary precedent will never be followed, and that unsexed women will not attempt to occupy the judgment seats of the land. Otherwise, we fear that we shall have the judgments of the Courts dictated by the spirit of Demosthenes and other heathen, instead of by the "benign and benignant" principles of the common law.

In this case the facts were conceded by all parties; and after a tender, in open Court, of three times the amount of the debt had been made and refused, this referee of uncertain sex proceeded to pronounce judgment. His (or her) conclusions of law were as follows:—

1. That the bond was valid, and that the plaintiff was entitled to his pound of flesh.

2. That he was entitled to exactly a pound of flesh, neither more nor less, and not to a drop of blood; and that if he drew blood, or took a grain of flesh more or less than a pound, he would be guilty of murder.

3. That, under an ancient and absolute ordinance of the city of New York, passed in the time of Peter Stuyvesant, the plaintiff was liable to capital punishment "for practising against the life of a Christian."

4. That he could only escape this punishment by giving half his fortune to his daughter (who had just married a Christian), and by turning Christian himself.

On hearing the latter portion of this decision, the plaintiff felt a considerable abatement of his enthusiasm, and inquired in a tremulous tone "if that was the law." On being assured that it was, he offered to take the amount of his bond and discontinue without costs; to which proposition this astonishing referee replied that the plaintiff had forfeited all claim to his money by refusing it in open Court! The plaintiff being without counsel, no stay of proceedings was obtained, and the decree of the referee was carried into effect, the plaintiff being baptized, we presume, by the sheriff of the city and county of New York. Upon a subsequent appeal, the judgment was affirmed by the general term, and the plaintiff appealed to this Court.

Digitized by Google

Upon hearing the first conclusion of law announced by the referee, the plaintiff exclaimed, in his delight, "O! wise young judge! A Daniel come to judgment!" and, during the remainder of the decision, one Gratiano, a sort of "next friend" of the defendant, made the Court-house ring with cries of "A Daniel! A Daniel come to judgment!" It is the unanimous opinion of this Court that these allusions to the lamented Webster, from whichever side they proceeded, were most unfortunate. Nothing could be more unlike the calm, clear judgment of that great lawyer and statesman than this truly feminine decision, half civil decree, half criminal sentence, and the other half commutation of punishment. No part of it bears the slightest semblance to any principle of law or equity ever recognized in a civilized country.

The first conclusion of law, though apparently in favour of the plaintiff, was utterly erroneous for two reasons:—1. It is well settled that, when a bond contains a condition that is unreasonable and absurd, it will be considered as good only for the sum actually secured by or lent on the faith of it. As in the familiar case where a party, in consideration of a sum of money, agreed to give the price of the twenty-fourth nail in a horse's shoe, at the rate of a penny for the first nail, two for the second, and so on in geometrical progression. This bond was not only unreasonable, but provided for the commission of a capital crime, and was clearly void under the principle to which I have adverted. 2. The bond was extinguished by the tender of the amount of the loan which it was given to secure. This Court has explicitly decided that a tender of the debt, even after it is due, extinguishes all collateral securities (*Kortwright* v. *Cady*, 21 N. Y. 343), and the tender at the trial was sufficient to cancel the bond if it ever possessed any validity.

But, if the referee's first proposition of law is sound, the second becomes a stupendous absurdity. It is a familiar rule of construction, that the right to do a certain act confers the right to the necessary incidents of that act. The referee holds that the plaintiff had a right to cut off a pound of defendant's flesh. Now as no one could cut off an exact pound of flesh to a grain, and as no one can do it without drawing blood, it seems too plain for argument that the parties could have intended no such restrictions, and the Court had no right to supply them. If the bond was valid, the plaintiff could have subjected himself to no penalty by simply taking what it gave him.

We have not before us the statute referred to in the third conclusion of the referee, but we have great doubts whether the plaintiff, upon any reasonable construction of its terms, could be held liable for taking a bond voluntarily signed by the defendant. It does not seem to us that this was "practising against the life" of the defendant, within the meaning of the law. But this is of no importance, for all the proceedings of the referee, under this statute, were void for want of jurisdiction. The plaintiff was then pursuing a civil though somewhat bloody, remedy; and what right had the referee, without complaint, warrant, or the intervention of the grand jury, to change this plaintiff into a defendant, on a criminal charge, and herself into a criminal judge? It would be easy to show that she has violated the constitution of the United States and the State of New York, as well as nearly all the criminal statutes.

The pretence that the plaintiff had forfeited his debt by the refusal of the tender was extremely shallow. Nothing is better settled than that a tender does not extinguish the debt, but only things collateral thereto, such as interest (*Kortright* v. *Cady*, above cited). The bias of this female referee was plainly shown by the direction that the plaintiff should pay half his fortune to his daughter, who had run away and married against the wishes of her venerable parent, and who was not even a party to the action. Such encouragement to young women to disregard the parental commands is very pretty and romantic, but it cannot receive the countenance of this Court. The referee had no authority to make such a disposition of the defendant's property, and it must be restored to him. But the climax of usurpation and cruelty was to come. The plaintiff was not only required to despoil himself for his daughter's benefit, but to embrace Christianity for his own.

The framers of our federal constitution were so careful to avoid all reference to matters of religion, that complaints have lately been made that it contains no acknowledgment of a Deity. And Judge Strong, of the United States Supreme Court, has, within a few weeks, presided over a convention of pious and weak-minded gentlemen, called for the purpose of inserting a Supreme Being into the constitution by a special amendment.

The strangest thing about this movement is, that Judge Strong has never before had any difficulty in discovering anything in that instrument that he particularly wanted to find there. For our own part, we could as easily find a Supreme Being in the constitution of the United States as an authority to make paper money a legal tender for the payment of debts.

But we are not going to argue this question upon general principles. It is certainly difficult for us to see how any benefit could arise to the Christian Church if all the criminals in the land were compelled to adopt that religion at—if the expression is admissible—the point of the halter. We do not mean to deny the power of the Legislature to prescribe the union of the criminal with some religious body as a penalty for crime. If coupled with the obligation of hearing two average sermons a week, we are not prepared to say that the punishment would not be exemplary. We place our decision entirely upon the ground that the Legislature have not authorised the infliction of such a penalty, and we are unwilling that the referee should add the functions of the body to her self-appointed duties as civil judge and Court of oyer and terminer; and here we pause for a moment to set ourselves right before the public. Absorbed in our arduous duties we can pay but little attention to general literature; but we read the public prints, and we cannot ignore the fact that this case has created much interest in the minds of the community. If we are rightly informed, the facts have formed the basis of a powerful drama, which has lately been placed upon the stage, and the conduct of the referee has been loudly applauded by audiences unlearned in the law, who doubtless saw in her the embodiment of the classical idea of justice, namely, a woman with her eyes completely blinded.

To prevent any misunderstanding, therefore, we assert most positively that our decision upon this point is not influenced by the feeling which seems to have actuated one of the witnesses, who objected to the conversion of the daughter of the plaintiff, Miss Jessica Shylock, upon the ground that "the making of so many new Christians would raise the price of pork." The Court is of the opinion that, in moderation, a pork diet is both healthful and invigorating, and that sausages, when their origin is not involved in too much obscurity, are a "dish fit for a judge."

But, if we know our own hearts, we would not allow a slight advance in the price of a favourite esculent to stand in the way of the genuine conversion of the humblest Hebrew in the land. And in this we believe that we speak the sentiment of the American people, even outside of Chicago and Cincinatti; while in those two cities the fact that such a fulfilment of Scripture would tend to raise the price of pork would, doubtless, be considered the strongest possible reason for the conversion of the whole world. To their citizens no two events could appear more desirable, than that "the knowledge of the Lord should cover the earth as the waters cover the sea," and that "prime mess" should go up a dollar a barrel. Personal motives, therefore, have nothing whatever to do with our decision. It is the law of the land and our own feelings of duty that call upon us to relieve the plaintiff from his unfortunate position. We have thus disposed of the question raised by this appeal, but we cannot close without a word of warning to Mrs. Bassanio. The bench of justice is a hard seat, as many of us can feelingly certify, very different from the rocking-chairs in which the beauty and fashion of our land are wont to disport themselves; and if, in the tender and appropriate duties of wife and matron, she shall forget the spirit of recklessness and intrigue which led her to occupy the position of a referee in this case, we will gladly overlook the past. But if, forgetting her duties to her husband and family, she shall hereafter occupy the platform, and clamour for the suffrage with the Woodhulls and Cady Stantons of the day, we shall make it our business to see if there is not some provision of the common or statute law under which she may be punished for her audacious usurpation, *verbum*

Digitized by Google

sup. The result of the whole matter is this:—We cannot compel restitution of the money paid by the plaintiff to his daughter, as she is not a party to the action. But the entire decree of the referee must be reversed, the plaintiff must have judgment for his 3,000 dollars against the defendant, with interest from the date of the bond (as there is no proof that the tender has been kept good); and he must be permitted, if he so elects, to relapse into Judaism, "subject only to the constitution of the United States." All the judges concurring, ordered accordingly.—*Albany Law Journal.*

CROYDON COUNTY COURT.

[From the *Law Times.*]

Dec. 1 and 19, 1873.

(Before H. J. STONOR, Esq., Judge.)

COSSTICK *v.* LAPORTE; NASH *v.* SAME; WELLS *v.* SAME.

Married Women's Property Act, 1870, *s.* 1—*Husband tenant of, and resident in, house in which his wife carries on business—Wife's separate property.*

H. Parry, Croydon, appeared for the claimant.

Thomas A. Goodman, Brighton, for the three judgment creditors.

Dec. 19.—His HONOUR.—The claimant is the wife of the defendant in three actions (respondents, Cosstick, Nash, and Wells), and claims the goods taken in execution therein as her property, in which her earnings have been invested by her, and to which she is entitled for her separate use under the Married Women's Property Act, 1870, s. 1. The amount of the judgments has been paid into court. The claims were heard by me on the 4th Nov., and decided in the claimants favour, except as to £20, representing goods purchased by her with moneys received from her sisters, which clearly did not fall within the Act. At the hearing the claimant and her husband deposed that the claimant was living with her husband, who was a confirmed invalid, in a house at Brighton, taken by her and in her name, and in which she carried on the buiness of lodging-house keeper, also in her name and by herself alone, without any interference or assistance from her husband, except that on a few occasions he wrote letters at her request chiefly as to repairs to the house. The respondents, the execution creditors, were not aware, till the hearing, of the nature of the employment in which the claimant alleged her earnings had been made, and supposed that it was some professional employment, and they were therefore unprepared to meet the case. After the trial they became informed that the house had been taken by the husband and in his name, and also that the husband had in various ways interfered and assisted in the conduct of the business carried on there, and even to the internal management of the house, and they applied upon affidavits for a new trial, which I felt bound to grant. I have now re-heard the case and consider it to be one of much greater difficulty than it appeared to be on the first hearing. I still adhere most firmly to the opinion which I then expressed, that it is not necessary to the separate carrying on of an employment, occupation, or trade, by a married woman, within the meaning of the Married Women's Property Act, 1870, sect. 1, that she should live apart from her husband (whom she is bound by the 13th section to maintain) but only that her husband should not interfere or take part in carrying on such business, and I still think that on the evidence then before me, the claimant proved herself to have carried on the business of a lodging-house keeper separately from her husband, and the question for my decision to-day is whether upon the contradictory evidence as to the tenancy of the house, and the additional evidence as to the husband's interference with the business carried on in it since adduced before me, the claimant is still entitled to her verdicts. I will consider, first, the contradictory evidence as to the tenancy of the house. It consists of the admission made on cross-examination by the claimant and her husband, that although the house was taken for the purpose of being let as a lodging-house by the claimant, and this fact was communicated to the landlord, the husband as well as the claimant, saw the landlord about the letting, and nothing was said as to the house being let to the wife or taken in her name, and of several letters by the husband to the landlord or his agent, relative to the payment of rent and repairs of the house, and finally of a notice to quit by the husband as tenant of the house. It also appeared that the husband was rated for the house, and receipts for the rates and taxes were given in his name, and that he was registered as a voter, but never voted. A previous tenancy of another house by the husband was also proved, but I do not consider that any evidence of the letting now in question, although it is evidence of the mode in which the claimant carried on the business of a lodging-house keeper. Upon this point of the case, I think that it is clear that the claimant's husband was the tenant of the house in question, and that it was not taken by her in her name as she deposed, although no doubt it was taken by her husband with her personal assistance, for the purpose of enabling her to carry on the business of a lodging-house keeper, which seems to have caused the confusion in her mind on this point. The question then arises whether the fact of her husband having been the tenant of this house is sufficient in itself to disable her from claiming the earnings of the business carried on there as her separate property under the 1st section of the above Act. At first I was strongly inclined to think this was so on the ground that the business of a lodging-house keeper evidently consists in the letting of the rooms themselves, as much as in the providing furniture and attendance. But since the last hearing it has occured to me that a married woman, even if living separate from her husband, could scarcely obtain a house in which to carry on the business of a lodging house keeper, without the same being taken in the name of her husband or a trustee; for a married woman is wholly unable to execute a deed or enter into any contract at law, and therefore a landlord who lets a house to a married woman would be entirely at the mercy of the tenant, and could not even distrain for the rent at law, although he might in equity obtain relief against any separate estate of hers. I am, therefore, not prepared to say that if a married woman carried on the business of a lodging house keeper in a house taken in the name of her husband or a trustee, that she could not still carry on the business separately from either of them, indemnifying him against the rent and taxes out of her earnings. I however think that the circumstances of the house being let to the husband, militates very much against the separate trading by the wife, and renders necessary a very close inquiry into the subsequent action of the husband, with reference to the business carried on in it. The payment of the rates and taxes by the husband, and the insertion of his name on the register, were, of course, incidental to his tenancy, and, according to my views, are immaterial. It remains for me to consider the additional evidence now before the court, as to the husband's interference in the business in question. It appears that previous to the husband taking the house he had taken the upper part of the adjoining house for the same purpose of letting lodgings, and had paid the rent, corresponded with the landlord, and given notice to quit. In both houses the claimant issued cards in her name alone, with a notice of "apartments to let" at the top, and circulated them among the tradesmen in the neighbourhood and others. She also had acounts with tradesmen in the neighbourhood in her own name, and the judgment creditors in two of the actions had debited her in their books with the goods in respect of which they sued her husband, or with part of them. On the other hand, some of the tradesmen, and I believe all, or some of the judgment creditors, had debited her husband with some of the goods supplied. The tradesmen thus appear to have charged their goods indiscriminately to the claimant and her husband; but the majority, perhaps, appear to have charged them to the claimant. It was stated that it was common at Brighton to open accounts in the name of the lady who gave orders, whether married or not, on account of the tradesmen not knowing the Christian names or condition of the husband and the frequent change of occupation of house and lodgings, but this scarcely seems to apply to the case of a yearly tenant of an unfurnished house, a householder and ratepayer. Evidence was also given that the husband had on some few occasions ordered goods and paid bills without any objec-

Digitized by Google

tion to their having been made out in his name. The claimant contends that her husband did so as her agent at her request and with her money. With regard to the husband's interference in the internal management of the house, the evidence consists of three receipts given by him to a lodger (the Hon. Miss Kerr), as he deposes, at her special request, and a letter which he wrote to her as to letters left for her after her departure. The claimant contends that her husband did so at her request, and as her agent. This appears to exhaust the evidence before the Court material to the issue which I have to decide, viz., whether the business of a lodging house keeper was carried on by the claimant separately from her husband or not. It is to be observed that this is not the ordinary question as to whom credit was given in any particular transaction, nor is it the question whether any particular creditor or creditors knew that the claimant was carrying on this business separately from her husband, but the simple question whether or not she was in fact so carrying on this business within the meaning of the "Married Women's Property Act, 1860," and after great consideration I am of opinion on this very difficult mixed question of fact and law that notwithstanding the house was taken in the husband's name, that he occasionally ordered and paid for goods in his own name, and in the instance of one lodger acted as if he were carrying on business himself, still as the business was carried on in the name of the wife, and this was made known in the usual manner, and as it was by her personal exertions that it was so carried on, the claimant did carry on this business separately from her husband within the meaning of the Act. The claimant is, therefore, entitled to the verdict, but the judgment creditors may have their remedy in Chancery, as I pointed out before, against the claimant for such of the goods as were supplied whilst she carried on the business of a lodging house keeper at the house in question. The verdicts to stand, but the money to remain in Court for one month, with liberty for all parties to appeal, and no costs.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, *53, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

LAND TRANSFER

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I have read, in your two last numbers, with much interest, Mr. Urlin's paper upon the above subject—a subject which seems to me of very great importance at the present time, and upon which Mr. Urlin must, of necessity, from his official position as Recorder of Title, be well informed, and on which he is certainly entitled to be heard. As I was permitted, in former numbers of your journal (the most suitable place, it seems to me, for considering such a subject), an opportunity of discussing this question, I trust you will again extend to me this privilege, and allow me a place in your columns to express my views on this matter in its present aspect.

The battle of Registry of Deeds *versus* Registry of Title, is one which has been well fought on both sides in England; and although Mr. Urlin claims the victory for the latter system, I think there are many friends of the former who would decline to admit it. In that contest Irish opinion has, I may say, been unrepresented, to the detriment of the Registry of Deeds side of the argument; but I admit that to judge by the report of the Royal Commission, as well as the opinion of the most leading law reformers of the present day, Registration of Title is, at the present time, more in favour than Registration of Deeds. In the causes leading to this result it must not be forgotten that Registration of Deeds has ever been unpopular in legal circles in England. The English lawyer does not like its publicity, and sees no reason why any one beyond his client, and those with whom he is dealing, should know anything of the transaction carried out by the instrument which he prepares—for in England, with the exception of two counties (Yorkshire and Middlesex), transactions respecting land are of a perfectly private character, and unknown to any one but those concerned; and such privacy also existed in Ireland previous to the Registry of Deeds Act, 6 Anne, Cap. II. (1708).

The very purpose and policy of that statute, which created the Irish Registry of Deeds Office in Ireland, was to abolish such privacy in dealings with land, and which (as appears by the preamble to that statute) was found to work injuriously, and was used for purposes of fraud. Irish lawyers, therefore, who have been brought up under this system and accustomed to registration, do not share the views of English lawyers on the subject of privacy in such transactions. An unregistered deed is to them a questionable and suspicious instrument, for no other reason than that it is unregistered, and kept back from the public registry in which *bona fide* transactions are usually recorded. Whatever English lawyers may say, I think there can be no doubt that the Irish Registry of Deeds has been a most valuable institution in this country, and has given us an immense advantage over our English brethren in dealing with title to landed property. Until recently, the fact that no deed affecting the title of an estate appeared on the registry, was conclusive evidence that none such could exist to the prejudice of a purchaser for value, even although the original title-deeds were not all forthcoming; and the vendee was not haunted with a vision of a "brown paper parcel," containing valuable title-deeds, starting up after he had parted with his purchase money. I admit, that owing to the conflicting decisions in *O'Connor* v. *Stephens*, *The Agra Bank* v. *Barry*, *M'Kinny's estate*, and the recent decision of the Court of Appeal in *Reilly* v. *Garnett* (vii. I.R. Ch. App.), the priority of registered mortgages is not so secure as was supposed, but no one can doubt that the policy of the statute of Anne was to require registry of every deed affecting land, however these conflicting decisions may hinder this purpose. Still, if the system of registry of deeds is behind the age we live in—if, as Mr. Urlin asserts, this legislation of the time of Queen Anne is "insufficient for the exigencies of modern times," and can be supplanted by a *better* system, I for one see no reason why it should be retained.

One of the most prominent features of the registry of deeds system is the perfect freedom which it gives in all transactions connected with landed property. Beyond the very simple requirements of the statute, no obstacle is put in the way of registering any deed; and no irksome restraint is put upon the mode or form in which the transaction is to be carried out. The parties are not tied down to a stereotyped Procrustean shape in carrying out the many and infinitely various matters relating to land, but are allowed perfect freedom in the mode in which they choose to transact their business, provided certain simple details, which are necessary to protect the public, are complied with. No judicial opinion is required to enable a deed to be put upon the registry of deeds. The officer, whose duties are purely administrative, has merely to see that it complies with the simple requirements of the statute.

The registry of title differs from the registry of deeds in this respect, at least as Mr. Urlin would have it. Its rules, to be effectual, must be stringent and absolute, and be strictly and imperatively administered. The record of title must contain no trusts, no complications, everything must be as simple as the transfer of government stock. The deeds must be according to a prescribed form, in order that the registry officer may the more easily abstract them in the record. The title appearing must be confined to the legal title; the beneficial owners are to be nowhere on the record, and, unless they have the most perfect confidence in their trustees "and the survivor of them"—nay, more, in the "executors, administrators, and assigns of such survivor"—they must only protect themselves by *caveats*, "stops," or "cautions," to prevent the whole estate being disposed of some day to the discomfiture of the tenant for life, and next in remainder. The object of this reform in land transfers is to promote "Free Trade in Land," which Mr. Urlin defines as "the removal of artificial obstructions to its sale and transfer, the rendering of trans-

Digitized by Google

fers and transmissions of estates and charges as easy as possible, the approximation of dealings with land to dealings with government stock and railway shares." The purpose thus expressed lies at the root of all the reforms which are proposed by the advocates of registry of title, namely, to approximate dealings with land to dealings with government stock and railway shares. Now, before entering into the merits and demerits of rival systems of registration, let us consider is this a safe principle to begin with—*a reasonable basis for legislation on the subject*. In the first place, *can* land, with safety to the various interests in it, be dealt with in the same manner as government stock or railway shares, and in the next place, is it *desirable* it should so be dealt with?

What is the character of Government stock? It is a security for money, which, although of an ascertained amount and variable value, has no "local habitation," tangibility, or materiability in its existing state, and which (strange paradox) only becomes material when it ceases to exist, and is converted into cash by being sold out. It is not money, but represents money. The possession of it involves no responsibility whatever in relation to the thing itself. It can neither be improved nor deteriorated by anything the proprietor of it can do to it. He can neither let it to tenants, nor extract from it by his own labours, no matter how anxious, anything more than the 3 per cent. interest, payable on dividend day. There are no occupiers upon it betweem whom and himself exists the important relations of landlord and tenant, and by whom he may be reminded of that wise apothegm (so freely used by those who are not landlords themselves), that "property has its duties as well as its rights." In fact the most sensitively conscientious proprietor of Government stock can have nothing to disturb his conscience as to the discharge of his duties towards it, which could cause him even a momentary pang, or a sleepless night.

With land it is quite another matter. It is capable of an infinite variety of relations. Out of the same estate how many interests arise. There is the Crown, it may be, to begin with, who take their little Crown rent out of it from the owner of the inheritance, who may himself be a tenant for life, "with divers remainders over," paying interest to mortgagees and annuitants upon the fee, whose debts were created by his great grandfather, besides incumbrances on his own life estate created by himself, also a jointure to his mother, and the interest of a charge for younger children to his brothers and sisters. His income is derivable from the rents of his tenantry, who hold, some under old leases of lives renewable for ever (which are the roots of other interests in the same lands); it may be converted, in some instances, into fee-farm grants, some under determinable leases of for various periods (perhaps with covenants for pre-emption), and others as tenants from year to year. The persons interested in this estate (and it is by no means an uncommon or exaggerated case) are, *at least*, the following:—1. The Crown. 2. Tenant for life. 3. Tenant in remainder. 4. Jointress. 5. Mortagees. 6. Annuitants. 7. Brothers and sisters of owner. 8. Tenants of renewable leaseholds. 9. Tenants for determinable leases. 10. Tenants from year to year.

All these parties have different interests in the land, which more or less will be affected by every transfer of the property, and how can we, in the nature of things, deal with property, so circumstanced, as with Government Stock, which may be transferred a dozen times between each dividend? By one way only, namely, by a total disregard to the different qualities and character of the two kinds of property, and insisting upon those who are interested in land being subjected to serious risk and intolerable restrictions, in order that the distinctive character of that description of property may be annihilated, and landed property be brought down to the level of Goverment Stock. Hence, in the registry of title, at least as Mr. Urlin admits it should be constituted, to make it effectual, nothing but the legal ownership must appear, and trusts must be excluded, so that those who would protect themselves against their property being made away with, must resort to the precarious protection of perpetual *caveats*. To further forward this purpose every Act on the record must receive an indefeasible character to the infinite risk of those interested in land, and all this to attain the supposed *desideratum*—"Free Trade in Land," and make land as easily transferable as Government Stock.

But is this a desirable attainment? Is it for the public good that the land of the country should be so rapidly dealt with that it should pass from one proprietor to another as frequently as stock changes proprietors? "Free Trade in Land" means, amongst other things, free speculation in land, which is very far from being a *desideratum* in my opinion. "Jobbers," who now job on the Stock Exchange in shares, would then turn their attention to land, and I pity the poor tenantry who were thus obliged to change their landlords—it may be half-a-dozen times in the year—while the facility afforded extravagant proprietors to incumber their estates, would always insure business for the Landed Estates' Court; and I have no doubt (as when great facilities are afforded to litigation) the members of the legal profession would be the gainers in the end.

I know that such sentiments as I have expressed will be met by the reply—"Are we, then, in the interest of the landed proprietors, to throw every obstacle that expense and technicality can raise in the way of land transfer?" This *argumentum ad absurdum* is so commonly used against anyone who attempts to resist impetuous reformers, that I quite expect it. My answer—if I am to answer such a question seriously—is, certainly not. The fact that we cannot, having regard to the character of landed property, and with safety to the various interests connected with it, reduce transactions respecting it to the simplicity of a transfer of Government Stock, is no reason why some attempt should not be made, to use Mr. Urlin's own words, "to remove artificial obstructions to its sale and transfer." The best means of effecting this purpose, without going the length which Mr. Urlin does, of seeking to approximate the transfer of land to the transfer of Government Stock, I hope to consider, with your permission, in some future number, as I have trespassed too long already on your valuable space to do so now. One thing, however, allow me to say in conclusion, that this movement towards "Free Trade in Land," is but the precursor of another movement of great national importance—namely, the abolition of the law of primogeniture. When it becomes impossible to preserve limitations of estates in land from being defeated, except by the expedient of stops, "cautions," or "caveats," the present mode of settling landed property and preserving family estates is doomed, and the views of the "lamented" Richard Cobden, and his disciple, John Bright, will be triumphant. That this day may be distant is the sincere wish of

Your obedient servant,

HENRY T. DIX.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

HILARY SESSION, 1874.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Hilary Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at 10 minutes before 10 o'clock a.m.

The first Lecture will be delivered on *Thursday*, the *15th day of January, 1874.*

The course will consist of *Twelve* Lectures, Three-fourths of which *must* be attended, so as to entitle Candidates to Professor's Certificate.

By Order, JOHN H. GODDARD, *Secretary.*

Solicitors' Hall,
Four Courts, Dublin.
January, 1874.

The Professor of Law has fixed upon the following Book for Lectures, viz., "Broom's Commentaries on the Common Law."

Digitized by Google

LAW STUDENTS' DEBATING SOCIETY.

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inn's, on Monday evening, January 12th, 1874, when the following subject will be debated :—"That Primary Education should be Compulsory."

SPEAKERS :

Affir. Mr. A. Reeves, Mr. L. S. Eiffe. | *Neg.* Mr. Perry, Mr. Mayne.

The Chair will be taken at Eight o'clock by GEORGE DE BUTTS, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—Executors Hutton, from December 17.—J. B. Daly, payment.

Before EXAMINER (Mr. Dobbs).

Hugh Bell, rental.—J. Curran, do.—Earl Darnley, do.—Lord De Frayne, ditto.

TUESDAY.

Marcus Keane, final schedule.—Trustee Forde, do.—E. Barry, do.—R. A. Cox, do.—Assignees Elliott, do.—R. C. Henry, do.—H. W. Alford, do.—W. H. Hoey, do.—J. Reddick, from 19th December.—Presbyterian Widows' Fund, do.—J. Barney, ditto.

Before EXAMINER (Mr. Dobbs).

Moses Corner, rental.

WEDNESDAY.

R. Rawson, final schedule.—J. Orr Brennan, do. —M. Madden, do.—Trustees De Bazancourt, do.—J. M'Carthy, do.—Sherlock trustee, O'Brien, do.—R. W. Fearon, do.—F. T. Parnell, tenants objection.

Before EXAMINER (Mr. Dobbs).

F. F. Molyneux, rental.

Before EXAMINER (Mr. M'Donnell).

T. H. Green, rental.—Sir D. Baxten, do.—F. Beatty, do.—J. Crotty, do.—John Thomton; do.—M. Studdart, do.—G. Bennett, ditto.

THURSDAY.

J. Tierney, from 18th December.

Before EXAMINER (Mr. Dobbs).

Lord Annaly, rental.

FRIDAY.

SALES AT 12 O'CLOCK.

MARGARET FITZGERALD, Co. Cork.—1 lot.
HON. AND REV. WM. KINGFIELD, City of Dublin.—5 lots.
GERALD AYLUND, Co. Tipperary.—1 lot.
F. D. BUTLER, Co. Galway.—2 lots.
G. RALUGH, Co. Limerick.—1 lot.
TRUSTEES FORDE, City of Dublin.—3 lots.
REV. R. H. GRAVES, Co. Dublin.—1 lot.
G. H. PENTLAND, Co. Meath.—2 lots.
(REV. T. STACK), Nugent, P., Co. Dublin.—2 lots.
(SAME), Johnson, P., Co. Dublin.—1 lot.

Before EXAMINER (Mr. M'Donnell).

Church Commissioners, rental.—A. M. Fawcett, do.—N. Hone, do.—S. C. Reid, do.—E. A. Kemmis, do.—Wm. Kemmis, do.—Lord Annaly, do.—M. M'Donnell, do.—Marquis Waterford, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
Patrick Carew	do	*Sullivan*
Henry L. Dymoke	do	*Molloy & Watson*
Thomas Delany	do	*Larkin & Co.*
James Delany	do	*Larkin & Co.*
William Palmer	do	*Molloy & Watson*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patk. Kendal Reid	2nd composition sitting	*Creagh, junr.*
Same matter	Choose assignee & final examination	*Creagh, junr.*
Francis Harvey	1st composition sitting	*Fay & M'Gough*
Robert Lynch	1st public sitting	*Mathews*
William Holmes	do	*Oldham & Eaton*
John Joseph Kelly	do	*Mara & Cullen*
Samuel Doyle	do	*Meldon & Sons*
John M'Gowan	do	*Froste*
Henry Denis Jubé	Final examination	*Findlar & Co.*
Maurice Cassidy	Examine witnesses	*Fay & M'Gough*
Nicholas Dormoy	Final examination	*O'Dowda*
George Duncan	do	
Edward Law	do	
Patrick J. Keniry	do	
George Rogers	do	*Seeds & Lynch*
Anthony Connors	do	*M'Namara*
Joseph H. Smith	do	*Welsh*
Michael Cullinan	do	*Colman*
James E. Best	do	*Deaker*
John O'Donnell	do	*Hamilton & Craig*
Same matter	Motion	*Hamilton & Craig*
P. W. Fitzgerald	Prove charge	*Murray*
James Meglaughlin	do	*Fitzgerald*
James Keegan	Motion	*Ryan*
John Keane	Audit and dividend	*Fay & M'Gough*
George Turner	do	*Molloy & Watson*
Henry Anderson	do	*Lett*
John Mayes	do	*Mathews*
Robert Baird	do	*Larkin & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
J. E. Best	Costs	*M'Cully*
Patk. M'Lenegan	Title and posting	*Mathews*
Joseph Parker	Costs	*Larkin & Co.*
Anne Travers	do	*Larkin & Co.*
Richard A. Burns	do	*H. C. Neilson*
Owen Conny	do	*H. C. Neilson*
Edward Fergus	do	*H. C. Neilson*
John Connors	do	*H. C. Neilson*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John A. Malet	Prove debts	*Mathews*

THURSDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
A. M. M'Givney	Motion	*Oldham & Eaton*
Same matter	Final examination	*Oldham & Eaton*
John Barrett	Motion	*Perry & Co.*
John Murphy	Charge and discharge	*Maxwell & Weldon*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Carroll	Prove debts and vouch	*Leachman*

Digitized by Google

FRIDAY.

Before the COURT, at 11 o'clock.

James D. Beresford	1st composition sitting	*Oldham & Eaton*
Same matter	Final examination	*Mathews*
James Carroll	1st composition sitting	*Perry & Co.*
P. E. DeSerancourt	Final examination	
Margaret Bradshaw	do	
Patrick Monaghan	do	
Andrew Rogers	do	*Gerrard*
Thomas Little	Application for certificate of conformity	*Orr*
Peter Carthy	Take charge of P. Kennedy as proved	*Kennedy & Co.*
Bernard Cummings	Take charge of Bank of Ireland	*Darley*
John Connor	Audit and dividend	*Lynch*
James Molony	do	*Meldon & Son*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Baird	Vouch account	*Lett*

ADJUDICATIONS IN BANKRUPTCY.

Dowler, Charles, Curragh Camp, Kildare, H. M. 12th Regt of Foot. Sittings, *Tuesday, January* 27, and *Friday, February* 13. *Browning*, solr.

Logan, James, Ballymacarret, county Down, carpenter. Sitting, *Friday, January* 30, and *Tuesday, February* 17. *Seeds & Lynch*, solrs.

Walsh, John Charles, 50, Great Britain-street, Dublin, grocer. Sittings, *Tuesday, January* 27, and *Friday, February* 13. *Dutch*, solr.

DIVIDENDS IN BANKRUPTCY.

Davison, Alexander, Knockboy, Antrim, flax spinner. 1s. 0½d. in the £. C. H. James, official assignee. *Carson & Leachman*, solrs.

Hughes, William, Belfast, draper. 1s. 5d. in the £. C. H. James, official assignee. *Larkin & Co.*, solrs.

Quigley, David, Newtownlimavady, provision dealer and grocer. 3s. 9½d. in the £. C. H. James, official assignee. *Larkin & Co.*, solrs.

THE VACANCY ON THE IRISH BENCH.—The English press is at present engaged in discussing the question of supplying the vacancy created on the Irish Bench by the death of Chief Baron Pigot. In the spirit of cheese-paring economy by which they are usually animated when dealing with the affairs of this country, the organs of English opinion ask that Chief Baron Pigot's successor should be taken from the Bench, and that the second place vacated should be left unfilled. Anyone acquainted with the amount of business transacted by Irish judges, especially at assizes, will need no argument to convince them of the hollowness and want of judgment displayed by the English papers in the view they have taken of this question.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

GALLOWAY—January 2, at 6 Clifton-terrace, Monkstown, County Dublin, the wife of John Galloway, Esq., of a daughter.

LORD—January 6, at Athy Lodge, Athy, the wife of Edward Lord, Esq., Sessional Crown Solicitor, of a son.

MACAULAY—January 5, at Belfast, the wife of Peter Macaulay, Esq., solicitor, of a son.

PORTER—January 6, at 29 Mountjoy-square, East, the wife of A. M. Porter, Esq., Q.C., of a son.

WHITNEY—January 8, at 29, Upper Fitzwilliam-street, the wife of Benjamin Whitney, Esq., of a son, prematurely.

DEATHS.

BYRNE—January 3, at Penegelly House, Annerley, London, James Peter Byrne, Esq., solicitor, late of Brooklawn, Chapelizod, County Dublin, aged 45 years.

STAVELEY—October 31, 1873, at Geelong, Victoria, deeply regretted, George Staveley, Esq., solicitor, aged 47 years, eldest son of the late Rev. Edmond Staveley, Rector of Drinagh, in the County of Cork.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JANUARY Fri. 2	Sat. 3	Mon. 5	Tues. 6	Wed. 7	Thur. 8
	Government.						
—	3 p c Consols	—	91⅞	91⅞–2	91⅞	92	92⅛
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	90¾⅞	90¾⅞⅞	90⅞⅞	90⅞⅞	90¾⅞	90⅞¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	106⅛⅛	—	106⅛⅛	—
—	4 p c Oct. '88 } Bk. of Irel.	100⅞	—	100⅞	100⅞	100⅞	100⅞⅞
	Banks.						
100	Bank of Ireland ..	299 ½	—	299	299½	299½¾	300
25	*Hibernian Banking Co.* ..	56⅛	—	56⅛	56⅛	56⅛	56⅛⅛
3½	*Munster Bank (Limited)*	—	8⅞	8⅞	—	—	—
30	*National Bank*	57¾⅞⅞	57⅞	58	58	58	—
15	*National of Liverp'l (Litd)*	14⅛	14	14	—	—	—
25	*Provincial Bank* ..	—	x d	94⅞	95⅛	95⅛–5	95⅛⅞⅛⅛
10	Do. New ..	—	x d	—	—	—	37⅞
10	*Royal Bank*	27⅞	27⅞–8	—	28	—	28⅛⅛
	Steam.						
50	British & Irish	—	—	—	-	—	—
100	City of Dublin	—	105	105	104⅛	—	—
50	Dublin and Glasgow ..	—	—	—	63	—	—
10	Dundalk (Limited) ..	—	—	—	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A ..	—	—	—	—	—	—
10	B ..	—	—	—	—	—	—
10	No. 2 C ..	—	9 ⅛	—	—	—	—
8⅛	*Dublin Tramways* ..	8	—	—	—	—	-
100	Grand Canal	—	—	—	—	—	—
25	*National Assurance* ..	—	--	—	47⅛	—	—
9-4-7	*Patriotic Assurance* ..	—	10⅛⅛	—	—	—	—
	Railways.						
100	Dublin and Drogheda ..	—	—	—	—	113⅞	—
100	Dublin, W'klow, & W'ford	73⅞	—	74	—	—	—
100	Gt. Northern and Western	—	—	—	—	—	—
100	Gt. Southern and Western	113	113⅛	113⅛	—	—	113⅛⅛
100	Midland Gt. Western ..	91 ⅛	—	91⅛	—	91⅞	92⅛
50	Waterford and Limerick ..	—	—	32⅞	32⅞	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	92	92⅛	—
100	D., W., & W., 6 per cent ..	—	—	—	—	—	128
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	98⅞	99	99⅛	99⅛	99⅛	—
10	Irish North Western A 5 p c	—	-	—	—	—	—
100	Mid. Great Western, 5 p c	—	110⅞	—	111	—	—
	Railway Debentures.						
—	Gt. South'n & West'n, 4 p c	98⅞	98⅞ f	—	98⅛	98⅛ f	98⅛ f

* Shares not fully paid up are here given in italics.

Bank Rate—Of Discount—4½ per cent., 8th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—January 14th and 29th, 1874.
Account Days—January 15th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

LEGAL POSTINGS:

COURT OF BANKRUPTCY.

SALE OF
VALUABLE LEASEHOLD INTEREST,
IN THE CITY OF DUBLIN.

In the Matter of William Henry Harris, of Middle Abbey-street, in the City of Dublin, Glass Merchant, a Bankrupt.

TO BE SOLD
BY
PUBLIC AUCTION,
On TUESDAY,
The 27th day of JANUARY, 1874,
At the Hour of Twelve o'clock,
At said Court, Four Courts, Dublin,

Pursuant to the Order and subject to the approval of the Court, All the Estate and Interest of the Bankrupt, his Assignees and Mortgagees, in and to the Dwelling Houses and Premises, known as Nos. 101 and 102 Middle Abbey-street, in the City of Dublin. No. 101 is held under Lease, dated the 31st December, 1864, for 99 years from the 1st day of January, 1865, subject to the yearly rent of £28 sterling, payable half-yearly, on every 1st July and 1st January; and No. 102 is held under Lease, dated the 27th December, 1837, for 109 years, from the 1st day of January, 1838, subject to the yearly rent of £25 sterling, payable half-yearly, on every 25th March and 29th September.

A Statement of the Title and Conditions of Sale, subject to which the Premises are offered for sale, have been filed in the said Court, and may be inspected.

Dated 8th January, 1874.

W. PERRIN, Chief Registrar.

For further particulars, and Conditions of Sale, apply to
MICHAEL LARKIN & CO., Solicitors having Carriage of Sale, 51 Dame-street;
LUCIUS HENRY DEERING, Official Assignee, 33 Upper Ormond-quay;
Messrs. OLDHAM & EATON, Solicitors for the Assignees, 42 Fleet-street;
THOMAS DILLON, Auctioneer, 25 Bachelor's-walk.

Digitized by Google

IN THE COURT OF BANKRUPTCY (IRELAND).

SALE OF

VALUABLE LEASEHOLD PREMISES, IN THE CITY OF DUBLIN.

In the Matter of Patrick Nolan, of South Great George's-street, in the City of Dublin, Draper, a Bankrupt.

TO BE SOLD BY PUBLIC AUCTION, On TUESDAY, The 27th day of JANUARY, 1874, At the Hour of Twelve o'clock, By Order of the Court,

All the Estate and Interest of the Bankrupt, his Assignees and Mortgagees, to the Dwelling-house and Premises known as No. 61, South Great George's-street, and City of Dublin, held under two Indentures of Lease, the one dated the 8th day of September, 1845, for 30 years, from the 29th day of September, 1845, and the other dated the 30th day of May, 1871, for 55 years, from the 29th day of September, 1875, at the yearly rent of £60, payable quarterly.

A Statement of Title and Conditions of Sale, subject to which the Premises will be sold, is filed in the Office of the Court, where same can be seen.

W. PERRIN, Chief Registrar.

Dated this 8th January, 1874.

For further particulars, apply to

MICHAEL LARKIN & CO., Solicitors having carriage of Sale, 51, Dame-street;

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay;

THOMAS DILLON, Auctioneer, 25 Bachelor's-walk.

LANDED ESTATES' COURT, IRELAND.

COUNTIES OF ARMAGH AND TYRONE.

SALE,

On FRIDAY, the 6th day of FEBRUARY, 1874,

In the Matter of the Estate of Robert King, Owner; Thomas Hewat, Public Officer of the Provincial Bank of Ireland, Petitioner.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, Dublin,

On FRIDAY, the 6th day of FEBRUARY, 1874, At Noon, The following Lots:—

LOT 2.

A perpetual Yearly Rent of £14 17s 1d, payable out of part of the Lands of Ballycullen, containing 44a 3r 5p, statute measure, situate in the Barony of Armagh, and other part of the said Lands of Ballycullen, containing 100a 0r 14p, statute measure, said Lot producing a Profit Rent of £153 19s 4d, said perpetual Yearly Rent and Lands being held in perpetuity under the Church Temporalities Act.

LOT 3.

Part of the Lands of Moygashill, otherwise Moygashel, containing 25a 0r 32p, statute measure, in the Barony of Middle Dungannon, and County of Tyrone, held under lease, dated 31st December, 1840, for lives renewable for ever, and producing a Profit Rent of £39 12s 1d.

N.B.—Lot 1 has been sold.

Private Proposals will be received by the Solicitors having carriage up to the 19th day of January, 1874, and, if approved of, submitted to the Court.

Dated this 12th day of December, 1873.

J. E. MADDEN, for Examiner.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; to

The PROVINCIAL BANK OF IRELAND at Dublin, Belfast, Armagh, and Dungannon; or to

LONGFIELD, DAVIDSON, & KELLY, Solicitors having carriage of Proceedings, 62 Upper Sackville-street, Dublin; and Dungannon.

DESCRIPTIVE PARTICULARS.

LOT 2.

The Lands of Ballycullen are situate within about five miles of the City of Armagh, and three from Trewmount and Moy Station of the Portadown, Dungannon, and Omagh Junction Railway, and lie between the Post Towns of Benburb and Moy. There is a plentiful supply of turbary, and the Lands are intersected by the Ulster Canal, adjoining the River Blackwater.

LOT 3.

The Lands of Moygashel are situate about one and a-half miles from the Town of Dungannon. There is a Beetling Mill, Workers' Houses, walls of Scutch Mill, and other buildings thereon. There are twelve good Beetling Engines in the Mill, with room for eight more. The water power, which drives a turbine wheel lately erected, is good, and generally available for eight or nine months in the year. There is also an excellent horizontal Steam Engine of sixteen horse power, sufficient to drive twenty-four Beetling Engines, extensive Drying Lofts, and Capping Rooms, fitted up in the best manner, and Eight Houses for workmen.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DONEGAL.

In the Matter of the Estate of Daniel M'Nulty and of George Brown, Trustee for the Creditors of said Daniel M'Nulty, or one of them, Owners; *Ex parte*— Sir John Arnott, David Taylor, John Arnott Taylor, William King, and David Milne Cowper, trading under the firm of John Arnott and Company, Petitioners.

TO BE SOLD, In One Lot, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, The 30th day of JANUARY, 1874, At the Hour of Twelve o'clock Noon,

The Dwelling-houses and Premises in Castle-street, in the Town of Ballyshannon, as formerly in the possession of Sarah Earls, and the Dwelling-house and Premises in said street as formerly in the possession of John Sharkey, and lately in the possession of Hugh Stephens, with all Out-buildings, Yards, and Appurtenances usually occupied therewith, situate in the Barony of Tyrhugh, and County of Donegal, held in fee-simple.

Dated this 18th day of December, 1873.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The Property offered for Sale consists of a Large Shop, Dwelling-house, and Premises, in which the Drapery Business has been lately carried on by one of the owners (Daniel M'Nulty). It is situate in the leading thoroughfare of Ballyshannon.

For Rentals and further particulars apply at the Landed Estates' Court, Dublin; or to

HENRY C. NEILSON, Solicitor, 30, Bachelors'-walk; or to

HENRY MILFORD, Solicitor, having Carriage of Sale, 30, Bachelors'-walk, Dublin; and 54, Donegal-street, Belfast.

In the LANDED ESTATES' COURT, IRELAND.

IN THE CITY OF DUBLIN.

The Rev. Peter Edward O'Farrelly, and Thomas Fitzpatrick, Trustees for Sale under the Will of Rose Ellen Forde, deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Dublin,

On FRIDAY, the 16th day of JANUARY, 1874, At the hour of Twelve o'clock noon. In Three Lots, The following Fee-farm Rent and Valuable Property:—

LOT I.

The House and Premises, No. 3 Ely-place, in the Parish of St. Peter, and City of Dublin, held under a Fee-farm grant dated 3rd December, 1855, and subject in conjunction with Lots 2 and 3, to the Fee-farm rent of £38 15s 0d. The Premises are held by a tenant under a Lease at a rent of £80, leaving a profit rent of £41 5s.

This Lot will be sold subject to the entire head rent of £38 15s, and bound to indemnify Lots 2 and 3 from payment of any portion thereof.

LOT 2.

Fee-farm Rent of £9 6s 0d, issuing out of the Houses and Premises, Nos. 140 and 141 Lower Baggot-street, in the parish of Saint Peter, and City of Dublin, held under Fee-farm Grant of 3rd December, 1855, subject to the rent of £38 15s 0d, but indemnified against the payment of any portion thereof by Lot 1.

The Government Valuation of this Lot is £95.

LOT 3.

House and Premises, No. 4 Ely-place, in the Parish of Saint Peter, and City of Dublin, held under same Grant as Lots 1 and 2, and indemnified against rent by Lot 1. These premises are held by a tenant, under a Lease for lives renewable for ever, at a rent of £36 18s 4d, and the Government Valuation of the Lot is £60.

Dated this 28th day of November, 1873.

C. E. DOBBS, Examiner.

For Rentals, Maps, and further particulars, apply at the Landed Estates' Court; or to

Messrs. WM. ROCHE & SON, Solicitors having the carriage of the Proceedings, 4 Stephen's-green North, Dublin.

BINDING "THE IRISH LAW TIMES."—

SUBSCRIBERS are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. Also the Acts of the past Sessions, printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates.

BY JOHN FALCONER,

Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL,

53 Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, January* 10, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JANUARY 17, 1874. No. 364.

DECISIONS ON THE PARLIAMENTARY ELECTIONS ACT, 1868.—II.

THE effect of the decisions of the judges on the subject of treating can hardly be said to be likely to influence a deterent effect on the habit of supplying refreshments to electors and non-electors which has become almost a recognized portion of our system of parliamentary election. The decisions of the Committees of the House of Commons had been by no means unanimous on the subject of acts which constitute the offence: in some cases a salutary severity seems to have prevailed, as in the Roscommon case (1 Wol. & Bris. 107) and the Peterborough case (P. R. & Dew. 259); but, on the other hand, in the Carlisle case (1 Wol. & Bris. 95), where it appeared that the sitting member's agent had invited some 20 voters to breakfast at his house on the morning of the election; but all these persons had promised their votes long before, and had always been supporters of the sitting member's party, the committee adopted the view that the transaction was *bonâ fide*, and held the election good. We confess we feel some surprise at finding this merciful theory of giving refreshments to electors endorsed by the decisions of the election judges. One of the first indications of this was given in the Windsor case (1 O'M. & H. 4). There the sitting member, a short time before he commenced his canvass, was present at a dinner given to the "Odd Fellows Society," many of whom were electors, and £27 10s. was paid by the respondent and two other persons for wine and cigars. Mr. Justice Willes, in delivering judgment, said:—"The sting of the case lies in the fact that the dinner was within a fortnight before the commencement of the actual canvass. I am impressed with the objectionable character, to say the least of it, of a transaction by which an intending candidate may seek to ingratiate himself with electors, whether of his own side or not, by profuse expenditure for luxuries." His Lordship then proceeded to draw a distinction between the enactments relating to bribery and to treating, "for if every elector then present had received 6s. 8d. in cash, which was the price of the wine, &c., consumed per head, what interpretation could be put upon such a proceeding;" and concluded by declaring the whole transaction innocent, the "Odd Fellows" not being a political society. In the Bodmin case (1 O'M. & H. 122), the same judge proceeds to carry out the same principle, and gives his reasons for his decisions. He holds that sec. 36 of 17 & 18 Vic., c. 102, which makes treating a ground for unseating a member, refers to sec. 4 of the same Act, which inflicts a penalty of £50 for *corrupt* treating; but there exists another offence which is only punished by a penalty of 40s., and which consists in giving refreshment to a voter on the day of election, whether with a corrupt intention or not. This latter form of treating is not referred to by the 36th sec., and, in consequence, this act, although illegal by the provisions of 23 sec., is not such an act as will unseat a candidate. Of course, the intentions of a candidate may be found to be corrupt by the judge trying the case (Norfolk case, 1 O'M. & H. 243), so that a certain amount of danger must exist in all cases of supplying refreshment; but it cannot be denied that a door has been open to a considerable amount of corruption by the decision of the judges that all hospitality by a candidate is not struck at by the enactments as to treating. If the somewhat narrow interpretation put upon the 36th sec. by the learned judges is correct, and we confess that the words "bribery, treating and undue influence," in the 36th section seems to have been intended by the Legislature to comprehend all corrupt acts tending to bring unfair influence to bear on the constituency, it must be admitted that the existence of such a state of law is a public calamity. How can it be pretended that the electors have not been biased by improper motives, where a candidate is permitted to make himself more popular than another by giving entertainments to electors, even though a judge may decide that the motive was not corrupt. Perhaps it is not corrupt with respect to any individual elector, and even the entertainment may not be intended to influence directly the votes of any of the guests then present, but is it not perfectly clear that such entertainments, as a rule, do not take place at any other time than before an election? and that such hospitable acts of such a nature are never done except when a candidate is among his own constituents. If such expenditure as was proved in some of the cases had been declared fatal to the sitting member, a blow would once and for all have been struck at the system of indirect corruption popularly known in England as "nursing a constituency," which is at present so prevalent. Another decision with regard to treating, which we cannot but regard as unfortunate for the interests of purity of election, is the decision of Mr. Justice Blackburn in the Norfolk case (1 O'M. & H. 243). There it was proved that an agent of the candidate had treated after the election, to increase his influence at any future election. "As yet," said his Lordship, "no statute has struck at that; the Legislature must say that they intend to prohibit it." But in the Carrickfergus case (1 O'M. & H. 265), although it was held that treating after the election was not corruptly treating within the meaning of 17 & 18 VIC., c. 102, s. 36, it was an act that should not have been done, and was one of the circumstances in the case which seriously affected the question of costs. Several decisions have been given as to the question of provisions supplied to electors in connexion with political events having reference to the election, but not immediately connected with it. In the Coventry case (1 O'M. & H. 106), where a supper was given after the registration prior to the election, to celebrate the triumph of the respondents' party at the registration, and meat was provided by an agent of the respondent, Mr. Justice Willes said:—"When eating and drinking takes the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes corrupt, and is forbidden by statute. Until that arrives the mere fact of eating and drinking, even with the connexion which the supper had with politics, is not sufficient to make out corrupt treating." In the Hastings case (1 O'M. & H. 220) a somewhat similar point was decided. In that case it was held that supplying provisions to persons attending the Registration Court was not necessarily corrupt treating. Mr. Justice Blackburn took into consideration the extent and the quantity of the treating, and

Digitized by Google

also the fact that it was confined to the time of the registration, and under these circumstances he drew the inference that it was not intended to influence votes. Upon the whole there can be little doubt that the general tendency of the election judges' decisions has been to take an extremely merciful view of the subject of treating.

THE COURT OF EXCHEQUER.

THE subject of the vacancy in the Court of Exchequer is still unsettled, notwithstanding the very strong expression of public feeling which the matter has evoked. The members of the Town Council of Dublin have expressed the opinion of the citizens and the public at large, in their deputation to the Lord Lieutenant; but, unfortunately, his Excellency was only able to say that he would forward their statements to the Government in England, if he were asked his opinion or consulted in the matter. This is not satisfactory; and political capital has already been made of the diplomatic answer that Lord Spencer gave the deputation. One of the gentlemen present, Mr. Norwood, reminded his Excellency of the Report of the very eminent Commissoners who inquired into the subject, in 1862, and who reported against any diminution of the members of the Judicial Bench in Ireland, supporting their opinion with reasons and historical statements which should finally settle the matter, and which, from the number and authority of the Commissioners, cannot be gainsaid. As it is important that the legal profession and members of Parliament should be fully aware of these facts, we reprint the recommendations of the Commissioners on these points in our present issue.

As if to embarrass matters the more, it will become necessary for the Judges to arrange the circuits on Monday next, according to custom; and as there are six circuits, each requiring two Judges, and going out about the same time, the difficulty to which we alluded last week immediately arises. Another instance of inconvenience arose on Thursday, in the Court of Exchequer, which strikingly illustrates the necessity of having four Judges in each Court of Common Law. On that day Baron Fitzgerald was engaged as the sitting Judge in the Court of Nisi Prius. Baron Deasy (the then Judge by rotation) was absent, owing to the death of a very near relative. Accordingly, when Baron Dowse took his seat he found himself the only Judge of the Court present. The result was that there was "no Court," that the doors of the Court of Exchequer were shut, and that the important business pending before that tribunal received a check most injurious to the suitors concerned. We have here an apt example of what may at any time occur, if the staff of Judges in the Court of Exchequer were permanently reduced. At any moment an accidental circumstance might cause a stand-still fatal to the interests of suitors, harassing to the legal profession, and in every way injurious and regretable.

THE ASSOCIATED LAW CLERKS OF IRELAND.

REPORT OF THE EXECUTIVE COMMITTEE FOR THE YEAR ENDING 12TH JANUARY, 1874.

WE are glad to learn from this Report that the Law Clerks are gradually succeeding in the objects for which their Association was formed. The Committee seem to have been indefatigable in their efforts, and we feel sure will soon be completely successful; for, although primarily acting for themselves, they are, in reality, serving the interests of the Solicitors and the public, by endeavouring to provide that the Law Clerks shall be all that could be desired for the discharge of their very onerous duties. They make the following remarks on the important subject of Registration of Law Clerks:—"It being the unanimous opinion of the Committee that some effectual check should be put upon the dangerous facility with which persons totally disqualified by utter want of training, character, or knowledge, can now assume the name of Law Clerk, a proposition was brought forward at one of the General Meetings of the Association, recommending that the system of registering Law Clerks—already existing in the Landed Estates' Court—should be extended to all the Courts. The question was very fully discussed at a numerously attended meeting, and was affirmed by an overwhelming majority. Your Committee earnestly recommend this subject to the consideration of their successors and the Association at large, as they are of opinion until some such system of Registration shall be adopted, the respectable and properly qualified Law Clerk will never obtain that due recognition of his position and services which it is one of the fundamental objects of the Association to secure for him. It is suggested that a General Roll of Law Clerks should be prepared under the sanction of the proper authorities, upon which none but qualified Law Clerks should be placed, and from which Clerks who bring discredit upon their order should be struck off, and prevented from transacting business. In our present unprotected state there is nothing to prevent persons destitute alike of character and competency from assuming the name of 'Law Clerk,' and thus lowering the status of the properly qualified assistant. In any such system of Registration the interests of junior Clerks should be carefully provided for."

Further, "in order to assist in providing funds for the establishment of a Library and Reading-Room, your Committee brought the matter before the Barristers and Solicitors of Ireland by circular. Subscriptions to the amount of £51 15s. have already been received towards that object. Two gentlemen of the highest standing in the Profession, Messrs. William Findlater and Leonard Morrogh, in the kindest manner consented to act as Trustees of the Library Fund, and the subscriptions received have been lodged to their credit in the Royal Bank."

THE NUMBER OF JUDGES IN THE SUPERIOR COURTS OF COMMON LAW IN IRELAND.

We take the following extract from the First Report of Her Majesty's Commissioners appointed to inquire into the Superior Courts of Common Law and Courts of Chancery of England and Ireland, presented in 1863:—

In close connexion with the subject of practice and procedure is the constitution of the Superior Courts of Common Law as to the number of the Judges.

In Ireland there are, as in England, three Superior Courts of Common Law—the Courts of Queen's Bench, Common Pleas, and Exchequer.

This constitution has prevailed since the first introduction of English Law into Ireland in the reign of King John.

In Ireland there are four Judges in each of these Courts, and in England there are five. But only four of the five sit in the English Courts *in banco*, so that the constitution of the Courts when sitting *in banco* is the same in both countries.

The fifth Judge in each of the English Courts sits during term at Nisi Prius or at Chambers, so that there are in England six Common Law Courts in operation during term, three Courts *in banco*, and three for Nisi Prius or Chamber business.

In Ireland there are only four Courts, the three Courts *in banco*, and the Consolidated Nisi Prius Court.

Digitized by Google

The importance of the special constitution of the Courts *in banco* of four Judges, and neither more nor less, was made a matter of special observation by the Commissioners who inquired into the Courts of Common Law in England in 1829.

They show that the number of the Judges in the English Courts came to be established at the regular number of four Judges in each Court as early as the reign of King Henry VII., and it seems to have continued at the same number during the reigns of Henry VIII., Edward VI., Mary, and Elizabeth.

The Commissioners then notice that the only monarch subsequent to Henry VII. who broke in upon this constitution of the Courts *in banco* was King James I.

King James I. appointed a fifth Judge in each of the Courts of King's Bench and Common Pleas, for the benefit, as he stated, of a casting voice in case of a difference of opinion.

The Commissioners of 1829, in considering the policy of this exceptional course of King James I. in appointing an odd instead of an even number of Judges, stated:—

"The soundness of the principle, however, upon which five Judges were appointed by King James has been greatly doubted by Paley. That accurate observer of human affairs says, in his chapter on the Administration of Justice:—"I should prefer an even to an odd number of Judges, and four to almost any other number; for, in this number, beside that it sufficiently consults the idea of separate responsibility, nothing can be decided but by a majority of three to one; and when we consider that every decision establishes a perpetual precedent, we should allow that it ought to proceed from an authority not less than this. If the Court be equally divided, nothing is done, things remain as they were, with some inconvenience, indeed, to the parties, but without the danger to the public of a hasty precedent."

The Commissioners then state:—"We entirely accede to this opinion; and, for this and other reasons, we think that not more than four Judges should, at any time, sit together *in banco;* and that one Puisne Judge in each Court to which the Judges shall be appointed, should be exempted in rotation from attendance in Court during each Term."

The Legislature adopted this recommendation of the Commissioners; and of the five Judges in each of the English Courts of Common Law, only four ever sit at one time *in banco.*

The Superior Courts of Common Law having been established in Ireland before the reign of King Henry VII., and consequently before the establishment of the fixed principle of having four Judges in each Court, this matter was not in the first instance attended to, and we find that there were in early times only three Judges in each of the Superior Courts in Ireland.

Sir William Petty, in his Political Anatomy of Ireland, mentions all the officers and others serving in the Courts of Justice in the several provinces in Ireland in 1662. In that list he enumerates a Chief Justice and two Puisne Judges in each of the Courts of King's Bench, Common Pleas, and Exchequer, or nine Judges in all. But then he adds five other judicial officers which no longer exist, viz., the Chief Justice and Second Justice of the province of Munster, the Chief Justice and Second Justice of the province of Connaught, and the Chancellor of the Exchequer, who acted as a Judge, making fourteen in all.

That the Irish judicial system was, for many years, in a very inferior position to the English, is shown by the late period at which the independence of the Judges was secured.

In England the tenure of the Judges originally depended on the terms of their commission; and King James II. having abused the prerogative of the Crown to secure the subservience of the Judges, it was provided by the Act of Settlement, 12 & 13 Will. 3, c. 2, passed in 1700, that after the settlement of the Crown provided for by the Act should take effect, "Judges' commissions should be made *quam diu se bene gesserint,* and their salaries ascertained and established."

The Act also provided that the constitutional mode of removing the Judges should be an address of both Houses of Parliament.

The Act of Settlement left the Judges still liable to be displaced at the end of each reign, as the succeeding monarch was not bound to appoint them. It also left their salaries inadequately secured. These defects were removed at the commencement of the reign of King George III. in 1761, by Statute 1 Geo. 3, c. 23, which provided that the commissions of the Judges should remain in force notwithstanding the demise of the Sovereign.

This Act also provided that the salaries of the Judges settled by Act of Parliament, and the salaries granted by the Crown, should be payable during the continuance of their commissions, and should after a demise of the Sovereign be charged upon the duties granted for the use of the civil government of the King.

In Ireland a practice appears to have prevailed in early times of the Judges' commissions being sometimes for life. But in 1495, the power of the Crown to create independent Judges was taken away by an Act of the Irish Parliament (7 Henry VII., c. 2).

This Act, after referring to some other officers, provided "That the Judges of the King's Bench and Common Pleas, and the Chief and Secondary Baron of the Exchequer, should not have any authority in their offices but only at the King's will and pleasure."

The Irish Judges continued to hold by this precarious tenure, long after the Judges in England were made virtually independent by the Act of Settlement, and had their independence made complete by the Act of 1761.

It was not until the Session of 1781–2 that these great securities for the administration of justice were extended to Ireland; when Statute 21 & 22 Geo. 3, c. 50, was passed by the Irish Parliament.

This important Statute, assimilating so far the position of the Irish and English Judges of the Superior Courts of Common Law, was followed in the succeeding year, 1783, by an unanimous address from the Irish House of Lords to the Crown for an increase in the number of Judges in order that the Courts might be carried on with dignity, efficiency and expedition.

A strong expression of opinion on the same subject was made about the same time by the Irish House of Commons.

In accordance with these expressions of opinion, an additional Judge was then added by the Crown to each of the Superior Courts of Common Law in Ireland, raising the number to four in each, thus completing the assimilation of the constitution of the judicial portion of these important tribunals to the model which has prevailed in England, with the single exception we have noticed, since the reign of King Henry VII.

This increase in the number of Judges enabled the circuit business to be more satisfactorily discharged in Ireland by the formation of the present number of six circuits, which took place in 1796.

In the same year the establishment of the County Court system of Ireland was completed, by the appointment, under 36 Geo. 3, c. 26, of Assistant Barristers in every county, not only to act as Chairmen of Quarter Sessions in criminal business, but to hold a separate Court with considerable civil jurisdiction.

The successful working of these local Courts was secured by a system of appeal more convenient to the suitor, and more suited to the circumstances of the country than the appeal under the English County Court system, being to the Judge of Assize at the next assizes instead of the English appeal to a Judge in London.

In connexion with this extensive appellate jurisdiction on circuit, which could only properly be exercised by a Judge of the Superior Courts, we may notice a difference between Ireland and England, that in Ireland Queen's Counsel are not named in the Commission, except in the rare case where, owing to the illness of a Judge during circuit, it has become necessary to issue a commission of assistance.

From this historical sketch it appears that the existing arrangement of three Superior Courts of Common Law in Ireland has existed for upwards of 500 years, and dates from the introduction of English law into Ireland.

It also appears that the principle of having four Judges in each Court *in banco* has existed in England since the reign of King Henry VII., and is still the constitution of

Digitized by Google

the English Courts, and has existed in Ireland ever since the extension to Ireland in 1782–3 of the English system of independent Judges and the English constitution of the Courts.

These facts of constitutional history explain the strong national feeling which exists in Ireland against a reduction in the number of the Judges of the Superior Courts of Common Law.

Such a reduction is not a mere question of saving of expense or of improved administration, but it is felt that it could not be effected without disturbing some essential part of the very constitution of the Superior Courts.

Thus, if one Judge were permanently withdrawn from any of the Courts, it would be impossible to have for important arguments *in banco* the constitutional number of four Judges; and, even for the ordinary business of the Court, all the inconvenience which in early periods of Irish history was experienced from having only three Judges would recur, as, should one be absent from illness, or employment, the Court would be reduced to two Judges.

The only reduction not open to these evils would be the abolition of an entire Court, but such a change would destroy the constitution of the Court of Exchequer Chamber, which is now identical with the similar tribunal in England; the appeals from each Court being heard before the Exchequer Chamber constituted of the Judges of other Superior Courts of Common Law. If there were only two instead of three Superior Courts, such a constitution of a Court of Appeal would become impossible.

We have already noticed the importance of having a good local appellate jurisdiction in Ireland to guard against suitors being burdened with the expense of appeals to the House of Lords. And also to obviate the inconvenience of the House of Lords and the English Judges being occupied with appeals from Ireland upon any but the most important questions of law.

This reduction would, we think, be objectionable on other grounds. The judicial business which the Judges have to discharge is in Ireland, as in England, of a varied and responsible character.

During the four terms, the four Judges in each Court sit *in banco*. One of the Judges in each attends before the sitting of the Full Court to hear motions of course. The sittings of all the Puisne Judges *in banco* are not continuous, as one of them in turn sits during term for such time as may be required in the Consolidated Nisi Prius Court, for the trial of certain classes of records for all the Superior Courts. But this does not in practice prevent the Judge so engaged being present *in banco* for any special case.

After term the Lord Chief Justice and the Lord Chief Baron sit at Nisi Prius, and a Puisne Judge is frequently required to hold an additional Nisi Prius Court.

Out of term a Puisne Judge in rotation sits at the Consolidated Chamber Court.

Eight Judges usually, and not less than six, are required for the Court of Exchequer Chamber either in or out of term, and sittings *in banco* are sometimes required out of term.

Two of the Judges in rotation sit at the Commission Court for trying criminals in the County and City of Dublin, which is held six times in the year.

The Judges have to attend the Court of Criminal Appeal and the Court of Registry Appeal, for each of which not less than five Judges are required.

The Lord Chancellor occasionally requires the assistance of a Common Law Judge at the Chancery Appeal Court. The attendance of one or more Judges is also sometimes required at the Court of Delegates to try appeals from Admiralty cases.

The Twelve Judges are required for the Assizes in the six circuits twice in each year. The circuit business, includes the appellate jurisdiction from the Irish County Courts which we have noticed, and also the hearing of traverses and objections to the presentments by Grand Juries, in the exercise of the very extensive powers of taxation for local purposes which Grand Juries possess in Ireland.

At present the business of suitors in the various Courts to which we have referred is disposed of by the Judges without any undue delay, and with proper deliberation.

It is true the Common Law Courts would be able, without any increase in their staff, to dispose of a larger amount of business than at present devolves upon them; but if the number of Courts were reduced to two, we do not think that the business in term and on circuit could then be so efficiently despatched.

It seems an unwise economy, when a system works well to reduce it to a condition which might render it difficult if not impracticable thereafter to have the business of the Courts satisfactorily performed.

The chief argument for a reduction of the number of Judges, is attempted to be founded upon a comparison of Ireland with England.

In this comparison, the effect of having in England a Fifth Judge of each Court, sitting not *in banco*, but at Nisi Prius or at Chambers during Term, and thus providing six Courts for the dispatch of business, is not sufficiently estimated.

Again, the practice of inserting Queen's Counsel in the Commission of gaol delivery that they may hold separate Courts for the trial of prisoners, the practice of Queen's Counsel sitting by consent to try Civil cases, and the numerous references which take place from want of time on circuit, are all methods of increasing the number of persons discharging judicial functions in England in matters falling within the jurisdiction of the English Courts of Common Law.

On one circuit in England, the pressure of business is so great, that suggestions have been made, and are under consideration for some means of providing a remedy. The state of the Nisi Prius lists in London, with numerous remanets for a considerable time, would seem to indicate that the pressure is not a question of circuit arrangement only, but that there is now too much work for the existing staff of English Judges to do, notwithstanding the increase that was made in their numbers in 1830.

If the judicial business of the Law Courts has been increasing in England, it may reasonably be expected to increase in Ireland, when we consider the great increase of wealth which has taken place there within the last 20 years, notwithstanding seasons of pressure, and the diminution of the population.

The changes of practice and procedure which we have recommended are considerable, and the immediate effect of such changes will be to throw additional labour on the Judges, in having the new system properly introduced and carried out.

Under these circumstances, having regard to the difficulties we have noticed in the way of any reduction short of a total change in the constitution of the Courts, we think it would be unwise to disturb a system which secures the efficient and expeditious discharge of the many and very important duties which are by the Constitution intrusted to the Judges of the Superior Courts of Common Law.

We are therefore of opinion,—

That it is not expedient to reduce the number of the Judges in the Courts of Queen's Bench, Common Pleas, or Exchequer in Ireland.

[This report is signed by the following gentlemen who had been appointed Commissioners :—]

JOHN ROMILLY. (L.S.)
FRANCIS BLACKBURN. (L.S.)
JAMES H. MONAHAN. (L.S.)
JOSEPH NAPIER. (L.S.)
W. P. WOOD. (L.S.)
JAS. S. WILLES. (L.S.)
HENRY GEORGE HUGHES. (L.S.)
WILLIAM ATHERTON. (L.S.)
THOMAS O'HAGAN. (L.S.)
ROUNDELL PALMER. (L.S.)
JAMES A. LAWSON. (L.S.)
H. M. CAIRNS. (L.S.)
GEORGE MARKHAM GIFFARD. (L.S.)
ROBERT B. FOLLETT. (L.S.)
RICHARD J. THEO. ORPEN. (L.S.)

Digitized by Google

BARON MARTIN.

The retirement of Mr. Baron Martin from the Court of Exchequer will be the subject of very general regret, and it will be long ere the memory of his great practical knowledge, shrewd common sense, and genial humour fades from Westminster Hall. His professional position as leader of the Northern Circuit, had, as a matter of course, rendered him familiar with commercial law before his elevation to the bench, and many of his judgments have since shown that upon other legal subjects he had at command ample stores of knowledge and a singular capacity for applying them to particular cases. He certainly contributed much to the strength of the Court of Exchequer, and from the date of his appointment by Lord Truro, in November 1850, until now, has always remained a prominent figure among his brethren. He was emphatically a "strong" judge, and never hesitated, either in *banc* or at *Nisi Prius*, to act promptly and decidedly upon the opinion he had formed. But his principal characteristic was his intense desire to do justice. He was impatient of merely technical defences, and his generous sympathies may sometimes have led him to strain the forms of the law a little in favour of the suitor whom he conceived to have right on his side. The fault, if it be a fault, is a good one, and may perhaps have been caused by the circumstance that when Baron Martin joined the Exchequer, Baron Parke (Lord Wensleydale), who, with all his great powers, was to some extent the slave of technicality, was the ruling spirit of the court.

Baron Martin was educated (as were also the late Mr. Justice Willes and Mr. Justice Keating) at Trinity College, Dublin, where he graduated in the year 1821. In Mr. Foss' Lives of the Judges it is stated that he was also D.C.L. of the University of Dublin, but the date of his receiving that honour is not given. He was a son-in-law of Lord Chief Baron Pollock, and his only daughter is married to Mr. Macnaughten, a well-know member of the equity bar. He will carry with him into his retirement from active life the good wishes of every member of the bench and the bar. No judge has ever been more popular and more deservedly popular than he. Though he has reached the age of seventy-three, his intellect and physical vigour are comparatively untouched by time, and it is only in consequence of an increased difficulty in hearing that he has thought it advisable to tender his resignation. In this matter, as in all others through his long and honourable career, he has been governed by an unselfish desire to consult the interests of the public in preference to his own personal inclinations.—*Solicitors' Journal.*

BRADFORD COUNTY COURT.

[From the *Law Times*.]

Dec. 2 *and* 6, 1873.

(Before W. T. S. Daniel, Q.C., Judge.)

Moscrop *v.* Lancashire and Yorkshire Railway Company.

Carriers Act (11 *Geo.* 4, *&* 1 *Will.* 4), *c.* 68, *s.* 1—*The value of the contents of a parcel is the value of the goods to the owner, not the value to a tradesman to buy and sell again.*

Hutchinson for plaintiff.

Terry (*Terry* and *Robinson*) for the defendants.

This action was brought to recover the sum of £9 10s., as damages for the loss of a parcel sent by the defendants' railway, and not delivered. The parcel consisted of a small box containing a lady's gold lever watch. The defendants relied upon the Carriers Act (11 Geo. 4 & 1 Will. 4. c. 11), s. 1, alleging that the parcel exceeded £10 in value, and the value was not declared. There was no suggestion that the parcel had been lost through the felonious act of any of the defendant's servants. The only question is one of fact, namely, did the contents of the parcel exceed £10 in value, and the affirmative of that issue must be established by the defendant. It appeared in evidence that the watch had been purchased five or six years ago of Messrs. Rhodes and Son, the well known jewellers of Bradford, as a present to the plaintiff's wife. Its actual cost did not appear, but the manager of Messrs. Rhodes and Mr. Rhodes, the son, proved that the actual price of such a watch was £15 15s. The watch had been sent by the lady to Messrs. Rhodes to be cleaned and repaired, and then returned to her at Rochdale, where she lived. It was so cleaned and repaired, and then returned by railway carefully packed up in a box about the size of a cigar box, properly addressed, but without any indication of the nature of its contents, or declaration of value. The sum of £9 10s., the amount claimed in the action, was arrived at thus: Mr. Rhodes and his manager treated it as a second-hand watch, and stated that if offered to them for sale they would have given £8 10s. or £8 15s. for it and no more, and would have sold it again for £9 10s. I do not think this a proper test of the value of the watch. The test is, what was its fair value to the lady, disregarding altogether any value she might attribute to it as a present, *pretium affectionis*. The watch when cleaned and repaired by Messrs. Rhodes and returned to the lady, which was the state in which it was when delivered to the defendants as carriers, was, so to speak, as good as new to her, and in answer to a question from me the lady said, speaking as a lady might be expected very fairly, she thought the watch would be worth £12 or £13, but of course she could not tell. I think, however, that evidence is more reliable than the evidence of what the watch would be worth in a tradesman's shop to buy and sell again, and that any jury would be bound to find that the contents of the parcel did exceed £10 in value. The defendants are, therefore, entitled to the protection given them by the statute, for this is the very sort of case to which the statute was meant to apply, and it would be most unfair towards common carriers to allow the public, whose goods they are bound to carry, to deprive them of the protection of the statute by undervaluing, though without any improper intention, the goods sent, and thereby bring the value below the statutory limits. The judgment will, therefore, be entered for the defendants with costs.

IRISH AFFIDAVITS IN ENGLAND.

We gladly make the following extracts from the columns of the *Law Times* on this subject, particularly since its animadversions on the inconvenience at present existing have been confirmed by Mr. Oldham:—

"We have already had occasion lately to refer to the unsatisfactory position of matters as regards the swearing of affidavits in England for use in the Irish Courts and offices, and it seems from a communication which we have just received from Mr. Henry Oldham, of Dublin, who is an Irish Commissioner for all the English Courts, that we have in some respects under-estimated the evils in this respect, so much so, indeed, that we shall feel it our duty, on a future occasion, again to refer to, and deal more fully with, this subject; the more so because legislation, arising out of exigencies occasioned by the operation of the Supreme Court of Judicature Act, may be looked for upon the subject of Commissions for Oaths generally. We propose now shortly to call attention to certain statutory provisions affecting this question as regards affidavits sworn in Ireland for use in the English and Scotch Courts and offices, and *vice versâ*. As regards affidavits for use in the Irish Court of Chancery, the Chancery (Ireland) Act, 1867, provides that 'affidavits, &c., in all causes, &c., pending in the Court, shall and may be sworn and taken in England before any Judge or person authorised to administer oaths in England' (see 30 & 31 Vict. c. 44, s. 81). This is an important provision, the nature of which is, we believe, not known to many English Commissioners for Oaths in Chancery in England. Upon this subject our correspondent observes, 'affidavits so sworn are constantly filed here, and should, when sworn according to our practice, be enclosed by the Commissioner in an envelope, sealed and endorsed by him with the title of the cause or matter, and subscribed with his signature.' In the case of proofs of debt in the Irish Bankruptcy Court, similar facilities for swearing the necessary affidavits exist both in England and Scotland. As regards the Irish Courts of Common Law and Probate, our correspondent says, 'There is frequently the utmost delay, trouble, and expense in having sworn in England affidavits for use in these Courts.' And he adds upon this

Digitized by Google

subject, 'debts are often lost to English creditors in provincial towns from want of an authority to take the most ordinary routine affidavits.' As regards the English Court of Probate, the English Act (21 & 22 Vict., c. 95, s. 32) provides 'that in Scotland and Ireland affidavits' for use in this Court 'may be sworn before any person,' &c., 'authorised to administer oaths,' while as regards the Irish Court of Probate, the Irish Act (22 & 23 Vict., c. 31, s. 28) affords no such facilities for swearing affidavits in England and Scotland for use in that Court, the section in question providing that such affidavits can be sworn only before such Commissioners as are directly authorised by the Irish Court of Chancery or Probate to administer oaths in such Courts. The wording of this section is such that there is no room for doubt but that the framers of it purposely omitted to provide as is provided in the corresponding section of the English Act. The entire question requires readjustment, and, in our opinion, no measure dealing with it will be complete unless it provides that a Commissioner for Oaths can take affidavits in all Courts in Her Majesty's dominions."

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

ATTACHMENT FOR DISOBEDIENCE OF ORDER TO PRODUCE DOCUMENTS—SERVANT FORBIDDEN TO PRODUCE BY MASTER —CORPORATION—COMMON PLEAS AT LANCASTER.—In obedience to the instructions of his directors, and in disobedience of the order of the district prothonotary of the Common Pleas at Lancaster, and of the order of an arbitrator, the secretary of a railway company refused to produce before the arbitrator numerous books and papers of the company, which the attorney of the plaintiff in the case referred to swore to be material to the plaintiff's case: Held, that the secretary, being in the position of a servant, was justified in obeying the orders of his masters not to produce the documents, and a rule to attach him for contempt discharged. Whether an action would lie in such a case, *quære:* (*Crowther* v. *Appleby; Re Sharpley*, 29 L. T. Rep. N. S. 580. C. P.)

EQUITABLE MORTGAGE—AGREEMENT TO EXECUTE LEGAL MORTGAGE — MARRIAGE ARTICLES — SETTLEMENT — CONSTRUCTIVE NOTICE—PRIORITY.—In 1866 L. deposited with a bank the title deeds of certain real estate to secure the balance of his account, and at the same time he executed a memorandum by which he agreed to execute a deed for legally carrying out the security. In 1871, two days before his marriage, articles were executed by which he agreed to settle the same property, stating, in answer to inquiries by the solicitor of the intended wife who prepared the articles, that the property was unincumbered, and that the title deeds were at his banker's for safe custody. Shortly after the marriage a settlement was executed by which he conveyed the legal estate in the property to the trustee of the settlement. On a bill by the bank for foreclosure, Held, that it was the duty of the solicitor to have made further inquiries of the bank; that the intended wife must be taken to have had constructive notice of the equitable charge in favour of the bank, and that the plaintiff was entitled to a foreclosure: (*Maxfield* v. *Burton*, 29 L. T. Rep. N. S. 571. Rolls.)

SETTLEMENT—CONSTRUCTION—SHIFTING CLAUSE—POWER OF CROWN TO LIMIT DIGNITIES.—A testatrix, by her will, devised certain estates to trustees upon trust to settle the same in a course of entail to correspond as nearly as might be with the limitations of the Barony of B., and the provisos affecting the same. By a clause in the letters patent creating the Barony of B., it was provided that if any person taking under such letters patent should succeed to the Earldom of D., then, and so often as the same should happen, the succession to the honours and dignities thereby created, should devolve upon the person who would be entitled thereto if the person so succeeding to the Earldom of D. was dead without issue male. A settlement was executed under the direction of the court, which contained a clause following, *mutatis mutandis*, the words of the shifting clause in the letters patent. Lord B. (the person taking under the letters patent) succeeded to the Earldom of D. Held (affirming the decision of Bacon, V.C.) that immediately upon the succession of Lord B. to the Earldom of D., his next brother became entitled in possession to the settled estates, under the shifting clause in the settlement. *Semble*, that the Crown has not an unlimited power of limiting dignities in any way that it pleases, and that it cannot create a mode of succession to a title totally unknown to the law: (*Cope* v. *Earl De La Warr*, 29 L. T. Rep. N. S. 565. Ch.)

POWER OF APPOINTMENT—EXECUTION—DOCTRINE OF CY-PRÈS.—The donee of a power of appointment of an estate to one or more of the children of A., by his will devised the estate to B., the son of A., for life, with remainder to the first and other sons of B. (who were not objects of the power) in tail male. Held, that the *cy-près* doctrine was applicable, and that B. took an estate tail: (*Line* v. *Hall*, 29 L. T. Rep. N. S. 568. Rolls.)

APPOINTMENTS.

SESSIONAL CROWN SOLICITOR.—The Right Honourable the Attorney-General has appointed William Mooney, Esq., Sessional Crown Solicitor for the county of Westmeath, *vice* Patrick Egan, Esq., resigned.

ACTING CLERK OF THE CROWN.—Mr. William Smartt, of Dublin, has been appointed Acting Clerk of the Crown for the county of Limerick.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Preliminary Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland), 1866."

DUBLIN, HILARY TERM, 1874.

ENGLISH HISTORY.

1. Enumerate the Anglo-Norman kings to the accession of the house of Plantagenet, and explain the title of that house to the throne?
2. Give the date and some particulars of the conquest of Ireland?
3. What was the "Mise of Lewes?"
4. On what ground did Edward III. and Henry V., respectively, lay claim to the throne of France?
5. To what event did Catherine of Arragon allude when she stated that her first marriage was made in blood?
6. When and with what object was the order of Baronets founded?
7. Give the date and some account of the dispersion of the Spanish Armada?
8. What were the chief provisions of the Bill of Rights, and when was it enacted?
9. What gave rise to the war of the Spanish Succession? Mention some of the battles fought in it, and by what peace was it concluded?
10. What war was concluded by the peace of Aix-la-Chapelle?
11. What was the Cato-street Conspiracy?
12. Enumerate the Sovereigns of England from 1660 to 1714, and mention some of the most remarkable events in the reign of each?

GEOGRAPHY.

1. Explain the terms "Estuary," "Meridian," "Declination."
2. What is the greatest longitude that a place can have? What the greatest latitude?
3. What would be our latitude if our zenith were 45° from the celestial equator?
4. What is the origin of the division of a circle into 360 degrees?
5. Describe the course of the *Gulf Stream*.

Digitized by Google

6. Three peninsulas form the south of Europe and three the south of Asia. Name them, with the seas which border on, and the northern boundaries of each.
7. What are the principal possessions of Great Britain in America?
8. Describe the course of the Missisipi, and name its principal tributaries.
9. Name the counties of England and Wales on the west coast, and the principal towns of each.
10. Where are Cape Comorin; the Rivers Mackenzie, Petchora; the Hartz Mountains, Ancona, Nankin, Greenoble, Beyrout?

ARITHMETIC.

1. What is the rent of 176A. 2R. 17P., at £2 13s. per acre?
2. What is the price of 3 cwt. 2 qrs. 17 lbs., at £1 5s. 8d. per quarter?
3. Reduce 15s. 9d. to the fraction of a £.
4. What is the cash value of £1,200 Government Stock, at 92⅜?
5. If the rent of 12A. 2R. 30P. be £28 8s. 9d., what would be the rent of 69A. 3R. 20P. at the same rate?
6. What is the interest of £571 15s. for 8 months at 6 per cent?

BOOK-KEEPING.

1. What books are used in book-keeping by double entry? Explain the use of each.
2. Explain what are "real," "personal," and "fictitious," accounts.
3. When you open an account for stock in the ledger, on which side would you enter the cash in hand?
4. What entry is made in the journal when goods are sold for part cash, part on credit, and part bills receivable?
5. Open a cash account. Enter the following transactions, and balance the account.

	£	s.	d.
Cash in bank, - - -	341	12	6
Cash in hand, - - -	38	6	4
Paid A. Jones amount of his account,	46	10	5
Received of John Brown, - -	86	3	9
Paid amount of my acceptance of John Smith's draft, - -	95	3	4
House expenses, - - -	27	9	8
Paid Wm. White's account, -	218	5	4
Thomas Smith paid me amount of his acceptance, - - -	106	3	8
Paid house-rent, - - -	73	2	7
Lent to John Smith, - -	23	10	0
H. Williams paid to my account at bank, - - - -	97	8	10

LEGAL AND LITERARY DEBATING SOCIETY.

On next Thursday evening (22nd January) the above Society will hold its usual Weekly Meeting at 53, Lower Sackville-street, when an essay will be read, by Mr. Norris Goddard (ex-President), on "The Science of Legislation."

SPEAKERS:
Mr. Richard C. Hallowes and Mr. Walter Nolan.

The Chair will be taken at Eight o'clock by the President.

Members will please note the change in the rooms.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—E. Lloyd, from 15th.—G. J. Alymer, objection to schedule.—W. O'Brien, proposal.—T. Collins, allocation.—F. R. Yorke, ditto.

IN COURT.—S. Tierney, judgment on motion of 25th November.—Same, from 15th.—Church Commissioners, to be mentioned.—A. H. Wood, from 12th.—Presbyterian Widows Fund, from 13th.—J. M'Carthy, from 14th.—J. Sherlock, final schedule.—S. W. Fox, from 14th.—A. M. St. Leger, from 15th.

Before EXAMINER (Mr. M'Donnell).

M. Madden, vouch.—J. O. Brennan, do.—George Bennett, rental from 14th.

Before EXAMINER (Mr. Dobbs).

T. O. Sullivan, vouch.—M. Goyder, do.—Julia Rae, rental.—W. Elliott, do.—H. Alford, ditto.

TUESDAY.

IN CHAMBER.—J. V. Kildahl, payment.

IN COURT.—A. D. M'Gusty, judgment.—A. E. Graves, examine witness.—G. H. Walker, final schedule.—R. Morgan, do.—M. W. Knox, objection to final schedule.

Before EXAMINER (Mr. Dobbs).

S. Quinn, rental.

WEDNESDAY.

IN CHAMBER.—Trustee Despard, proposal.

IN COURT.—Executor O'Connor, final schedule.—R. W. P. Fitzgerald, do.—James Gorman, ditto.

Before EXAMINER (Mr. M'Donnell).

M. Roberts, vouch.—Trustee Campbell, rental.—G. Neddrie, do.—E. R. Mahony and others, do.—Administrator Plunkett, do.—A. Warnock, ditto.

FRIDAY.

Before EXAMINER (Mr. Dobbs).

Church Commissioners (Clonfert), rental.

Before EXAMINER (Mr. M'Donnell).

M. C. Osborne, vouch.—G. Craig, as to final notice.

SALES AT 12 O'CLOCK.

WILLIAM ARMSTRONG AND OTHERS, Co. Fermanagh.—2 lots.
T. N. UNDERWOOD, Co. Donegal.—2 lots.
G. J. SHEIL, Co. Westmeath.—1 lot.
JOHN KIDD, City of Dublin.—1 lot.
SIR JOHN KING, City of Dublin.—1 lot.
E. J. COOPER, City of Dublin.—1 lot.
TRUSTEE REYNOLDS, Co. Galway.—1 lot.
TRUSTEE ROSINGRAVE, County Clare.—1 lot.
J. T. WALKER, City of Kilkenny.—5 lots.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patk. Kendal Reid	Prove debts	*Creagh, junr.*
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
Patrick Carew	do	*Sullivan*
Joseph Parker	Title and posting	*Oldham & Eaton*

Digitized by Google

TUESDAY.
Before the COURT, at 11 o'clock.

Potter and Gillman	1st public sitting	*Larkin & Co.*
Samuel Hawkins	Choose assignee & final examination	*Forsythe*
George Craig	Final examination	*Cronhelm & Co.*
Francis Cahir	do	*Dennehy*
Mary Clancy	do	*White*
Same matter	Examine witnesses	*White*
Cochrane & Lyons	Final examination	*Perry & Co.*
Bernard Finigan	do	*Cronhelm & Co.*
James Grierson	do	*Oldham & Eaton*
Alfred Parker	do	*Lett*
Patrick Hennessy	Take charge of Civil Service Building Society as proved	*Dix*
Sylvester Wallace	Application for certificate of conformity	*Scallan*
Michael Carroll	do	*Scallan*
Denis O'Gorman	do	*Scallan*
Judith Gannon	Motion	*Robinson*
P. E DeSerancourt	do	*Bloomfield & Benner*
Harley Kough, Brothers	do	*Casey & Clay*
Miles Roland	Examine witnesses	*Meldon & Sons*
John Baird	Audit	*Lett*
Thomas Fitt	Audit and dividend	*Daniel*
Joseph Parker	do	*Oldham & Eaton*

Before the CHIEF REGISTRAR, at 12 o'clock.

Arthur Noble	Prove debts and vouch	*Rosenthal*
William M'Geary	Costs	*Smith*
James Grierson	Title and posting	*Oldham & Eaton*
Peter M'Breen	Reference	*Perry & Co.*
Peter Woods	Vouch mortgagee's act.	*Larkin & Co.*
Sarah Meglaughlin	Vouch assignee's acct.	*Larkin & Co.*
Sherlock & Rourke	Costs	*Perry & Co.*

THURSDAY.
Before the COURT, at 11 o'clock.

David Porter	Charge and discharge	*Larkin & Co.*

FRIDAY.
Before the COURT, at 11 o'clock.

Wm. James Lister	2nd composition sitting	*Molloy & Watson*
Same matter	Final examination	*Larkin & Co.*
Thomas Nolan	2nd composition sitting	*Scallan*
Francis Cusack	Final examination	*Colman & O'Brien*
Joseph Jermyn	do	*Hamilton & Craig*
George Rogers	do	*Tincler & Son*
Same matter	Examine witnesses	*Tincler & Son*
Michael Cullinan	Final examination	*Colman*
George Duncan	do	*Colman*
James Coffey	Audit and dividend	*Leachman*

Before the CHIEF REGISTRAR, at 12 o'clock.

John T. Manning	Vouch account	*Findlater & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Forde, John, Ballygar, county Galway, baker, grocer, and publican. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Mathews*, solr.

Kehoe, Andrew, Newtownbarry, Wexford, grocer. Sittings, *Tuesday, February* 3, and *Friday, February* 20. *Hamilton & Craig*, solrs.

O'Donnell, Walter, of Waterford, county Waterford, draper, trading as Walter O'Donnell and Company. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Findlater & Co.*, solrs.

Maguire, Charles and Patrick, trading as C. Maguire and Co., High street, Omagh, county Tyrone, drapers. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Larkin & Co.*, solrs.

M'Loughlin, James, 13, Upper Stephen-street, in the city of Dublin, shoemaker. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Walsh*, solr.

M'Nulty, Anthony, of Swinford, county Mayo, grocer, shopkeeper, and seedsman. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Hamilton & Craig*, solrs.

Roland, Miles, Woodlawn, Galway, hotel-keeper, grocer, and farmer. Sittings, *Friday, February* 6, and *Tuesday, February* 24. *Meldon & Sons*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JANUARY Fri. 9	Sat. 10	Mon. 12	Tues. 13	Wed. 14	Thur. 15
	Government.						
—	3 p c Consols	92⅛	—	91⅞–2	91⅞	91¾⅞	91¾⅞
—	3 p c Reduced	—	—	90⅝	—	—	—
—	New 3 p c Stock ..	90⅝	90⅝¾	90⅝¾	90¾	90⅝¾	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trafble. at	—	—	107⅝	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	101⅝	102	102⅝	102⅝
	Banks.						
100	Bank of Ireland ..	—	301	302	302½	303½	—
25	*Hibernian Banking Co.* ..	56¾⅞	57	57	57⅛	57⅛	—
20	*London and Westminster* ..	—	—	70	70	—	70
3½	*Munster Bank (Limited)*	8¾⅞	—	—	8⅞	8⅞	—
3½	*Do. New at £8 premium*	—	—	8⅝	8⅛	—	—
30	*National Bank*	58	58⅛⅜	58⅛	58⅛	58⅛	—
15	*National of Liverp'l (Ltd)*	13¾⅞	—	—	13⅞	—	—
25	*Provincial Bank* ..	95	—	—	—	—	—
10	*Royal Bank*	28⅛¼⅜	—	28⅜½	28⅛	28⅛⅜	28⅛
	Steam.						
100	City of Dublin	—	—	—	105¼½	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	56	x d	—
10	Dundalk (Limited) ..	—	—	—	8¼	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	14/6	—
7	*Cape Copper M. Co. (lit'd)*	—	—	—	29¼	29¼	—
7	*Mining Co. of Ireland (lit'd)*	5⅜	5⅛	5⅛	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A ..	—	9⅛⅜	—	9⅛	—	9⅜
10	B ..	9⅛	—	—	9⅛	9⅜	—
10	No. 2 C ..	9⅛	—	—	—	—	—
8½	*Dublin Tramways* ..	—	7⅝	—	—	—	7⅞
100	Grand Canal	—	—	—	52	—	—
25	*National Assurance* ..	—	—	47⅛	—	—	47⅞
9-4-7	*Patriotic Assurance* ..	—	—	10⅛¼	10⅛	10⅛	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	69	—
100	Dublin and Belfast Junct.	90¼	—	90¼	—	—	—
100	Dublin, W'klow, & W'ford	-	—	76⅞	77	77⅞	78⅛
20	*Do.—issued at £35* ..	—	—	—	22½	—	—
100	Gt. Southern and Western	113½	113¼½	113⅜½	114⅛	114¼½	114½
100	Midland Gt. Western ..	92¼½	92⅝	92½	92	91¾	91⅞
50	Waterford and Limerick ..	—	—	—	—	33⅛	34⅛
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	93	—	—
6½	Cork & Bandon, 5½ p c ..	—	—	—	—	—	—
5	Do. do. 4 p c	3⅜	—	—	—	—	—
100	Dublin & Meath—1st, 5 p c	—	—	50	—	—	—
50	D., W., & W., 5 p c (1860)	—	54½	—	—	—	—
50	Do. do. (1865)	—	—	53	53	—	53
100	Gt. South'n & West'n 4 p c	99½	—	99½	—	—	99½
100	Mid. Great Western, 5 p c	—	—	—	—	111	111
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	98	—	98	—	98	—
50	Do., new redeemable 5 p c	—	50½ f	—	—	—	—
	Railway Debentures.						
—	Dublin & Meath 4½ p c ..	—	—	—	89½	—	—
—	Gt. South'n & West'n, 4 p c	—	-	—	98⅝ f	—	—
—	Irish Nth Westn 1st C 5 p c	100	—	—	—	—	100
—	Midland Gt. West'n, 4½ p c	—	—	99½	—	—	—
—	Do., 4½ p c ..	—	—	—	—	103	—
—	Waterford & Central 5 p c	—	—	—	—	99	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—January 29th, and February 12th, 1874.
Account Days—January 30th, and February 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers Offices close at 1 p.m.

LEGAL POSTINGS:

LANDED ESTATES' COURT.

COUNTY OF CARLOW.

SALE,

On FRIDAY, the 6th day of FEBRUARY, 1874.

In the Matter of the Estate of Elizabeth Eleonora Widdup, Owner and Petitioner.

TO BE SOLD BY AUCTION, before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Inns'-quay, In the City of Dublin, On FRIDAY, the 6th day of FEBRUARY, 1874, At the hour of One o'clock in the afternoon, In One Lot,

The Lands of Ballyshancarragh, being part of the Manor of Clonegal, otherwise Huntingdon; the Lands of Crowesgrove, Lackabeg, and

Kildavin Village, containing in the whole 690a 0r 20p statute measure, situate in the Barony of Saint Mullins, and County of Carlow, held under fee-farm grant dated the 13th day of December, 1864, made in pursuance of the provisions of the Renewable Leasehold Conversion Act, subject to the yearly fee-farm rent of £406 3s 1d, and producing a profit-rent of £212 2s 11d per annum.

Dated this 10th day of December, 1873.

C. E. DOBBS, Examiner.

J. D. MELDON & SONS, Solicitors having carriage of Sale.

DESCRIPTIVE PARTICULARS.

The Estate to be sold is enclosed in a ring fence. The Lands are of good quality, well watered, judiciously divided and fenced, situate within a short distance of the excellent market towns of Tullow, Carlow, and Newtownbarry. The property is admirably situated as to roads, rivers, and rivulets, and divided into fields of all sizes, well fenced.

For Rentals, Maps, and further particulars, apply to the Registrar's Office, Landed Estaes' Court, Dublin;

CHARLES TAYLOR, Esq., Solicitor for the Owner, 22 Harcourt-street, Dublin; and 14 High-street, Wexford;

FREDERICK SUTTON, Esq., Solicitor, 22 Harcourt-street, Dublin;

MARK C. BENTLEY, Esq., Solicitor, 32 Harcourt-street, Dublin; or to

JAS. DILLON MELDON & SONS, Solicitors having carriage of the Sale, 14 Upper Ormond-quay, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MAYO.

SALE,

On FRIDAY, the 30th day of JANUARY, 1874.

In the Matter of the Estate of Charles Joseph O'Donel and John Nolan Ferrall, Esquires, Trustees for Sale under the Will of Judith Mary O'Donel, Deceased, Owners and Petitioners.

TO BE SOLD, On FRIDAY, The 30th day of JANUARY, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, At the Hour of Twelve o'clock noon.

In Two Lots,

The following Valuable Fee-farm Estate, situate in the Barony of Gallen, and County of Mayo:—

LOT 1.

That part of the three divided fifth parts of the Lands of Lisadoran, known on the Ordnance Survey as Knockavilla, and part of Lisdurraun, containing 205a 1r 33p statute measure, held under fee-farm grant, dated 24th July, 1867, and subject, in conjunction with Lot 2, to the fee-farm rent of £10 3s 1d, with 12d per pound Receiver's fees. This Lot produces a net annual rental of £83 2s 11d, and will be sold primarily, subject to the entire fee-farm rent and Receiver's fees, and bound to indemnify Lot 2 from payment thereof. The Ordnance Valuation is £54 15s 0d.

LOT 2.

The other part of said three divided fifth parts of said Lands of Lisadoran, known on the Ordnance Survey as part of Ballintemple, containing 142a 1r 16p statute measure, held under said fee-farm grant, and subject, in conjunction with Lot 1, to said fee-farm rent and Receiver's fees. This Lot produces a net annual rental of £61 14s 3d, and will be indemnified against payment of said fee-farm rent by Lot 1. The Ordnance Valuation of this Lot is £48 10s 0d.

Dated this 19th day of December, 1873.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The foregoing Lands are situate within one mile of Swinford, five of Kiltimagh, five of Foxford, seven of Charlestown, and nine of Ballyhaunis, all first-class market towns and fairs.

There is a station on the Great Northern and Western Railway at Foxford.

The lands are of good quality, in the hands of industrious tenants, and well circumstanced as to roads, turbary, and water.

There is excellent fishing in the River Moy, which bounds the lands of Ballintemple on the North West.

The lands are not subject to any arterial or other drainage charge, and will be sold discharged of quit rent.

Proposals for purchase by private contract will be received by the Solicitor having carriage of Sale, and submitted to the Court for approval, up to the 17th day of January, 1874, after which day no private offer can be entertained.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inns-quay, Dublin;

Mr. PATRICK KEANE, the Agent over the Estate, Kilduff, Swinford; and to

JOHN R. COLFER, Solicitor having carriage of Sale, 17 Merchant's-quay, Dublin.

IN THE COURT OF BANKRUPTCY (IRELAND).

SALE OF

VALUABLE LEASEHOLD PREMISES, IN THE CITY OF DUBLIN.

In the Matter of Patrick Nolan, of South Great George's-street, in the City of Dublin, Draper, a Bankrupt.

TO BE SOLD BY PUBLIC AUCTION, On TUESDAY, The 27th day of JANUARY, 1874, At the Hour of Twelve o'clock, By Order of the Court,

All the Estate and Interest of the Bankrupt, his Assignees and Mortgagees, to the Dwelling-house and Premises known as No. 61, South Great George's-street, and City of Dublin, held under two Indentures of Lease, the one dated the 8th day of September, 1845, for 30 years, from the 29th day of September, 1845, and the other dated the 30th day of May, 1871, for 55 years, from the 29th day of September, 1875, at the yearly rent of £60, payable quarterly.

A Statement of Title and Conditions of Sale, subject to which the Premises will be sold, is filed in the Office of the Court, where same can be seen.

W. PERRIN, Chief Registrar.

Dated this 8th January, 1874.

For further particulars, apply to

MICHAEL LARKIN & CO., Solicitors having carriage of Sale, 51, Dame-street;

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay;

THOMAS DILLON, Auctioneer, 25 Bachelor's-walk.

LANDED ESTATES' COURT, IRELAND.

COUNTIES OF ARMAGH AND TYRONE.

SALE,

On FRIDAY, the 6th day of FEBRUARY, 1874,

In the Matter of the Estate of Robert King, Owner; Thomas Hewat, Public Officer of the Provincial Bank of Ireland, Petitioner.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, Dublin,

On FRIDAY, the 6th day of FEBRUARY, 1874, At Noon, The following Lots:—

LOT 2.

A perpetual Yearly Rent of £14 17s 1d, payable out of part of the Lands of Ballycullen, containing 44a 3r 5p, statute measure, situate in the Barony of Armagh, and other part of the said Lands of Ballycullen, containing 100a 0r 14p, statute measure, said Lot producing a Profit Rent of £153 19s 4d, said perpetual Yearly Rent and Lands being held in perpetuity under the Church Temporalities Act.

LOT 3.

Part of the Lands of Moygashill, otherwise Moygashel, containing 25a 0r 32p, statute measure, in the Barony of Middle Dungannon, and County of Tyrone, held under lease, dated 31st December, 1840, for lives renewable for ever, and producing a Profit Rent of £39 12s 1d.

N.B.—Lot 1 has been sold.

Private Proposals will be received by the Solicitors having carriage up to the 19th day of January, 1874, and, if approved of, submitted to the Court.

Dated this 12th day of December, 1873.

J. E. MADDEN, for Examiner.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; to

The PROVINCIAL BANK OF IRELAND at Dublin, Belfast, Armagh, and Dungannon; or to

LONGFIELD, DAVIDSON, & KELLY, Solicitors having carriage of Proceedings, 62 Upper Sackville-street, Dublin; and Dungannon.

DESCRIPTIVE PARTICULARS.

LOT 2.

The Lands of Ballycullen are situate within about five miles of the City of Armagh, and three from Trewmount and Moy Station of the Portadown, Dungannon, and Omagh Junction Railway, and lie between the Post Towns o Benburb and Moy. There is a plentiful supply of turbary, and the Lands are intersected by the Ulster Canal, adjoining the River Blackwater.

LOT 3.

The Lands of Moygashel are situate about one and a-half miles from the Town of Dungannon. There is a Beetling Mill, Workers' Houses, walls of Scutch Mill, and other buildings thereon. There are twelve good Beetling Engines in the Mill, with room for eight more. The water power, which drives a turbine wheel. lately erected, is good, and generally available for eight or nine months in the year. There is also an excellent horizontal Steam Engine of sixteen horse power, sufficient to drive twenty-four Beetling Engines, extensive Drying Lofts, and Capping Rooms, fitted up in the best manner, and Eight Houses for workmen.

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF CAVAN AND CITY OF DUBLIN.

In the Matter of the Estate of Charles Langdale, Esq., Sir John Esmonde, Bart., and others, Owners and Petitioners. And in the Matter of the Estate of Frances Maria Horne and others, Owners: And the Partition Act, 1863.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, On FRIDAY, The 13th day of FEBRUARY, 1874, In Thirteen Lots, The following Valuable Property:—

COUNTY OF CAVAN RENTAL,

LOT 1.

The Lands of Derrylane, containing 57a 3r 35p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett rental of £36 9s 7¾d. The Government Valuation of this Lot is £40 5s 0d.

LOT 2.

The Lands of Garranrush, known on the Ordnance Survey as the Lands of Garryross, containing 332 acres and 10 perches statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £248 11s 0d. The Government Valuation of this Lot is £224.

LOT 3.

Part of the Lands of Barecony, known on the Ordnance Survey as Bareconny (Grattan), containing 44a 2r 15p statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £33 3s 3d. The Government Valuation of this Lot is £29 5s 0d.

LOT 4

Consists of part of the Lands of Ballycroft, known on the Ordnance Survey as Lower Lackan, containing 70a 3r 25p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental (paid by one tenant who holds under a Lease) of £73 2s 10d. The Government Valuation of this Lot is £69.

LOT 5

Consists of other Part of the aforesaid Lands of Lower Lackan, containing 262a 0r 26p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £120 0s 9d. The Government Valuation of this Lot is £123 12s 0d.

LOT 6

Consists of Part of the Lands of Leggiwitt, known on the Ordnance Survey as Legawell, containing 114a 2r 38p statute measure, situate in the Barony of Clonmahon and County of Cavan, and producing a nett annual rental of £73 14s 7d. The Government Valuation of this Lot is £71 0s 0d.

LOT 7

Consists of Part of the Lands of Leganny, known on the Ordnance Survey as the Lands of Legaginny, containing 178a 3r 21p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £67 10s 3d. The Government Valuation of this Lot is £93 16s.

The Lands of Derrylane, Lacken Lower, Legaginny, and Legaweel, are situate within one mile of Crossdoney, a station on the Midland Great Western Railway, and 4 miles from the Town of Cavan.

The Moorland on Legaginny and Legaweel is capable of much improvement by a small outlay. The Lands are cheaply set, the tenants industrious, and pay their rents with punctuality.

The Lands of Garryross and Barconey (Grattan) are situate within two miles of Oldcastle, a station on the Dublin and Drogheda Railway, and a good fair and market town. The Lands are of nice quality. The tenants are industrious, and pay their rents with punctuality.

RENTAL OF THE CITY OF DUBLIN PROPERTY.

LOT 1.

Houses and Premises, Nos. 72, 73, 74, 76, 77, 78, and 79, Queen-street, and Nos. 1, 2, and 3, Tighe-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject, in conjunction with Lots 2 and 3 on this rental, to a rent-charge of £6 12s 4d sterling. This Lot will be sold primarily, liable to the entire of the rent-charge of £16 12s 4d, and bound to indemnify Lots 2 and 3 from payment of any portion thereof. This Lot produces a nett annual rental of £70 12s 3d, and the Government Valuation is £127.

LOT 2.

House and Premises, No. 75 Queen-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rental of £25. The Government Valuation is £22.

LOT 3

Consists of the Houses and Premises, Nos. 71 and 72 Queen-street, and Nos. 1, 2, 3, 4, and 5 Hendrick-street, in the Parish of Saint Paul, and City of Dublin, held in fee, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rent of £39 13s 10½d. The Government Valuation is £84 0s 0d.

LOT 4

Consists of the Houses and Premises, Nos. 71, 72, 72½, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90, Cork-street, and Cozy Lodge and Vauxhall Lodge, Cork-street, and Houses and Premises, 48 Marrowbone-lane, all in the Parish of St. Catherine, and City of Dublin, held in conjunction with Lots 5 and 6 under a Lease for lives renewable for ever, and subject to the yearly rent of £46 3s 1d, and producing a nett annual rental of £42 16s 10½d.

This Lot will be sold subject to the entire head rent, and bound to indemnify Lots 5 and 6 against the payment of any portion thereof. The Government Valuation is £187.

LOT 5.

Consists of the House and Premises, No. 73 Cork-street, in the parish of St. Catherine, and city of Dublin, held in conjunction with Lots 4 and 6 under Lease for lives renewable for ever, subject to the rent of £46 3s 1d, and producing a nett annual rental of £44 15s per annum. The Government Valuation of this Lot is £31 10s. This Lot will be sold indemnified against the payment of any portion of the head rent of £46 3s 1d by Lot 4.

LOT 6.

This Lot consists of Houses and Premises, Nos. 46 and 47 Marrowbone-lane, situate in the parish of St. Catherine, and city of Dublin held in conjunction with Lots 4 and 5 under Lease for lives renewable for ever, and subject to the rent of £46 3s 1d, but indemnified against the payment of any portion thereof by Lot 4.

This Lot produces a net annual rental of £29 15s. The Government Valuation is £31.

A draft Fee-Farm grant, in lieu of the Lease for lives renewable for ever, under which Lots 4, 5, and 6 are held, has been approved of on behalf of grantors, and will be executed to the purchaser at the expense of the estate.

The rent in the grant will be £48 10s 2d.

Dated this 20th day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates' Court; or to

Messrs. WILLIAM ROCHE & SON, Solicitors having the carriage of the Proceedings, No. 4 Stephen's-green North, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

IN THE CITY OF DUBLIN.

In the Matter of the Estate of Charles Toole, Owner and Petitioner.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Dublin,

On FRIDAY, the 13th day of FEBRUARY, 1874, At the hour of Twelve o'clock noon, In Three Lots, The following Valuable Property:—

LOT 1.

The House and Premises, No. 2 College-street, in the Parish of St. Mark and City of Dublin, held in Fee-simple, the estimated value of which, according to the valuation of Messrs. Brassington and Gale, is £120 per annum.

LOT 2.

The Houses and Premises, No. 1 College-street, in the Parish of St. Mark and City of Dublin, held under Lease for Lives renewable for ever, and last renewal thereof, all the lives in which are in being, subject to the yearly rent of £9 sterling, and to a perpetual annuity of £46 3s 1d.

The Premises have been valued by Messrs. Brassington and Gale, at the annual rent of £80, which would leave a net annual value of £24 16s 11d. Immediate possession will be given to a purchaser.

LOT 3.

House and Premises, No. 41 Westmoreland-street, in the Parish of St. Andrew and City of Dublin, held under Lease for Lives renewable for ever, and last renewal thereof, subject to the yearly rent of £28 5s 7½d.

These Premises have been valued by Messrs. Brassington and Galef at the yearly rent of £200, which leave a net annual rental o, £171 14s 4½d. Immediate possession will be given to a purchaser.

The aforesaid premises are situate in the leading thoroughfare, and best part of the City of Dublin for business.

For the last seventy years a very extensive and lucrative seed business has been carried on on the premises, which are in thorough repair. The premises, 41 Westmoreland-street, consist of large shop, having frontages in Westmoreland-street and College-street, and are at the corner of the street facing the Bank of Ireland; the upper part of the house contains eight large rooms, which are well suited for either a dwellinghouse, or could be let with great advantage and profit as offices. There is also a good basement story to the premises. Immediate possession will be given.

The premises, No. 1 College-street, are well suited for business purposes, and contains an office on street floor, four rooms over, and a basement story. Immediate possession of this house will be given.

The premises, No. 2 College-street, consist of a good shop and back offices, and upper portion consists of eight large rooms, used at present as seed stores, well suited for storage of all kinds of goods. Immediate possession of the upper and basement stories will be given to the purchaser, and the tenancy of the shop and back office, which are at present let at £120 per annum, will terminate on the 27th day of May, 1874.

Dated this 23rd day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates Court; or to

Messrs. WM. ROCHE and SON, Solicitors having carriage of Sale, 4 Stephen's-green, North, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, January* 17, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JANUARY 24, 1874. No. 365.

THE PROPOSED BILL FOR REFORMING THE COUNTY COURTS.

PENDING the publication of the last of the series of articles which appeared in the IRISH LAW TIMES, in November and December, on the County Courts, we were informed that a Bill was in course of preparation, for the purpose of carrying out the objects so strenuously recommended by us. We thought it right, accordingly, to abstain from treating further on the subject until we could ascertain the nature and extent of the proposed measure, and whether it was calculated to satisfy the anxious and well-grounded anticipations of that large and influential class of the community who have taken for so long such a deep interest in the question. We have recently been informed, on good authority, that these anticipations are likely to be disappointed. We have not seen the draft of the Bill, which, we understand, has been completed. We believe the members of the Law Society have not seen it. We know that it has not been submitted to the Bar, through the library, and at this late period, immediately before the assembling of Parliament, this important measure, fraught with such serious consequences to the profession and the public, has not been referred to either branch of the profession for consideration or suggestion. We understand that it proposes to confer an equitable jurisdiction to the extent of £300, to increase the common law jurisdiction from £40 to £50, and to confer an additional bankrupt, probate, and administrative jurisdiction. That the Chairmen are not to be interfered with at present, but a power of consolidating some of the counties, in the event of death or retirement of some of the existing Chairmen, is contemplated—thus doubling the duties on the successors, with or without any sufficient additional remuneration, as the Legislature may think advisable. That no change is to be made in the offices of Clerk of the Peace and Crown Solicitor, or any other part of the present existing staff of the Quarter Sessions and Civil Bill Courts, and that, with the exception of the proposed extension of the jurisdiction, all things are to remain as hitherto.

We can scarcely believe it possible that public opinion in Ireland is so feeble and contemptible in the estimation of the Legislature as this proposed measure would imply. At public meetings, in learned societies, through the columns of the press, in professional and in private circles, the necessity for more complete changes, and a nearer approximation to the County Courts, as established in England, has been canvassed and conceded. The question is settled in the opinion of the public, and no one doubted the certainty of the long-looked-for concessions. But what do we hear is the lame and halting measure that is about to be thrown to what has been stigmatised "the Irish Cerberus?" A Bill increasing the duties of the Chairmen and their Courts, conferring, or rather burthening, them with new jurisdiction, requiring an acquaintance with the principles and practice of an important and difficult branch of the law, hitherto unadministered by them; opening a door for an immense increase of business in what may be called the hitherto latent litigation of the country, and yet leaving the staff to whom this important increase of duty is to be committed in the same condition in which it has heretofore been. It is simply impossible that a measure of this character can work. In the interest of both the profession and the public we exclaim against any timid and piece-meal legislation—any short-sighted policy. We require and we ask for a remedy suited to the grievance. In the name of the Civil Bill practitioners, in the interest of the Chairmen themselves, but, above all, in the interest of the public, we require that some more worthy concession should, at length, be made to their patient and long-continued forbearance. We hope our remonstrance will not pass unheeded; if it should, we shall, nevertheless, consider it our duty, as the humble organ of professional opinion in this country, to bring the matter forward again, in the hope of attracting the attention of those who are both willing and able to have its defects exposed, if not remedied. In the meantime we call on every professional man who feels an interest in the subject and an anxiety for the welfare of the country to exert himself towards the same end. We hope every Irish member will look to this Bill, and watch its progress. This is a subject with which every country gentleman must be familiar. Although of a legal character, it is still easily comprehended by the lay portion of the community, and we emphatically say the fault will be their own if they do not take advantage of this opportunity, and obtain, if possible, a beneficial and practicable measure. For our part, we are willing to give our aid to any movement calculated to remedy the mischief, and shall be happy to receive, and anxiously consider, any suggestions we may receive on the subject.

THE PETITIONS OF RIGHT (IRELAND) ACT, 1873.

OUR Correspondence, in the present issue, includes a communication from Mr. Butt, in reference to a question mooted in our former paper (7 IR. L. T. 532) on the recent Petitions of Right Act. We there pointed out an error which appeared to have crept into the Act in the interpretation clause, which provided that the word "Court" should be taken to mean Court of "Common Law," instead of "Court of Common Law or Equity," and we are happy that our observations have been the means of evoking a confirmation, on such high authority as that of Mr. Butt, of the opinion to which we inclined, that the embarrassment occasioned might be surmounted by construction, although, no doubt, it opens up a nice question. Upon the question thus involved we might refer (in addition to the authorities collected in 2 Inst. 257) to the case of *in re Millar*, 2 J. & Sy. 273, where it was held that the Acts 7 Will. 3, 21, and 9 Will. 3, 9, did not extend to the Court of Queen's Bench, in consequence of which the 29 Geo. 2, 14, was passed; and also to the *Queen* v. *O'Connell*, where it was held that the provisions of 1 & 2 Vic., 37, applied to the Queen's Bench. Most certainly, it would seem to defeat the spirit of the Petitions of Right Act—the first petition under which, *O'Grady* v. *The Queen*, has just been presented in the Court of Queen's Bench—were it to be governed by the literal rendering of the interpretation clause. And we may add that, especially as regards a measure of its particular character, it were to be regretted if the jurisdiction of the Court of Chancery were excluded or its application impeded. Indeed, the

Digitized by Google

very origin and progress of equity jurisdiction is connected with petitions of right. It appears, at least as far back as King Edgar, that the Kings of England exercised a power of moderating the *summum jus* arising from the rigour of the law; and, in the time of Edward I. and afterwards, this power was exercised on express petition to the King, whom the Chancellor usually assisted. Sometimes, during the absence of the King (very common for many successive reigns, during their possession of duchies and fiefs in France, and the crusades in Palestine) petitions were referred to the Chancellor alone; and at length they were regularly delegated to him. The form and language of Bills still present an indication of their original—the petition to the King. And it is satisfactory to find now that it is more than probable that the House of Lords have, fortunately, failed in introducing a *fatal* error into the 36 & 37 Vict. c. 69, although their intervention has succeeded in producing a certain degree of confusion. In conclusion, we would express our anxiety that no further time may be allowed to pass without framing the General Rules under the Act; and we may observe that in one case, already, we happen to be aware, considerable inconvenience has been occasioned by the absence of General Orders.

THE COURT OF EXCHEQUER.

THE question, whether or not the number of Judges of the Court of Exchequer should be reduced, is still undetermined, notwithstanding the earnest expression of public remonstrance which the mere surmise of a possible reduction has evoked. This procrastination on the eve of the After-Sittings and Circuits is deplorable. On Thursday and Friday, last week, the Court of Exchequer, sitting in banco, instead of consisting of the constitutional number of four Judges, was represented by a single Judge, whose decisions will be binding as precedents, not only in his own Court, but in the other fully constituted Courts having co-ordinate jurisdiction. It is due, however, to Baron Dowse to say that he did not shrink from the responsibilities, thus onerous (even though it happened that the cases pending were unusually few), cast upon him by the exigency of circumstances; and, as he has been misrepresented, we here print the statement on the subject made by him at the rising of the Court on Friday:—"I sat yesterday for the Full Court, as the Full Court, and I disposed of all the motions that were before the Court as the Full Court. The cases in the list were three in number. When I arrived at the cases in the list I never intended—and no sensible man would suppose I intended—to suggest that I should hear the case of Dysart *v.* Montgomery, part heard by my brothers Fitzgerald and Deasy; and I never said one word about the case in that respect, nor Gowan *v.* Wheeler for the same reason. No such proposition was made. There was only one other case in the list. The counsel in that case were not present, and I understood when I came into Court that they would not be ready, and therefore the case was never mentioned. I state this on public grounds, and not on any individual ground, for I am so much accustomed to misrepresentation that I do not care what anybody says of me on the Bench or off it. I disposed of all the motions on the list yesterday for the Court of Exchequer. There were only three cases for argument; two of these were part heard by other members of the Court and myself. In the other the parties were not ready, and therefore the Court rose. If people want to make political capital of what occurred in this Court, they are not to put words into my mouth that I did not use. I will not permit it. I am ready now to dispose of any other case. The only thing is that my brother Deasy will be here to-morrow, and it might be as well not to go into any case not likely to be finished to-day. Finally, just let me say if gentlemen report what takes place in this Court, they ought to report it correctly, and if they are not present here, they ought to be sure their informants know what they are talking about."

RECENT CASES AFFECTING SOLICITORS.

There are two cases in Chancery in the current number of our Reports affecting solicitors, the first of which will be applicable to many suits; while the second, we hope, will form a precedent but rarely quoted. In *Hartland* v. *Murrell*, before the Lord Chancellor (43 Law J. Rep. (N.S.) Chanc. 94), there had been a foreclosure suit; a decree for sale; several sales; payment of the proceeds of sale into Court; application of the proceeds to the discharge of principal and interest due on the mortgage; order for taxation of costs of all parties as between solicitor and client, including mortgagee's expenses, and for payment of all such costs and expenses out of the stock representing the proceeds of sale; and an order for the division of the residue among the persons entitled to the property. There were parties severally interested in three undivided shares of the property. Two owners of such shares were mortgagors; the third merely concurred in the sale. The solicitors for the plaintiffs included in the bill of costs charges for interest on disbursements made by them in carrying out the sales "as moneys disbursed for their clients." The claim was made under 33 & 34 Vict., c. 28, s. 17, as for "interest on moneys disbursed for clients." But the taxing-master disallowed the item, because the fund belonged also to other persons. The Lord Chancellor upheld the ruling of the taxing master, but without costs. It was contended, in argument, that the Act was not retrospective, and did not apply to disbursements made before July 14, 1870. But on this important point his Lordship offered no opinion.

The other case to which we refer is *Harvey* v. *Hall*, 43 Law J. Rep. (N.S.) Chanc. 95. There an order had been made on a solicitor to pay a sum of money with certain costs to the receiver in the cause. The order was endorsed with the usual threats against property and person. It was disobeyed, and the sheriff seized under a *fi. fa.*; the solicitor undertook to pay the money by instalments, and the sheriff withdrew. The solicitor broke his undertaking, and a motion was made to commit him. The Vice-Chancellor refused to make the order, on the ground of interference with and departure from the terms of the original order. The moral of the case is obvious.—*The Law Journal.*

LEGAL EXAMINATION.—At the recent preliminary examination for attorneys' apprentices the following candidates were successful:—Mr. Tristram Curry, Londonderry (5th place); Mr. Charles S. Conway, Tuam; Mr. J. T. Evans Boyd, New Ross; Mr. Fras. Quin, Dublin; Mr. John M'Donnell, Roscommon; Mr. Wm. Creagh, Mallow; Mr. Henry Murray Rynd, Sandymount. We understand that these gentlemen were prepared by Dr. Mortimer, 26, York-street, of whose pupils 97 have passed on former occasions.

LEGAL CHANGES.—It is in contemplation—the suggestion coming from the Treasury—to reduce gradually the number of English county court judges and Irish assistant barristers, and to increase the present staff of resident magistrates in Ireland. Those county chairmen who retain their posts will be armed with more extended powers of jurisdiction, and all their time must be given to judicial duties.—*Correspondent daily paper.*

THE TICHBOURNE CASE.—Dr. Kenealy, the defender of the Claimant, is a Cork man. He was educated at Trinity, where he took his degree of B.A. in 1840. In the same year he was called to the Irish Bar, and went the Munster Circuit. Dr. Kenealy took his doctor's degree at an English University. He was called to the English Bar about 1845, and became a Q C. in 1868. He is the author of several volumes in prose and poetry. His most ambitious work—the "New Pantomine"—is dedicated to Chief Justice Cockburn.

Digitized by Google

RECENT DECISIONS.

MANCHESTER COUNTY COURT.

Tuesday, Jan. 6, 1874.

(Before J. A. RUSSELL, Q.C., Judge.)

M'GOVERN *v.* HINKEY.

Married Women's Property Act—Liability of married woman to be sued.

H., a married woman, carried on business at S., apart from her husband, and received no assistance from him. The property acquired in the business so carried on was admitted to be her separate property, under the first section of the Married Women's Property Act. She was sued for a balance of money due for goods supplied to her in the way of her trade.

Held, that the 11th section of the Act does not impose a liability to be sued, but only enables a married woman to maintain an action in her own name to recover earnings or other property declared by the Act to be separate property.

W. Mann, solicitor for the plaintiff.

Smith, solicitor for the defendant.

The plaintiff, John M'Govern, haberdasher, Union-street, Manchester, sued the defendant, Margaret Hinkey, draper, 95, Lord-street, Southport, for a sum of £15 12s., the balance of a debt of £35, which she had contracted with the plaintiff, and the remainder of which she had paid in instalments.

W. Mann, who appeared for the plaintiff, said the defendant was a married woman, living apart from her husband, supporting and maintaining herself by her own industry, and receiving no assistance from her husband, whom she had not seen for five years. The question which would arise in the case was whether she was liable for debts apart from her husband. She was carrying on a separate business of her own in Southport, and he might take it that she was carrying on that business in accordance with the first section of the Married Women's Property Act, and that all the property which she had become entitled to since she had been carrying on the business separately would be her separate property, held for her separate use, independently of her husband. She was, therefore, clearly possessed of property independently of her husband, and the 11th section of the Married Women's Property Act gave her the power to sue for any debts that might be owing to her in respect of that property. There was certainly no section in the Act imposing on a wife a liability to be sued in her own name, but he suggested that the fact of the Act having vested property separately in her and given her the exclusive control over it, implied a liability in her to pay debts in respect of that property or the business by which she acquired it. Taking it as a matter of contract, he contended that the fact of a husband allowing a wife to carry on business separate and apart from him impliedly conferred upon her a power to contract debts in her own name. It was clear that in equity a married woman might bind her separate estate by a contract, and it was a question whether she had not power to do so by law. This property in her business was vested in the defendant, and it was only a reasonable inference that a wife should be enabled to bind her separate estate by a contract.

Smith (of the firm of *Smith* and *Boyer*) argued that as far as the Married Women's Property Act was concerned, there was no implied liability such as that contended for, because if there had been any intention to set aside a long-established principle of law, there would have been an expressed provision to that effect. There was no question of separate estate in this case, and no pretence that the wife had pledged her separate estate.

His HONOUR said he was not aware that this question had ever been raised before. The defendant was a married woman, living separately from her husband and carrying on business separately from him, and the goods in respect of which she was sued were goods supplied to her in the way of her trade. Certain payments had been made on account of those goods, and she was now sued for the balance remaining due. In answer to the claim the defendant set up the plea of coverture, and the question was whether that plea was a good defence. It was perfectly clear that in common law it would be a good defence, for a married woman had no power to contract such a debt as that in question by the common law. But it was suggested that under the Married Women's Property Act, sects. 1 and 11, the liability contended for in the present case was imposed upon a married woman, not expressly, but by implication. From the language of the 1st section it struck him that it was clearly enabling. It gave a married woman the power to acquire property for her separate use, and it did not impose any liabity on her that she was not subject to before. By the 11th section a married woman was empowered to maintain an action in her own name to recover earnings or other property declared by the Act to be her separate property. That was clearly an enabling enactment, and such being the case the question was whether he was to infer that not only had this ability been created, but that a liability had been likewise imposed. Inasmuch as the statute did not impose any liability in respect to the property mentioned in sects. 1 and 11, the liability of the woman stood just as it did at common law. But did not the statute itself show that, in expressly making her, in sect. 12, liable in respect to debts contracted before marriage. He could not, therefore, go beyond the letter or the spirit of the Act, which was clearly enabling to a woman, but not rendering her subject to any liability except such as was expressly imposed upon her. He thought the liability of the defendant stood just as it did in common law, and she was not, therefore, liable in this action. He dismissed the case.

Smith, on behalf of the defendant, applied for costs, which were granted.

RIGHTS AND LIABILITIES OF FOREIGN PRINCIPALS.

In no less than three reported cases within the last few months has the attention of the Court of Queen's Bench been directed to an important rule, or rather exception, in the law of agency, which has been the subject of much controversy, both in this country and in America. It is a well-known rule that "where" (to use the words of Blackburn, J., in *Armstrong* v. *Stokes*, L. R. 7 Q. B. 603, 21 W. R. 54) "a person employs another to make a contract of purchase for him, he, as principal, is liable to the seller, though the seller never heard of his existence, and entered into the contract solely on the credit of the person whom he believed to be the principal, though in fact he was not." And, conversely, the undisclosed principal has the right to come forward and sue upon the contract, his rights and liabilities being co relative (see *Die Elbinger Actien-Gesellschaft* v. *Claye*, L. R. 8 Q. B. 316, 317). The expediency and justice of this doctrine has been doubted, but the rule of law is firmly established. In the three recent cases, however, to which we have referred, an important exception is stated to have been engrafted on this rule by the usage of trade. It is this: that where the principal resides abroad he does not authorise his agent here to create a privity of contract between himself and the other contracting party in this country, and therefore the foreign principal is *primâ facie* neither entitled to sue nor liable to be sued upon a contract of purchase effected at his request by his agent in this country. The distinction was adverted to in the leading case of *Thomson* v. *Davenport* (9 B. & C. 78). In that case the principal who was sought to be charged resided in Scotland, but, as the point had not been made at the trial at Nisi Prius, the judges in banc declined to take it into their consideration. Lord Tenterden, however, said that where a British merchant is buying for a foreigner, "according to the universal understanding of merchants, and of all persons in trade, the credit is then considered to be given to the British buyer, and not to the foreigner;" and Bayley, J., said, "There may be a course of trade by which the seller will be confined to the agent who is buying, and not be at liberty at all to look to the principal. Generally speaking that is the case where an agent here buys for a house abroad."

It is to be observed that in that case the question was treated as one for the jury (see per Lord Tenterden, at

Digitized by Google

p. 87); and that was the course actually adopted in *Addison* v. *Gandassequi*, 4 Taunt. 574. "I left it to the jury," says Mansfield, C.J. (at p. 580), "to say whether this was the common case of a merchant here buying for his correspondent abroad, on which he charged a commission, or whether it was the case of a factor buying goods for his principal." Thus the learned Chief Justice refers to two different states of facts, which he treats as distinct and well-known, in one of which goods are bought for and at the request of, but not on behalf of, a foreign merchant, and in the other are bought by his agent in the ordinary sense, and he leaves to the jury the question which was the state of facts shown to exist in the particular case.

In America, as we have said, the point has been the subject of considerable controversy. Mr. Justice Story, in his work on Agency, § 268, observes, "The general rule obtains that agents or factors acting for merchants resident in a foreign country (as, for example, in France or Germany) are held personally liable upon all contracts made by them for their employers, and this without any distinction *whether they describe themselves in the contract as agents or not.* In such cases the ordinary presumption is that credit is given to the agents or factors, and not only that credit is given to the agents or factors but that it is *exclusively given* to them to the exoneration of their employers." And elsewhere he speaks of this presumption as "almost amounting to a conclusive presumption of law." In the case, however, of *Kirkpatrick* v. *Stainer* (22 Wend. 244), in the Supreme Court of New York, while a minority of the judges adopt, the majority dissent from, these views, though Story, in subsequent editions of his work, adheres to them. The editor of Mr. Paley's work on Agency, in 1848, after discussing Story's note and the decision in *Kirkpatrick* v. *Stainer* and other American decisions, concludes, "The subject of the preceding note must be considered as still left in doubt and uncertainty." And the editor can only add "*non nostrum inter vos tantas componere lites.*" In 2 Kent's Comm., 630, however, Story's observations are cited with disapproval, and the decision in *Kirkpatrick* v. *Stainer* is relied upon as proving that "there is no distinction known to our" (*i.e.*, American) "law, between an agent acting for a foreign and domestic house." In the last edition of Story on Agency (1869) the learned editors have introduced words modifying the passage cited above, in accordance with the English decision of *Green* v. *Kopke* (4 W. R. 598, 18 C. B. 549), which is therein cited, and which was decided in 1856. In that case a sold note for 1,000 barrels of tar commenced "Sold *on behalf of Mr. Leonard Roos, Gottenburg,*" and was signed "H. Kopke, *as agent.*" The bought note commenced "Bought *through Mr. H. Kopke* of Mr. L. Roos, Gottenburg." It was sought to make Kopke personally liable on the contract, on the ground that Mr. Roos was a foreigner, but the decision was in his favour. "It is in every case," says Jervis, C. J., "a question of intention, to be gathered from the contract itself, and the surrounding circumstances. No doubt, as has been said by learned judges more than once, the fact of the principal being a foreigner is entitled to some weight; but there is no rule of law, as is suggested by counsel for plaintiffs, that the agent is in all cases liable personally where the principal is a foreigner residing abroad. It is in all cases a question of intention, capable of being explained by the custom or usage of trade, where any such can be shown to exist. There was, however, no usage proved here; nor could there be. It is ridiculous to suppose that an agent, for a mere commission of half per cent, would guarantee the performance of a contract for the sale of 1,000 barrels of tar." None of the learned judges gave any opinion as to whether the fact that the principal is a foreigner raises *per se* in ordinary cases a presumption that the agent makes himself personally liable on a contract to the exclusion of the foreigner—a presumption capable of being rebutted, and in that case rebutted by the fact that the written contract purported to be concluded on behalf of the principal by the agent *as agent* only. The judgment of Jervis, C.J., would seem to imply that, irrespective of usage specially proved, there is no such presumption. But in *Armstrong* v. *Stokes* (L. R. 7 Q. B. 598, 21 W. R. 52), Blackburn, J., says (p. 55), "The great inconvenience that would result if there were privity of contract established between the foreign constituents of a commission merchant and the home suppliers of the goods has led to a course of business, in consequence of which it has been long settled that a foreign constituent does not give the commission merchant any authority to pledge his credit to those from whom the commissioner buys them by his order and on his account. It is true that this was originally (and in strictness, perhaps, still is) a question of fact; but the inconvenience of holding that privity of contract was established between a Liverpool merchant and the grower of every bale of cotton which is forwarded to him in consequence of his order given to a commission merchant at New Orleans, or between a New York merchant and the supplier of every bale of goods purchased in consequence of an order to a London commission merchant, is so obvious and so well known that we are justified in treating it as a matter of law, and saying that in the absence of evidence of an express authority to that effect, the commission agent cannot pledge his foreign constituent's credit." Again, in *Die Elbinger Actien-Gesellschaft* v. *Claye* L. R. 8 Q. B. 313), Blackburn, J., says (p. 317), "Where a foreigner has instructed English merchants to act for him, I take it that the usage of trade, established for many years, has been that it is understood that the foreign constituent has not authorised the merchants to pledge his credit to the contract, to establish privity between him and the home supplier. On the other hand, the home supplier, knowing that to be the usage, unless there is something in the bargain showing the intention to be otherwise, does not trust the foreigner, and so does not make the foreigner responsible to him, and does not make himself responsible to the foreigner."

Lastly, in *Hutton* v. *Bulloch* (21 W. R. 809, L.R. 8 Q. B. 334) the Court cited the passage already quoted from *Armstrong* v. *Stokes*, and expressed their adherence to it.

Thus upon the substance of the matter there seems a great unanimity of opinion in English Courts. If the agent here signs the contract in such a form as to exclude personal liability he will not be liable on the contract, although his principal is foreign (*Green* v. *Kopke, ubi sup.*); his liability can only arise from his warranty of authority to bind his foreign principal. On the other hand, if he enters into the contract in a form which does not exclude his personal liability, there is no presumption arising from the fact that he acts for the benefit and at the request of a foreign merchant, that he pledges, or is authorised to pledge that merchant's credit. Further, from the fact that the principal carries on business abroad, there is a presumption that the agent is not authorised to pledge his credit, but the exact nature of this presumption is doubtful. According to the view expressed in *Thomson* v. *Davenport*, and acted on in *Addison* v. *Gandassequi* (by Mansfield, C.J.), and in *Elbinger Actien-Gesellschaft* v. *Claye* (by Mellor, J.), the question is for the jury, but the presumption is one on which the jury are entitled to act in the absence of rebutting circumstances. No decision or *dictum* contradicts this proposition. In *Armstrong* v. *Stokes* the point did not in the remotest degree present itself for decision, and Blackburn, J., expressly says that this presumption "was originally (and in strictness, perhaps, still is) a question of fact." In *Elbinger Actien-Gesellschaft* v. *Claye* the question was (as pointed out above) left to the jury; and Lush, J., observes that on the facts (including the fact which characterised *Addison* v. *Gandassequi*, that though the foreign principal was present at the making of the bargain, the English agent and the other contracting party treated one another as principals throughout) there was clear evidence in support of the *verdict*. And lastly, in *Hutton* v. *Bulloch* the whole matter was presented to the Court in the shape of a special case, on which the Court decided as a mixed question of law and fact. It is true that Blackburn, J., says in *Armstrong* v. *Stokes* (and the passage which contains this sentence is repeated in *Hutton* v. *Bulloch*), "we are justified in treating it as a matter of law, and saying that in the absence of evidence of an *express* authority to that effect the commission agent cannot pledge his foreign constituent's credit." We are, however, at a loss to reconcile these words, taken in their strict sense, with the previous admission that the question is one of *fact*; and we cannot imagine that the learned judge can ever have meant to say that under no circum-

Digitized by Google

stances will a jury be justified in *inferring* the existence of a power in the English agent to bind his foreign principal, or that a judge is bound to direct a jury, as a matter of law, that in the absence of *express* authority from the foreign principal no such power exists. It seems to us that it would be extremely perilous to lay down an absolute rule of law upon matters which ought to be governed by the usage of those concerned, and we cannot but think that the course adopted by Mansfield, C.J., and sanctioned by the Court in *Thomson* v. *Davenport*, and which has been acted on ever since, is a safer and more prudent way of dealing with the question.—*The Solicitor's Journal.*

HUSBAND AND WIFE AS CONTRACTING PARTIES.

We have before us two County Court decisions, which introduce a new element of uncertainty into contracts entered into between married persons and the public. To one of these cases we have referred on previous occasions, and shall advert to again presently. The second turns upon the construction of the first section of the Married Women's Property Act, being a decision of Mr. Stonor upon a case presenting a peculiar state of facts. Before criticising this judgment we must confess to a certain amount of diffidence. The cause was twice tried, and on both trials the learned Judge came to the same conclusion. His Honour recognised the difficulty of the case, but he laid down a broad proposition of law which is open to criticism, apart from the surrounding facts of the case. The proposition of law was this:—That it is not necessary to the separate carrying on of an employment, occupation, or trade by a married woman, within the meaning of the Married Women's Property Act, 1870, sec. 1, that she should live apart from her husband, but only that her husband should not interfere or take part in carrying on such business.

It is clearly impossible to say that this is unsound in point of law; but looking to the object with which the Act was passed, can it be taken to have been the intention of Parliament to protect married women living with their husbands? As some evidence that it was, the County Court Judge cites the 13th section, by which a married woman is made liable to maintain her husband. For such a purpose, however, this section is, we think, of no weight, but rather, on the contrary, contemplates a husband who, living apart from a wife having separate property, becomes chargeable to the parish. And what are the words of the first section? "The wages and earnings of any married woman, acquired or gained by her in any employment, occupation, or trade, in which she is engaged, or which she carries on separately from her husband," shall be taken to be her separate property. There is nothing in these words to indicate a necessity for the wife to be residing separately from the husband, and the little light which decided cases throw upon the question seems to support the view of the County Court Judge, and to make the question one of evidence on the facts of each particular case. In *Reg.* v. *Harrald* (L. Rep. 7 Q. B. 361; 26 L. T. Rep. N. S., 616), wherein it was sought to establish that the Married Women's Property Act had got rid of the political disabilities of married women, the Lord Chief Justice spoke of the Act as recognising and establishing the power of married women "to hold property." And Mr. Justice Hannen said, "The Married Women's Property Act was intended to protect married women in the enjoyment of the rights of property." These expressions, wide and general as they are, do not leave room, as it appears to us, for the suggestion that it is contrary to the intention of the Act that a married woman living with her husband should be incapable of holding or enjoying the rights of property.

But in a previous issue we observed that we consider that the decision of the learned Judge opened a wide door to fraud, because nothing can be easier than for a man to set his wife up in business in a house rented and occupied by him, and whilst she earns money by the separate carrying on of this trade, for him to obtain all the credit of being the owner of the business. Before dwelling upon this aspect of the questions, and the protection which creditors may throw round their transactions with a married woman, we will look at two cases which are cited in text books as throwing some light upon the construction of the first section of the Married Women's Property Act. *Petty* v. *Anderson* (3 Bing. 170) was an action of assumpsit for goods sold and delivered. The wife had carried on business on her own account during the imprisonment of her husband, and he having returned to live with her after his discharge, it was held that he was liable for articles furnished in this business with his knowledge, after his return, though the invoice and receipts were in the name of the wife, and she was rated to and paid the poor's and paving rates. At the trial Chief Justice Best, in summing up the case to the jury, made a point of the circumstance of the husband being in the house where the business was carried on, assisting in the business, and subsisting on the profits. He directed the jury to find for the plaintiff, on the ground that obviously the wife was the agent of the husband. On the argument of the rule for a new trial the same learned Judge said, "the husband took advantage of the trade that was carried on by living on the profits, and a legal presumption arises from that circumstance that the wife conducted the trade as his agent." He added, however, "undoubtedly the presumption arising from his presence might have been rebutted, but there were no facts in the present case to repel the presumption." The other judges, Mr. Justice Park and Mr. Justice Burrough considered the circumstance of the husband cohabiting with the wife conclusive, Mr. Justice Park citing *Langford* v. *Tilor* (1 Salk. 113), which went directly to that effect. Mr. Justice Burrough said, "the husband was present and assisting in the business, and, therefore, clearly liable to the plaintiff's claim." The other case to which we refer is *Smallpiece* v. *Dawes* (7 C. & P. 40), where the evidence fell short of establishing the agency of the wife, and an action against the husband for goods supplied to the wife in her business, carried on in his absence, failed. For nine years the husband was absent, avoiding a bankruptcy commission. During that period the wife carried on the business, and the husband was seen at the shop on only two or three occasions, and had been present at the marriage of two of his daugters in the neighbourhood. Baron Parke said that this evidence was insufficient, and that the defendant coming to his wife's house could only make him liable for goods supplied to her.

We think it may be fairly argued that if before the passing of the Married Women's Property Act it was a question in actions against the husband for supplies to a wife carrying on trade, whether the fact of his cohabiting with her fixed him with liability, it must arise with greater force, and so as to weaken the presumption of law against him since the passing of that Act. Before that Act, as Chief Justice Best said in *Petty* v. *Anderson*, the presumption arising from the circumstance of the husband cohabiting with his wife might be rebutted. The Act of 1870 almost disposes of the presumption of law. A married woman may hold and enjoy the rights of property. If she is trading in her own name, can it be said that there is any presumption of law at all that she is acting as the agent of her husband? We feel driven to the conclusion that the presumption is perhaps stronger that she is trading "separately," and that the onus lies upon the creditor of the husband seizing the goods claimed by the wife to show that she is trading as the agent of her husband. We candidly confess that we have arrived at this conclusion against our first convictions, and strongly against our inclinations, and in opposition to our idea of what is expedient.

Now the business carried on in the Croydon case was that of a lodging-house, and the case really set up on the part of the claimant was that whenever the husband interfered in the business he was acting as her agent. He paid money to one of the creditors, and requested him to give credit for it to his wife. The invoices of the tradesmen were also made out to the wife. This latter fact we do not think of much importance, as it is a common thing for tradesmen supplying necessaries to a household to send in the invoices to the wife. The rate collector had been told that the husband was tenant of the house, and had so entered it in his rate book, but the landlord was dead. The facts will be found more fully detailed and discussed in the judgment of the learned Judge; but we think that we

Digitized by Google

have said enough to show that there was a pretty even balance of evidence on the one side and the other—in favour of the presumption of the wife acting as the agent of her husband, and of the wife's separate trading. To which side under such circumstances ought the law to lean? We think clearly against the separate trading of the wife. A married woman has it in her power to make it plain and unmistakeable that she is trading separately, so as to secure the protection of the Married Woman's Property Act. Cohabiting with her husband, the law implies a liability on his part for necessaries supplied to her order; and the Married Women's Property Act does not render the wife liable to an action upon her contracts. It is hardly possible to conceive a state of things in which creditors could be more easily defrauded; and although we feel constrained to agree that the learned County Court Judge has taken an accurate view of the Act, we think the facts of each case should be narrowly watched, and the onus thrown heavily on the wife of establishing a separate trading.

The second County Court case to which we have referred was reported by us on the 20th ult., and carried the right of the husband to relieve himself from liability for necessaries supplied to his wife to limits which, supposing them to be reached by any existing authority, places persons dealing with married women in a position of peril. Notwithstanding *Jolly* v. *Rees*, it is considered an open question whether a husband by private prohibition can relieve himself from liability for necessaries supplied to the wife, more particularly where those necessaries are not personal to the wife but peculiar to the household. Contemplate for a moment this position of things:—A married woman living with her husband unable to pledge his credit for bread. A married woman carrying on business in a house occupied by her husband, the rent of which he pays, and to which he is rated; neither husband nor wife liable for goods supplied to the wife in such business. What an absolutely monstrous state of the law! We say, therefore, that it behoves judges to apply it with as much caution as possible, and to presume as much as they can against a state of circumstances which in effect is calculated to operate to the prejudice of those who have dealings with married women.—*The Law Times.*

THE NEW ENGLISH JUDGE.

The *Echo* says that Mr. Amphlett, the new Baron in the Court of Exchequer, is the son of the late Rev. R. H. Amphlett, of Wychbold Hall, Droitwich, and was born in 1809. He was called to the Bar at Lincoln's-inn in 1834, and in 1858 was appointed Q.C., and a Bencher of his inn. He was Chairman of the Worcester Quarter Sessions, and succeeded Sir Roundell Palmer, as President of the Legal Education Association. He is the first Equity lawyer who has been promoted to the Common Law Bench.

The *Times* observes that the Lord Chancellor seems determined to make his Judicature Bill a working measure, if it be possible. It is said that the vacancy in the Court of Exchequer caused by the resignation of Sir Samuel Martin will be filled by the appointment of a member of the Chancery bar; that Mr. Amphlett has been selected for the post, and has agreed to accept its duties. If this be so, the fusion has begun. A representative of equity will take his place among the judges of common law, and the union on the same bench of men trained on opposite sides of Westminster Hall—or, to speak more literally, Fleet-street—will be the first step towards the establishment of a common practice and the mingling together of practitioners hitherto separated. The easy manner in which, as the *Times* ventures to believe, Mr. Amphlett will discharge his new functions, will dissipate many fallacies, and will show that it is not difficult for a man in the front rank at the equity bar to serve with distinction as a common law judge. It must, indeed, be remembered that Mr. Amphlett's judicial career is destined to extend far beyond the few months during which the systems of procedure at common law and equity are to remain dissimilar, and that it will be his especial duty to promote the adoption of the practice which is to supplant both. The Lord Chancellor has shown himself, as might be expected, superior to prejudice in appointing a political opponent to the vacancy in the Exchequer. But it must be remembered that, while Mr. Amphlett is a Conservative politician, he is a reforming lawyer.

CONTRACTS BY CORPORATIONS AND THEIR AGENTS.

Very many cases have been decided upon the operation of the seal of a corporate body, in giving validity to its contracts, and the subject is one of considerable importance. In the case of *The Mayor and Corporation of Kidderminster* v. *Hardwick* (29 L. T. Rep. N. S. 611) the corporation let its market and tolls by auction. The defendant was the highest bidder. The conditions of letting were signed by the defendant and by the town clerk on behalf of the corporation. A month's rent in advance, according to the conditions, was paid by the defendant, and the keys of the markets were handed over to him, but he did not otherwise enter into possession. By a resolution of the corporation under their seal they approved the letting to the defendant. He, however, failed to complete by finding the necessary sureties, and the corporation brought an action against him to recover damages for breach of contract. We may say at once that the case was decided against the corporation on two grounds—(1) that there was no such part performance as would entitle the defendant to specific performance and the contract was void for want of mutuality; and (2) that the contract was not enforceable as not having been entered into by the corporation under seal, or by an agent expressly authorised under seal. The resolution was passed after the breach, and thus too late to operate as a ratification.

The point to be considered, and which this case so admirably illustrates, is this. As a bare proposition a corporation must contract by its corporate seal, or by its agent duly authorised under seal. This being wanting, under what circumstances will a corporation be entitled to the benefit of its contracts and to sue for the breach of them? The case under notice does not give us any new law, for we consider that the principle was fully established by the Court of Common Pleas in the *Fishmonger's Company* v. *Robertson* (5 M. & G. 131), where Chief Justice Tindal said that wherever there is a part performance, where the corporation have acted upon the contract and the other party has had the benefit of it, it does not lie in the mouth of either to deny it; the corporation cannot set up the want of a corporate seal, nor can the other side take advantage of it. The case of *The Corporation of Kidderminster* v. *Hardwick* is chiefly valuable in showing what is necessary to make a contract binding in the absence of the corporate seal.

In deciding the case, however, a dictum of Lord Chief Justice Tindal's was commented upon—a dictum which caused the Chief Baron to hesitate for a while in his decision. That dictum was expressed in the case which we have already cited, and was to the effect that by suing upon a contract made without the corporate seal, a corporation admits that it is binding upon them, and is estopped from disputing it, or setting up the objection in a cross action. We quite agree with the learned Chief Baron that merely suing upon a contract in itself void cannot estop a corporation from disputing its validity in a cross action, and the authority upon which Chief Justice Tindal based his dictum was a case in which the corporation had clearly estopped itself by a return to a *mandamus*, which was a matter of record. But even supposing Chief Justice Tindal's dictum to be good law, we do not see that it would make a contract void in its inception binding upon the other contracting parties, otherwise most assuredly ratification under seal after breach would have the same effect.

The judgment delivered by Baron Pollock puts the matter as clearly and as distinctly as it can be put. He regards the want of a seal in contracts by corporations (not being trading corporations) as something more than a technical objection, and that the rule by which the seal is required is one which it would not be at all safe to relax—adopting what fell from the court in *The Mayor of Ludlow* v. *Charlton* (6 M. & W. 815). And it is plain from the views expressed in all the cases decided upon this point that where corporations neither use their own corporate seal nor

Digitized by Google

authorise agents under seal to act for them, the law will imply nothing in their favour, but will look strictly to the facts to ascertain whether the party with whom they contract has so far performed his contract as to entitle the corporation to specific performance.—*Law Times.*

SALES BY TRUSTEES.

The question what protection trustees are entitled to claim from their character as such in acting as vendors of property, is one of general importance, which is usefully illustrated by a recent case in which Vice-Chancellor Malins and the Lords Justices differed in their views—as unfortunately too frequently happens. In the court below the case of *Dance* v. *Goldingham* is reported 28 L. T. Rep. N. S. 391, and in the Lords Justices Court, 29 L. T. Rep. N. S. 166. We may mention that the case is additionally interesting by reason of some observations of Lord Justice James on the costs incurred in consequence of reckless allegations of fraud which were made but abandoned.

There was a sale of land by trustees, and amongst the conditions of sale were the following: "(4) All recitals and statements in abstracted instruments, and in the particulars of sale shall be accepted as conclusive evidence of the matters recited, stated, or referred to. (5.) The title to the several lots shall commence with an indenture dated the 12th March, 1858, under which the premises became vested in the vendors as trustees for sale, and no earlier or other title shall be called for or required except at the purchaser's expense in all things, and as the vendors are trustees for sale, they shall not be called upon to enter into any other covenant than that they have done no act to encumber."

In the indenture of 1858 a settlement of 1819 was recited which conveyed a certain estate to trustees for the term of 500 years upon trust in the events which happened to raise the sum of £3,000 for the portions of the children of the marriage as therein mentioned and subject thereto the estate stood limited to the use of the husband and wife for their respective lives, with remainder to their first and other sons in tail. The trustees were unable to discover this settlement of 1819, and therefore inserted the fifth condition in the conditions of sale. By the deed of 1858, in the events which happened, the plaintiff in the suit became entitled to one thirty-fifth share of a residue of the proceeds of the estate, which was a very small amount. A person became the purchaser of the estate who knew of the existence of the deed of 1819.

The principal ground relied upon by the bill was that the fifth condition of sale was unnecessarily depreciatory, as a good marketable title could be deduced by the vendors from a date anterior to the year 1858, and that the conditions had materially prejudiced the sale, and prevented various persons from bidding, and that in consequnce the property had been sold at less than its market value. The sale was also impugned on the ground of fraud, and also on the ground of insufficient advertisements, but neither of these grounds was sustained.

The Vice-Chancellor came to the conclusion that, by the exercise of ordinary diligence, the deed of 1819 might have been found, and disapproved of the condition inserted in the conditions of sale. But going thus far he hesitated to decide that the sale was to be set aside as against an innocent purchaser. "With regard to the duties of trustees," his Honour said, "there is very considerable difficulty in this case; because, although there may be a remedy against the trustees, a man who attends a public auction bids for property under certain conditions to which he is not party or privy, the motive for introducing which he knows nothing of, and it is very difficult to say, that if the conditions are unduly restrictive, the purchaser who attends the auction must necessarily lose the advantage of his purchase. I do not think the doctrines of this Court go to that extent."

The Vice-Chancellor fully recognised that where the purchaser had been mixed up with the irregularity of the trustees he could not receive the benefit of his purchase; but he held that the fact of his knowledge of the existence of the deed of 1819—knowledge which others might have acquired by due diligence—did not affect his purchase. The right of the *cestui que trust* to file a bill in such a case was clearly upheld by the Judges in both courts; and the Lords Justices were particularly emphatic in saying that, however small the interest of the *cestui que trust*, the right would still exist. Consequently, the point was reduced to this—was the sale so conducted as to bind the *cestui que trust?*

As we have said already, the Vice-Chancellor recognised the negligence of the trustees in not discovering the deed of 1819, but he considered that the conditon of sale objected to was not so prejudicial to the propery as to call for the exercise of the power of the Court to deprive an innocent purchaser of his purchase. Some cardinal doctrines were laid down in the judgment of Lord Justice James which should be carefully considered—(1) The *cestuis que trust* have a right to have their property sold without anything being done which is calculated to depreciate it. (2) The purchaser under a mere contract of purchase is not entitled to insist upon a transaction being completed which, as between the *cestui que trust* and the trustees is a breach of trust. If, the Lord Justice reasoned, the contract of purchase was one which could not be enforced against the purchaser as having its origin in a breach of trust, neither could he claim the performance of it.

The Lords Justices were most particular in the protection which they threw around the plaintiff, holding that it would be *pessimi exempli* to say that where a breach of trust has been committed against a *cestui que trust* interested in a very small share of the trust property, the loss sustained by him by reason of the breach of trust is so small that it is not sufficient to justify a Chancery suit. Upon this point there can hardly fail to be general concurrence; but the position of a purchaser under such circumstances seems to be one of considerable hardship. True, he was reminded, that he had a remedy against the trustees, but what remedy the Court did not proceed to say.—*The Law Times.*

CORPORATIONS AND SUBPŒNA DUCES TECUM.

It is an old saying that a corporation has neither soul nor conscience, and now it appears to have other advantages besides these over private persons. Apparently it enjoys the privilege of defying even a *subpœna duces tecum*, one of the most formidable processes with which the law of England has armed the Courts of Law and Equity. In the celebrated case of *Amey* v. *Long*, 9 East. 472, Lord Ellenborough, in delivering the unanimous judgment of the Court of Queen's Bench, repudiated the argument advanced by Sir Vicary Gibbs and Garrow, that that which is commonly called a writ of *subpœna duces tecum* was not of compulsory obligation in the law. Lord Ellenborough then said:—"The right to resort to means competent to compel the production of written as well as oral testimony seems essential to the very existence and constitution of a Court of Common Law, which receives and acts upon both descriptions of evidence, and could not possibly proceed with due effect without them. And it is not possible to conceive that such Courts should have immemorially continued to act upon both, without great and notorious impediments having occurred, if they had been furnished with no better means of obtaining written evidence than what the immediate custody and possession of the party who was interested in the production of it, or the voluntary favour of those in whose custody the required instruments might happen to be, afforded." His Lordship then proceeded to say that a witness served with such a subpœna ought to attend with the documents, and the judge at Nisi Prius ought, upon the principles of reason and equity, to decide whether production should be required, and whether the party withholding it should be attached. Now, in *Crowther* v. *Appleby*, reported in the current number of our Reports (43 Law J. Rep. (N.S.) C.P. 7), the Court decided that it ought not to attach the secretary to a railway company, who attends in obedience to such a subpœna, but refuses to produce documents on the ground that the directors have ordered him as their servant not to do so. No doubt it is an absurd dilemma for a servant to be on the one hand sent to prison if he does not produce a

Digitized by Google

document, and on the other to be turned out of his situation by his master if he does. But equally would it be unjust if a corporation could defeat a litigant by the simple device of withholding documents essential to the proof of a cause. A statute allowing service of such a subpœna on a company, in the same way as a writ of summons is now served, and visiting the company with fine for neglecting to send the documents by a proper agent, might be useful. Meanwhile the best device is to serve *subpœna duces tecum* on all the directors, and on all such officials as the manager and the secretary, and leave it to them to satisfy the Court that they have prohibited each other all round from obeying the process.—*The Law Journal.*

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, *53, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

THE PETITIONS OF RIGHT (IRELAND) ACT, 1873.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR—It is only this evening that I have had the opportunity of reading the paper in your journal of the 1st of November, commenting on the statute which I was fortunate enough to carry in the last session, providing for the trial of "petitions of right in the Irish courts."

Your criticism on the language of the provision interpreting the word "court" is perfectly well grounded. The omission of courts of equity in that interpretation is calculated to create some confusion. The omission is, however, plainly a mere clerical error, and is so opposed to the plain provisions of the Act that there is no danger of its varying its interpretation.

I am anxious, however, to state that for the said clerical error I am not responsible. I entirely agree with you that the definition of the word court, and some of the other definitions which follow, are altogether unnecessary, and, therefore, mischievous. They were not contained in the bill as it passed the House of Commons. It left that House in the shape in which I originally drafted it. The definitions were introduced "*ex majori cautelâ*" in the House of Lords.

I have the honour to be,
Your faithful servant,
ISAAC BUTT.

Eccles-street, January 21st, 1874.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

GUARANTEE — AGREEMENT BETWEEN GUARANTORS FOR EQUALITY OF LIABILITY—INSOLVENCY OF ONE GUARANTOR.—Five directors of a company gave their joint and several bond to a bank to secure repayment with interest of a loan made by the bank to a company. By an agreement made between five persons interested in the company of the first part, and the five directors of the second part, after reciting the bond, it was agreed that, in pursuance of an agreement made upon the treaty for the loan by the bank, the liability of the several persons, parties thereto of the second part, under the bond, should be borne and discharged by the ten several persons parties thereto respectively in equal shares and proportions, and that each of the several persons parties thereto, would indemnify the other nine against all actions, &c., in respect of the loan by the bank or in respect of the bond. The company was ordered to be wound up, and the bank recovered judgment against the obligees of the bond for the whole amount of principal and interest due thereunder. One of the guarantors had become insolvent. On a bill by two of the guarantors, who had under the judgment paid more than their proportion of the sum secured by the bond against the other eight guarantors to enforce a rateable contribution from them in respect of the principal, interest, and costs recovered under the bond: Held (affirming the decision of Lord Romilly, M.R.) that all the solvent guarantors were liable to contribute rateably in respect of the whole amount recovered under the bond, and that the extra liability arising from the insolvency of one of the garantors was not to fall upon the defendants to the action at law. The bank made a further advance to the company upon the personal security of three of the directors. Five of the guarantors for the amount secured by the bond signed an agreement that they would join the three directors in guaranteeing repayment to the bank of the further advance in equal proportions with the three directors. One of the five who signed this agreement stated by his affidavit that his signature (if he did sign) was obtained "on the express engagement and understanding" that the agreement should be signed by all the guarantors for the sum secured by the bond: Held, that the words "express understanding" were utterly unmeaning, and that the court would never pay any attention to a statement that something was done on an express engagement, unless the engagement was spoken to in a manner which was admissible in evidence: (*Dallas* v. *Walls*, 29 L. T. Rep. N. S. 599. Chan.)

EVIDENCE—UNSTAMPED LETTER, OR ORDER FOR PAYMENT OF MONEY—WHETHER ADMISSIBLE—THE STAMP ACT 1870, ss. 16, 48, 54.—A letter or order directing the payment of a sum of money out of a particular fund is a bill of exchange within the meaning of ss. 16 and 48 of the Stamp Act 1870, and as such will not be received in evidence unless it has been properly stamped at the time of the making thereof: (*Ex parte Shellard; Re Adams and Kirby*, 29 L. T. Rep. N. S. 621. Bank.)

SHARES—ASSIGNMENT OF—DECLARATION OF TRUST—ORDER AND DISPOSITION—CHOSE IN ACTION—THE BANKRUPTCY ACT 1869, s. 15, SUBJECT 5.—A. was the registered owner of certain railway shares, which had been deposited with him by B. as security for advances. B. assigned the shares, subject to A.'s charge, by way of declaration of trust to C. for value. On B.'s bankruptcy, C. claimed the shares as his property, subject to the lien of A., but the registrar of the County Court decided against him. On appeal: Held (reversing the decision of the registrar) that the shares were not in the order and disposition of B., and that he held them in trust for C.: (*Ex parte Barry*; *Re Fox*, 29 L. T. Rep. N. S. 620. Bank.)

FRAUDULENT CONVERSION OF MONEY BY AN AGENT—DIRECTION TO APPLY TO A GIVEN PURPOSE.—A stock and share dealer was in the habit of buying for S. gratuitously, and receiving cheques on account. On the 27th Nov. he wrote informing S. that £300 Japanese bonds had been offered to him in one lot, and that he had secured them for her, and that he had no doubt of her ratifying what he had done, and inclosing her a sold note for £336, signed in his own name. S. wrote in reply, "that she had received the contract note for Japan shares, and inclosing a cheque for £336 in payment, and that she was perfectly satisfied that he had purchased the shares for her." In fact, the bonds had not been offered to the dealer in one lot, but he applied to a stock jobber and agreed to buy three at £112 each, but never completed the purchase. Held, that S.'s letter was a sufficient written direction within the meaning of 24 & 25 Vict c. 96, s. 75, to apply the cheque to a particular purpose, viz., in payment for the bonds: (*Reg* v. *Christian*, 29 L. T. Rep. N. S. 154. C. Cas. R.)

LATE CHIEF BARON PIGOT.—It will be seen by a reference to our advertising columns, that a Portrait and Memoir of this distinguished judge is to appear in the February number of the *Dublin University Magazine.* At the same time it is announced that "Our Portrait Gallery," which formed an attractive and popular feature in the *University* from 1839 to 1854, is to be revived. Since the first "Gallery" closed in 1854 a new generation of public men have appeared, and we doubt not that the Second Series about to be commenced will prove fully as attractive and popular as the first.

Digitized by Google

LAW STUDENTS' JOURNAL.

NEW BARRISTERS.

Monday, the eighth day of Term, being "Call Day," the following gentlemen were called to the Bar:—

1. MOLYNEUX BARTON, Esq., A.B., University of Dublin, only son of John Barton, of Mespil-road, in the county of Dublin, Esq. [Mr. Barton obtained the prize at the General Examination held on 8th, 9th, and 10th December last, and takes rank accordingly.]
2. JAMES ALEXANDER RYND, Esq., eldest son of James Goodlatte Rynd, of Serpentine-avenue, in the county of Dublin, Esq., solicitor.
3. JOHN R. COUTURIER DE VERSAU, Esq., A.B., University of Dublin, eldest son of Monsieur Edward Couturier de Versau, late of Paris, deceased.
4. HUGH WATSON, Esq., A.B., University of Dublin, second son of Hugh Watson, late of Stramore House, Gilford, in the county Down, Esq., deceased.
5. THOMAS O'SHAUGHNESSY, Esq., eldest son of Thomas O'Shaughnessy, of Lower Gardiner-street, in the city of Dublin, Esq., solicitor. [Mr. O'Shaughnesy obtained a Special Certificate of Honour at the General Examination held on 8th, 9th, and 10th Dec. last.]
6. BERNARD DOWELL KELLY, Esq., A.B., University of Dublin, only son of Tobias Joseph Kelly, late of Clondoyle, in the county of Galway, Esq., deceased.
7. MICHAEL PALLES LYNCH, Esq., A.B., University of Dublin, fifth son of Joseph Lynch, late of Roebuck, in the county of Cavan, Esq., J.P., deceased.
8. CHARLES LOUIS MATHESON, Esq., A.B., University of Dublin, second son of Robert Nathaniel Matheson, of Rathmines, in the county of Dublin, Esq., Clerk of the Privy Council.
9. JOHN HENRY BROWN, Esq., A.B., University of Dublin, eldest son of Henry Brown, of Banna, Ardfert, in the county of Kerry, Esq.

GENERAL EXAMINATION OF STUDENTS

Held at the Hall of the King's Inns, on Monday, Tuesday, and Wednesday, 8th, 9th, and 10th December, 1873.

The Benchers have awarded to

THOMAS OVEREND, Esq., A.B., an Exhibition of 20 Guineas per annum, to continue for a period of three years; to

MOLYNEUX BARTON, Esq., A.B., a Prize of 20 Guineas; to

THOMAS O'SHAUGHNESSY, Esq., a Special Certificate of Honor; and to

CHARLES MATHESON, Esq., A.B.,
HUGH WATSON, Esq., A.B.,
R. DE VERSAU, Esq., A.B.,
JOHN HICKEY, Esq., A.B.,
J. H. BROWNE, Esq., A.B.,
JOHN A. RYND, Esq.,
and
GEORGE PENTLAND, Esq., A.B.,

} Certificates of having satisfactorily passed the General Examination.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

HILARY TERM, 1874.

At the Examination of applicants seeking to become Apprentices to Attorneys, held on Monday, the 12th, and Tuesday, the 13th of January, 1874, the following were adjudged by the Court of Examiners to have passed said Examination, and their names are arranged in order of merit, viz.:—

1. MATTHEW CORRIGAN,	11. MICHAEL MOLONEY,
2. ARTHUR E. VINCENT,	12. CHARLES S. A. CONWAY,
3. ROBERT J .PORTER,	13. JOHN THOMAS E. BOYD,
4. WILLIAM WARD,	14. FRANCIS W. QUIN,
5. TRISTRAM CURRY,	15. JOHN M'DONNELL,
6. ALPHONSUS RYAN,	16. WILLIAM P. CREAGH,
7. JOHN J. COEN,	17. HENRY M. RYND,
8. JAMES MURPHY,	18. EDWARD BLAQUIERE,
9. LOUIS MELDON,	19. JAMES CARUTH,
10. JOSEPH MACAULEY,	20. GEORGE B. CARLETON.

The other candidates on the list have been postponed for the present.

The Court of Examiners cannot grant permission to any of the candidates to compete at the Society's Prize Examination in Michaelmas Term next.

The President (Sir RICHARD J. T. ORPEN) distributad the following Prizes awarded to successful candidates at Michaelmas Term, 1873, Examinations, viz.:—

FINAL EXAMINATION.—Messrs. W. R. C. RICHARDSON and MALCOLM J. CAMERON, Two Silver Medals.

PRIZE EXAMINATIOrN. — Mr. ANDREW GREGG, Silver Medal and £5; and M. RICHARD BURKE, a Silver Medal.

HILARY TERM, 1874.

At the Examination of applicants seeking admission as Attorneys, held on Wednesday, the 14th, and Thursday, the 15th of January, 1874, the Court of Examiners decided that the following candidates who presented themselves should be allowed the examination; and their names have been arranged in order of merit, as follows:—

1. JOHN R. M'NEELY,	11. GEORGE ROCHE,
2. EDWARD FITZGERALD,	12. MICHAEL W. DUNNE,
3. RICHARD ALLEN,	13. JOHN OWEN,
4. GEORGE H. LYSTER,	14. BARTH. O'C. HORGAN,
5. WILLIAM M'WILLIAM,	15. CHARLES H. THORP,
6. FRED. A. H. O'BRIEN,	16. CHARLES J. V. BENSON,
7. DENIS F. SLATTERY,	17. JOSHUA L. NUNN,
8. WILLIAM J. VERLIN,	18. JOHN W. F. FALKINER,
9. ROBERT H. TODD,	19. DAVID MILLIKEN,
10. JOHN SIMMONS,	20. WM. P. LYNDEN.

The remaining candidate on the list has been postponed for the present.

The Court of Examiners have awarded a Gold Medal to Mr. JOHN R. M'NEELY; a Silver Medal to Mr. EDWARD FITZGERALD; and Special Certificates of Merit to Messrs. RICHARD ALLEN, GEORGE H. LYSTER, and WILLIAM M'WILLIAM.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Final Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland), 1866.

DUBLIN, HILARY TERM, 1874.

COMMON LAW.

1. What is the proper form of a joint and several bond or covenant when there are a larger number of obligors and covenantors than two?
2. If two or more executors having proved the will of "A" die before the assets have been administered, each of them having themselves appointed executors, who would be entitled to complete the administration of A's assets? How if they had died intestate?
3. What is the most important difference between a will of personal estate and a will of lands?
4. Explain the distinction between *specific*, *demonstrative* and *general* legacy? What is the meaning of *ademption* of a legacy?
5. What steps are necessary to render a bill of sale available against the creditors of the person who gives the bill of sale?
6. In what respects does a bill of exchange differ from an ordinary simple contract, and illustrate some of the consequences resulting from each distinction?
7. A contract not required by statute to be in writing is reduced to writing by the parties. Is it necessary that the consideration should appear on the face of the agreement? Why and what are the exceptions to the rule?
8. How does the proper measure of damages in an action of tort differ from that in an action of contract?
9. Give instances of the application of the rule that the best evidence of a transaction must be given.

Digitized by Google

10. In what cases may entries in the handwriting of a deceased person be given in evidence to prove the facts stated in them?

11. Is the seller ever answerable for a representation concerning the quality of goods which he expressly declines to warrant?

12. Explain the doctrine of merger and illustrate by examples.

13. Explain the nature of proceedings by interpleader.

14. Will an action lie to recover money paid on an illegal contract, and what are the exceptions to the rule?

15. Illustrate the maxim "*Nullus commodum capere potest de injuria sua propria.*"

REAL PROPERTY, CONVEYANCING AND EQUITY.

1. State the meaning and origin of the term protector of a settlement. What power of alienation has a tenant in tail without the consent of the protector?

2. What are the exceptions to the right of a tenant in tail to bar the entail?

3. An estate consisting partly of freehold and partly of leasehold, is devised to A for life with remainder to B for life, with remainder to the heirs of the body of A; what interest does A take in the freehold and leasehold respectively?

4. What was the principal enactment of the Statute of Uses, and how were trusts revived after the passing of that statute?

5. What is the meaning of the *Cy-pres* doctrine?

6. If a tenant for life surrender his life estate to the remainder man in fee, what was formerly and what would now be the effect of such surrender on a contingent remainder, depending on such life estate?

7. Were executory interests formerly liable to destruction like contingent remainders? Are they now so liable? Are there any exceptions to this rule?

8. What is the doctrine of *Scintilla juris?* Whence did it arise? What provision has recently been made by Parliament with respect to this doctrine?

9. If a man who was married before 1834, should purchase lands, why is it desirable that these lands should be conveyed to him to uses to bar dower?

10. What are the three kinds of purely incorporeal hereditaments?

11. What are the principal kind of incorporeal hereditaments now usually found appurtenant to lands?

12. Is an express power of distress now necessary for the security of a rentcharge? If not, why not? What further remedy is usually given for recovery of a rentcharge besides the power of distress?

13. Does equity ever give any relief in the case of a defective execution of a power?

14. Are the executors of a lessee obliged to keep his assets always in their hands to answer the rents and covenants of a lease? If not, what course can they adopt?

15. Will equity relieve against acts performed under mistaken notions of law or fact?

LEGAL AND LITERARY DEBATING SOCIETY.

The Weekly Meeting will be held on Thursday evening, the 29th inst., at 53, Lower Sackville-street. Chair to be taken at Eight o'clock. Subject for debate—"That the Law of Primogeniture be Abolished."

COURT PAPERS.

THE CIRCUITS.

The Common Law Judges met on Monday, January 19th, to settle the Circuits. The following arrangements were made:—

HOME.—Mr. Justice O'Brien, Mr. Baron Deasy.

CONNAUGHT.—The Chief Justice of the Common Pleas, Mr. Justice Morris.

NORTH-EAST.—Mr. Justice Keogh, Mr. Justice Lawson.

NORTH-WEST.—The Chief Justice, Mr. Baron Fitzgerald.

MUNSTER.—Mr. Justice Fitzgerald, Mr. Justice Barry.

LEINSTER.—Mr. Baron Dowse.

The North-East Circuit will go out on the 16th of February. The Leinster on the 2nd or 3rd of March.

The following is the order in which the first and last Circuits are to go out for the years 1874, 1875, and 1876:—

Spring Assizes, 1874.—North-East Circuit first, Leinster Circuit last.

Summer Assizes, 1874.—Home Circuit first, Connaught Circuit last.

Spring Assizes, 1875.—North-West Circuit first, Munster Circuit last.

Summer Assizes, 1875.—Connaught Circuit first, Home Circuit last.

Spring Assizes, 1876.—Munster Circuit first, North-East Circuit last.

Summer Assizes, 1876.—Leinster Circuit first, North-West Circuit last.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—H. A. Cox, allocation.—H. Alford, do.—T. P. Vokes, provision for costs.—M. W. Knox, liberty to file objection.—J. Honohan, ex-delay.

IN COURT.—J. M. Blake, make order absolute.—Trustees Goff, final schedule re-entry.—J. E. Thompson, payment.—C. O. Blake, do.—A. M. Fawcett, objection.—M. Ryan, do.—Church Commissioners, from 19th.—J. Forrest, order for payment.

TUESDAY.

IN CHAMBER.—J. W. Browne, re-entry motion of 21st November, 1873.—J. V. Kildahl, from 20th.

IN COURT.—E. J. Cooper, final schedule.—E. M. Byrne, do.—Trustee Waldron, do.—F. Stuart, do. re-entry.—J. Barney, from 13th.—Assignee Dickey, re-entry motion 31st May.—M. W. Knox, from 20th.—A. H. Wood, ditto.

Before EXAMINER (Mr. Dobbs).

H. H. Molyneux, rental.

WEDNESDAY.

IN CHAMBER.—E. S. Nicholson, amend order.—F. Beatty, examine witness.

IN COURT.—Lord Ranfurly, final schedule.—T. N. E. O'Halloran, do.—H. K. Corkran, ditto.

Before EXAMINER (Mr. M'Donnell).

Trustee Jones, rental.—J. L. Mason, do.—S. Tuton, do.—R. Usher, do.—M. Roberts, vouch from 21st.—E. Geraghty, ditto.

THURSDAY.

Before EXAMINER (Mr. M'Donnell).

Church Commissioners, rental from 16th.

FRIDAY.

SALES AT 12 O'CLOCK.

ASSIGNEES M'NULTY, Co. Donegal.—1 lot.
R. E. GIBBINGS, Co. Cork.—1 lot.
J. M. O'DONEL, Co. Mayo.—2 lots.
J. GAGGIN, Co. Cork.—3 lots.
ANNE CLARKE AND OTHERS, Co. Dublin.—4 lots.
J. M'CREEVY, Co. Dublin.—5 lots.
W. GABBETT, Co. Tipperary.—9 lots.

Before EXAMINER (Mr. M'Donnell).

T. J. Murphy, for deeds.—Lord Milltown, do.—L. Read and others, rental.—W. Cox and others, ditto.

Before EXAMINER (Mr. Dobbs).

A. Quigley, rental.

Digitized by Google

LANDED ESTATES' COURT.

PETITIONS FILED *from 1st to 23rd December*, 1873.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Dec. 1	Christina Campbell and James Carnegie Campell, owners; *The Rev. Patrick Riordan, petitioner*	Sale	Cork	218 0 0	*S. Gillman*
" "	Chas. Palmer Archer, owner and petitioner	Sale	Dublin	44 1 2	*Davis and Montfort*
" 2	Gregory Murphy, owner; *Hugh Lundy, petitioner*	Sale	Dublin	16 0 0 Estimated letting value	*W. J. Stuart*
" "	Richard Hogan, owner; *Rev. Thomas P. Weldon, petitioner*	Sale	Limerick	76 2 6	*Francis Kearney*
" "	Robert Balfe, owner and petitioner	Sale	Roscommon	170 0 0	*B. Whitney*
" 3	John Hill and Richard Archer, owners and petitioners	Sale	Dublin	90 7 6	*Davis & Montfort*
" "	John Callaghan and Richard Callaghan, owners; *Charlotte Callaghan and others, petitioners*	Sale	Cork	448 6 11	*S. Gillman*
" 4	Philip O. E. Hawkes and others, owners; *Rev. H. F. J. Woodroffe, petitioner*	Sale	Cork	176 0 0	*J. & W. G. Lane*
" "	Henry C. Cullen, owner; *Scottish Amicable Life Assurance Society, petitioners*	Sale	Leitrim	128 0 0 in addition to part in owner's hands	*P. J. Mayne*
" "	Charles Capel Macnamara, owner; *A. W. Beetham and others, petitioners*	Sale	Dublin	126 5 8	*Nunn & Jones*
" 5	George Rollo Massy, owner; *George Maxwell and another, petitioners*	Sale of a recorded estate	Limerick	Not stated	*S. & R. C. Walker*
" "	Thomas Bennett, owner and petitioner	Sale	Meath	106 5 0	*John D. Rosenthal*
" 8	Catherine Dower & Ellen Dower, owners; *R. R. F. Uniacke and another, petitioners*	Sale	Waterford	124 8 8	*Maxwell & Weldon*
" "	John Jackson, owner and petitioner	Sale	Monaghan	135 7 3	*Meade & Colles*
" 9	Right Hon. Sir Colman O'Loghlen, owner; *Frederick W. Nevin, petitioner*	Sale	Clare	569 7 2	*Orpen, Sons, & Sweeny*
" "	Mathew Duffy and others, owners; *Royal Bank of Ireland, petitioners*	Sale	Kildare	Not stated	*Orpen, Sons, & Sweeny*
" "	Hugh John Ingham, owner and petitioner	Sale	Cavan	85 11 0	*C. D. Ingham*
" "	Richard Myles Barry, owner and petitioner	Sale	Cork	105 0 4	*MacCarthy & Hanrahan*
" 10	Michael Boyle Lane, owner; *Belfast and Provincial Building and Investment Company, Limited, petitioners*	Sale	Donegal	81 8 6	*Samuel Black*
" "	Frederick Solly Flood and Thomas Nevill, owners and petitioners	Sale	Meath	363 17 11	*Flood & Russell*
" 11	James Walker Furlong, owner; *David Bindoff, petitioner*	Sale	Dublin	85 10 0 Tenement valuation	*William Lewis*
" "	Catherine Boggs and others, owners; *Hume Babington, petitioner*	Sale	Londonderry and Donegal	275 17 2	*Thomas Chambers*
" 12	William Mayne Clayton, a minor, owner; *Celestina Jane Clayton, petitioner*	Sale	Kildare	101 14 10	*P. J. Mayne*
" 13	Julia A. O'Conor, owner; *John Daly, petitioner*	Sale	Cork	119 0 0 Tenement valuation	*C. J. Daly*
" 15	George Vesey Stewart, owner and petitioner	Sale	Tyrone	504 14 3	*Edward Hudson*
" "	Samuel Sealy Allen and others, owners; *C. J. Furlong, petitioner*	Sale	Cork	Not stated	*P. W. Bass & Son*
" 16	John Ryan and another, owners and petitioners	Supplemental petition for sale	Limerick	175 0 0 Estimated value	*Dalton & Smith*
" "	Henry Valentine Sampy, owner and petitioner	Sale	Mayo	96 10 11	*V. B. Dillon & Co.*
" "	William Daly, trustee for sale, or Daniel Gillman, or one of them, owner and petitioner	Sale	Cork	390 0 0	*B. Franklin*
" 17	Henry Coall, owner; *C. E. Vincent, petitioner*	Sale	Dublin	105 19 2	*S. & R. C. Walker*
" "	Nathaniel Mayne and William Mayne, or one of them, owners; *Elizabeth Anne Hurst, petitioner*	Sale	Tyrone	208 15 6	*William Caldwell*
" 19	John Connor and others, owners; *The Ulster Land, Building and Investment Company, petitioners*	Sale	Antrim	109 18 0	*R. D. Bates*
" "	John Dinneu and others, owners and petitioners	Petition of John Dinnen, for appointment of new trustee	—	—	*John Dinnen*

Digitized by Google

LANDED ESTATES' COURT—PETITIONS FILED—*continued.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT £ s. d.	SOLICITOR
Dec. 20	Wm. Lumley Perrier and others, trustees of the Monerea Marsh Company, owners and petitioners	Sale	Cork	1,848 0 11	*Lane & Lane*
" "	Robert Hall and several others, owners; *Herbert Hall, petitioner, and Partition Act of* 1868	Sale	Tipperary and Leitrim	882 10 11	*George Bolton*
" 22	Anne Eyre Powell, and Hilda Hinton, and Archibald Hinton, owners and petitioners	Sale	Kildare	2,257 5 7	*J. P. Hartford*
" "	William Hammond and several others, owners; *William Hammond and others, petitioners, and Partition Act of* 1868	Sale	Dublin	81 0 8	*Arthur Ellis*
" "	Thomas Lloyd, owner; *John M. Tittle, petitioner*	Sale	Limerick	686 12 8	*French & Argles*
" 23	Agnes Anne Campion, owner; *Patrick M'Kenna and another, petitioner*	Sale	Waterford	103 16 0	*J. W. Howard*

LANDED ESTATES' COURT.

SALES.

January 16th, before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN.—In the matter of the estate of the Hon. and Reverend William Wingfield, owner; Arthur Lyster, petitioner.

Lot 1.—House and premises, 1, North Great George's-st., held in fee-farm; yearly rent, £27 13s. 10d. Sale adjourned.

Lot 2.—House and premises, 2, North Great George's-st, held in fee-farm; net yearly rent, £50. Sold to Mr. Flynn for £470.

Lot 3.—House and premises, 3 and 4, North Great George's-street, net yearly rent, £22 3s. 1d. Sold to Mr. Flynn for £330.

Lot 4.—House and premises, 6, North Great George's-street; lease for 999 years; net yearly rent, £41 18s. 2d. Sold to Mr. Mulvihill for £310.

Lot 5.—House and premises, 5, North Great George's-street; net yearly rent, £52 10s. Sold to Mr. Bermingham for £570. Solicitors, *Whitton and Smyth.*

COUNTY TIPPERARY.—In the matter of the estate of Gerald J. Aylmer, owner and petitioner. Part of Derrygill, Knolagh, and Ballyduff, containing 363a. 3r. 28p.; held in fee-simple; net yearly rent, £205 6s. 8d. Sold in trust for N. Kelly for £4,000. Solicitors, *Messrs. Byrne and Kennedy.*

CITY OF LIMERICK.—In the matter of the estate of J. O'N. Brenan, owner; Joseph Brenan, petitioner. Fee-farm rents issuing out of Brenan's-row, Smyth's-row, and Summer-street, and other premises; held in fee-simple; net yearly fee-farm rent, £51 2s. 4d.; tenement valuation £385 15s. Sold to Mr. Cregan for £805. Solicitors, *William Roche and Sons.*

COUNTY CORK.—Margaret Fitzgerald, owner and petitioner. Sale adjourned. Solicitors, *M'Carthy and Hanrahan.*

COUNTY LIMERICK.—G. Raleigh. Sale adjourned. Solicitors, *Kenny and Murphy.*

COUNTY MEATH.—In the matter of the estate of George H. Pentland, owner and petitioner.

Lot 1.—A fee-farm rent out of part of Ross, containing 364a. 3r. 33p.; held in fee simple; net yearly rent, £277 15s. 4d. Sold to Mr. William Thompson for £5,900.

Lot 2.—Other part of same lands, containing 410a. 0r. 35p.; net yearly rent, £317 5s. 10d. Sale adjourned. Solicitor, *A. L. Barlee.*

COUNTY OF DUBLIN.—In the matter of the estate of Rev. T. Stack, owner; Louisa M. Digby, petitioner.

Lot 1.—Dwelling house and demesne, known as Thorndale, containing 72a. 1r. 13p.; held under lease of 1844, for a term of 99 years; net yearly rent, £179 15s. Sale adjourned.

Lot 2.—Part of lands of Puckstown, containing 47a. 0r. 17p.; held under same tenure; net yearly rent, £95 10s. Sold to Mr. Vincent for £700.

Same owner, Johnston petitioner. Dwelling-house and premises, known as Elm Park. Sale adjourned. Solicitor, *A. L. Barlee.*

CITY OF DUBLIN.—In the matter of the estate of Trustees of Rose E. Forde, owners and petitioners.

Lot 1.—House and premises, 3, Ely-place; held in fee-farm; net yearly rent, £41 5s. Sale adjourned.

Lot 2.—House and premises, 4, Ely place; held in fee-farm; net yearly rent, £36 18s. 4d. Sold in trust for G. Bashford for £175.

Lot 3.—Fee-farm rent out of 140 and 141, Lower Baggot-street; held in fee-farm; yearly rent, £9 6s. Sold to George Harpur for £560. Solicitors, *William Roche and Son.*

COUNTY DUBLIN.—In the matter of the estate of Rev. R. H. Graves and another, owners and petitioners. Dwelling-houses and premises, known as Proby-square, Blackrock; held in fee-farm; net yearly rent, £258 6s. 2d. Sold to Mr. M'Dermott for £3,400. Solicitor, *R. Courtenay.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas Nolan	Prove debts and vouch	*Sullivan*
Francis Harvey	do	*Fay & M'Gough*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John C. Walsh	1st public sitting	*Dutch*
Charles Dowler	do	*Browning*
Francis Harvey	Final examination	*Rosenthal*
John O'Donnell	do	*Hamilton & Craig*
Same matter	Motion	*Hamilton & Craig*
Patrick Ahern	Final examination	*Larkin & Co.*
C. J. Bridgford	do	*Goff*
Cochrane, Lyons, and Co.	do	*Perry & Co.*
Francis Cahir	do	*Dennehy*
Timothy O'Shea	do	
———	Application to dismiss debtor summons	*O'Rorke*
———	do	*Perry & Co.*
Joseph Enright	Audit and dividend	*Casey & Clay*
Nathaniel Evans	do	*Oldham & Eaton*
John T. Manning	do	*Findlater & Co.*
James Keegan	Motion	*Ryan*
Anna M. M'Givney	1st composition sitting	*Rynd*
Same matter	Final examination	*Oldham & Eaton*
do	Motion	*Oldham & Eaton*

Digitized by Google

The following at 1 o'clock.

Wm. Henry Harris	Sale	*Larkin & Co.*
Patrick Nolan	do	*Larkin & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

Sherlock & Rourke	Prove debts and vouch	*Findlater & Co.*
James Molony	Vouch account	*Meldon & Sons*

FRIDAY.

Before the COURT, at 11 o'clock.

James Logan	1st public sitting	*Lynch*
Robert Lynch	Final examination	*Mathews*
William Holmes	do	*Oldham & Eaton*
John Joseph Kelly	do	*Molloy & Watson*
Samuel Doyle	do	*Meldon & Sons*
John M'Gowan	do	*Macaulay & Foster*
Anne Travers	do	*Stuart*
Nicholas Dormoy	do	*O'Dowda*
MargaretBradshaw	do	*Larkin & Co.*
Patrick Monaghan	do	*Perry & Co.*
Owen Conny	Audit and dividend	*Casey & Clay*

The following at 1 o'clock.

Arrangement	Sale	*Oldham & Eaton*

Before the CHIEF REGISTRAR, at 12 o'clock.

Arthur Noble	Prove debts	*Rosenthal*

SATURDAY.

Before the COURT, at 11 o'clock.

David Porter	Charge and discharge	*Larkin & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Hickey, Michael, Balbriggan, Dublin, grocer and publican. Sittings, *Tuesday, February* 10, and *Friday, February* 20. *Mathews*, solr.

Neil, John, Cherryville, Kildare, farmer and cattle dealer. Sittings, *Tuesday, February* 10, and *Friday, February* 20. *Casey & Clay*, solrs.

Ryan, Anne, Cashel, Tipperary, spinster, draper and milliner. Sittings, *Tuesday, February* 10, and *Friday, February* 20. *Perry & Co.*, solrs.

DANGER OF LAW IN KENTUCKY.—A disagreeable fracas, attended by rather serious results, took place in Kentucky on the 26th ult., arising out of a suit between Richard Meaux and Theodore H. Davies. It seems, from the account given in the *Kentucky People*, that "a difficulty had been expected to arise at any time during the progress of the suit," and accordingly, about four o'clock in the afternoon of the day mentioned, when the evidence was concluded, "difficulty" did arise. Among those present in court were Theodore Davies, sen., his eldest son Theodore, and his other sons Larne and Eugene; also Caldwell Davies, a relation, and a firm of attorneys named P. B. Thompson, sen., P. B. Thompson, jun., and J. B. Thompson, jun. The Thompsons had given evidence adverse to the cause of the Davies, and hence the difficulty. The judge, seeing P. B. Thompson, jun., leaving the court, followed by the Davies family, called out, "Bring those men back," but it was too late. Just then the firing began, the audience taking refuge from the bullets behind the bench. For several minutes there was an incessant fusillade—all the Davies and all the Thompsons using their pistols with pertinacity and courage. The following were the results of the difficulty: Caldwell Davies escaped uninjured by jumping through the back window of the Court-house, crashing through sash and glass as he went; Theodore H. Davies, sen., was shot through the heart, and fell dead in the doorway; Larne Davies was shot in the breast, and died in front of the Court-house door; Theodore Davies, jun., was shot through the spine, and died on the 27th ult.; Eugene Davies escaped uninjured; P. B. Thompson, sen., received a flesh wound in the thigh; P. B. Thompson, jun., a wound in the hand; John B. Thompson, jun., was also wounded in the hand, a bullet passing through the right breast of his overcoat; Davies Thompson (a relation of the firm) received a shot through the crown of his hat and one through the waistband of his "pants;" the gaoler of the court was also wounded in the back. The Messrs. Thompson, it is said, "profoundly deplore the dire necessity which drove them into the conflict"; and a general wish is expressed that the affair may now be allowed to drop.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JANUARY Fri 16	Sat. 17	Mon. 19	Tues. 20	Wed. 21	Thur. 22
	Government.						
—	3 p c Consols	91⅞–2	—	92	92⅛	—	—
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	90⅞	90⅞	90⅞	90⅞–1	90⅞–1	90⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	108⅛	108⅝	—	108⅛	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	102⅝	103⅛	102⅝
	Banks.						
100	Bank of Ireland ..	303	303½	303⅝	303⅛	303	303 ¼½
25	*Hibernian Banking Co.* ..	57⅝	57⅝	57⅝	58	—	58
20	*London and Westminster* ..	—	—	70	—	—	70⅛
30	*National Bank*	57⅞–8	—	—	57⅞	57⅞	—
15	*National of Liverp'l (Ltd)*	14	—	—	—	—	13⅞
25	*Provincial Bank* ..	95	94⅞	—	—	—	—
10	*Royal Bank*	28⅛	28⅛	—	—	28⅛	28⅛
	Steam.						
100	City of Dublin	—	—	105⅛	—	—	—
10	Dundalk (Limited) ..	—	8¼	—	—	—	—
50	Peninsular and Oriental ..	—	—	—	—	56	55¾
	Mine.						
7	*Mining Co. of Ireland (Ltd)*	5⅞ 6	—	5⅞ 6	—	—	—
	Miscellaneous.						
8¼	*Dublin Tramways* ..	7⅞	—	—	—	—	—
25	*National Assurance* ..	x d	—	—	46⅛	47	—
9–4–7	*Patriotic Assurance* ..	—	10⅛	—	10⅛	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	71
100	Dublin and Belfast Junct.	—	92⅛¾⅛	92½	92	—	—
100	Dublin and Drogheda ..	—	113⅛	—	—	—	—
100	Dublin and Kingstown ..	—	—	212⅛	212⅛	213	—
100	Dublin, W'klow, & W'ford	78¼–7	—	78⅛¼½	79 ⅛	80	78–7¾
100	Gt. Southern and Western	114⅞	115¾	—	115¾	115⅛⅞	115
100	Do. do. free of Stamp	115⅛⅞	—	116¼	116¼	116¼	—
100	Midland Gt. Western ..	92⅛⅞	92¾	94	93¾	93⅞	93⅛
50	Waterford and Limerick ..	34⅛	34¼	34–3⅞	—	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	104	—
100	Gt. South'n & West'n 4 p c	99½	99½	99½	99½	—	98¾
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	—	—	98	—	—
50	Do., new redeemable 5 p c	50	—	—	50	50	—
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	—	95	95	—	—	—
—	Do., 4½ p c	—	—	—	99⅝ f	99⅝ f	99⅝ f
—	Gt. South'n & West'n, 4 p c	—	98⅝	—	—	—	—
—	Derry & Enniskillen 5 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	100	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	99½	—
—	Waterford & Central 5 p c	—	—	—	100	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—January 29th, and February 12th, 1874.

Account Days—January 30th, and February 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

MONROE—January 16, at 35 Fitzwilliam-square, the wife of John Monroe, Esq., barrister-at-law, of a daughter.

UPINGTON—January 12, at 40 Elgin-road, the wife of Thomas Upington, Esq., barrister-at-law, of a daughter.

VERDON—January 11, at 21 Rathmines-road, the wife of Michael Verdon, Esq., solicitor, Drogheda, of a daughter.

MARRIAGE.

PILKINGTON and KIRWAN—January 8, at St. George's Church, Dublin, by the Rev. B. Gibson, Chaplain of the Rotundo Hospital, assisted by the Rev. Mr. Stuart, Richard Grant Pilkington, Esq., of 55 Rutland-square, youngest son of the late George Pilkington, Esq., of 53 Rutland-square, and Albany, Ballybrack, to Alice Charlotte, eldest daughter of Walter P. Kirwan, Esq., of 4 Upper Temple-street, and Baldoyle House, County Dublin.

DEATHS.

COLLUM—January 13, at Westbridge, Enniskillen, of acute inflammation of the lungs, Charles Lucas Collum, Esq., eldest son of Archibald Collum, Esq., solicitor, aged 23 years.

TODD—January 14, suddenly, of heart disease, Robert Ross Todd, Esq., 49 North Great George's-street, Dublin, M.A., T.C.D., solicitor, Clerk of the Crown for County Down, and Secretary for Ireland of the Scottish Equitable Life Assurance Society, aged 51 years.

WHITNEY—At 29, Upper Fitzwilliam-street, the infant son of Benjamin Whitney, Esq., who only survived his birth two days.

Digitized by Google

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

ADVERTISEMENT FOR CREDITORS.

Pursuant to an Order of the High Court of Chancery, made in the Matter of the Estate of Alexander M'Neale, late of 22 North Frederick-street, in the City of Dublin Solicitor, deceased—a Cause between James Murphy, plaintiff; Edwarda Wilhelmina M'Neale, defendant—the Creditors of the said

ALEXANDER M'NEALE—who died in or about the month of October, 1872—are on or before the 14th day of FEBRUARY, 1874, to send by Post, pre-paid, to Messrs. READE and GOODMAN, of 86 Lower Gardiner-street, in the City of Dublin, the Solicitors of the defendant, Edwarda Wilhelmina M'Neale, the administratrix of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said order.

Every Creditor holding any security is to produce the same before the Right Honourable the MASTER OF THE ROLLS, at his Chambers, Four Courts, Dublin, on the 11th day of MARCH, 1874, at the hour Eleven of the clock in the forenoon, being the time appointed for adjudicating on the claims.

Dated this 14th day of January, 1874.

B. E. WHITESTONE, Chief Clerk.

JEHU MATHEWS, Plaintiff's Solicitor, 9 Lower Dominick-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF CAVAN AND CITY OF DUBLIN.

In the Matter of the Estate of Charles Langdale, Esq., Sir John Esmonde, Bart., and others, Owners and Petitioners. And in the Matter of the Estate of Frances Maria Horne and others, Owners: And the Partition Act, 1863.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, On FRIDAY, The 13th day of FEBRUARY, 1874, In Thirteen Lots, The following Valuable Property:—

COUNTY OF CAVAN RENTAL,

LOT 1.

The Lands of Derrylane, containing 57a 3r 35p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett rental of £36 9s 7½d. The Government Valuation of this Lot is £40 5s 0d.

LOT 2.

The Lands of Garranrush, known on the Ordnance Survey as the Lands of Garryross, containing 332 acres and 10 perches statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £248 11s 0d. The Government Valuation of this Lot is £224.

LOT 3.

Part of the Lands of Barecony, known on the Ordnance Survey as Bareconny (Grattan), containing 44a 2r 15p statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £33 3s 3d. The Government Valuation of this Lot is £29 5s 0d.

LOT 4

Consists of part of the Lands of Ballycroft, known on the Ordnance Survey as Lower Lackan, containing 70a 3r 25p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental (paid by one tenant who holds under a Lease) of £73 2s 10d. The Government Valuation of this Lot is £69.

LOT 5

Consists of other Part of the aforesaid Lands of Lower Lackan, containing 262a 0r 26p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £120 0s 9d. The Government Valuation of this Lot is £123 12s 0d.

LOT 6

Consists of Part of the Lands of Leggiwitt, known on the Ordnance Survey as Legawell, containing 114a 2r 38p statute measure, situate in the Barony of Clonmahon and County of Cavan, and producing a nett annual rental of £73 14s 7d. The Government Valuation of this Lot is £71 0s 0d.

LOT 7

Consists of Part of the Lands of Leganny, known on the Ordnance Survey as the Lands of Legaginny, containing 178a 3r 21p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £67 10s 3d. The Government Valuation of this Lot is £93 16s.

The Lands of Derrylane, Lacken Lower, Legaginny, and Legaweel, are situate within one mile of Crossdoney, a station on the Midland Great Western Railway, and 4 miles from the Town of Cavan.

The Moorland on Legaginny and Legaweel is capable of much improvement by a small outlay. The Lands are cheaply set, the tenants industrious, and pay their rents with punctuality.

The Lands of Garryross and Barconey (Grattan) are situate within two miles of Oldcastle, a station on the Dublin and Drogheda Railway, and a good fair and market town. The Lands are of nice quality. The tenants are industrious, and pay their rents with punctuality.

RENTAL OF THE CITY OF DUBLIN PROPERTY.

LOT 1.

Houses and Premises, Nos. 72, 73, 74, 76, 77, 78, and 79, Queen-street, and Nos. 1, 2, and 3, Tighe-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject, in conjunction with Lots 2 and 3 on this rental, to a rent-charge of £6 12s 4d sterling. This Lot will be sold primarily, liable to the entire of the rent-charge of £16 12s 4d, and bound to indemnify Lots 2 and 3 from payment of any portion thereof. This Lot produces a nett annual rental of £70 12s 3d, and the Government Valuation is £127.

LOT 2.

House and Premises, No. 75 Queen-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rental of £25. The Government Valuation is £22.

LOT 3

Consists of the Houses and Premises, Nos. 71 and 72 Queen-street, and Nos. 1, 2, 3, 4, and 5 Hendrick-street, in the Parish of Saint Paul, and City of Dublin, held in fee, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rent of £39 13s 10½d. The Government Valuation is £84 0s 0d.

LOT 4

Consists of the Houses and Premises, Nos. 71, 72, 72½, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90, Cork-street, and Cozy Lodge and Vauxhall Lodge, Cork-street, and Houses and Premises, 48 Marrowbone-lane, all in the Parish of St. Catherine, and City of Dublin, held in conjunction with Lots 5 and 6 under a Lease for lives renewable for ever, and subject to the yearly rent of £46 3s 1d, and producing a nett annual rental of £42 16s 10½d.

This Lot will be sold subject to the entire head rent, and bound to indemnify Lots 5 and 6 against the payment of any portion thereof. The Government Valuation is £157.

LOT 5.

Consists of the House and Premises, No. 73 Cork-street, in the parish of St. Catherine, and city of Dublin, held in conjunction with Lots 4 and 6 under Lease for lives renewable for ever, subject to the rent of £46 3s 1d, and producing a nett annual rental of £44 15s per annum. The Government Valuation of this Lot is £31 10s. This Lot will be sold indemnified against the payment of any portion of the head rent of £46 3s 1d by Lot 4.

LOT 6.

This Lot consists of Houses and Premises, Nos. 46 and 47 Marrowbone-lane, situate in the parish of St. Catherine, and city of Dublin held in conjunction with Lots 4 and 5 under Lease for lives renewable for ever, and subject to the rent of £46 3s 1d, but indemnified against the payment of any portion thereof by Lot 4.

This Lot produces a net annual rental of £29 1[illegible]s. The Government Valuation is £31.

A draft Fee-Farm grant, in lieu of the Lease for lives renewable for ever, under which Lots 4, 5, and 6 are held, has been approved of on behalf of grantors, and will be executed to the purchaser at the expense of the estate.

The rent in the grant will be £48 10s 2d.

Dated this 20th day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates' Court; or to

Messrs. WILLIAM ROCHE & SON, Solicitors having the carriage of the Proceedings, No. 4 Stephen's-green North, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

In the Matter of the Estate of Richd. Steele Hawksworth and Edward Price, Trustees for Sale under the Will of William Wellesley Despard, deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 6th day of FEBRUARY, 1874, At the Landed Estates' Court, Four Courts, Inns'-quay, In the City of Dublin, At Noon, In One Lot,

The following House and Premises, in the City of Dublin, and described in the printed Rental in this Matter:—

Dwelling-house and Premises, now known as No. 76 Thomas-street, in the Parish of Saint Catherine, and City of Dublin, held under lease for three lives renewable for ever, at the small rent of £17 10s 9d, and producing a well secured profit rent of £47 1s 7d yearly.

The Tenement Valuation of the Premises is £90.

Dated this 16th day of December, 1873.

H. R. GREENE, Chief Clerk.

The above House and Premises are situate on the south side of Thomas-street, in the City of Dublin, and in the best part of the street. It is a four-storied house, built of cut stone, and in perfect order, being lately erected, quite regardless of expense.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; or to

THOMAS TURPIN, Solicitor having carriage of the proceedings, 19 Parliament-street.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, January* 24, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JANUARY 31, 1874. No. 366.

DECISIONS ON THE PARLIAMENTARY ELECTIONS ACT, 1868.—III.

HAVING considered the subjects of agency and treating, we now propose to direct the attention of our readers to some decisions of the election judges, in which the law relating to bribery has been affected. In the Coventry case (1 O'M. & H. 100) a novel point was decided, which is vitally important to those candidates who coalesce for the purpose of carrying both seats in a constituency returning more than one member. In that case an agreement was come to, prior to the election, between the two respondents, that E., one of the respondents, should bear the expenses of H., the other respondent, provided H. should coalesce with E., and give him the benefit of his influence. Such a treaty as this, it was contended on behalf of the petitioner, came within the provisions of 17 & 18 Vic., c. 102, sec. 2 (3)—"Every person who shall, directly or indirectly, by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to procure, or endeavour to procure, the return of any person to serve in Parliament, shall be guilty of bribery." Such a view of the transaction was not taken by the learned judge (Mr. Justice Willes) who tried the petition—"If the respondent E. agreed to give to the respondent H. £5, I might say a farthing in point of law, if only a peppercorn, for purchasing any influence which H. had with the electors, and advancing E.'s interest at the election, it would be bribery in the case of the person who gave, as well as the person who received." But it was held, that there being a proviso at the end of the section that "this enactment does not extend to any money paid for or on account of legal expenses *bonâ fide* incurred at or concerning any election," that bringing forward another candidate under such circumstances, without a view to purchase his influence for himself, with the intention of serving a man's party, and because he does not mind spending his money upon the legitimate expenses of himself and of the other candidate, does not fall within the third clause of 17 & 18 Vic., c. 102, sec. 2. His lordship came to a decision favourable to both the respondents, but stating that in so deciding he had considered the question as to whether the agreement was entered into by E. with the selfish view of aiding himself by that influence, or whether what he did was fairly to be explained by a desire to serve his party, without any regard to the influence of H. Another decision which affects the question of the candidates receiving pecuniary assistance is the Belfast case (1 O'M. & H. 285), which, acting apparently on the proviso before referred to, decided that a subscription for defraying the expenses of the candidate was not illegal. As the converse case, which certainly in practice is far more likely to arise, of the candidate being the donor, and not the recipient, of any pecuniary consideration, these judgments throw a strong light on the fact that the maxim "*Crescit in orbe dolus*" is not less applicable to Parliamentary elections than any other transaction of life. In the Youghal case (1 O'M. & H. 294) is was proved that persons on behalf of the respondent distributed large sums of money in shillings and half-crowns on and immediately before the polling day to poor persons who were not electors. So much as £160 was distributed in this way by one person, £130 by another, and £50 by a third. It was contended, and we think somewhat reasonably, on behalf of the petitioner, that this amounted to bribery, as the money so distributed was given in order that the recipients might spend it in drink at the public-houses, and so influence the publicans' votes in favour of the respondent. But Mr. Justice O'Brien did not contemplate such a proceeding as being within the provisions of the Act 17 & 18 Vic., c. 102, sec. 2 (3). In the Cashel case (1 O'M. & H. 289), where before the election an agent of a candidate sent cheques for five guineas to two supporters of his opponent, and upon the cheques the word "retainer" was marked. It was contended that this attempt to incapacitate these voters from voting was an act of bribery. But Mr. Baron Fitzgerald, in delivering judgment, said:—"I am inclined to think that the object before the mind of the party, in order to his being bribed, must be either the abstaining from voting or the giving of the vote; and though that was the thing in the mind of the person giving these considerations or retainers, it will not make it an inducement to the other party, unless the same thing was before the mind of that party also. The giving these retainers was not bribery." With unfeigned respect for the opinion of the very learned Baron, we venture to submit that the acute mind of his lordship went somewhat far in drawing such a fine metaphysical distinction as to the object before the mind of the voters. The persons in this instance attempted to be bribed refused the money, and the very fact of their refusing it shows in what light they considered the offer. It cannot be overlooked that in certain constituencies in the minds of the electors the ideas of receiving £5 notes and giving votes to the donor are inseparably connected. Whether this phenomenon is to be explained by the theory of long association of ideas, or some other metaphysical operation, we will not take upon ourselves to decide. It was held in the Coventry case (1 O'M. & H. 97) that corrupt payment of illegal expenses incurred at a previous election will come within the Act. But as to corrupt payments made after the election by an agent, it was held in the Salford case (1 O'M. & H. 140) that such payment, if made without the privity of the respondent, cannot affect the seat, ordinary agency ceasing at the close of the poll. But Mr. Baron Martin intimated that if many acts of bribery of this kind had been proved to have been done, it would induce him to come to the conclusion that the money was paid with the privity of the member, hanging back and avoiding taking any part in it, in order that the bribe might be given, and under such circumstances the member would be affected at once. This view seems to be held in substance by Mr. Justice Willes in the Southampton case (1 O'M. & H. 223), where, after deciding that a case of intimidation which took place after the election was only material as throwing light on what took place before the election, he quoted the Parliamentary Elections Act, 1868, sec. 6 (2), which contains a provision as to presenting a petition after twenty-one days, in case of bribery (but not other corrupt practices) taking place after the election. "Whether that is to be read in the Corrupt Practice Act, 1854, or not, does not clearly appear. If so, it can only be read in to make subsequent bribery defeat an election."

Digitized by Google

NOTANDA.

Conditional Order; Supplemental Affidavits.—Affidavits filed without the leave of the Court, subsequent to the granting of a conditional order for a *habeas corpus* (and not replied to), will not be allowed to be used, unless by consent, on the motion to make the order absolute; but the Court will, if necessary, discharge the order, and grant a new conditional order, founded on the supplemental affidavits (*Re Kearse*, Q. B., Nov. 25, 1873).

Remitting action; plaintiff resident abroad.—Action for £27 11s. for goods sold by the plaintiff, who resided in London, to the defendant, who resided in Dublin. The plaintiff's witnesses resided in London, save one who resided in Dublin. *Kaye* (with him *Weir*) moved to remit the action to the Recorder of Belfast. *Kisbey, contra:* The Recorder could allow only £5 expenses of each witness. Motion refused, with costs (*Clarke* v. *Pelling*, Q. B., Jan. 18, 1874).

Habeas Corpus; bringing prisoner before coroner's inquest.—*Nash*, on behalf of the Crown, moved for a writ of *habeas corpus* to bring up Eliza Claffey before the coroner, at an adjourned inquest. The motion was grounded on the affidavit of a conducting clerk of the Crown and Treasury solicitor, who stated that the prisoner was brought before one of the Metropolitan Police Magistrates, on January 20th, charged with infanticide, and that she was remanded to prison; that, later in the day, the coroner held an inquest on the body of the infant, but, owing to the absence of the accused, adjourned the inquiry till January 28th, and conveyed a communication to the Lord Lieutenant requesting the presence of the prisoner at the inquest. Motion granted (*Re Claffey*, Q. B. Chambers, before Fitzgerald, J., Jan., 27th, 1874).

Remitting action; no means of recovering under decree against defendant.—Action on bill of exchange for £28, by drawer against administratrix of acceptor. *Kavanagh* moved to remit to Recorder of Dublin. *Curtis, contra.*—The assets consist of debts due to the deceased and chattels real; a garnishee order could not be obtained in the Civil Bill Court against the debts, the leasehold could not be seized under a decree, and as the debt accrued since the Debtors Act, the defendant could not be arrested. Motion refused, with costs (*Flanagan* v. *Watson*, C. P., Jan. 18, 1874).

Remitting action; scandalous matter in affidavits.—*Sullivan* moved to remit action of assault to the Recorder. *Houston, contra.* Per Fitzgerald, J.—"I observe that, latterly, on these motions the affidavits are habitually made the vehicles of the most malignant and grossest slander. I am determined not to encourage that practice, or to permit it to be indulged in with impunity; and, to mark my sense of its impropriety in this case, in which scandalous charges have been made quite unnecessarily, I shall, in ordering the action to be remitted, disallow both parties' costs of the motion" (*O'Driscoll* v. *Blackwell*, Con. Ch., Dec. 23, 1873).

Bills of Exchange Act; leave to defend.—*Keogh* applied for leave to defend on equitable grounds. *Short, contra,* relied on an affidavit in reply, disclosing matter of equitable replication. Motion granted notwithstanding (*Rowan* v. *White*, Con. Ch., before Dowse, B., July 11, 1873).

Adjudication; petitioning creditor's debt.—The bankrupt being a non-trader, and a prisoner as defined by the B. A., 1857, filed a declaration of insolvency 25th August, 1873, upon which a creditor presented a petition of bankruptcy September 4th, on a debt of £40 17s. 9d. The debt was composed of £39 6s. 4d. debt, and costs, on a judgment marked before August, 1872, to which interest was added up to May 18, 1873. The bankrupt having been adjudicated September 5, 1873, *Walsh*, attorney, showed cause.—The debt is insufficient, unless the interest can be included, and the bankrupt being a non-trader, the debt should have been contracted after the B. A. Act, 1872. *G. Perry, contra.*—The costs and interest may be included, and it is not necessary that the debt should have been after the Act, as the bankrupt was a prisoner. Per Harrison, J.—The costs and interest follow on the judgment. Cause shown disallowed (*Re T. Irwin*, Ba., September 16, 1873).

Notice to quit; stamp; agricultural or pastoral tenancy.—The tenancy of a public-house situate in a village, with an acre of land attached, held at an annual rent of £17, of which from £1 to £1 5s. represents the letting value of the land, is not "agricultural or pastoral" in its character, within the provisions of the Land Act, 1870, and a notice to quit such tenancy need not therefore be stamped (*Spunham* v. *Walsh*, Thomastown Q. S., Jan. 7, 1874, before De Moleyns, Ch.)

Rent on Lease executed after the Land Act, 1870; *deduction for county cess.*—A reservation of rent "over and above all taxes, charges, and impositions whatsoever," with a corresponding covenant to pay it, in a lease executed since the passing of the Landlord and Tenant Act, 1870, deprives the tenant of the right to deduct a moiety of the grand jury cess under the 65th section of that Act (*Hely* v. *Kennedy*, Kilkenny Q. S., October 8, December 31, 1873, before De Moleyns, Ch.)

COURT OF QUEEN'S BENCH, WESTMINSTER.

Monday. Jan. 12.

(Before Blackburn, Quain, and Archibald, JJ.)

Re An Articled Clerk.

Although this was merely an application to allow Thomas Robert Oakley, an articled clerk, to be discharged from his articles and to enter into fresh articles, it raised a question of some importance of its kind. By 23 & 24 Vict. c. 127, s. 10, articled clerks are prohibited from holding any office while serving their articles. The applicant in the present case, on the 19th April in last year, obtained a commission as lieutenant in the Royal Monmouthshire Militia, and he went out with his regiment for twenty-seven days, from the 19th May to the 14th June. On the 9th December he resigned his commission. Fearing that his twenty-seven days' service might bring him within the provisions of the Act, he now applied to be allowed to be discharged from his present articles, and to enter into fresh articles for a time which would cover the 27 days.

Bosanquet appeared for the applicant.

Attorney for the applicant: *Raw*, agent for *Oakley*, of Monmouth.

The Court granted the application.

The Exeter Election Petition.—In the Court of Common Pleas, Westminster, on Tuesday, Mr. Chandos Leigh applied on behalf of the petitioners in the case of the Exeter election petition for a rule to carry out an arrangement by which the petition should be allowed to drop, and the money deposited be paid out of court. Mr. Petheram, for the respondent, said that he had been instructed to consent to the rule asked for, upon the distinct statement that there never had been any intention of charging Mr. Mills with personal bribery or corruption. To this the petitioners assented. The Lord Chief Justice said: We have nothing to do with that. I am of opinion that the Queen having been pleased to dissolve Parliament—of which the court will take official notice—a case has occurred which is not provided for by the 32 Vic., cap. 135, and therefore we must guide our proceedings by the old parliamentary practice, according to which a petition dropped or abated by a dissolution. This being so, I have no doubt that there should be a rule to return the £1,000 which had been deposited.

Digitized by Google

THE JUDICATURE COMMISSION AND THE IRISH COUNTY COURTS.

Report on the Application of the Principles recommended by the Judicature Commission to the Irish County Courts, By Mr. Constantine Molloy.

[Read before the Statistical Society of Ireland.]

Since the subject of this report was entrusted to me, the principles recommended by the Judicature Commission have received the sanction of the Legislature and become law; and the year that has just now closed will always form a memorable epoch in the legal history of the Empire, signalized as it has been by the accomplishment, in a single session of Parliament, of one of the most beneficial legal reforms ever effected. The fusion of legal and equitable principles, the simplification of law, and the preference for equitable principles over ancient statutes and harsh rules secured for England by the Judicature Act of 1873, must produce an improvement in the administration of justice, the importance of which it would be difficult to over-estimate.

In this great legal reform Ireland is not, as yet, entitled to participate. Her right, as an integral portion of the United Kingdom, to have extended to her every beneficial reform effected for the sister kingdom is unquestionable, and is especially so in whatever concerns the due administration of justice, and the prompt and efficacious enforcement of civil rights, so that the extension to this country of the great legal reform of 1878 may be regarded as a mere matter of time. Desirable as it is in the case of the Superior Courts, the importance and urgency of extending it to the Inferior Courts, are still more manifest, for the humbler the suitor is, and the less aided he is by legal assistance in his dealings, the more necessary it is that he should be able to obtain full and complete justice in one Court; and the greater is the benefit conferred when law is freed from unnecessary complications and framed in accordance with principles of natural equity, which are intelligible to all.

In Scotland, when in the middle of the eighteenth century, nearly all the hereditary jurisdictions were abolished, it became necessary to substitute some power of administering justice in each district, and, accordingly, a local tribunal, known as the Sheriff's Court was established. This Court has now civil jurisdiction of a very complete and extensive nature. It can entertain all questions relating to removables, and all questions of possession, even although these may involve the consideration of titles to real property, and questions between landlord and tenant. Its jurisdiction also embraces admiralty questions, and those relating to wills and bankruptcy. In a word, it affords to all a ready, local, and complete remedy, under forms which make it easy of access, economical and satisfactory.

The Irish County Court was first established by a statute of the Irish Parliament towards the close of the last century, long before a similar Court was instituted for England; and from the first establishment of these local tribunals in Ireland and in England, various measures have been, from time to time, passed for their improvement; but although the Irish County Court was first started, the English County Court has been suffered to outstep in the race of improvement its Irish prototype. Unfavourable as the contrast at present is between the Irish and the English County Courts, as means of administering justice, that contrast will become still more marked after the second of next November, when the time will arrive for applying to all matters within the cognizance of the English County Court, the new and enlightened rules of law enacted by the Judicature Act of last session.

The English County Court has power to try all actions of contract or tort, where the debt, whether on a balance or otherwise, or the damage claimed does not exceed £50, except actions of libel, slander, seduction, malicious prosecution, breach of promise of marriage. It can also try any claim for the recovery of any demand not exceeding £50, which is the whole, or part of the unliquidated balance of a partnership account, or the amount of a distributive share under an intestacy, or of any legacy under a will. It has also jurisdiction in any action of ejectment on the title, where the value of the lands, or the rent payable in respect thereof, does not exceed £20 by the year, and also in any action in which the title to any corporeal or incorporeal hereditaments is in question, where neither the value of the lands, tenements, or hereditaments, in dispute, nor the rent payable in respect thereof exceeds the sum of £20 by the year; and also in case of any easements or license, where neither the value or the reserved rent of the lands, tenements, or hereditaments, in respect of which the license or easement is claimed, or on, through, or over which, such easement or licence is claimed, exceeds £20 by the year.

In 1865 jurisdiction in Equity was conferred on the English County Court, and it was enabled to try suits in equity to the extent of £500. Its equitable jurisdiction is comprised under ten heads.

1. The administrations of estates of testators and intestates.
2 The execution of trusts.
3 The foreclosure or redemption of, or enforcing mortgages, charges, or liens.
4. The specific performance of, or reforming, delivering up or cancelling agreements.
5. The relief of trustees.
6. Proceedings under the Trustee Act.
7. Proceedings relating to the maintenance or advancement of infants.
8 The dissolution of partnership.
9. Accounts, and
10. Partition.

In the suits or matters within its equity jurisdiction, the County Court has and can exercise all the powers and authority of the Court of Chancery.

While the English County Court was thus from time to time improved—its authority extended to classes of cases that were not originally within its province, while it was made a Court of Equity, with all the powers of the High Court of Chancery, and thus enabled to do full and complete justice between the parties in any matter within its jurisdiction—the Irish County Court has made but little advance in the way of improvement. True it is that the statute under which it is at present constituted declares that it shall be lawful for the Chairman "to hear and determine all disputes and differences between party and party for any sum, damages or penalty, not exceeding £40 sterling (slander, libel, breach of promise of marriage, and criminal conversation excepted), and for any unascertained and unpaid balance not exceeding £40 of a partnership account;" and also to decree payment of any pecuniary legacy not exceeding £20, payable out of any personal estate, whatever may be the amount of such personal estate; and also to decree the payment of any legacies or distributive shares, payable out of the assets of any deceased person, where the assets shall not exceed £200; and the Chairman has also jurisdiction in ejectments between landlord and tenant, where the rent of the holding does not exceed £100; and in cases of ejectment on the title, his jurisdiction is confined to cases where the parties claim under a common title, and the rent of the lands sought to be recovered does not exceed £20 a year, and are held under a yearly tenancy, or under a lease, the duration of which, when originally granted, did not exceed three lives, without any provision for the renewal thereof; or for a term of sixty-one years, and in respect of which no fine exceeding £20 shall appear on the face of such lease to have been paid on the granting or execution thereof. The statute, while it confers in these cases jurisdiction in ejectments on the title, declares expressly that in other cases the title to lands, tenements and hereditaments shall not be drawn into question in any proceeding in the Court.

It is unnecessary to enter into further detail for the purpose of contrasting the power and authority of the local courts in the three kingdoms as tribunals for administering justice. The foregoing brief and necessarily incomplete summary is sufficient to show how far the Irish county court has been permitted to lag behind in the progress of improvement. Scarcely a sitting of the court is held in any part of the country at which one or more cases do not occur where some suitor applies to the court for relief, to redress some wrong or enforce some right, and after expense, which to the humble suitor is considerable, has been incurred, and the time of the court has been, it may be for hours, occupied in ascertaining the exact nature of the matter in dispute, it is then discovered that all this expense, time, and trouble have been merely wasted—that the case is not within their

Digitized by Google

jurisdiction, and the court is unable to enforce the right or redress the wrong.

The matter in dispute may be about an obstruction of a watercourse or a right of way, or an interference with a right of turbary, or some one of those questions that commonly arise between the occupiers of small holdings; but if the rent of the holdings in respect of which the dispute arises, or the value of the right disputed be great or small, once a question of title is found to be involved, the jurisdiction of the court is ousted, and the suitor learns, to his surprise, that the court is powerless to afford him redress, and that if he wishes to obtain it he must seek it in the superior court, where the matter will be decided, after delay and at an expense that will most probably be ruinous to one, if not to both of the litigants. Every-day experience shows what is frequently the result of the Irish county court not having jurisdiction to deal with this class of cases. Men of humble means, seeing the expense with which the defence of their rights is attended in the superior courts, will not have recourse to the law to vindicate them, but will either altogether abandon their right and submit to wrong, or they will seek to maintain them by a recourse to force; and then, if a breach of the peace ensues, the same judge who explained to the parties that he was unable by law to determine the dispute, out of which the breach of the peace arose, is the judge delegated to preside in the court which has full power to deal with the criminal part of the case. The trial of this part of the case is conducted at the public expense, and although the breach of the peace is dealt with, yet the civil question out of which it arose is left in exactly the same position as before, or, it may be, in a worse position—for if the man whose right is unjustly invaded happens not to be a man of cool temper, able to restrain himself under the infliction of wrong, advantage may be taken of this by the wrong-doer to provoke him, and so get involved in a breach of the peace, and then have him punished, it may be by imprisonment; and when this happens, things not unfrequently go from bad to worse; evil passions are aroused, and what was originally a dispute about some small matter, sometimes ends in the perpetration of a fearful crime.

Where the question in dispute is too small to bear the cost and delay of a resort to the superior courts, justice and sound policy alike require that jurisdiction in such cases should be conferred on the local court. In such cases, resort is seldom had to the superior courts; parties are deterred by the expense, and, as already observed, rights are either abandoned or attempted to be maintained by force; and one of the most salutary reforms that can be effected for the benefit of the humbler classes of the community is to confer on the Irish county court the same power which the English county court now possesses—of hearing and determining disputes where small questions of title are involved.

Even before the Judicature Act of 1873 gave effect to the principles recommended by the Judicature Commissioners in their Reports, the English county courts, as has been already shown, were far in advance of the Irish. But the Judicature Act of 1873 does not confine the application of those enlightened principles to the superior courts, but at once extends them to every court.

The 91st section of the statute declares that "The several rules of law enacted and declared by this Act shall be in force and receive effect in all courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such courts;" and the 89th enacts that "Every inferior court which now has, or which which may, after the passing of this Act have, jurisdiction in equity or at law, and in equity and in admiralty, respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal, in as full and ample a manner as might and ought to be done in the like case by the high court of justice."

The rules of law declared by the Judicature Act are contained in the 24th and 25th sections of the statute, and may be thus briefly stated, viz.: That law and equity shal be concurrently administered, and that whenever there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail.

The English law was introduced into Ireland, and courts of justice in conformity with the laws of England were established, as early as the reign of King John—upwards of 650 years ago—and close upon three centuries afterwards all the then existing statute law of England was extended to Ireland by Poyning's Act; and in 1782, when the Irish Parliament asserted its legislative independence and repealed Poyning's Act, the Irish Parliament, in passing the statute known as Yelverton's Act, recorded its opinion on the question of the assimilation of the laws of the two countries. The preamble to Yelverton's Act recites that "a similarity of laws, measures, and customs must necessarily conduce to strengthen and perpetuate that affection and harmony which do and at all times ought to subsist between the people of Great Britain and Ireland;" and accordingly, by that statute, in pursuance of the policy of assimilating the laws of the two countries, the provisions of a considerable portion of the statute law of England were extended to Ireland.

In 1862 the English and Irish Law and Chancery Commission was appointed, consisting of Lord Romilly, Lord Cairnes, Lord O'Hagan, Lord Selborne, Chief Justice Monahan, Sir Joseph Napier, Mr. Justice Lawson and others, upon the question of assimilating the details of Irish and English law. The Commissioners, after noting the fact that the practice and procedure in equity of the two countries, which were originally similar, had by modern legislation become almost entirely different, and that this difference had been caused by separate attempts at carrying out Chancery reform in each of the two countries, expressed the unanimous opinion that "it was of paramount importance to restore and preserve, as far as possible, a uniformity of system in the equity jurisprudence of the two countries," and that "the practice and procedure of the superior courts of common law in England and Ireland should, as far as practicable, be assimilated."

Parliament, so far as the courts of equity were concerned, adopted the opinion of the Commissioners, by passing the Irish Chancery Act of 1867; and bills were brought in by successive law officers to carry out the assimilation of the practice and procedure of the courts of common law, which which were finally postponed for the report of the Judicature Commission.

When the Judicature Act declares that certain enlightened and just rules shall be observed for the future as part of the law of England, in every court whatsoever in England, it is of paramount importance that the same salutary principles should be extended to this country, and in like manner be observed in every court whatsoever in Ireland. Thus will be best carried out that policy of assimilating the laws of the two countries, which was originated centuries ago, in the reign of King John—sanctioned and acted upon by the Irish parliament, and approved of by the high authority of the Commissioners already referred to.

While the Irish County Court possesses the public confidence, nevertheless, year after year, the demand for its improvement is becoming more urgent, as the defect in its power to decide completely various questions that arise, in cases where some humble suitors seek its intervention, becomes more manifest. The Irish Land Act has brought under legal cognizance tenant interests of great value. Formerly claims arising of such interests, and disputes between small tenants about rights of way, turbary fences, and other matters—fruitful sources of contention between neighbours, and which the Irish County Court has not jurisdiction to hear and determine—were settled by the agent and landlord, who exercised in such cases a species of unauthorised, but yet beneficial, jurisdiction. Their interference was quite optional. In some cases they declined to interfere; while in others, by their kindly interference, bitter disputes were settled, and injustice in many instances prevented. But all this is now changed, with the altered position of the parties, consequent on the passing of the Land Act. Landlords and agents will be very slow to interfere in disputes between tenant and tenant, but will

Digitized by Google

rather leave such matters to be settled as best they can by the tribunals of the country; and hence it has latterly become a matter of paramount importance and urgency that the Irish County Court should now be enabled to deal with cases of this kind, which, owing to the smallness of the interest involved, are but very rarely submitted to the superior courts, as they cannot bear the expense of a recourse to the latter courts.

While the Land Act recognizes the necessity of a guardian *ad litem* being appointed in the cases of idiots, lunatics, and minors, it only provides for the appointment of such guardians for the purpose of any proceedings under that act; but the permanent protection of the interest of tenants under leases and tenant-right usages requires a cheap machinery for appointing guardians of idiots, lunatics, and minors, and for making such guardians account.

In 1870, Mr. Henry Dix Hutton, in his *Report on Admiralty Jurisdiction*, read before the Society, called atention to complaints made by foreign traders, that while the Court of Admiralty in Ireland possessed jurisdiction to proceed against the masters of ships at the suit of merchants employing their vessels, it had no corresponding power of entertaining complaints by captains in respect of freight and demurrage—a state of things which caused delay, involving hardship, and not unfrequently a practical denial of justice. Strong representations on this unsatisfactory state of the law were made by some of the foreign consuls resident in Dublin to the Commissioners appointed to inquire into the High Court of Admiralty in Ireland, who sat in 1864; and while the Commissioners, in their report, state that they do not think it expedient to extend the jurisdiction of the Admiralty Court to cases of freight and demurrage, because the effect would be to give to the Irish Court a wider jurisdiction than that possessed by the English Admiralty Court, they are, at the same time, of opinion that the object should be to assimilate the jurisdiction of both Courts, and that if such a jurisdiction were given to the English Court a corresponding jurisdiction should be also given to the Irish Court.

Following out the recommendations of the Commissioners in favour of assimilating the law of both countries as to admiralty jurisdiction, the Court of Admiralty (Ireland) Act of 1867 was passed, assimilating the Irish to the English jurisdiction; but it did not make any provision for trying cases of demurrrge or freight.

By this Act of 1867 the Lord Lieutenant was empowered by order in Council to confer a limited jurisdiction in admiralty cases on the Irish local Courts; but this power has not as yet been exercised. In 1868 the English County Courts' Admiralty Jurisdiction Act was passed, enabling Her Majesty in Council to confer a limited admiralty jurisdiction upon the English County Courts; and both in 1868 and 1869 orders in Council were issued conferring this admiralty jurisdiction upon thirty-six of the English County Courts. The English Act of 1868 did not provide for cases of freight and demurrage; but in 1869 this omission was supplied by the statute 32 & 33 Vic. c. 51, which conferred in those cases a limited admiralty jurisdiction upon the English County Courts. It is to be regretted that the policy of assimilation recommended by the Admiralty Commissioners in 1864, carried out by the Admiralty Act of 1867, was not acted upon in 1868 and 1869 when the English County Courts obtained their limited admiralty jurisdiction, and the Irish County Court thereby enabled to afford the same address to the foreign trader as he would be able to obtain in an English port, if business had brought his vessel to that country instead of to Ireland.

Under the English Bankruptcy Act of 1867 the County Courts in England have a bankruptcy jurisdiction. The Irish County Courts up to 1873, had jurisdiction in insolvency; but that jurisdittion, except as to pending matters, ceased on the 1st January, 1873, when the Irish Bankruptcy Amendment Act, 1872, came into operation. And even no matter how small the value of the bankrupt estate may happen to be, the Irish County Court has no jurisdiction in bankruptcy unless in cases which, after being proceeded with to a certain extent in the Court of Bankruptcy, are then remitted to the County Court to be there dealt with, and after being so dealt with there is a right of appeal back to the Court of Bankrupty. A great boon would be conferred both on small debtors and those who may have dealings with them, by conferring directly upon the Irish County Court a limited jurisdiction in bankruptcy.

(*To be continued.*)

RE MARSHALL.

The *Law Times* (January 24th, 1874) thus comments on the case of *Re Marshall*, exclusively reported as a Law Report for this Journal, which appeared in our issue of January 17th :—

The argument in support of the application for a writ of *habeas corpus* was that the Court of Queen's Bench had discretionary jurisdiction, and that even though the prisoner might not be required as a witness before the coroner, she was entitled to be present. It was pointed out that a coroner had power to exclude from the inquest both attorney and counsel, and that if the prisoner were not allowed to be present, any irregularities of which she might be entitled to take advantage for the purpose of quashing the inquisition would pass unchallenged; and further, that the prisoner should be entitled to cross-examine the witnesses, some of whom might die between the inquest and the trial, but whose depositions might possibly still be used, and no cross-examination take place at all. Solicitor-General Law, on behalf of the Crown, urged that uniformity should prevail in the English and Irish practice, and that the settled practice in England is that a writ of *habeas corpus* will not be issued unless it appears to be substantially necessary to the ends of justice. That may be a general principle, but there is no English decided case which goes the length of saying that a prisoner ought not to get his writ for the purpose of attending the coroner's court. It occurs to us that the argument with reference to the admissibility of the depositions in evidence—the doubt whether they would be admissible at the trial if the accused were not present at the inquest—is of itself sufficient ground for allowing the writ to go. Archbold in his Criminal Evidence says (p. 232), "Although the former statutes relating to the examination of witnesses against a prisoner before justices and coroners (1 & 2 Ph. & Mc. 13; 2 & 3 Ph. & M. c. 10; 7 Geo. 4, c. 64, ss. 2 and 5) did not contain any express enactment like that contained in 11 & 12 Vict., c. 42, s. 17, it was yet determined in many cases, and recognised as a rule of law, that, where the examination of witnesses in cases of felony under these statutes was taken in the presence of the accused, and he had the opportunity of cross-examining them, the deposition of any such witness might be read in evidence against the accused on his trial, in case the person who made the deposition were dead." We have not looked at the authorities cited by the counsel for the application in *Re Marshall*, but it is obvious that any judge would hesitate considerably to admit the depositions of a witness before the coroner on the trial of the accused, if the accused had not been present at the examination. Whereas it is equally clear that there could be no objection to the reception of such evidence, the accused having been present. The Solicitor-General contended that the writ ought not to go merely to gratify the desire of the accused to be present, but only where the accused wished to give evidence. In this argument we do not for a moment concur, but we entirely agree with Mr. Justice Fitzgerald, who said that he always considered that the more latitude allowed in preliminary courts the better for the course of justice; and again, "Is the coroner's court to exist? If it is, I ought to assist its inquiries in every way." "I know," his Lordship added, "of no case in which the application of an accused person, saying by her attorney that she desires to be present, has been refused." In delivering his judgment, Mr. Justice Fitzgerald made some general observations concerning the examination of prisoners on their trial. "I, for one," he said, "have long entertained the opinion, and have repeatedly expressed it from the Bench, that, at the final trial before the judge and petty jury, prisoners should be allowed to tender themselves and be received as witnesses, if they so desired it. I believe that there is a great defect in the law as it stands at present, and I

Digitized by Google

think that an alteration in the law to that effect should be made, as it would be most conducive to the due administration of criminal justice. The adviser of the prisoner has sworn that it would be necessary for the prisoner to be present at the inquest before the coroner, in order that she might be tendered as a witness, and I must treat the application with that view as *bonâ fide*. That course, if adopted, will be taken at the peril of the party, and if I were sitting as a coroner, although I would not call upon her to be examined, I should be very slow to refuse to receive her evidence, if it were offered."

REVIEW.

The Ballot Act, 1872, (35 & 36 Vic., Cap. 33). An Act to Amend the Law relating to procedure at Parliamentary and Municipal Elections; with a Copious Index; and Explanatory Introduction. By E. N. BLAKE, Esq., Barrister-at-Law. Dublin: John Falconer, 53, Upper Sackville-street.

At the present juncture it is of vital importance that the nature and operation of the Ballot Act, 1872, should be generally understood. The General Election now in progress is the first that has occurred since the Legislature provided for the exercise of the public franchise through the machinery of the Ballot, and a practical acquaintance with its working has become a matter of immediate necessity. The Ballot has two objects in view—security and secrecy—in order to effectuate which, a most complex and involved series of minute regulations has been introduced, a knowledge of which could hardly be readily acquired even by careful study, unless facilitated by explanatory assistance. The unpretentious manual under notice appears to be well calculated to render to the practitioner the aid which is best conferred by the exclusion of all mere padding, and by presenting the statute itself in a convenient form, accompanied by a succinct explanatory Introduction, the whole being digested in an Index, which appears to us to be not only extremely copious but admirably arranged. It is compendiously and inexpensively brought out, and we have no doubt will amply conduce to a ready and correct understanding of the provisions of the statute.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

RIGHT OF AN IRISH PEER TO VOTE.—An Irish peer, who is not a member of the House of Commons, is not entitled to have his name kept on the register so as to be able to vote, in the event of his being elected to the House of Commons at a future time (*Lord Rendlesham* v. *Tabor*, 29 L. T. Rep. N. S. 679. C. P.).

UNAUTHORISED ALTERATION OF LISTS — NOTICE OF OBJECTION.—In the copy of the register of voters for the county, sent by the clerk of the peace to the overseers, the appellant, a voter, was described as of a particular place. The overseers, knowing that he had ceased to reside there, struck out the name of the place, inserted that of the place where the voter actually did reside, and published the list so altered. Previously to the annual revision of the lists, a notice of objection was sent by post to the voter, directed to his true address, as described in the list when altered. The revising barrister deemed the notice sufficient, and expunged the voter's name. Held, that the alteration of the list being beyond the powers given to the overseers by 6 Vict., c. 8, s. 5, the list so altered could not be "deemed to be the list of voters," within sec. 6, and, therefore, that the notice, not having been directed to the appellant, "at his place of abode, as described in the said list of voters," according to the provisions of sect. 100, was improperly served, and the barrister's decision erroneous (*Nosworthy* v. *The Overseers of Rutland*, 29 L. T. Rep., N. S. 675. C. P.).

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

LAND TRANSFER.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—In the paper which Mr. Urlin read before the Statistical Society, while reviewing the report of the Commissioners appointed in 1868, he very naturally looks at the subject of land transfer from an Irish standpoint, and this of course inevitably leads to the subject of the Record of Title here and its working. In spite of the assertion that under that system the transfer of land can be worked out simply and rapidly, I think the disappointed tone of the paper demonstrates plainly enough that it has not been a success. The blame of this result is thrown by Mr. Urlin chiefly upon a class who are pretty well accustomed to be abused—namely, "the lawyers," by which I mean the legal profession in both its branches. Amongst lawyers, he tells us, "there is a silent repugnance to simplification of processes," and, consequently, "the profession is, for the most part, found arrayed against even so evident an improvement as registration of title to real property." Admittedly they are the only people acquainted with the subject sufficiently to understand it, yet, strange to say, although Mr. Urlin admits that they are not influenced by self-interest, they are arrayed against this *evident improvement*. Did it never strike Mr. Urlin that this opposition may be traced to the defects, infirmities, and dangers of the system so opposed, and that lawyers represent, in a great measure, in this controversy, the eleven *obstinate* jurymen whom the twelfth failed to convince. With the light of experience and the knowledge acquired both by study and practice, lawyers object to this system as empirical and unsuited to the purpose of land transfer, and demanding sacrifices more than equivalent to the benefits it purports to afford — a system which involves the loss of that security which land now offers for trust property, and in which the rights of those who have not a present interest in possession in landed property can only be protected by constant caveats—a system which annihilates trusts and limitations, and is unequal to the adjustment of difficulties and complication of interests in landed property, to avoid which it is necessary to restrict the record to legal ownership only—a system that, by giving an indefeasible character to every act of the recording officer legalizes the successful fraud at the expense of the real owner—in fact, a system which tears up by the roots many of the legal principles which have hitherto governed the law of real property, and substitutes statutory restrictions and arbitrary rules. Against this system there is amongst lawyers (I mean real practising lawyers, not theorists and *doctrinaires*), not merely "silent repugnance," but an open and avowed dislike; and as long as the public are weak enough to be advised by these same lawyers, the Record of Title will be, as it has hitherto been, a miserable failure. By Mr. Urlin's own admission "it rather suggests the idea of a model farm, or a model of a new machine; of an experiment set on foot for the purpose, *not of effecting much*, but rather of showing what it is possible to effect under a much improved system." If the intention of its promoters was that it should *not effect much*, I think their hopes have been fully realized, for it has effected very little indeed; and as to its being a model machine, it has also answered that end, in a certain sense, by revealing its own defects, and its inadequacy for the purpose for which it was intended. It is admitted by Mr. Urlin that the great difficulty in the way of carrying out the system is that it is not compulsory, or to use his own language:—"*The fact that it is voluntary and permissive militates against its success.*" This *naive* admission from the greatest advocate of the system, and one who

Digitized by Google

knows most about its details, speaks volumes. Imagine a doctor introducing a new and valuable mode for treatment of disease, and starting with the acknowledgement that, while the adoption of it was voluntary and permissive, it could hardly be successful, but insisting that all sufferers should be made take his nostrum *nolens volens.*

That compulsion is necessary to bring the Record of Title into general adoption, Mr. Urlin proves beyond doubt, and anyone who reads his paper will feel satisfied that so long as it possesses the drawback of being "voluntary and permissive," the public will have little or nothing to do with it. Indeed, but for the partially compulsory powers of the Record of Title Act by which purchasers in the Landed Estates' Court are recorded, unless they protest agaiest this advantage being conferred on them, there would be still fewer estates in the Record of Title; but, being recorded, they usually accept the situation with the same thankfulness as a mouse caught in a trap, and so the system is provided with something to work upon. Impressed with the conviction that absolute compulsion is necessary to carry out the beneficent intentions of the originator of the Record of Title, as otherwise people will not come in to be recorded, a little Bill was introduced last session for this purpose, the provisions of which you exposed at the time in a leading article in your Journal. Judging from Mr. Urlin's observations (and his experience entitles him to be heard on the subject) as to the advantages of allowing the public any choice in the mode of dealing with their own property, this or a similar bill will be introduced next session, but I scarcely think it will fare better than its predecessor. What effect such a Bill becoming law might have upon proceedings in the Landed Estates' Court, it is hard to say, or whether there would be the same demand for land, subject to such restrictions as this Bill sought to impose upon it. According to the provisions of the proposed measure, no trusts could be entered on the record, so that the limitations of family estates could not be carried out except by private deeds, the interests under which could only be protected by caveats. Besides all this, there is the grave objection that practically a recorded title is in Court, and any transaction in relation to a recorded estate is not only subject to all the arbitrary restrictions of the system (and it is evident from what Mr. Urlin says that it is only by very arbitrary rules it can be worked), but is liable to be brought into Court for judicial decision. If the recording officer is dissatisfied with the deed to be recorded in any respect he may refuse to record it, and then the applicant is driven to apply to the Judge, for which purpose he will very probably have to obtain the services of counsel and solicitor, and this it may be in relation to some irregularity which, under the Registry of Deeds system, would have been of no consequence. I know myself of an instance in which the transactions in connexion with a recorded property were kept at a stand-still for more than a year, because the parties were unable to comply with the requirements of the Record of Title Office in a matter which the Judge afterwards dispensed with as unnecessary; and I have no doubt that other professional men could mention instances of similar inconvenience. In fact, I think I am safe in asserting that the record of title is unequal to transactions in land of any difficulty, and is only suited for the most simple transfers of legal ownerships. It is not surprising, then, that, as Mr. Urlin admits, "people are afraid of it," and "prefer evils to which they are accustomed to benefits placed before them in the Record of Title."

I, for one, am disposed to think that people are the best judges of their own business, and if they prefer, as Mr. Urlin admits, the evils which he deprecates, to the benefits which he proposes to bestow on them, I think they might, consistently with the liberty of a free Constitution, be allowed to follow their inclinations in the matter, and I suspect the British Parliament will be of the same opinion if the Record of Title Amendment Bill is brought forward next session.

Of course, these "evils" are exaggerated by the would-be reformers, while the "benefits" of their system are extolled. But will any one who desires to purchase a good estate in a good county in Ireland find that the price of land is depreciated, or the competition for it discouraged, by the delay and expense of investigation of title and carrying out the sale? I rather think not, and that anyone who has a good estate to sell will find little difficulty in getting a good price for it. I know that it is popularly believed that a Parliamentary title adds immensely to the value of an estate, but I do not think this is by any means a universal rule. In small properties I believe it is very little considered, and particularly in house property. I do not mean to say for a moment that both the delay and expense of making out title and carrying out sales of land are not complained of. I know that they are, and justly, but I say that were they removed to-morrow, the effect upon the price of land would not be affected in any material degree. Still, if this delay and expense can be safely removed or abated, there is no doubt that the duty of such removal is a plain one, and I hope to be able to show some practical mode towards it in my next letter.

Meanwhile, apologizing for intruding at such length on your space, and for which the importance of the subject is my only justification,

I remain, Sir,

Your obedient servant,

HENRY T. DIX.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Can you, or any of your correspondents, refer me to a decided case on the point as to whether an English solicitor can practise in Ireland without the ordinary apprenticeship.

Your obedient servant,

QUÆRIST.

Belfast, 26th January, 1874.

LAW STUDENTS' JOURNAL.

LEGAL AND LITERARY DEBATING SOCIETY.

The usual Weekly Meeting of this Society will be held on Thursday evening, the 5th Feb., at 53, Lower Sackville-street. Chair to be taken at Eight o'clock, when Mr. A. Gartlan will read an essay on "Novels, and their Relation to Real Life."

COURT PAPERS.

SUPERIOR COURTS OF COMMON LAW.

List of Days to Plead, and Mark Judgment.

FEBRUARY, 1874.

Plaint Served on		Filed not later than	Last Day to Plead	Entitled to Judgment
Monday,	.. 2 Feb.	11 Feb.	16 Feb.	17 Feb.
Tuesday,	.. 3 "	12 "	17 "	18 "
Wednesday,	.. 4 "	13 "	18 "	19 "
Thursday,	.. 5 "	14 "	19 "	20 "
Friday,	.. 6 "	16 "	20 "	21 "
Saturday,	.. 7 "	17 "	21 "	23 "
Monday,	.. 9 "	18 "	23 "	24 "
Tuesday,	. 10 "	19 "	24 "	25 "
Wednesday,	.. 11 "	20 "	25 "	26 "
Thursday,	.. 12 "	21 "	26 "	27 "
Friday,	.. 13 "	23 "	27 "	28 "
Saturday,	.. 14 "	24 "	28 "	2 Mar.
Monday,	.. 16 "	25 "	2 Mar.	3 "
Tuesday,	.. 17 "	26 "	3 "	4 "
Wednesday,	.. 18 "	27 "	4 "	5 "
Thursday,	.. 19 "	28 "	5 "	6 "
Friday.	.. 20 "	2 Mar.	6 "	7 "
Saturday,	.. 21 "	3 "	7 "	9 "
Monday,	.. 23 "	4 "	9 "	10 "
Tuesday,	.. 24 "	5 "	10 "	11 "
Wednesday,	.. 25 "	6 "	11 "	12 "
Thursday,	.. 26 "	7 "	12 "	13 "
Friday,	.. 27 "	9 "	13 "	14 "
Saturday,	.. 28 "	10 "	14 "	16 "

Digitized by Google

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—E. D. Barry, schedule dividend 3.—T. S. Hagarty, proposal.—S. Crowe, amend rental.—P. Barden, as to title.—Reverend J. Gabbett, from 29th.

IN COURT.—Church Commissioners Armagh, from 25th.—C. O. Blake, allocation.—T. P. French, tenants objection.—T. Haig, re-entry final schedule.—S. Tierney, from 29th.

Before EXAMINER (Mr. Dobbs).

F. Stuart, proofs.—W. Elliott, rental.

TUESDAY.

IN COURT.—Reverend T. Stack, final schedule.—E. T. White, do.—W. Jack, do.—J. Barney, from 27th.—Trustee O Brien, compensation.

WEDNESDAY.

Trustee, De Bazencourt, final schedule.—T. N. E. O'Halloran, do.—W. H. Slator, final schedule.

Before EXAMINER (Mr. M'Donnell).

J. H. Bowley, rental.—M. Downing, do.—J. L. Mason, from 28th.

SALE IN BELFAST.

J. F. FERGUSON.—3 lots.

THURSDAY.

IN CHAMBER.—K. A. Cox, directions.
IN COURT.—J. A. Gandon, objections.—Church Commissioners, tenant's objections.

Before EXAMINER (Mr. Dobbs).

S. Crowe, proofs.

FRIDAY.

SALES AT 12 O'CLOCK.

ANNE O'NEIL, Co. Dublin.—1 lot.

E. E. WIDDUP, Co. Carlow.—1 lot.

N. KIRWAN, Co. Galway.—1 lot.

G. O'FERRALL, Co. Meath.—1 lot.

TRUSTEES DESPARD, City of Dublin.—1 lot.

R. KING, Co. Tyrone.—2 lots.

T. S. HAGERTY, Co. Wexford.—1 lot.

H. LAMBERT AND OTHERS (life estate) Co. Wexford.—3 lots.

G. MURPHY, City of Dublin.—10 lots.

SATURDAY.

Before EXAMINER (Mr. M'Donnell).

Trustees Burleigh, rental.

Before EXAMINER (Mr. Dobbs).

Trustees Sir Wallace, rental.

SALE IN BELFAST.

M. CHERRY AND OTHERS.—1 lot.

LANDED ESTATES' COURT.

SALES.

January 23rd, before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN.—Ellen Jane Cooper, owner and petitioner. The house and premises 10, Upper Gloucester-st., held under lease for 999 years, from 1792. Sale adjourned. Solicitors, *Neilson and Son.*

COUNTY GALWAY.—The estate of the Trustees and Executors of John Reynolds, deceased, owner and petitioner. Part of the lands of Kiltormer West, containing 175a. 2r. 1p.; held in fee-simple. Sale adjourned. Solicitor, *M. J. White.*

CITY OF DUBLIN.—The estate of John Kidd, owner and petitioner. One undivided fourth of premises in Great Charles-street, North Summer-street, and Upper Rutland-street, held under lease for 9,999 years. Sale adjourned. Solicitors, *Maxwell and Weldon.*

COUNTY CLARE.—The estate of Redmond Burke, Trustee of M. Roseingrave, owner and petitioner. Two fee-farm rents, issuing out of the lands of Killulla and its subdenominations, held under fee-farm; profit rent. £73 16s. 11d. Sold in trust for Mr. J. H. Whitcroft, for £1,525. Solicitors, *Chomley and St. George.*

COUNTY DONEGAL.—Thomas N. Underwood and others, owners; William Young, petitioner; Thomas E. M. Mason and others, owners and petitioners.

Lot 1.—Part of the lands of Cornakilly, containing 73a. 2r. 4p., held in fee-farm; profit rent, £90 19s. 6d. This lot was withdrawn.

Lot 2.—Part of Maghery Callaghan, and Tochest, containing 143a. 2r. 34p., held under fee-farm grant; net profit rent, £332 7s. 9d. Sold to Mr. Thomas Cunningham, for £8,150. Solicitor, *John Colquhoun.*

COUNTY FERMANAGH.—The estate of Wm. Armstrong and others, owners; Wm. Armstrong and another, petitioners.

Lot 1.—Part of the lands of Drumsawnamore, containing 224a. 2r 8p., held for a residue of 500 years from 1760; profit rent, £155 17s. Sale adjourned.

Lot 2.—Part of Drumsawnabeg, containing 136a. 2r. 17p.; profit rent, £93 13s. 4d. Sold in trust for Mr. W. P. Armstrong, for £2,100. Solicitors, *Collum and Son.*

CITY OF DUBLIN.—The estate of Sir James W. King and others, owners; Rev. Wm. King, petitioner.

Lot 1.—House and premises 32, Aungier-street, held under lease for lives renewable for ever; profit rent, £28 15s. 7d. Sold to Mr. W. J. Tyndall, for £300.

Lot 2.—Head rents issuing out of 59, Dame-street, and 1 and 2, Eustace-street. Sale adjourned.

Lot 3.—House and premises 23 and 24, North Great George's street. Sale adjourned. Solicitors, *Messrs. Williamson and Hobson.*

COUNTY WESTMEATH.—The estate of Grace J. Sheil, owner and petitioner. Part of the lands of Gortomloe. containing 447a., held in fee; profit rent, £408 15s. 3d, Sold subject to an annuity of £400 for the life of a lady aged about sixty. Sale adjourned. Solicitor, *Wm. Mooney.*

CITY OF KILKENNY.—The estate of John Thomas Walker, owner; Robert A. Holmes, petitioner.

Lot 1.—House and premises in Parliament-street and New Buildings-lane; profit rent, £79 6s. 5d. Sold to Mr. Patrick Shea, for £325.

Lot 2.—Houses and premises in Lower John-street; profit rent, £62 17s. 5d. Sold to Robert A. Holmes, for £500.

Lot 3.—Houses and premises in King-street; profit rent, £33 13s. 5d. Sale adjourned.

Lot 4.—Houses and premises in Coal-market; profit rent, £21 3s. 10d. Sold to Mr. P. Shea, for £210.

Lot 5.—Part of Lower New-street, Upper New-street, and New-road; profit rent, £16 7s. 8d. Sold to Robert A. Holmes, for £500. Solicitor, *E. Fetherstonhaugh.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Henry L. Dymoke	Prove debts	*Molloy & Watson*
James D. Beresford	do	*Oldham & Eaton*
Samuel Hawkins	Prove debts and vouch	*Forsythe*
John Molony	Vouch assignee's acct.	*Lett*
Charles P. Lucas	Vouch account	*Perry & Co.*
Thomas F. O'Neill	Title	*Larkin & Co.*

TUESDAY.

Before the Court, at 11 o'clock.

James D. Beresford	2nd composition sitting	*Oldham & Eaton*
Francis Harvey	do	*Fay & M'Gough*
Thomas Nolan	do	*Scallan*
Andrew Kehoe	1st public sitting	*Hamilton & Craig*
Mary Clancy	Final examination	*White*
Same matter	Examine witnesses	*White*
Bernard Finigan	Final examination	*Cronhelm & Co.*
Christopher Flynn	Charge and discharge	*M'Govern* for charge
John C. Walsh	Motion	*Mathews* for dischrg. *West*
Eugene Sheehan	Confirm sale	*O'Connell*
Mary Quarry	Audit and dividend	*Campbell*
John Molony	Audit assignee's acct.	*Lett*
William Palmer	Audit and dividend	*Larkin & Co.*
Potter & Gillman	Examine witnesses	*White*

Before the Chief Registrar, at 12 o'clock.

M. M'Monagh	Costs	*Maturin*
John Kane	do	*Maturin*
John Murphy	do	*Cherry*
Robert Baird	do	*Perry & Co.*

WEDNESDAY.

Before the Chief Registrar, at 12 o'clock.

Francis Harvey	Prove debts	*Fay & M'Gough*
Mary M'Donagh	Vouch account	*Perry & Co.*

THURSDAY.

Before the Court, at 11 o'clock.

John Rea Payne	Prove debts and vouch	*Molloy & Watson*
Nicholas Dormoy	do	*O'Dowda*
Thomas Nolan	do	*Scallan*

FRIDAY.

Before the Court, at 11 o'clock.

Miles Roland	1st public sitting	*Meldon & Son*
C. & P. Maguire	do	*Larkin & Co.*
Walter O'Donnell	do	*Findlater & Co.*
John Forde	do	*Mathews*
James M'Loughlin	do	*Walsh*
Anthony M'Nulty	do	*Hamilton & Craig*
Same matter	Examine witnesses	*Hamilton & Craig*
Potter & Gillman	Final examination	*Larkin & Co.*
John M'Clelland	do	*Leachman*
Joseph Jermyn	do	*Hamilton & Craig*
Michael Cullinan	do	*Colman*
John O'Donnell	do	*Hamilton & Craig*
Same matter	Motion	*Hamilton & Craig*
James Carroll	1st composition sitting	*Perry & Co.*
Same matter	Final examination	*Leachman*
Andrew Rogers	Confirm sale	*Gerrard*

Before the Chief Registrar, at 12 o'clock.

Philip L. Lyster	Vouch account	*Molloy & Watson*

ADJUDICATIONS IN BANKRUPTCY.

Dever, John, Castlebar, Mayo, grocer. Sittings, *Tuesday, February* 17, and *Friday, March* 6. *Casey & Clay*, solrs.

Farrelly, Michael, Virginia, county Cavan, grocer. Sittings, *Friday, February* 20, and *Tuesday, March* 10. *Lett*, solr.

DIVIDENDS IN BANKRUPTCY.

Coffee, James, Lower Bridge-street, Dublin, hat and cap manufacturer. 2nd dividend 1½d in the £ on £1,518. L. H. Deering, official assignee. *Leachman*, solr.

Mayes, John, Lurgan, grocer. 1st dividend of 5s. 0¼d. in the £. C. H. James, official assignee. *Mathews*, solr.

Parsons, Joseph, Wellington-place, Dublin. 1st and final dividend of 1½d. in the £. L. H. Deering, official assignee. *Bradley & Son*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JANUARY Fri 23	Sat. 24	Mon. 26	Tues. 27	Wed. 28	Thur. 29
	Government.						
—	3 p c Consols	91⅞	91⅞	—	91⅞–2	—	91⅞–2
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	90⅝¾	90⅝¾	90⅝	90⅝¾	90⅝	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	108⅝	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	102½	—	—	—
	Banks.						
100	Bank of Ireland ..	304	304½	304	303⅞	303	302⅝¾
25	*Hibernian Banking Co.* ..	58	58	58	57⅞	58	58⅛
20	*London and County* ..	—	—	—	—	—	x d
15	*London Joint Stock* ..	—	—	—	—	—	x d
20	*London and Westminster* ..	70½	—	—	—	69½	67½ xd
3½	*Munster Bank (Limited)*	—	—	—	—	—	8⅝¾
30	*National Bank*	57¾	—	—	—	—	55⅞ xd
15	*National of Liverp'l (Ltd)*	—	—	—	—	—	13⅞ xd
25	*Provincial Bank* ..	—	—	—	95	—	95–4⅞
10	Do. New ..	—	—	38	—	—	—
10	*Royal Bank*	—	—	—	28⅜	—	28⅜
15	*Union of London* ..	—	—	—	—	—	x d
	Steam.						
50	British & Irish	—	—	—	-	—	x d
100	City of Dublin	107	--	—	107¾	—	—
50	Dublin and Glasgow ..	—	—	—	—	—	x d
10	Dundalk (Limited) ..	—	—	—		7½	—
50	Peninsular and Oriental ..	—	—	—	—	—	55⅞
	Mines.						
1	Killaloe Slate Co. (lit'd) ..	15/	15/	—	—	—	15/
7	*Mining Co. of Ireland (lit'd)*	—	—	5⅞	—	—	5⅞
	Miscellaneous.						
8½	*Dublin Tramways* ..	7⅝⅞	—	7⅝⅞	—	—	—
25	*National Assurance* ..	47	—	—	—	—	—
9-4-7	*Patriotic Assurance* ..	10⅝⅞	10⅝⅞	—	—	—	10½
	Railways.						
50	Belfast and Northern Cos.	71	—	—	—	—	—
100	Dublin and Belfast Junct.	92	—	—	—	92½	91½
100	Dublin, W'klow, & W'ford	—	—	—	—	75	—
100	Gt. Southern and Western	114⅜½	—	114	—	113	113–2⅞
100	Do. do. free of Stamp	115⅛	—	—	—	—	113½
100	Midland Gt. Western ..	93½	93⅝⅞½	93½	93	93	92⅞
50	Waterford and Limerick ..	33½	—	—	—	—	—
	Railway Preference.						
100	D., W., & W., 6 per cent ..	—	—	—	—	—	130
50	D., W., & W., 5 p c (1860)	54⅝⅞	—	—	—	54½	54⅞
50	Do. do. (1864)	53⅛	53⅞	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	98½	—	—	99 ½	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	97⅞	—	—	—	98
50	Do., new redeemable 5 p c	50½ f	50½ f	50½	—	—	50
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	95½	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	99½	—	—
—	D., W., & W., 4½ p c ..	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	102½
—	Gt. South'n & West'n, 4 p c	98⅞ f	—	—	—	97½	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	103¾	103½	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—February 12th and 26th, 1874.
Account Days—February 13th and 27th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

CARROLL—January 26, at 49 Summer-hill, the wife of Anthony R. Carroll, Esq., solicitor, of a son (still-born).

MARRIAGES.

COSBY and SHEGOG—January 27, at St. Stephen's Church, by the Rev. John Dowden, John H. W. Cosby, of No. 41 Pembroke-road, Esq., barrister-at-law, to Frances Elizabeth, widow of the late W. H. Shegog Esq., and daughter of Robert Maunsell, Esq., of Eblana Hall, Kingstown.

JACKMAN and O'MEARA—January 21, at the residence of the bride's father, with special licence, by the Very Rev. Dr. Howley, V.G., assisted by the Rev. John Jackman, brother of the bridegroom, and Rev. Thomas F. Meagher, C.C., Richard H. Jackman, Esq., M.D., Thurles, to Ella, only daughter of Valentine O'Meara, Esq., solicitor, Tipperary.

O'CALLAGHAN and MOLLOY—January 14, at Monkstown Church, by the Rev. C. Harris, C.C., Thaddeus O'Callaghan, Esq., B.A., eldest son of the late Thaddeus O'Callaghan, Esq., of Fitzwilliam-square, Dublin, to Kate, second daughter of Brian Arthur Molloy, Esq., barrister-at-law, 3 Ardnagreina, Tivoli-road, Kingstown, and grand-daughter of the late Major Brian Molloy, formerly of Millicent, County Kildare, and Belvidere-place, Dublin.

PUBLICATIONS:

MR. BUTT'S GREAT WORK ON THE IRISH LAND ACT.

PUBLISHED at 25s., now Selling for 21s., Free by Post, 704 pp. royal 8vo, cloth, lettered.

A PRACTICAL TREATISE ON THE NEW LAW OF COMPENSATION TO TENANTS, AND THE OTHER PROVISIONS OF THE LANDLORD AND TENANT ACT, 1870, With an APPENDIX of STATUTES and RULES.

BY ISAAC BUTT, ESQ., M.P., Of the Inner Temple, Barrister-at-Law; One of Her Majesty's Counsel in Ireland.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.
London: H. BUTTERWORTHS & Co., 7, Fleet-street.

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF CAVAN AND CITY OF DUBLIN.

In the Matter of the Estate of Charles Langdale, Esq., Sir John Esmonde, Bart., and others, Owners and Petitioners. And in the Matter of the Estate of Frances Maria Horne and others, Owners: And the Partition Act, 1863.

TO BE SOLD, Before the Honourable Ju'ge Flanagan, At the Landed Estates' Court, Dublin, On FRIDAY, The 13th day of FEBRUARY, 1874, In Thirteen Lots, The following Valuable Property:—
COUNTY OF CAVAN RENTAL,

LOT 1.

The Lands of Derrylane, containing 57a 3r 35p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett rental of £36 9s 7½d. The Government Valuation of this Lot is £40 5s 0d.

LOT 2.

The Lands of Garranrush, known on the Ordnance Survey as the Lands of Garryross, containing 332 acres and 10 perches statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £248 11s 0d. The Government Valuation of this Lot is £224.

LOT 3.

Part of the Lands of Barecony, known on the Ordnance Survey as Bareconny (Grattan), containing 44a 2r 15p statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a nett annual rental of £33 3s 3d. The Government Valuation of this Lot is £29 5s 0d.

LOT 4

Consists of part of the Lands of Ballycroft, known on the Ordnance Survey as Lower Lackan, containing 70a 3r 25p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental (paid by one tenant who holds under a Lease) of £73 2s 10d. The Government Valuation of this Lot is £69.

LOT 5

Consists of other Part of the aforesaid Lands of Lower Lackan, containing 262a 0r 26p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £120 0s 9d. The Government Valuation of this Lot is £123 12s 0d.

LOT 6

Consists of Part of the Lands of Leggiwitt, known on the Ordnance Survey as Legawell, containing 114a 2r 38p statute measure, situate in the Barony of Clonmahon and County of Cavan, and producing a nett annual rental of £73 14s 7d. The Government Valuation of this Lot is £71 0s 0d.

LOT 7

Consists of Part of the Lands of Leganny, known on the Ordnance Survey as the Lands of Legaginny, containing 178a 3r 21p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a nett annual rental of £67 10s 3d. The Government Valuation of this Lot is £93 16s.

The Lands of Derrylane, Lacken Lower, Legaginny, and Legaweel, are situate within one mile of Crossdoney, a station on the Midland Great Western Railway, and 4 miles from the Town of Cavan.

The Moorland on Legaginny and Legaweel is capable of much improvement by a small outlay. The Lands are cheaply set, the tenants industrious, and pay their rents with punctuality.

The Lands of Garryross and Barconey (Grattan) are situate within two miles of Oldcastle, a station on the Dublin and Drogheda Railway, and a good fair and market town. The Lands are of nice quality. The tenants are industrious, and pay their rents with punctuality.

RENTAL OF THE CITY OF DUBLIN PROPERTY.

LOT 1.

Houses and Premises, Nos. 72, 73, 74, 76, 77, 78, and 79, Queen-street, and Nos. 1, 2, and 3, Tighe-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject, in conjunction with Lots 2 and 3 on this rental, to a rent-charge of £6 12s 4d sterling. This Lot will be sold primarily, liable to the entire of the rent-charge of £16 12s 4d, and bound to indemnify Lots 2 and 3 from payment of any portion thereof. This Lot produces a nett annual rental of £70 12s 3d, and the Government Valuation is £127.

LOT 2.

House and Premises, No. 75 Queen-street, in the Parish of Saint Paul, and City of Dublin, held in fee-simple, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rental of £25. The Government Valuation is £22.

LOT 3

Consists of the Houses and Premises, Nos. 71 and 72 Queen-street, and Nos. 1, 2, 3, 4, and 5 Hendrick-street, in the Parish of Saint Paul, and City of Dublin, held in fee, but subject as aforesaid to the aforesaid rent-charge of £16 12s 4d, but indemnified against same by Lot 1. This Lot produces a nett annual rent of £39 13s 10½d. The Government Valuation is £84 0s 0d.

LOT 4

Consists of the Houses and Premises, Nos. 71, 72, 72½, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90, Cork-street, and Cozy Lodge and Vauxhall Lodge, Cork-street, and Houses and Premises, 48 Marrowbone-lane, all in the Parish of St. Catherine, and City of Dublin, held in conjunction with Lots 5 and 6 under a Lease for lives renewable for ever, and subject to the yearly rent of £46 3s 1d, and producing a nett annual rental of £42 16s 10½d.

This Lot will be sold subject to the entire head rent, and bound to indemnify Lots 5 and 6 against the payment of any portion thereof. The Government Valuation is £157.

LOT 5.

Consists of the House and Premises, No. 73 Cork-street, in the parish of St. Catherine, and city of Dublin, held in conjunction with Lots 4 and 6 under Lease for lives renewable for ever, subject to the rent of £46 3s 1d, and producing a nett annual rental of £44 15s per annum. The Government Valuation of this Lot is £31 10s. This Lot will be sold indemnified against the payment of any portion of the head rent of £46 3s 1d by Lot 4.

LOT 6.

This Lot consists of Houses and Premises, Nos. 46 and 47 Marrowbone-lane, situate in the parish of St. Catherine, and city of Dublin held in conjunction with Lots 4 and 5 under Lease for lives renewable for ever, and subject to the rent of £46 3s 1d, but indemnified against the payment of any portion thereof by Lot 4.

This Lot produces a net annual rental of £29 15s. The Government Valuation is £31.

A draft Fee-Farm grant, in lieu of the Lease for lives renewable for ever, under which Lots 4, 5, and 6 are held, has been approved of on behalf of grantors, and will be executed to the purchaser at the expense of the estate.

The rent in the grant will be £48 10s 2d.

Dated this 20th day of December, 1873.

H. R. GREENE, Chief Clerk.

For Rentals, Maps, and further particulars apply at the Landed Estates' Court; or to

Messrs. WILLIAM ROCHE & SON, Solicitors having the carriage of the Proceedings, No. 4 Stephen's-green North, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, January* 31, 1874.

Digitized by Google

// THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, FEBRUARY 7, 1874. No. 367.

DECISIONS ON THE PARLIAMENTARY ELECTIONS ACT, 1868.—IV.

IF the general tendency of a Parliamentary Committee was to condone the offence of intimidation, except in very flagrant cases, the same cannot be said to be the general result of the decisions of the new tribunals. Cases of this nature have been almost invariably treated with great severity by the election judges, and the general principles upon which their lordships seem to have acted were laid down by Keogh, J., in the Drogheda case (1 O'M. & H. 255), one of the first cases ever tried by an election judge. His lordship, in alluding to the argument which had been advanced on behalf of the respondent—that freedom of election is secured provided the majority are shown to have had the power of recording their votes—repudiated the doctrine *in toto*:—"This was not solely a contest between the respondent and the petitioner; there is another and a greater interest than belongs to either of them—there is the public interest. The humblest individual in the whole of the constituency has as good a right, without fear or intimidation, to come into the Court-house upon the day of the election as the richest man upon the register, and as good a right as the great majority of the constituency. Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining one-tenth should be able to record their votes and express their opinions." Considerable light was thrown on the question of what acts can be considered to come within the definition of undue influence, as defined by 17 & 18 Vic., c. 102, sec. 5, in the judgment of Blackburn, J., in the North Norfolk case (1 O'M. & H. 241). In that case it was questioned whether it is undue influence, within the provisions of the Act, for a person who is in the habit of frequenting at intervals a shop, and giving a tradesman some custom, to threaten to take away that custom and go elsewhere. His lordship held that "if the loss proposed to be inflicted in that way were to such an extent and in such a way as would seriously affect the saleable value of the good will of the man's business, it would clearly be a loss. The matter must be weighed as a question of degree. It must be remembered, in construing the statute, that it is intended that such an infliction of loss, or such a threatening of infliction of loss, must be so serious that one could direct a jury in a Criminal Court to find that a person was guilty of misdemeanour. The maxim *de minimis non curat lex* applies to a considerable extent, and in seeing whether there is undue influence from a threat of some loss, you should see whether the loss is really considerable or not, and that it is not what a lawyer would call too remote." Still this doctrine of remote damage will not be carried very far, for it was held in the Northallerton case (1 O'M. & H. 168) that a person threatening a Baptist minister, that he would give up his pew in the chapel if the minister voted as he wished, was intimidation within sec. 5. In the Blackburn case (1 O'M. & H. 203) it was contended that it was not undue influence, within the meaning of sec. 5, to discharge a servant who has a vote on the eve of a Parliamentary election, on the ground of politics. It was argued that he was not influenced directly; it was only made worse for him that he belonged to a certain political sect. He has been persecuted, and, therefore, he is more likely to crown his martyrdom by voting for the other side, and so there is no violation of the Corrupt Practices at Elections Act. Willes, J., in giving judgment, admitted that that might be so in a particular case—"A great deal would depend upon the circumstances, for instance, as to whether the injury would make him likely to change his mind, in order that he might be taken back by his master, or some other person of the same political opinions as the master who dismissed him. But the matter is not concluded here. The Legislature, in sec. 5, uses language which makes it undue inflence to practise intimidation directly or not, with intent to influence the vote of a single voter. If it is done with a view to affect votes, or interfere with the free exercise of the franchise, it is within the prohibition of sec. 5. I think, therefore, that the proper answer to the question which I have put is that the wrongful dismissal by an employer of a voter or voters from his employment shortly before the election, upon the ground of his political opinions, is evidence of intimidation within sec. 5." In the remarkable judgment delivered in the Galway County case (2 O'M. & H. 55) by Keogh, J., a somewhat important enunciation of the law as regards the interference of peers at elections was made by his lordship. It was proved that the Marquis of Clanricarde said to his tenants—"If you can vote for Capt. T. (the petitioner), I shall be delighted if you do so; if you cannot vote for him, at all events stay at home, and do not vote against him." Upon this evidence it was sought by the respondent to get the Marquis reported to the House of Commons under sec. 11 (15) of the Parliamentary Elections Act, 1868, as having acted illegally, by contravening the resolutions of the House with respect to the interference of peers at elections. His lordship utterly denied the proposition that any resolution of the House of Commons can make law:—"In every single case in which these charges were brought before the House of Commons the House left the charges where it found them, and took the determination of doing nothing. I shall not report Lord Clanricarde as having exceeded either any principle of common law, or any provision of the statute law." In the Longford case (2 O'M. & H. 14) it was proved that the party who supported the unsuccessful candidate introduced at the election bands of men from the neighbouring counties, for the purpose of intimidation and riot. In consequence of this the respondent's party organized a defensive force, for the purpose of protecting the outlying voters from the persons employed on the other side, it being impossible to obtain a sufficient escort of military or police. As to this course, taken by the respondent's party, Fitzgerald, J., in delivering judgment, said—"I am to ask myself the question whether it was legal, that is, whether the enrolment of what I may call a voluntary police was necessary, and, if necessary, whether it was legal? It would not have been necessary if a suitable escort of police or military could have been procured. As that could not be done, the necessity for some protection after the introduction of the foreign bodies was obvious, and there being that necessity, I cannot say that the enrolment of a voluntary police for defensive purposes

Digitized by Google

only was an illegal step, but it was one rarely to be adopted, except under extreme circumstances, particularly as the parties who adopted it exposed themselves to great peril, and would have had to bear all the consequences which resulted."

NOTANDA.

Subpœna; witness resident out of jurisdiction.—The Courts of Equity have jurisdiction to issue and enforce subpœnas in order to compel the attendance at the trial of issues of fact of witnesses resident out of the jurisdiction. But this power will not be exercised unless it is shown that such witnesses may give material evidence, and that their attendance is reasonably and necessarily required (*Underwood* v. *Darracott*, Rolls, Dec. 2, 1873).

Administration-summons by creditor; nonjoinder of other creditors.—In an administration-summons, obtained under 30 & 31 Vict., c. 44, s. 153 by a creditor, it is unnecessary to join all the other creditors of the deceased (*In Re M'Keown*, deceased; Rolls, Jan. 19, 1874).

Substitution of service.—Action on bills of exchange, and for goods sold against defendant, resident in Liverpool. The bills were accepted by defendant, payable in Dublin; and the goods were ordered by the defendant, and shipped for his order on board vessels in the port of Dublin, and addressed to the defendant in Liverpool. *O'Driscoll* moved to substitute service of the plaint by sending a copy in a registered letter, or serving the defendant in person in Liverpool, as he had no agent within the jurisdiction. [MONAHAN, C.J.—Has this Court ever made such an order? I rather think we have no jurisdiction]. I am not aware of such an order having been made by this Court, but the Court has jurisdiction to make it: *Kelly* v. *Dixon*, Ir. R. 6 C. L. 25. The C. L. P. Act, 1853, sec. 31, shows that the Court has inherent power to order service out of the jurisdiction; and sec. 34 allows that power to be exercised on good and sufficient grounds shown. [MONAHAN, C.J.—If *Kelly* v. *Dixon* is an authority, no doubt the present application comes within that decision. But it would be better to move the Queen's Bench.] It was assumed that the Queen's Bench decision would be followed; the writs being issued in rotation for the Law Courts, the plaintiff cannot select a particular Court. [*O'Brien*, Q.C., *amicus curiæ.*—Some expressions of one of the judges, at all events, of the Queen's Bench, recently, seem to show that he felt a doubt as to *Kelly* v. *Dixon.*] I understood that the doubt was as to whether or not the cause of action in a particular case arose within the jurisdiction, and not on the right to make the order. [MONAHAN C.J.—Have such orders been made by the Exchequer?] I do not know of any reported decision on the point in the Exchequer; but in an old case there are some expressions rather adverse to holding that the Court had jurisdiction.—MORRIS, J.: We make no decision on the point. All we say is that the application had better be made to the Court of Queen's Bench (*Barnett* v. *M'Neight*, C. P., Jan. 20, 1874. See *Knox* v. *Lord Rosehill*, 7 Ir. L. T. 504, miscel).

Substitution of Service.—*O'Driscoll* made an application similar to that immediately preceding, stating that having first brought the action in the Common Pleas, and moved accordingly, that Court, although it was admitted that the facts were *ad idem* with those in *Kelly* v. *Dixon*, without pronouncing any definite judgment on the question, suggested an application to the Queen's Bench.—FITZGERALD, J.: I will act on the authority of *Kelly* v. *Dixon*, although I entertained and still entertain doubts as to the propriety of that decision. But I will add to the conditional order a direction that it shall not be made absolute in the usual way by a side bar rule, in the event of cause not being shown, but that the plaintiff must apply to the Court to make the order absolute (*Barret* v. *M'Neight*, Q. B., Jan. 23, 1874).

Security for costs; defence filed; special circumstances.—*Walker* moved that the plaintiff, out of the jurisdiction, give security for costs. The plaint was served July 11, 1873, and the preliminary notice July 22. The defence was filed July 26 (the last day for so doing), without any notice that same was without prejudice. On the same day notice of motion was served, grounded on the defence therewith served, and an affidavit sworn the day previous, which (as deposed to) was filed before the filing of the defence, as there being a lodgment of part of the demand in Court (the intention to lodge which was stated in the affidavit), it was necessary to procure the order to lodge and afterwards to attend the officer that the lodgment might be certified on the defence before filing *Kavanagh*, *contra*, relied on *Bush* v. *Curran*, 9 Ir. C. L. Ap. 30; *Beausang* v. *Condon*, 13 Ir. C. L. Ap. 37. Motion granted (*Oates and Another* v. *Caraher*, Con. Ch., July 31, 1873, before O'BRIEN, J.)

Security for costs; extension of time to plead.—*Beytagh* moved that the plaintiff, out of the jurisdiction, give security for costs. The plaint was issued April 23rd, 1866. Preliminary notice served May 5th. Order extending time to plead on terms of short notice of trial, May 8. Notice of motion served with defence, same day filed "without prejudice," May 10. The motion had been directed to stand over from Chamber. *J. B. Murphy* opposed, on the ground of waiver. Motion granted (*Oates* v. *Culkeen*, Ex. May 23, 1866).

Arrangement; advertisement of sale; B. A. Act, 1857, s. 354.—*Scallan*, solicitor, opposed the advertisement in the newspapers of the sale of an arranging debtor's premises, describing same, so as to identify him, or giving his name, as being a violation of the spirit of the arrangement clauses. *Larkin*, solicitor, *contra*, asked for a decision on the question as one of right, and stated that in one case, although threatened with an action, he had, under counsel's advice, persisted in advertising: here it was necessary, in order to identify the premises. HARRISON, J.—Section 354 of the Act of 1857 enacts that the Court may, if it think fit, direct that any sitting of the Court, "or proceeding," in any matter under the Act shall be private. This is a proceeding within that provision, and it may be legitimately public. It lies on those to show why not who object to its being so in a particular case, serving notice of motion for the purpose. If the composition were paid, or unless some object was to be gained by publicity, I think it ought not to be pressed (*Re J. N.: Ba.*, October 21, 1873).

Reputed ownership; goods bought when purchaser insolvent.—Motion on behalf of J. M'Donald, that 7 barrels of porter, his property (in the possession of bankrupt's assignees), be returned. They were sold to the bankrupt by M'Donald, Sept. 29, 1873, and delivered Oct. 3. At time of order of sale an execution had issued, or was about to issue against the bankrupt's goods, as he was aware, but of which vendor was ignorant until after delivery. On day of delivery of porter, same was seized in execution and advertised to be sold on Oct 7. The bankrupt absconded (the act of bankruptcy) subsequent to the sale and delivery, and on Oct. 8 was adjudicated on a creditor's petition. *Atkinson*, in support of the motion. *G. Perry*, *contra*. Per MILLER, J.—If the bankrupt had been insolvent, and, knowing that, purchased the goods under the circumstances, I would order them to be returned. But there is no evidence that he was insolvent when he entered into the transaction, and I cannot infer it on mere speculation. He must be taken to have been solvent and able to pay when he ordered the goods, unless the contrar

Digitized by Google

is shown. It is argued that the seizure in execution is a test that he was insolvent. But a man may be insolvent in the sense necessary to support an adjudication and yet solvent in another sense. There is nothing in this case to take it out of the operation of the statute; the motion must be refused (*Re T. O'Connor*, Ba., Nov. 25, 1873).

Compensation for improvements; *head landlord liable for*; *measure of*.—The word "landlord" in the fourth section of the Land Act, 1870, is not restricted in its meaning to the immediate landlord, and therefore where a lessee for lives renewable for ever forfeited his interest by reason of omitting to renew, it was held that his sub-tenant was entitled to claim compensation for improvements from the head-landlord. In estimating the measure of improvements the amount of wear and tear is to be deducted—not from their present cost—but from the actual outlay by the tenant (*Comerford* v. *Saurey*; L. S., Nenagh, before C. R. SPUNNER, Q.C., Ch., Jan. 23, 1874).

DEATH OF LORD COLONSAY.

This melancholy event took place at Pau, whither his Lordship had gone for the benefit of his health. The noble Lord was born in 1793, and was educated at St. Andrews and Edinburgh Universities, of both of which he was LL.D. He was called to the Scottish Bar in 1816, and subsequently filled, amongst other appointments, the office of Solicitor-General for Scotland, Lord Advocate, and Dean of the Faculty of Advocates. He was made a Lord of Session in 1851-2, and afterwards became Lord Justice-General and President of the Court of Sessions. He represented Argyleshire from 1843 to 1851. His remains were removed from Pau on Monday by train on its way to Scotland. To mark the great respect in which he was held by the authorities of that place, and by his countrymen, the Premier-President, the legal chief of all the tribunals of the three Departments in the South of France; the Préfet of the Basses-Pyrenées, the Procureur-Général, and the Procureur of the Republic, and the chief members of the English colony, with a number of private carriages, followed the hearse to the station.

BAIL.

Bail is both a right and a privilege. The law assumes that every accused person is innocent until in due course he has been tried and convicted. It is, then, of great importance not to subject an accused person to needless inconvenience and restraint, and, therefore, the law of England permits an accused person to be released from custody on bail. Unfortunately, all accused persons cannot be so dealt with. There are crimes involving such punishments that it would be folly to admit to bail, because no guilty person would run the risk of a trial if he could escape. In bailable offences the magistrate or judge is vested with discretion as to the amount for which the recognisors are to be pledged. Bail is a privilege, because many persons are not able to procure bail, for sometimes it is impossible to adjust the amount to the social position of the accused. We have before urged the desirability of magistrates and judges releasing accused persons on bail whenever it is practicable, and the forfeiture of recognisances is infrequent.

The case of the gentlemen who became bail for Lizardi shows remarkable ignorance of the obligations incurred by a bondsman. These gentlemen have had to pay £6,000 each, and now petition for a remission, or partial remission, of the penalty. The sum is large, but the amount of pecuniary responsibility was voluntarily accepted. These gentlemen seem to think they have had to pay £6,000 each because Lizardi absconded. They are wrong. They have to pay £6,000 each because, through their intervention, there has been a miscarriage of justice. The magistrate did not say to the prisoner, "If you or your bail will pay £12,000 you may escape." The gentlemen who became bail not only gave a bond for £12,000, but also a pledge that Lizardi should appear on the day named for his next examination. They became, in fact, the custodians of Lizardi. They were bound, in public honour, to take some care that the man did not escape. They might have set a watch upon his movements. If they had the slightest suspicion that there was an intention to abscond, they had a right to seize Lizardi and put him in prison. They did not watch Lizardi. They chose to trust to his honour, and he absconded. They have no right whatever to complain of having to pay the penalty; but rather the Crown has a right to complain that, by their fault, justice has been baulked. We are persuaded that these gentlemen had no conception of the duties of a bail, or they would not think themselves hardly treated in having to pay the amount of the bond.—*Law Journal.*

THE SCOTCH BENCH.

By the resignation of Lord Cowan, and the death of Mr. Sheriff Glassford Bell, two vacancies have been caused in High Judicial Office in Scotland. Lord Cowan, who was the oldest of our Supreme Judges, having been on the bench since 1852, and who has unfortunately been laid aside through a severe illness, will be greatly missed. He was well read in Scots law, and was a man of great sense and considerable business capacity. Hardly less important than the vacancy caused by Lord Cowan's resignation is the one occurring through Sheriff Bell's death. The jurisdiction of the sheriff in Scotland, as a judge of the first instance, is unlimited in commercial cases. And in a county such as Lanark, embracing as it does the city of Glasgow, it requires no vivid imagination to realise to some extent the amount of judicial work to be performed in connection with commercial cases alone. But that gives but a faint notion of the duties of the vacant post, the sheriff, in addition, being a criminal judge and a high county official, to whom much important work is entrusted. The late sheriff was possessed of strong and highly cultivated intellect, and perhaps the best testimony to his capacity for the high office which he held is the fact, that although he succeeded such a man as Sir Archibald Alison, he did not lose by the contrast. The vacant sheriffship has been conferred on Mr. Wm. Gillespie Dickson, advocate, senior sheriff substitute at Glasgow. Mr. Dickson, who is the author of a really excellent book on the "Law of Evidence," and a lawyer of great accomplishment, was for several years Procureur-General for the colony of Mauritius. The appointment is highly approved of because it would be extremely difficult to get a practising advocate whose learning and capacity is superior to Mr. Dickson to give up the higher prizes of the profession, while it would never so confer such an important appointment on a second-rate man. Mr. Dickson, having left the bar before he had time to take a leading position, has not higher prizes open to him. The appointment is not a desirable one, it brings more dignity than ease; and as for the pay, it bears no proportion to the work. The gentleman who gets the appointment will be expected to sit in court every day from ten to four, and to read up his cases and prepare his judgments at home in the evening, and all for the handsome salary of £800 a year, or a third of what he should make at the bar for the same amount of work.—*Law Magazine.*

LAWYERS IN PARLIAMENT.—The Parliament which was dissolved on Monday contained at the time of its dissolution, so far as we can ascertain, close upon a hundred members of the English bar, of whom rather less than a quarter were practising barristers. The assembly also included about a dozen Irish barristers and half-a-dozen solicitors. Unless the next day or two adds very considerably to this list, there will have to be noted a decline in the number of lawyer candidates, as compared with the last election. It appears from the lists we then published, that in 1868 no fewer than 150 English barristers (of whom 79 were practising barristers) offered themselves as candidates, and 25 barristers came forward to contest Irish constituencies. Nine solicitors were candidates in England, and two in Ireland. Let us hope that at the present election the success of the lawyers at the polls will be such as to secure more lawyer members out of fewer lawyer candidates.—*Solicitors' Journal.*

Digitized by Google

THE JUDICATURE COMMISSION AND THE IRISH COUNTY COURTS.

Report on the Application of the Principles recommended by the Judicature Commission to the Irish County Courts.
By MR. CONSTANTINE MOLLOY.

[Read before the Statistical Society of Ireland.]

[*Continued from page 57.*]

Sufficient, I think, has now been said to indicate how defective the Irish County Court is as a means for administering ready and efficacious justice between parties of humble means, and how much this tribunal requires, in small cases, that complete and effective jurisdiction possessed by the corresponding tribunal in the sister kingdom. Many legal reforms from time to time, usually applied to the English County Court, have rendered that tribunal what it now is; but these reforms have not been applied to the Irish tribunal, and hence it is that the Irish County Court, originally established to supply a great public requirement, has been suffered to fall behind in the progress of improvement. This is much to be regretted on many grounds. To repeat what I said four years ago, when bringing the subject of the Irish County Courts under the notice of this Society:—"The cause of law and government in Ireland has suffered great loss of prestige from the delay that has occurred in the extension to Ireland of the most obvious reforms, till long after they have been introduced in England; and one of the most effectual means of restoring that prestige and imparting confidence in the law, would be found in the prompt carrying out of practical legal reforms, in which large and especially the humbler classes of the people are deeply interested."

The suggested improvement of the County Court raises questions that concern the constitution of the court—1st, as regards the judge—and 2nd, as regards the chief administrative officer of the Court.

Upon the first of these questions it is right to bear in mind that the institution of the County Courts in Ireland was borrowed from Scotland, where, upwards of a century and a half ago, analogous tribunals were established. The Scotch Court is presided over by a lawyer, whose official name as sheriff is likely to mislead in Ireland and cause him to be confounded with the officer in this country who bears that title. The Scotch sheriff is the judge of what may be called the Scotch County Court. He has both a civil and criminal jurisdiction; but in trying criminal cases he has not any of the justice of the peace associated with him. He alone is the judge of the Court; just like the case of a recorder of a borough in this country.

It has been suggested that with the proposed improvement of the Irish County Court it will be necessary and desirable to prohibit the Irish County Court Judges from practising, and also to oblige them to reside in their counties. In that suggestion I cannot agree, for I fail to perceive the necessity or expediency of making in the constitution of the Irish County Court so great a change. In my humble judgment such an alteration will not tend to promote the efficiency of the tribunal or secure it public confidence; but may, on the contrary, be attended, I greatly fear, with results the reverse of beneficial.

The same suggestion has been from time to time made as regards the Scotch County Court; and I beg to call attention to this fact, not merely because it fortifies the opinion which I have expressed, but especially because it shows how the proposed alteration in the constitution of the Scotch Court was regarded and dealt with in the case of a people who are so keenly alive to their true interests, and who know how so well to promote them.

The Commissioners appointed to inquire into the courts of law in Scotland had amongst them such men as Lord Colonsay, Lord Selborne, Lord Moncreiff, the late Mr. Justice Willes, the present Lord Advocate, the Lord Advocate of Mr. Disraeli's administration, and Mr. Sclater Booth. In their fourth report, made in 1870, these Commissioners, when dealing with the subject of the proposed changes in the constitution of the sheriff's court, say:

"The most important general question in regard to the constitution of these courts which we had to consider, was a proposal, by no means new, to prohibit the sheriff from practising before the Supreme Court; to compel him to reside in his county. On this and other proposed changes there was submitted to us a very large body of evidence, which we have considered very anxiously, along with the views of the Law Commission, presided over by Sir Ilay Caulfield, which reported in 1818, and also the report of the Law Commission in 1834. That report, which is signed by very eminent names, including professor G. J. Bell, Andrew Skene, Robert Jameson, Andrew Rutherford, and Adam Anderson, very elaborately discussed this question, and stated the result of their opinion in the following terms:

"Upon this subject it has been strongly pressed upon us that if resident sheriffs were appointed in all the larger and more populous counties, and if the other districts were enlarged so as to afford full employment to the principal sheriffs, a salary might be attached to the office, sufficient to induce men in hgh practice and repute at the bar to accept of the situation. But, after much consideration, we are unanimously of opinion that this change would be highly prejudicial to the administration of the law in the local courts."

When giving the grounds of their unanimous opinion, the Commissioners of 1818 remarked:—

"There is great risk of evil in the provincial residence of a judge, even when persons can be obtained confessedly competent to discharge the duties. An individual in that situation is exposed to all the influences, attachments, prejudices and local feelings disadvantageous to his character and authority, and even if he be supposed free from the operation of such bad influence, the mere circumstance that he has already reached the summit of his ambition, will tend to diminish his industry and utility as a judge, while his remote insulated situation excludes the salutary and counteracting effect of public opinion, by which the exertions of those who fill the highest judicial station are animated and controlled."

"Nor is this mere speculation. We have ascertained it to be a matter of fact that, notwithstanding the well-known talent and integrity of the sheriff's substitute, there is in Scotland a strong feeling of confidence in the decision of a judge who is remote from all local influences, and independently of any superior qualifications for the office. The mere circumstance that the principal sheriff is not resident in the county is considered both by litigants and practitioners as a practical advantage."

"Many of the witnesses examined by us concur in this opinion; but if the feeling thus expressed is less marked than it was in 1834, it must be recollected that our predecessors reported under circumstances to which the Act of 1838 has practically put an end. At that time the practitioners and the public had witnessed before them the evils of an uncontrolled resident sheriff."

The Commissioners of 1834 thus state the conclusion at which they had arrived:—

"We are decidedly of opinion, therefore, that such a change in the existing system of the local jurisdiction in Scotland is not only uncalled for, and unlikely to afford any solid advantage which we do not at present possess, but that it would be attended with the most injurious consequences to the administration of justice in our local court."

Following on this report of the Commissisoners of 1834, the statute of 1 & 2 Vic. c. 17, was passed in 1838. It contains the following provision in clause 8: "Every person who shall be hereafter appointed to the office of sheriff's depute, shall be an advocate of three years' standing at least, and shall have been at the time of his appointment in practice before, and in political attendance upon the court of session, or acting as sheriff's substitute; and after such appointment every such sheriff, with the exception of the sheriffs of the counties of Edinburgh and Lanark, shall be in habitual attendance upon the said court of session during the sitting thereof."

In 1853 the bill for the Act of that year which at present regulates the procedure in the sheriff's court, was submitted to a select committee of the House of Commons; and this question in regard to the residence of the sheriff in his county was, we are aware, very fully brought before them, and it was resolved to adhere to the present constitution of those Courts:—

"We (the Commissioners of 1870) see no reason for disturbing the system thus deliberately and repeatedly ap-

Digitized by Google

proved of. The evidence before us proves that, as regards the functions of the judges, these courts are in thorough working order. Not a trace of the evils alluded to in the report of 1834 is to be found in the testimony of the witnesses we have examined. So complete, although imperceptible and silent, has been the executive control of the sheriffs, that the community have forgotten that there ever was a time when a resident sheriff was suspected of local partiality."

It will be thus seen that the suggestion of making the County Court judges reside in their counties, and cease practising before the Superior Courts, has been repeatedly considered, as regards Scotland, by the eminent men who formed the Commissions of 1818 and of 1834; by the Legislature itself in 1838, when the 1st and 2nd of the Queen was passed; again, in 1853, by a select committee of the House of Commons, when the statute which at present regulates the proceedure of the Scotch County Court, was passed, and finally by the Commissioners of 1870. And on each of these occasions we see that the suggestion was strongly disapproved; and in 1838, the Legislature, so far from adopting the suggestion passed a statute requiring all future appointed County County Court judges to be in habitual attendance on the Superior Courts during its sittings.

For the proper and effective carrying out of the administrative duties that will arise when jurisdiction in equity is conferred on the Irish County Courts, the judge will require and should have the assistance of an efficient and competent officer to assist him in discharging these duties. To secure this object it will not be necessary to create any new office. It will be only requisite to apply to the office of clerk of the peace the same principles for the regulation of the office as exist in England. In this country the clerk of the peace is registrar by statute of the County Court (14 & 15 Vic., c. 57, s. 10). In England the patronage of those who appoint to the office of registrar of the County Court is restricted by an Act passed in 1846, by which the registrar of the County Court is required to be an attorney of one of the Superior Courts, and be approved of by the Lord Chancellor. The registrar in England is not enabled to appoint a deputy, except in cases of illness or unavoidable absence—and then only an attorney approved of by the judge. Had a similar restriction been adopted in 1851, when the present Irish County Court Act (the Civil Bill Act) was passed, the majority of the present clerks of the peace would all be qualified, as the corresponding officers are in England. It is unnecessary to disturb the existing patronage; it is only necessary to restrict it as in England.

The office of clerk of the crown has been long since recommended to be consolidated with that of clerk of the peace. For the diminution of crime in Ireland, and the large amount of criminal business disposed of at the quarter sessions, the duties of clerk of the crown have been very considerably lessened from what they were formerly. As the clerks of the crown and of the peace are each of them required to keep an office open every day in the county town, there would be a great economy in having only one office, and the consolidation of the two offices would enable the new officer to have an effective assistant to attend in his office, or assist him when the Clerk of the Crown and Peace would be elsewhere employed, or engaged in one or other of the Courts at the assizes.

Both the Clerk of the Crown and the Clerk of the Peace are paid upon a novel complicated system. By some statute they were allowed expenses only; by others they were allowed both expenses and remuneration; some duties are covered by salary, and others are paid for by fees—the latter being of a most complicated nature under numerous statutes. This should all be terminated by the fees being converted into stamps, as has been done in the case of the petty sessions' clerks. The stamps should be under the regulation of the Registrar of petty sessions clerks, who should thenceforward be called the Registrar of Local Court Officers—all cases where expenses have been allowed to Clerks of the Peace, being provided for out of the stamps, and the balance handed over in aid of local rates, upon which salaries and superannuations are charged. This regulation of the office would enable the principle of superannuation, already applied to other county officers, to be extended to Clerks of the Peace. The consolidation of the offices of Clerk of the Crown and Clerk of the Peace would be accelerated by extending to these cases the principles of superannuation applied in 1866 to the case of County Treasurers, in order to facilitate the transfer of their duties to the county banks and secretaries of grand juries.

The report of 1870 already referred to, upon the Scotch court, contains a valuable suggestion for consolidating the office of clerk of the commissary court and that of the registrar of the Scotch county court. The clerkship of the commissary court is an office corresponding with our district registrarship of the Probate court. In order to make the consolidation of the offices of clerk of the peace and clerk of the crown as effective as possible, and also to secure an adequate salary, without creating unnecessary charges upon the taxpayers, and, further, to provide for more local means of proving wills and obtaining administration in the cases within the jurisdiction of the county court, I would suggest that whenever the office of a district registrar under the Probate Court should become vacant, the duties of the office should thenceforward be transferred to and discharged by the clerks of the peace in each of the counties included in such district.

In order to effect the improvement of the Irish county courts above recommended, I beg to submit the following summary, or heads of suggestions:—

1. That the Irish county courts should have, as in England, jurisdiction in any case where the title to any land, hereditaments, easement, or license is in question, provided the value or rent of the land or hereditament in dispute, or affected by the easement or license, does not exceed £20.
2. That the Irish county court should have complete jurisdiction in all cases in Equity limited in value and amount to the same extent as its probate jurisdiction is now limited—viz., where personalty is affected up to £200, and so far as realty is affected up to £300.
3. That the county courts of Meath, Kildare, Wicklow, and Dublin, should have the same jurisdiction in probate cases as the other county courts in Ireland.
4. That whenever the office of district registrar becomes vacant, the duties of such office in each county within the district should thenceforward be performed by the clerk of the peace.
5. That the clerk of the peace in the counties of Meath, Kildare, Wicklow, and Dublin, respectively, should perform the duties of a district registrar for these counties.
6. That the Irish county courts in all maritime counties should have the same jurisdiction in cases of freight and demurrage and admiralty cases, as the English county court has.
7. That the Irish county court should have jurisdiction in bankruptcy to the same limit as it now has in cases of wills already referred to.
8. That the rules of law for fusing law and equity, and for giving preference to equitable principles, and all the rules of law enacted and declared by the Judicature Act, 1873, should be in force and have effect in the Irish county court, so far as the matters to which such rules relate shall be respectively cognizable by such court, to the same extent as such rules will, after the 2nd November, 1874, be in force and receive effect in the English county courts.
9. That the principles of the law enacted by the 1 & 2 Queen, chap. 119, requiring the judge of the Scotch county court, when not discharging the duties of his office, to be in "habitual attendance upon the superior courts during their sittings, should be extended to Ireland, and apply to all future county court judges in this country."
10. That the power of appointing to the office of clerk of the peace should continue as at present, but subject to the same restriction as in England, so that every future clerk of the peace shall be a solicitor approved of by the Lord Chancellor, or one of the existing deputies who has discharged the duties of his office to the satisfaction of the county court judge.
11. That the right of appointing a deputy by any future clerk of the peace should, as in England, be limited

Digitized by Google

to cases of illness or unavoidable absence, and to a person who may be qualified to be a clerk of the peace, and approved of by the judge.

12. That all fees received by the clerk of the peace should be converted into stamps, and be accounted for with the registrar of petty sessions clerks, to be thenceforward called the registrar of local officers, and the surplus, after payment of salaries, to be applied in relief of the local taxes.
13. That the salaries of all future clerks of the peace, and of such existing clerks of the peace as submit their emoluments to regulation, shall be fixed by the Lord Lieutenant, who shall also have power to apply the rules of the General Superannuation Act to their superannuation.
14. That in any county where, from its size or other cause, the Lord Lieutenant shall approve of an assistant to the clerk of the peace being employed, the salary and superannuation of such assistant shall be subject to the like regulation, and an assistant shall be provided in every case where the offices of clerk of the crown and clerk of the peace are consolidated.

SOLICITORS' BENEVOLENT ASSOCIATION.

The Tenth Annual Meeting of the members of this Association was held on Saturday, 31st January, 1874, in the Solicitors' Hall, Solicitors' Buildings, Four Courts. The Chair was occupied by

Sir RICHARD J. T. ORPEN.

The following members were present:—

William Roche, Charles Gaussen, John T. Hamerton, Edward De Moleyns, Arthur Ellis, George Beamish, Mark C. Russell, Arthur H. Orpen, Charles Stannell, George L. Cathcart, Henry Mills, James Tench, Edward T. Tarleton, Robert C. Lee, Richard C. Hallowes, Stephen Gordon, John H. Nunn, Thomas Merrick, George H. Belas, T. V. Ryan, John Lawless.

Mr. H. BINDON BURTON read the Annual Report as follows:—

"Your Committee, in submitting the Tenth Annual Report, feel it their duty to once more bring prominently before the profession, and those interested in its well being, the objects of the Association. They are:—To relieve such poor and necessitous members as may be incapacitated from business through bodily or mental infirmity, or other inevitable calamity, and their wives and children; to relieve the poor and necessitous widows and families of deceased members, and in special cases to give relief to the parents or collateral relations of deceased members, and (where the state of the funds and circumstances of the case appear to justify it) to render pecuniary assistance to the widows and families of deceased attorneys, solicitors, and proctors who were not members at the time of death. Your Commiitee have no hesitation in prefacing their report with these remarks, as they feel that the objects of the Association to which they have already referred in detail require no comment at their hands, but ought at all times to command sympathy and support, especially from the solicitors of Ireland. If respect for the feelings of the applicants did not preclude publicity, we would feel that simply laying before the profession at large the painful statements which have been submitted to your committee for consideration at their various meetings would do more than any report of ours to enlist the sympathy and co-operation of our professional brethren for a society which, with limited means, is from day to day keeping and relieving those whom, from unforeseen vicissitudes, have the strongest claims on those with whom they have for years mixed socially and professionally. The applications for relief which have come before them during the first year have been peculiarly distressing in their details and it has been a matter of great regret to your committee not to have been in a position to respond to them as fully and as liberally as the necessity of the cases demanded. Although, however, the progress of the association has not been as rapid as we would expect (having regard to the number and position of the profession), yet the means at our disposal and the patronage extended to us are steadily increasing, and we have strong hopes that the only society in Ireland which holds out a helping hand to our distressed brethren and their families will yet attain a position which will enable it to confer more substantial benefits on the poor objects of their solicitude. The following is the position of the Association for the years 1872 and 1873, respectively:—

	1872.			1873.			Increase.		
	£	s.	d.	£	s.	d.	£	s.	d.
Annual Subscriptions	261	15	0	270	13	0	8	18	0
Dividends on Stock -	64	15	2	69	17	10	5	2	8
Life Subscriptions -	42	0	0	52	10	0	10	10	0
Donations - -	52	14	0	70	1	0	17	7	0
Interest on Cash in Bank	1	5	8	1	4	3			
Balance in Bank and hands from previous years - -	81	13	11	17	13	2			

The life subscriptions and donations, amounting to £122 11s., having, according to the resolutions of the society, been invested in Government Stock, the actual income of the association for the past year, after deducting the balance carried forward from the last account, would appear to be £341 15s. 1d. In addition to the foregoing result, your committee have to add that the late Johnston Teevan, solicitor, giving an example which we hope will bear future fruit, has bequeathed a sum of £50 to the association, which we hope shortly to receive. The following is the position of your association, as regards members and subscribers, as compared with that of the year 1872:—

	1872.	1873.	Increase.
Life Members - -	54	57	3
Annual Members -	230	260	30
Annual Subscriptions of Non-Members	11	13	2

By the investment in Government New Three per Cent. Stock of the amount received from donations and subscriptions, amounting to £120 11s., the capital fund of the association has been increased to £2,355 18s. 6d. New Three per Cent. Stock. Out of the income of the association, your committee have granted relief in twenty-six necessitous cases, involving grants to the extent of £196. They feel that the relief given has been, in only too many cases, quite inadequate, but they have had to be careful not to exceed the funds at their disposal, and to keep some available means for sudden claims which unfortunately sometimes arise. The anniversary dinner, which took place in February last, and was as successful as its predecessor, was presided over by the Master of the Rolls, at whose hands the profession in general has invariably received courtesy and consideration, and to whose ability and geniality when presiding much of the success of the bankquet was due. Your committee ascribed to some extent the additional support the society has secured to the holding of these festivals which call attention to its existence and working. Your committee suggests that a special application should be made, in such manner as the association may decide upon, to every individual member of the profession for support, as they cannot but think that the objects of the association must not have been brought with sufficient clearness and force under the notice of each member, or so worthy a cause as the one advocated would have attracted the general instead of the partial support it has hitherto received."

The CHAIRMAN moved the adoption of the report.

Mr. LEE (Anderson and Lee) seconded the motion. He knew of several instances where the association gave most timely aid to the widows and orphan children of deceased members of the profession, and he believed, if he was at liberty to mention names, very large additional support would be given by attorneys and solicitors to the association.

The report was unanimously adopted.

Mr. WM. ROCHE proposed—

"That the warmest thanks of the association are due and are hereby tendered to the Right Hon. the Master of the Rolls, for his kindness in presiding at the third annual dinner of this association."

Digitized by Google

He said he esteemed it a high honour to have the privilege of moving that resolution. The profession were quite conscious of the great ability, assiduity, and courtesy displayed by this eminent judge in the Rolls Court, and they were also conscious that in his elevated position—which was the just reward of his talents and character—he was unchanged in manner, and on all occasions manifested the same kindness and consideration that marked his distinguished career at the bar. To that association he had well and heartily performed the duty imposed upon him at their last annual dinner, and he (Mr. Roche) was sure that the association joined sincerely in the vote of thanks he had proposed.

Mr. HAMERTON seconded the motion, which was passed by acclamation.

Mr. GORDON moved—

"That the trustees, treasurers, hon. secretary, and auditors of the association be re-elected."

He said that the association had worked well, as it was under the management of the gentlemen who had taken so much trouble about its affairs.

Mr. STANUELL seconded the motion, which was adopted.

Mr. MILLS moved a resolution expressive of the thanks of the association to the press for their kindness in supporting the movement.

Mr. NUNN seconded the motion, which was adopted.

Mr. GAUSSEN moved—"That the name of Mr. Meade be added to the name of the association." He said they were all acquainted with the origin of this society, and they could look back with pleasure to the founder of it. The name was well known and beloved in the memory of those who knew him, but many a younger member of the association might have forgotten him. He was afraid they would lose sight of that name—the name of Richard Meade. They who knew the man could appreciate his worth. He was the friend of mankind, and of their profession. He never swerved from his duty. To the end of his life he was anxious that such a society should be established.

Mr. LEE seconded the motion. As one of the committee, perhaps it did not come well from him to speak on the subject after what was said by Mr. Gaussen, for whatever fell from his lips was entitled to the respect of every member of the profession. His suggestions were undoubtedly for the benefit of the society. They had had the matter before them, and would take it again into consideration. The subject was discussed at one time, and he understood it was the wish of the family that Mr. Meade's name should be added to the title of the society, instead of a testimonial. The family were quite aware of their proceedings, and it was after due consideration that their decision was arrived at. There could be no objection to add the name of Mr. Meade to it. They had a great respect for Mr. Meade, and they had a portrait of him, and he was still living in their hearts.

Mr. GAUSSEN was called to the second chair, and on the motion of Mr. G. H. BELAS, seconded by Mr. M. C. RUSSELL, a vote of thanks was passed to Sir R. J. T. ORPEN.

The proceedings then terminated.

At the close of the proceedings, Mr. Stephen Gordon handed in a cheque for £20, as a donation to the funds of the association.

THE SOLICITORS' BENEVOLENT ASSOCIATION.

The fourth annual dinner in connexion with this excellent Association was given last evening in the dining-hall of the King's Inns, Henrietta-street, and was largely attended by members of both branches of the legal profession.

The chair was occupied by the Right Hon. the VICE-CHANCELLOR.

On the right of the chair were—

The Right Hon. the Lord Chancellor; the Right Hon. Sir Joseph Napier, Bart.; Mr. Arthur Barlow, and Master Coffey; and on the left, the Right Hon. Judge Warren, Dr. Battersby, Q.C.; Mr. Wm. Roche, and Mr. Leonard Morrogh.

The general company included—

Sergeant Armstrong, Q C; Jonas Blackhall, H. Bindon Burton (secretary), Wm. Joseph Cooper, John Cavanagh, R. P. Carton (bar), Graves C. Colles, Thomas Craig, Lewis Clare, John Corcoran, Edward De Moleyns, Henry T. Dix, Henry A. Dillon, Arthur Ellis, John C. Ennis, Frederick R. Falkiner, Q.C.; Robert Ferguson (bar), Thomas Fagan, John Fox Goodman, Thomas Gage, Edward Greer, John Thomas Hinds, Arthur Houston, LL.D. (bar); P. Hayes, Arthur Boyd, William Bloomfield, Wm. Bentham, Robert Keating Clay, William Casey, Patrick Coll, James Campbell, Barry Collins, Robert Casey, David Coffey, William Dalton, Wm. Thos. Daniell, Michael D'Alton, J. Dollard, Charles A. Fay, William Findlater, David Fitzgerald, John Galloway, Thomas Gerrard, Thomas Geoghegan, John Taylor Hamerton, Abraham Harrison, E. Johnston, Robert Johnston, John P. Kavanagh, Frederick Kennedy, Thomas R. Lynch, John Lawless, Robert Lyle, Michael Larkin, Jehu Mathews, Dodgson H. Madden (bar), Patrick Maxwell, Henry Mills, Arthur Molloy, P. C. M'Gough, John MacDermott, Henry S. Mecredy, John Naish (bar), Arthur H. Orpen, Edward O'Connor, Peter O'Brien (bar), Henry O'Beirne, John Ogle, Edward F. O'Farrell, Purefoy Poe, William Read, Edward Reeves, Richard S. Reeves, John C. Smith, David Sherlock, junior (bar), John W. Seymour, Shapland M. Tandy, George Twibill, Francis A. Tarleton, F.T.C.D.; J. B. Falconer, LL.D. (bar), Piers White, Q.C.; John Watson, John Edward Walsh (bar), W. Lane Joynt, D.L.; Henry L. Kelly, Charles Kelly, Q.C.; Thomas Lynch, Edmond Leahy, Robert Campbell Lee, R. O. Longfield, John Maunsell, Leonard Morrogh, O'Callaghan Mullins, James F. Meldon, Wm. Bentham Martin, John M'Sheehy, T. H. MacDermott, John H. Nunn, Henry Charles Neilson, Richard H. M. Orpen, Arthur O'Hagan, Henry Oldham, Daniel O'Rorke, John D. O'Hanlon, Theobald Purcell, Q.C.; William Roche, Thomas V. Ryan, Robert Reeves (bar), Charles G. Stanuell, William Sullivan, Edward T. Stapleton, Charles H. Teeling (bar), Archibald Tisdall, Henry James Pelham West, John Weldon, Thomas Walsh, Benjamin Whitney, John Buckley, Robert Reeves.

The CHAIRMAN said the first toast on his list was "The Health of Her Majesty the Queen." It was a gratifying thing that amidst all the political turmoil of the times, when they might have anticipated that some persons of very advanced opinions would show in front, not one word of disloyalty towards her had been uttered by any one. He gave them "The Queen," and might she be long spared to reign over them in health and prosperity.

The toast was drunk with all honours.

The CHAIRMAN, in proposing "The Prince and Princess of Wales and the rest of the Royal Family," said he would fail in his duty if he did not refer to the recent addition that had been made to the illustrious House. They had to congratulate themselves upon the alliance between a Prince and Princess of two of the greatest Powers in Europe, and the two greatest Empires in the East; but its political importance was of much greater consequence, for these Powers being the two greatest in the East, there must necessarily be a danger of conflict between them. They had had a bitter experience of the result of war between the two great Powers, and therefore they should congratulate themselves upon everything that tended to render the recurrence of such a calamity more unlikely. He trusted that would be the effect of the auspicious marriage, and that Russia and England would now go forward hand in hand in the great cause of civilization in the East.

The toast was received with enthusiasm.

The CHAIRMAN said the next toast was one coming nearer home—"The Health of the Lord Lieutenant and Prosperity to Ireland." He thought he might say that however many of them differed in political opinions from the illustrious nobleman who now filled the distinguished office, they all acknowledged that he was actuated by the most sincere desire to promote the prosperity with which his name was now coupled. He had shown his desire to do so in promoting the material prosperity of the country in agriculture, in commerce, and in arts, and he had done no small act in endearing himself to the people of this country by his participating in those manly sports and exercises so dear to the Irish race. When he spoke of the prosperity of this country, and asked them to drink to it, he asked them to drink, in fact, the prosperity of themselves. He remembered when first he went circuit hearing it said by the wise old men of the day that there was no surer test of the material advancement of a country than a light crown side and a heavy civil side. And it must be so, because as business progressed contracts must multiply and dispositions of property become more important, and these were the parents of honest, substantial litigation. So far from their being evils they were the proofs and signs of the wealth and prosperity of a country. Therefore he was not astray in

Digitized by Google

advancing the proposition that in drinking the prosperity of Ireland they were drinking the prosperity of their own profession.

Mr. ARTHUR BARLOW then proposed "The Lord Chancellor and the Irish Bench, including the retired Judges," and in doing so remarked that he required to say nothing as to the manner in which the Judges of Ireland discharged their duty, or as to the generous assistance they afforded to that society.

The toast was enthusiastically received.

The LORD CHANCELLOR on rising to respond, was received with loud applause. The cordiality and kindness with which the toast was received was no more than he would have expected from the Society. It was a pleasing thing to receive, on behalf of a body such as the Irish Bench, such a strong expression of kindly feeling from the solicitors, for no gentlemen had better opportunity or greater capacity to form a judgment than those whom he addressed, and therefore he was specially obliged for the enthusiastic reception they had afforded to the toast. He believed the Judges deserved some kindness—such as they had received—because they were disposed to sympathise with the society in their feelings, and aid them in their efforts. He approved of the idea of asking the judges in turn to preside at their annual dinners, and he was sure they would all most cordially co-operate with them in their noble work. For himself it afforded him great pleasure to take part in their meetings, and assist them in every way in his power. He believed a simple statement of the objects of the society was the highest eulogy that could be passed on it. Its mission was to assist their poorer and suffering brethren, and especially those to whom poverty is doubly bitter—those born of gentle blood and gentle breed. Men of culture and men of education who had fought the battle of life bravely—men who had borne every burden and sustained great responsibilities—finding themselves stricken down all at once by disease, or made poor and miserable by those vicissitudes to which all human beings are subject—it was the great duty and the great mission of the society to brighten for such the house of mourning, and give them peace and joy in their declining years. That was a great and a blessed work, and he thought it ought to be more largely supported by the members of the profession, and be able to give much more liberal assistance to those who required it. He hoped on the next occasion he would meet them there would be more improvement in that respect.

The CHAIRMAN then gave the toast of the evening—"The Solicitors' Benevolent Association, and may prosperity attend it." They had not met there so much to honour the hospitality which had been extended to them, or to partake of the social pleasures of so agreeable a meeting, as to promote, as far as in them lay, the interest and welfare of that benevolent association. The very object of the undertaking sufficiently bespoke a favourable consideration for it. He was happy to find by the report handed to him that in the last year an addition of 30 was made to its annual subscribers, but still, if he might be permitted to do so, he would express his concurrence in the Lord Chancellor's opinion, that it had not met at the hands of their great profession so large a measure of support as it deserved. They might consider it, looking from their point of view, in two aspects—benevolence and prudence. First, when they consider who were to be assisted they must concede that the claim on them was great, and then they should also remember that in subscribing to such an association they were creating for themselves and their families a provision, however slight and inadquate, should, alas! necessity arise. No profession required such an association more than theirs, into which young men had to enter after probably an outlay of a large proportion of their slender capital, and in which they could only win independence after facing and combating a world of difficulty and trial. He sincerely trusted that they would progress till they reached comparatively the position attained by the sister society in England. That they had done much already should not deter them from endeavouring to do far more. The bar, he was glad to say, had followed in their footsteps. Having inaugurated such an association for the necessities of their ranks, there should ensue between the two professions in this regard, a race of emulation to attain that position in benevolence which they ought to occupy in the face of the world.

The toast was drunk with all honour.

Sir RICHARD J. T. Orpen briefly returned thanks on behalf of the Society. After the statement of its objects and purposes by the Lord Chancellor and the Chairman, nothing remained for him to add. Before resuming his seat it was his pleasing privilege to propose the toast which he was sure would be received with acclamation, "The Health of the Chairman." It must be gratifying to them all to see occupying that chair a gentleman who, by his great natural talents and his extensive legal knowledge, had attained the high position in the Chancery Bench which the Vice-Chancellor now held. But it was peculiarly gratifying to him, for he claimed a long acquaintance with the right honourable gentleman and his family. He hoped they would drink his health with all the honours.

The toast was received with acclamation.

The CHAIRMAN, in rising to respond, was received with applause. He expressed his gratitude to the society and to Sir Richard Orpen for the flattering manner in which his name had been received, and said he only wished he deserved the encomiums that had been passed upon him. He was associated from day to day, in the administration of justice, with the profession so largely represented there, and he rejoiced to have to say that with few exceptions he could place the most implicit confidence in the honour and truthfulness of that profession. He therefore felt additional pride in having been asked to preside, and he trusted the good feeling which at present existed between the Bench and the Solicitors would long continue.

Mr. WM. ROCHE then proposed "The Bar of Ireland," and said the Irish Advocate was ever found discharging his onerous duties regardless of the frowns or smiles of power.

The toast was drunk with great cordiality.

Dr. BATTERSBY, Q.C., in responding, said he would feel some delicacy in responding for the Bar alone, but as the two branches of the profession were connected there, he could say that a more honourable, more useful to the public, and a more to be respected body of men was not to be found than the combined body of the Bar and Solicitors of Ireland. In saying that he was not only expressing his own opinions and the results of his own observation, but also those of others. When he came to consider their position as regards the public of Ireland, he might say with confidence that every class from the peer to the peasant has had on some occasion or other to rely upon the faith and honesty of some member of the profession; and not one among all these classes, with hardly an exception, could say that the trust placed in them had not been faithfully kept and honourably discharged as regards their clients.

The CHAIRMAN, before calling upon the proposer of the next toast, had a word of explanation to offer. They had expected to have had with them that evening Mr. Justice Fitzgerald and Mr. Justice Barry, both of whom had been unavoidably compelled to be absent—the one from indisposition and the other from being obliged to leave with his family for England. This observation was in the interest of both, for none took a greater interest in the welfare of the association than those right honourable gentlemen.

Sir JOSEPH NAPIER said the toast he had to propose came in natural sequence. He might call it the last and crowning toast of the evening—"The Attorneys and Solicitors of Ireland." They had heard from the Lord Chancellor, the proper and constitutional organ, the praises of the Bench, and they were honestly deserved. They had heard from Dr. Battersby the praises of a combined body, his special duty being to sound the praises of the Bar. But what he had to propose was the toast of "The Attorneys and Solicitors of Ireland," pure and simple. And perhaps he was at an advantage in speaking to that, seeing that he was now placed in a position above hope and fear, and could observe with perfect impartiality on the matter, his only fear being that which flowed from old and kindly and genial recollections. He had passed through a long period of

Digitized by Google

active, professional, and working life at the bar; he had spent a short interval upon the bench, and he had been brought into contact with many of the living and the dead amongst the attorneys and solicitors of Ireland, and whatever might be said of the combined body of which Dr. Battersby spoke, this he would say of the profession he had now to deal with, that amongst them he had found men of such integrity, high and honourable feeling, sagacity, capacity, and kindly nature, as he had ever found among any class of men with whom he had been brought into contact. He remembered what he and what all barristers owed to the discrimination of attorneys—he regarded them as an integral part of the judicial system, which he held to be one of the foremost institutions of the country. Lord Coke told them that he had been informed by those who came from Ireland, that this was the nation in which every one loved justice; believing that to be so, he (Sir Joseph) hoped that people would think well before they attempted to tamper with the stability, and integrity, and greatness of the temple of justice in this realm. He would be for maintaining it in its full integrity, preserving it in all its strength. He would strengthen its foundations, preserving for the Judges, the Bar, and Attorneys their several proper functions as integral branches of the one great system. He feared he was wandering, like his friend, Dr. Battersby, from his text; but what could he say more than had been said of their glorious profession? When had faith been broken by them or confidence found to be misplaced in them? They formed the very bone and sinew of the legal profession; and in speaking of that profession as a whole, he could not omit expressing a hope that no considerations of petty economy or cheese-paring might attempt to weaken the working power of the judicial system. He remembered the past generation of Irish lawyers, and in his intercourse with the English people he had always been able to appeal with pride to the professional character of his countrymen. He hoped that those who followed would ever be enabled to do likewise. Let them endeavour, by making their system more efficient and more capable of administering pure justice, so as to root it in the affections of the people, to be a rule—Home Rule—a rule founded upon the imperishable principles of eternal justice.

MR. LEE responded, after which the company separated.

HALIFAX BANKRUPTCY COURT.

[From the *Law Times*.]

Thursday, Jan. 15.

(Before Mr. Registrar RANKIN, sitting for the Judge.)

Ex parte BOWERS *v.* OGDENS.

Debtor's summons—Application to dismiss—Claim arising out of partnership disputes—Staying proceedings on summons without security.

G. Rhodes for summoning creditor.

England for debtors, in support of application to dismiss.

The main facts appeared in an affidavit filed by the debtors, admitted to be substantially correct, and were shortly these: Messrs. Ogden (the debtors), had advertised for a managing partner in a brewery, requiring a premium of £200, and Mr. Bowers agreed to join them; but there were no written articles. If the whole premium should not be paid down at once, Bowers was not to become a "full partner," until it should be so paid, but was to be allowed interest on any portions of the premium paid by him, and was to have a salary for management. Bowers managed the business on these terms for about six months, and paid about £75 on account of the premium which, the Ogdens say, was put into the business. Disputes then arose, and the partnership was dissolved. The Ogdens complained that Bowers was incompetent, and had damaged the concern by bad brewing. Bowers alleged that the Ogdens had deceived him as to the value of the business. Cross actions at law for damages were commenced by the parties; but Bowers, as a distinct matter, issued the present debtor's summons, claiming about £93, in respect of the part of premium paid and salary. The debtors, in their affidavit, denied the debt. In a correspondence the debtors' solicitors had offered to pay £75 to await an award, if Bowers would refer the whole case.

G. Rhodes claimed to proceed on the summons under the authority of *Ex parte Ellis Re Kain* (24 L. T. Rep. 819).

England reminded the Registrar of his own dictum (reprobating issuing summonses in disputed cases instead of proceeding by action at law) in *Verity* v. *Thompson* (*Law Times*, vol. lii., p. 466)—but there the evidence before the Registrar showed there was no debt owing—and argued that the debtors were at least entitled to have the case tried by a jury, the debt being disputed and a good defence alleged, and questions as to partnership arising.

The REGISTRAR.—*Ex parte Ellis* v. *Kain*, cited by Mr. Rhodes, does not apply. In that case the debt was a judgment debt, not to be set aside on such an occasion, and the question was merely as to some alleged cross claims. In the present instance it is denied that there is any debt; at the same time the offer of the debtors to pay £75 into a bank to await a reference, though not equivalent to an admission by payment into court, savours of a consciousness on the part of the debtors that something might be found to be owing from them. But in my view of the case, as one arising out of partnership disputes, I have grave doubts whether Mr. Bowers can succeed in a common law action, and on the whole, the evidence to my mind being inconclusive, I consider I have an option either to dismiss the summons or to stay proceedings: *Ex parte Rowbotham* (25 L. T. Rep. 921). It is true that in *Ex parte Ellis* v. *Kain*, Lord Justice James appears to give the preference to letting the summons go on, and deciding the point at a further state, viz., the hearing of the petition for adjudication. I should at all times feel bound implicitly to obey any decision of that learned judge, but, as I have before observed, there was an established debt in that case, but none in this. It appears to me that the case in point is *Ex parte Weir re Weir* (26 L. T. Rep. 333), where questions of partnership arose, and their lordships not only allowed a stay of proceedings on the summons, but considered that security for trying the question should not have been required. I propose to follow that decision, and I therefore order that the proceedings on this summons be stayed (without security being given), until proceedings in a court of law shall have been taken by the summoning creditor against the summoning debtors for the recovery of the demand mentioned in the summons, and until such court shall have come to a decision thereon. At present I make no order as to costs.

THE FIRST PETITION UNDER 36 & 37 VIC., c. 69.

Within the last few days a "summons and plaint" has been issued in the Court of Queen's Bench, in which even the illustrious rank and character of the defendant make the proceeding one worthy of some notice in the press. The plaintiff—or, as we believe we ought to call him, the "suppliant"—is Mr. James O'Grady, a contractor for some repairs to the barracks at Athlone. The defendant is no less a personage than Her Most Gracious Majesty the Queen. This is the first time that Her Majesty, or any English Sovereign, has ever referred a claim made against the wearer of the Crown to the adjudication of an Irish Court. Up to last session any inhabitant of Ireland who made such a claim could only obtain an adjudication upon it in one of the English Courts. This has been the case in all periods of our history. The only mode of obtaining redress in any case in which the Sovereign was concerned was by a "petition of right" addressed to the Sovereign, and stating the grievance of which the subject complained. The Sovereign endorsed on the petition the words, "Let right be done," and with this authority the tribunals proceeded to deal with the complaint as they would do if it were a case between subject and subject. But all these matters were only cognizable in the English Courts. No Irish Court ever entertained a "petition of right." Even when the grievance complained of originated in Ireland, the petition of right could only be prosecuted in an English Court. This state of the law suggests questions of interest in a constitutional point of view. Even when Ireland was a separate kingdom, and after her legislative independence was established,

Digitized by Google

petitions of right from Ireland could only be heard in the English Courts, and this continued to be the law up to the 5th of last August, the day upon which Parliament was prorogued. Upon that day, and among the last acts of the session, her Majesty gave her assent to a statute under which petitions of right from Ireland are in future to be tried in the Irish Courts. The case of Mr. O'Grady supplies a strong illustration of the necessity of the recent statute. As we have already said, Mr. O'Grady was a contractor for some repairs to the barracks at Athlone, and for some claim arising out of that contract he brought an action against Mr. Cardwell, the Secretary at War, with whom, in terms, the contract was made. Mr. Cardwell defended himself by saying that, although the contract was, in terms, made with him, yet he only entered into it as the agent of her Majesty, and that, therefore, the remedy was not by action against him, but by petition of right against the Queen. The Court of Exchequer (7 I. L. T. R. 15) ruled that the defence was a good one, and Mr. O'Grady was left without any means of trying his case, unless he could bear the expense of bringing all his witnesses to London, and trying in Westminster whether he was entitled to the payment he claimed in respect of work done in the town of Athlone. The matter attracted considerable attention both in England and Ireland, and one of the English legal periodicals suggested that some Irish member should bring in a Bill to enable the trial of a petition of right to take place in an Irish Court. The same course was previously urged in the IRISH LAW TIMES, our only legal periodical. Mr. Butt acted on this hint, and prepared and brought in "The Petitions of Right (Ireland) Act, 1873." With the aid of Sir Colman O'Loghlen, he succeeded in passing it into a law; and under the provisions of that statute, and in accordance with the decision of the Court of Exchequer, Mr. O'Grady will now try in Dublin his action against the War Office under the form of a petition of right against the Queen. It would be impossible in an article like this to review that most interesting portion of legal history and constitutional jurisprudence which is connected with the remedy by petition of right. In old times the remedy was encumbered by forms of procedure which, even when they had become antiquated, it was necessary to observe. In 1860 the late Sir William Bovill succeeded in passing an Act which substituted for these ancient forms a simple and intelligible procedure, which made the remedy against the Sovereign just as accessible to all persons as that against any of her subjects. In the Act passed by Mr. Butt the provisions of Sir William Bovill's Act are adopted, and applied to petitions of right which are prosecuted in Ireland under its provisions. This enactment is one of great importance, both in a practical and constitutional point of view. If other departments thought proper to avail themselves of the precedent established by the War Office in that case, no Government contractor in Ireland could have recovered compensation in any Irish Court for any breach of his contract on the part of the officials. His only remedy was by a petition of right against her Majesty, which could be prosecuted only in the Westminster Courts. It is something to have given to every Irish contractor a mode of redress against injustice, which cannot be defeated by a department throwing the legal responsibility on the Queen. One memorable petition of right from Ireland was prosecuted some years ago in the English Court of Queen's Bench. It was that of Mr. Stephen Fox Dickson, who sought to recover from the Queen duties which he alleged had been illegally exacted from the spirit grocers of Ireland. The petition was founded on a judgment of the Court of Exchequer Chamber of Ireland, which decided that the duties exacted were not warranted by law. The officers who had levied them protected themselves by a plea that they had paid them over to the Exchequer. Mr. Dickson's only remedy was by a petition of right in the English Courts. Five judges in the English Court of Exchequer Chamber overruled the decision of the Irish Court. In future the complaints of Irishmen arising out of Irish transactions will be tried where they ought to be—before the Irish tribunals—who are now, strange to say, for the first time empowered to decide upon all Irish cases, without the reservation of any portion of their jurisdiction to the English Courts.—*Freeman's Journal.*

TRUSTEES AND THE COMMUTATION OF EAST INDIA STOCK.

Half or nearly half of the City article of the *Times* of the 14th inst., consists of criticisms and correspondence in relation to the conditions offered by the India Office to the proprietors of East India Stock for the commutation of their holdings. This stock, amounting to £6,000,000, bears, under the 3 & 4 Will. 4, c. 85, a ten and a half per cent. dividend, and is made liable to redemption at the rate of £200 sterling for £100 stock, on or after the 30th April, 1874, on twelve months' notice in writing signified by the Speaker of the House of Commons by the order of the House given to the East India Company. Such notice having, as we presume, been duly given for the 30th April next, the Secretary of State for India, acting, or assuming to act, under the powers conferred by the 36 Vict. c. 17, by a circular or advertisement of the 3rd inst., offered in lieu of £2,350,000 of the said stock £3,000,000 Reduced £3 per cent. Annuities at the rate of £220 Reduced £3 per cent. Annuities for £100 East India Stock, and £2,000,000, India Four per Cent. Stock, redeemable in 1888 at par, being at the rate of £200 of such stock for £100 East India Stock. It was announced in the same circular that the applications of proprietors for either of the above stocks would receive attention in the order in which such applications should be received at the India Office; and that so much of the East India Stock as exceeded the £2,350,000, and so much of that amount as did not come in for commutation under the circular, would be paid off in cash on the 30th April. The 31st of the present month was fixed as the last day for receiving assents.

East India Stock being one of the stocks in which trustees have been by law empowered to invest, the issuing of the circular would, in many cases, put trustees on an inquiry whether they would be safe in accepting it. There can be no question that both the stocks offered by way of commutation are stocks which trustees (unless expressly forbidden by the language of their trusts) might have purchased in the open market with funds under their control. In the case of the India £4 per cent. Stock the point is expressly provided for by 36 Vict. c. 32, s. 16. Purchase, however, differs from commutation, and the 36 Vict. c. 17, s. 12, expressly requires a trustee, executor, or administrator, to obtain the direction of a Judge of the Court of Chancery in England or Ireland, or of the Court of Session in Scotland, before assenting to a commutation in cases where all persons beneficially interested do not consent in writing, or are under legal disability, or if the trusts be such that persons yet unborn may become interested. As has been pointed out in the money article of the *Times*, this section will operate as a trap for unwary trustees; and as to cautious trustees desirous of commuting, but unwilling to do so, without the sanction of the Court, the delay incident to an application to the Court, even if an order should be obtainable before the end of the present month, will so far prejudice them in the race for priority that the sanction of the Court, after all the trouble and cost of obtaining it, will probably be altogether nugatory. To what extent, however, is a trustee who disregards the requirements of the 12th section and commutes without the direction of a Judge liable as for a breach of trust? The answer to this question, we apprehend, must depend on the price of the stock accepted in commutation on the 30th April next. If the stock so accepted be then less in amount than the redemption value of the East India Stock (£200 per centum) would suffice to purchase in the market, for the difference in value a trustee would, we think, be clearly accountable. If, however, at that date the difference in value were in favour of the stock accepted in commutation, but the price of the stock afterwards fell, and the difference were the other way, the question of the liability of the trustee would, it might fairly be argued, depend on whether the fact of the stock accepted in commutation being a stock which a trustee would be justified in purchasing and holding would exonerate him from a fall in price occurring subsequent to the 30th April. Unless on the ground that the original breach of trust had not been purged, we think a trustee would not be liable for a fall in price; and we think also that the doctrine of non-purgation of a breach of trust would be carried to an extreme and unreasonable extent, if applied to such a case.

Digitized by Google

Since writing the above we observed that it has been notified by the India Office that applications for the full amount of £2,000,000 India Four per Cent. Stock have already been received.—*The Law Times.*

THE ASSOCIATED LAW CLERKS OF IRELAND.

The Monthly General Meeting of this Association was held on last Monday evening at the Central Committee Rooms, 212, Great Brunswick-street, at half-past eight o'clock. Notwithstanding the elections, the attendance was numerous, and included the President, who took the chair; Mr. Dowling, Vice-President; Messrs. Pride, Sheridan, Molony, Coyle, Farrelly, Cosgrave, Power, Norman, Pigot, Bradbury, Collins, Dillon, and Flynn. The business of the evening consisted in making the final arrangements for the Annual Dinner of the Association, and in discussing a motion proposed by the Vice-President, and seconded by Mr. Bradbury—

"That in the opinion of the Association an advance in the salaries of the Law Clerks of Ireland should now be conceded."

After an exhaustive debate the question was carried.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

BOROUGH FRANCHISE — OCCUPATION — ABSENCE. — A clergyman who goes abroad, having placed a curate in his house, and having locked up three rooms for his own use, without an *animus revertendi*, for six months previous to the 31st July, is not entitled to vote under either 2 & 3 Will. IV., c. 45, or the Representation of the People Act, 1870 (30 & 31 Vict., c. 102) (*Durant* v. *Carter*, 29 L. T. Rep., N. S. 681. C. P.).

BOROUGH FRANCHISE — OCCUPATION — EXCHANGE OF HOUSE.—A man has not resided within the borough for six calendar months previous to the last day of July, within the 27th section of 2 Will. IV., c. 45, when he has for a portion of that time exchanged houses with a friend in another part of England, and had no intention of returning, and does not return until the expiration of the time agreed upon between them (*Penn* v. *Pye*, 29 L. T. Rep., N. S. 684. C. P.)

BILL OF SALE—COVENANT TO PAY "IMMEDIATELY ON DEMAND"—REASONABLE TIME FOR PAYMENT—CONSTRUCTION.—By a bill of sale dated the 15th April, 1873, the plaintiff assigned all his goods, &c., to the defendant to secure a sum of £100, upon the express condition that if the plaintiff did not "immediately upon demand thereof in writing," deliver to the plaintiff or left for him at his home, pay the money due, it shall be lawful for the defendant to seize and sell the goods comprised in the bill of sale. On the 27th April, 1873, the defendants went with bailiffs to the plaintiff's house and there saw the plaintiff's wife and son, who told him that the plaintiff was from home, they knew not where, and that he might be gone to America for ought they knew. The defendant then read and delivered to the wife and son a written demand for payment, which not being complied with, he at once put the bailiffs in possession, and after an interval of eight days sold the goods. The plaintiff returned to his home on the 5th May, and said he had started with the £100 to go to S. on business, but had gone to R., had got drunk, and remained away "on a spree." In an action against the defendant for so seizing and selling the plaintiff's goods, it was held by the Court of Exchequer (Kelly, C.B., and Bramwell and Pollock, B.B.) that the defendant was, under the circumstances, perfectly justified by the terms of the bill of sale in seizing the goods as he did, immediately upon the demand having been made as above stated. *Toms* v. *Wilson and another* in the Q.B. and Ex. Chamber) 7 L. T. Rep. N. S. 421, 8 ib. 799; 3 B. & S. 422 and 455; 30 L. J. 32 and 382, Q.B.), *Massey* v. *Sladen and others* in the Exchequer (L. Rep. Ex. 13; 38 L. J. 34 Ex.), discussed and distinguished (*Wharlton* v. *Kirkwood*, 29 L. T. Rep. N. S. 644. Ex.)

VOLUNTARY SETTLEMENT—WORDS OF LIMITATION IN GRANT—LIFE ESTATE.—A., by a voluntary settlement, in 1838 conveyed freeholds to trustees upon trust (together with a sum of stock already transferred) for himself for life, and after his death in trust for his reputed son, W., when and in case he attained twenty-one, with a trust for maintenance if W. should be under twenty-one at the settlor's death. And in case W. should die under twenty-one, or die in the settlor's lifetime, without leaving issue living at his decease, then over. There were no words of limitation in the trust for W. There was a power of sale in the settlement, but no trust to invest the proceeds in land. A. died in 1849, having made his will in 1843, which recited the settlement and confirmed it, except as to the stock which had been sold. W. attained twenty-one, and died in 1872. Held, that W. took a life estate only in the freeholds under the settlement, and that there was a resulting trust for the settlor: (*Middleton* v. *Barker*, 29 L. T. Rep. N. S. 643. V.C.B.)

TESTAMENTARY SUIT — MARRIED WOMAN'S WILL — SETTLEMENTS — COSTS.—A married woman executed a will by virtue of a power, by which she appointed A., her husband, her universal legatee. A. did not prove the will, but dealt with the estate, which was all included in the marriage settlement. On the intermarriage with B., his adopted daughter, with C., he settled on her a sum of £5,000, in which he included a certain portion of his wife's estate. B. and C. proved the will of the testatrix, which was opposed by her next of kin, and the court, in decreeing costs out of her estate, held, that no portion of the fund settled at the marriage of B. and C. was liable to the costs of the litigation: (*Adamson* v. *Adamson and Hammond*, 29 L. T. Rep. N. S. 700. Prob.)

EJECTMENT FOR FORFEITURE—NON-PAYMENT OF RENT—CONSTRUCTION OF COMMON FORM—MEANING OF "BEING DEMANDED."—The defendant was tenant to the plaintiff under an agreement containing a condition for re-entry if defendant should "make default in payment of the rent within twenty-one days after it should have become due being demanded." The defendant made default on the 25th March, and the plaintiff made demand on the 9th April, but the defendant failed to pay. The plaintiff waited twenty-one days, and then brought ejectment: Held, that the demand being made before the expiration of twenty-one days, was not a good demand within the meaning of the agreement, and a rule to set aside a verdict for the plaintiff in ejectment made absolute: (*Philips* v. *Bridge*, 29 L. T. Rep. N. S. 792. C. P.)

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Final Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland) 1866.

DUBLIN, HILARY TERM, 1874.

CHANCERY PRACTICE.

1. If a suit relate to the rights of the Crown, who is to be the complainant, and what is the pleading called?

2. If a defendant to a suit (not being an infant, or under disability, and being within the jurisdiction), has been served with the bill and does not appear, what step should the plaintiff then take, and within what time?

3. If the plaintiff require the defendant to answer the bill, what should he do?

4. If a defendant only *demur* to a bill, within what time must he do so?

5. How is the answer of a peer verified, and how of a corporation?

Digitized by Google

6. Within what time after the evidence closes must the plaintiff set down his cause for hearing?

LANDED ESTATES' COURT PRACTICE.

1. What peculiar powers or jurisdiction has the Landed Estates' Court over property?

2. Who may present petitions for sale, partition, or declaration of title?

3. State some of the peculiar kinds of property with which the Court can deal, and the general words used in the Act and Orders to comprise such properties.

4. By whom may an original petition for sale be verified?

5. What is the first duty of a solicitor to a petition after presenting same?

6. What his first duty on obtaining absolute order?

PROBATE COURT PRACTICE.

1. If no caveat be entered, within what period after testator's death, can a will be proved?

2. Can a blind person make a will, and if so, what forms must be complied with, to make it valid?

3. How long does a caveat remain in force after it has been entered?

4. If an executor does not wish to act, under a will, by what proceeding can he get rid of his liability?

5. Is there any penalty for not obtaining probate to a will, or omitting to take out letters of administration? If so, state particulars.

6. A will duly signed by testator and witnesses, but attestation not being in prescribed form, by what means can the error be rectified?

COMMON LAW COURTS PRACTICE.

1. If the plaintiff in a cause is resident out of the jurisdiction, and the defendant requires that he shall give security for costs, what is the proper course to be adopted with a view to compel him to do so? and state any difference in practice that exists in Courts of Common Law.

2. When marking judgment in ejectment for non-payment of rent, what documents are required; as also on marking judgment in ejectment on title?

3. Within what time must the writ of habere be returned; and what are the proper steps to be taken to have the writ renewed, in case the habere is not executed within the proper time?

4. State the different methods by which judgments can be revived.

5. Within what time must application be made to set aside an award.

6. What remedy has the successful party on an award which stands final?

PRACTICE OF THE COURT OF BANKRUPTCY AND INSOLVENCY.

Under "The Bankruptcy (Ireland) Amendment Act, 1872," 35 & 36 Vic., c. 58.

1. State fully within what time after filing a petition in bankruptcy, the petitioning creditor must adjudicate, and what is the result of his not doing so?

2. What must be shown to the Court to justify it in issuing a warrant to arrest a bankrupt.

3. In case after adjudication the debt of the petitioning creditor is found by the Court insufficient to support the adjudication, do the proceedings, as a matter of course, fall to the ground, or has the Court any, and if so, what power to order the bankruptcy to be proceeded with?

4. Is there any limitation placed by the Act of 1857 upon the right of a person, entitled to an annuity payable by a bankrupt, to sue a person who may be collateral security therefor? If so, state it, and mention how a surety can get rid of his liability to the accruing gales of an annuity payable by a bankrupt.

5. When the goods of a trader are taken in execution, and sold, must the sheriff pay over the amount to the execution creditor on the expiration of the return of the writ, or how otherwise?

6. State succinctly the provisions made by the Bankruptcy (Ireland) Amendment Act, 1872, with reference to he avoidance of voluntary settlements made by traders.

COURT PAPERS.

MUNSTER CIRCUIT.

COUNTY OF CLARE.—At Ennis, Monday, February 23rd, at four o'clock.

COUNTY OF LIMERICK.—At Limerick, Friday, February 25th, at twelve o'clock.

CITY OF LIMERICK.—Same day and hour.

COUNTY OF KERRY.—At Tralee, Monday, March 9th, at one o'clock.

COUNTY OF CORK.—At Cork, Friday, March 13th, at three o'clock.

CITY OF CORK.—At Cork, Wednesday, March 18th, at ten o'clock.

Judges.—Mr. Justice FITZGERALD and Mr. Justice BARRY.

NORTH-WEST CIRCUIT.

COUNTY LONGFORD.—At Longford, Monday, 23rd Feb., at two p.m.

COUNTY CAVAN.—At Cavan, Wednesday, 25th Feb., at two p.m.

COUNTY FERMANAGH.—At Enniskillen, Friday, 27th Feb., at three p.m.

COUNTY TYRONE.—At Omagh, Monday, 2nd March, at three p.m.

COUNTY DONEGAL.—At Lifford, Saturday, 7th March, at eleven a.m.

CITY AND COUNTY OF LONDONDERRY.—At Londonderry, Wednesday, 11th March, at twelve o'clock.

The Right Hon. The LORD CHIEF JUSTICE, and the Hon. BARON FITZGERALD.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—J. F. Ferguson, confirm sale.—W. Gabbett, proposal.—P. Rooney, for delivery of certificate.—J. M'Kinley, allocation.

IN COURT.—Church Commissioners, peremptorily.—J. P. Trench, from 2nd.—D. G. Brown, do.—R. C. Henry, objection to schedule.

Before EXAMINER (Mr. Dobbs).

Marquis Devonshire, rental.—W. Jack, proofs.

Digitized by Google

TUESDAY.

In Chamber.—M. Roberts, allocation.—H. Mulreany, ex-delay.

In Court.—J. Kidd, schedule.—R. E. Gibbings, do.—Trustee O'Brien, from 3rd.

WEDNESDAY.

In Chamber.—M. Cherry and others, confirm sale.

In Court.—J. F. Walker, final schedule.—A. C. Gaffikin, do.—F. S. L. Tottenham, do.—H. L. St. George, do.—S. Keays, allocation.—M. Ryan, from 4th.

Before Examiner (Mr. Dobbs).

M. Darcy, rental.

Before Examiner (Mr. M'Donnell).

Trustee O'Brien, vouch.—T. Murphy, do.—Trustee Culbertson, for deeds.—S. K. Jackson, rental.—W. D. Alleyn, do.—D. Darcy, do.—J. L. Mason, do. from 4th.

FRIDAY.

SALES AT 12 O'CLOCK.

J. Bergin, City of Dublin.—1 lot.
M. O'Connor, Co. Kerry.—1 lot.
J. Lemass, City of Dublin.—1 lot.
T. M. Wood, Co. Sligo.—1 lot.
B. W. Faulkiner, Co. Carlow.—2 lots.
C. Langdale and others, City of Dublin, and County Cavan.—13 lots.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas F. O'Neill	Prove debts and vouch	*Maxwell & Weldon*
O'Reardon and Murphy	do	*Larkin & Co.*
John H. Sweet	do	*Maxwell & Weldon*
John Murphy	do	*Maxwell & Weldon*
John O'Donnell	Vouch account	*Findlater & Co.*

TUESDAY.

Before the Court, at 11 o'clock.

John Neil	1st public sitting	*Casey & Clay*
Michael Hickey	do	*Mathews*
Anne Ryan	do	*Perry & Co.*
Charles Dowler	do	*Browning*
Samuel Hawkins	Final examination	*Forsythe*
John Joseph Kelly	do	*Molloy & Watson*
Mary Clancy	do	*White*
Same matter	Examine witnesses	*White*
John Bennett	Motion	*O'Dowda*
James Delany	Audit and dividend	*Larkin & Co.*
Thomas Delany	do	*Larkin & Co.*
T. M. O'Shaughnessy	do	*Molloy & Watson*
————	Application to dismiss debtor summons	*Riddick*

Before the Chief Registrar, at 12 o'clock.

Alfred Parker	Title and posting	*Delandre*

THURSDAY.

Before the Chief Registrar, at 12 o'clock.

Morrison and Ferguson	Prove debts and vouch	*Neilson*

FRIDAY.

Before the Court, at 11 o'clock.

Anne Ryan	1st composition sitting	*Perry & Co.*
John C. Walsh	Final examination	*Dutch*
Charles Dowler	do	*Browning*
Anthony Connors	do	*Macnamara*
Anne Travers	do	*Stuart*
Margaret Bradshaw	do	*Larkin & Co.*
————	Application to dismiss debtor summons	*Casey & Clay*
Maurice Cassidy	Examine debtors	*Fay & M'Gough*

Before the Chief Registrar, at 12 o'clock.

Arthur Noble	Prove debts and vouch	*Rosenthal*

ADJUDICATIONS IN BANKRUPTCY.

Farrelly, Michael, Virginia, Cavan, grocer. Sittings, *Friday, February* 20, and *Tuesday, March* 10. *Lett*, solr.

Hackett, John, Omagh, county Tyrone, builder and painter. Sittings, *Friday, February* 27, and *Tuesday, March* 17. *Mathews*, solr.

Hickey, Martin, John-street, Kilkenny, provision dealer and baker. Sittings, *Tuesday, February* 24, and *Friday, March* 13. *Mathews*, solr.

Hanlon. Patrick, Waltherstown and Murney, county Kildare, farmer, miller, grocer, provision and soft-goods dealer. Sittings, *Tuesday, March* 3, and *Friday, March* 20. *Sullivan*, solr.

DIVIDENDS IN BANKRUPTCY.

Enright, Joseph, of Ranelagh-avenue, Dublin, builder and contractor. 1st and final dividend 6s. 10½d. in the £. L. H. Deering, official assignee. *Casey & Clay*, solrs.

Evans, Nathaniel, Limerick, draper. 2nd dividend 7s. 8d. in the £, making, with 1st dividend, 10s. 7d. in the £. L. H. Deering, official assignee. *Oldham & Eaton*, solrs.

Manning, John Thomas, Dingle, Kerry, shopkeeper. 3rd and final dividend 1s. 7d. and 5-6ths of 1d., making, with former dividends, 8s. 9d. and 4-6ths of 1d. in the £. L. H. Deering, official assignee. *Findlater & Co.*, solrs.

Palmer, Rev. Sir William, Bart., Ballycroy, Mayo, fish-dealer. 1st and final dividend 1s. 8d. and 1-12th of 1d. in the £. L. H. Deering, official assignee. *Molloy & Watson*, solrs.

Quarry, Mary, Dungarvan, Waterford, spinster, grocer. and spirit dealer. 1st and final dividend 4s. 10½d. in the £. L. H. Deering, official assignee. *Campbell*, solr.

New Silk Gowns.—The Lord Chancellor of England has found in the present position of political affairs a sufficient reason for reconsidering the determination at which he recently arrived, that he would create no new Queen's Counsellors for the present. The following gentlemen have received a notice of the fact that her Majesty has been pleased to approve of their appointments to the dignity of Queen's Counsellors—Mr. Joyce, Mr. Murphy, and Mr. Cohen, of the Home Circuit, and Mr. Waddy, the new Liberal M.P. for Barnstaple, of the Midland Circuit; Mr. R. G. Williams, and Mr. C. H. Hopwood, of the Northern Circuit. The names of the Chancery Barristers who have, or who are said to have, received the honour of Queen's Counsellors are—Mr. Martin, the Conservative candidate for Cambridge, Mr. W. Pearson, Mr. W. Chitty, and Mr. Walles.

Digitized by Google

Private Bills in Parliament, relating to Ireland.—On Tuesday, the 27th January, the Examiners found the standing orders duly complied with in the following cases, viz.:—Dublin General Cemetery Company, Belfast Corporation Gas Company, Dublin Port and City Railway Company, Wexford Harbour Commissioners, Midland Great Western Railway of Ireland, Dublin Metropolitan Junction Railways.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	Jan. Fri 30	Jan. Sat. 31	February Mon. 2	February Tues. 3	February Wed. 4	February Thur. 5
	Government.						
—	3 p c Consols	—	92⅝¾	92	92⅛–2	—	91⅞
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock	90⅝¾	90⅞–1	90⅝¾	90⅝⅞¾	90⅝⅞	90⅝
	INDIA STOCK.						
—	5 p c July '80 } Trafble. at	108⅛	108	—	107⅝¾	—	107⅞
—	4 p c Oct. '88 } Bk. of Irel.	102⅞	—	—	—	—	—
	Banks.						
100	Bank of Ireland	—	303⅝¾	303⅝¾	—	303⅞	304 ¼
25	*Hibernian Banking Co.*	—	58¼	58⅝	58½	58¼	58½
20	*London and County*	—	—	—	—	—	—
15	*London Joint Stock*	—	—	—	—	—	—
20	*London and Westminster*	67½	67½	—	67⅝	67½	—
3½	*Munster Bank (Limited)*	8⅝ x d	8⅝	8⅝¾	—	8⅝	8½
30	*National Bank*	56	55⅝¾	56 ⅛¼	56½	56⅝⅞	56½
15	*National of Liverp'l (Ltd)*	—	13⅝¾	13⅝	—	—	—
25	*Provincial Bank*	—	—	94	94½	—	—
10	Do. New	—	—	—	37⅞	—	—
10	*Royal Bank*	23¾	28¼	28⅛⅝	28½	—	—
15	*Union of London*	—	—	—	—	—	—
	Steam.						
50	British & Irish	—	—	—	—	—	—
100	City of Dublin	—	107	—	107	—	107⅞
20	Drogheda (limited)	—	—	—	25	25	—
50	Dublin and Glasgow	—	—	—	—	—	—
10	Dundalk (Limited)	—	—	—	7⅜⅝	—	—
50	Peninsular and Oriental	—	55⅞	—	—	-	—
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	29	—	—	—	—	—
1	Killaloe Slate Co. (lit'd)	—	—	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A	—	—	10	—	—	10
10	B	9⅞ 10	—	10	10	—	10
10	No. 1 C	—	—	—	—	—	10
10	No. 2 C	—	-	—	—	—	10
8½	*Dublin Tramways*	—	7⅞	—	7⅞	—	—
100	Grand Canal	—	—	—	—	54	—
25	*National Assurance*	—	46½	—	—	46⅞	—
9–¼–7	*Patriotic Assurance*	10⅝⅞	—	10⅝⅞	—	—	-
	Railways.						
50	Belfast and Northern Cos.	69⅞	—	—	—	—	—
100	Dublin and Belfast Junct.	—	—	—	91½	91⅝	91⅝
100	Dublin and Drogheda	—	—	—	—	—	115½
100	Dublin, W'klow, & W'ford	74½	74¼	74¾	75	74⅞	—
100	Gt. Northern and Western	—	—	—	—	97	—
100	Gt. Southern and Western	113	112⅞	—	—	—	111⅞
100	Do. do. free of Stamp	113¼	113	113	113	—	112–1⅝
100	Midland Gt. Western	92½	91⅝¾⅞	92 ⅛	—	—	—
50	Waterford and Limerick	—	—	33⅜	33	- -	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	93	—	—	—	—	—
100	D., W., & W., 6 per cent	130	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	54½	—	—	—	—	—
50	Do. do. (1864)	—	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	99⅞	—	—	100	—	—
10	Irish North Western A 5 p c	—	4	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	—	—	—	—	—
50	Do., new redeemable 5 p c	—	50	—	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	D., W., & W., 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Gt. South'n & West'n, 4 p c	—	—	98½	98	—	98½ f
—	Irish Nth Westn 1st C 5 p c	—	—	—	100	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	100

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—February 12th and 26th, 1874.

Account Days—February 13th and 27th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

PUBLICATIONS:

MR. BUTT'S GREAT WORK ON THE IRISH LAND ACT.

PUBLISHED at 25s., now Selling for 21s., Free by Post, 704 pp. royal 8vo, cloth, lettered.

A PRACTICAL TREATISE ON THE NEW LAW OF COMPENSATION TO TENANTS, And the Other Provisions of THE LANDLORD AND TENANT ACT, 1870, With an Appendix of Statutes and Rules.

By ISAAC BUTT, Esq., M.P., Of the Inner Temple, Barrister-at-Law; One of Her Majesty's Counsel in Ireland.

Dublin: John Falconer, 53, Upper Sackville-street.
London: H. Butterworths & Co., 7, Fleet-street.

JUST PUBLISHED, Price 6d.

A COMPLETE ABSTRACT OF THE NEW IRISH BANKRUPTCY ACT, WHICH CAME INTO OPERATION ON THE 1st OF JANUARY, 1873.

WITH A COPIOUS INDEX.

BY JAMES M. LOWRY, B.A., Of Lincoln's-Inn.

Dublin: John Falconer, 53, Upper Sackville-street.

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MEATH.

SALE,

On FRIDAY, the 6th day of MARCH, 1874.

In the Matter of the Estate of Drake Christopher O'Reilly, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 6th day of MARCH, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, Dublin, In One Lot,

Part of the Town and Lands of Drinadaly, situate in the Barony of Moyfenrath, and County of Meath, containing 128a 2r 36p, statute measure, held in fee-farm, and producing a net profit rent of £188 15s 6d.

Dated this 26th day of January, 1874.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This Estate consists of a portion of the Townland of Drinadaly, known as Boyne Lodge, containing 128a 2r 36p, statute measure.

The House is handsome and commodious, with first-class Stabling, Coach-house, and Farm Offices.

The Lands are all in grass, and are of superior quality, and situate on the Banks of the River Boyne, a short distance from the Town of Trim, and in the centre of a hunting district.

The Fields are conveniently divided, each division having an excellent supply of water from the River Boyne.

The entire Estate is in possession of the owner, and the purchaser can have immediate possession.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inns'-quay, Dublin; to

CHRISTOPHER P. DUIGENAN, Trim; to

JOHN THOMAS HINDS, Solicitor having carriage of the Sale, No. 37 Westmoreland-street, Dublin.

Printed and Published by the Proprietor, John Falconer, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, February* 7, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, FEBRUARY 14, 1874. No. 368.

DECISIONS ON THE PARLIAMENTARY ELECTIONS ACT, 1868.—V.

[*Concluded*].

HAVING considered the various malpractices by which a candidate may lose his seat, the next topic we propose to consider is the effect of these decisions upon the claims of unsuccessful candidates to a seat by the operation of a scrutiny. In the King's Lynn case (1 O'M. & H. 208) a witness denied that he had been bribed—counsel for the petitioner asked leave to call evidence to contradict this witness, and to prove that when he gave his vote he admitted being bribed. It was held that, although this could not affect the respondent's seat, because proof must be given that he was actually bribed—not merely that he said he was bribed—still this was sufficient to affect the man's vote on a scrutiny. Similarly it was held in the Westbury case (1 O'M. & H. 49) that mere gossip is no evidence, except self-disabling evidence, on a scrutiny. The principle upon which a scrutiny should be conducted is well laid down by Martin, B., in the South West Riding case (1 O'M. & H. 215):—"By the 53rd sec. of the Parliamentary Elections Act, it is enacted that upon the trial of a petition complaining of an undue return, and claiming the seat, as the petitioner did in this case, the respondent may prove that the election of the petitioner was undue, as if he (the respondent) had presented a petition against him." After alluding to the fact that the question which had, so far, been tried before him was not as to whether the respondent or petitioner was the legally elected member, but whether or not something had not been done on the part of the petitioner which incapacitated him from being a member at all, his lordship proceeds:—"Whatever the decision was as to that question, we must have entered upon the scrutiny before the determination of the case, because the question in the scrutiny would be—which of these gentlemen had the majority of legal votes; and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would have been perfectly good votes, and the persons who were supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to Parliament by a legal majority. The same was held to be law in the Southampton case (1 O'M. & H. 225). We cannot leave the subject of a scrutiny at Parliamentary elections without reverting to a case which must still be fresh in the minds of our readers, having been fully commented on and reported in this journal, but to which we must shortly refer in this place, on account of the all-important principle laid down in it by the majority of the Court of Common Pleas. We allude to the Galway case, 6 I. L. T. 121. It was there held by the majority of the Court that the commission of acts of undue influence disqualify a candidate, and that from the nature of the acts the electors should have known as a fact that undue influence had been practised, and that the disqualification having been created before the election, and knowledge of it having been brought to the electors, the respondent was entitled to be seated, though he had only polled a very small minority of votes. This decision of the majority of the Court not having been as yet reversed by any decision, it must be taken as correctly stating the law on the subject, though we confess that the opinion of Monahan, C.J., the dissentient judge, seems to have very great weight. He held that the Court could not, from the general notoriety of the acts, presume general knowledge of their criminality and consequence in the body of the electors. "This case," said the Chief Justice, "if it does anything, disqualifies every man who gave his vote to the number of 2,823. It seems to me it would be going a long way in this case, the first of its kind, to make a precedent such as will be made by the present decision upon the idea that the legal disqualification was generally known, and without any means of ascertaining to how many it was known." As to the question of the costs of proceedings under the Act, the general rule adopted by the election judges in the great mass of cases is, that costs should follow the event, but special circumstances have in many instances induced their lordships to vary from this rule—indeed in the Limerick case (1 O'M. & H. 263) Fitzgerald, B., stated that, in accordance with Parliamentary practice, he would not give costs unless he were prepared to pronounce the petition frivolous and vexatious. The conduct of the respondent or petitioner has influenced this question in many cases. In the North Norfolk case (1 O'M. & H. 243) it was held that the employment of a person scheduled for malpractices at a previous election was enough to justify an investigation, and had the petition been confined to that, the petitioner would not have had to pay costs. In the Youghal case (1 O'M. & H. 299) the petitioner was refused his costs on account of the character of his bill of particulars; because, although it contained specific charges of bribery against 78 electors, no charge was proved, and as to several of them no evidence was offered. In the South West Riding case (1 O'M. & H. 215) the special circumstances of the case, apart from the question of the conduct of the parties, was held to be sufficient to exonerate the unsuccessful party from paying costs. "As to the respondent B.," said Martin, B., "assuming the case stood on the scrutiny, I would not have given costs on either side; because I think, in a constituency of 19,000, a gentleman who has been rejected by a majority of eight may reasonably come forward to ascertain what the true majority was. I do not mean to say that evidence might not have been given to alter my opinion; but, as at present advised, I should not have given costs on either side." In the Blackburn case (1 O'M. & H. 205) Willes, J., refused costs to the successful petitioner on account of the unfounded charges made and persisted in against the respondent personally. The same consideration, to a great extent, influenced the Westbury case (1 O'M. & H. 55), where a similar decision as to costs was come to.

We have now considered the general effect of these decisions as to the election law. Our anticipations as to the improbability of any more reports on this subject appearing prior to the general election have proved well founded. We will take the opportunity of again calling the attention of our readers to this important subject, when the decisions of the learned judges now upon the rota, upon the large number of petitions we understand are likely to ensue from the great electoral contest we are now passing through, have been reported.

Digitized by Google

LORD COLONSAY.

Lord Colonsay died on Sunday, 1st Feb., at Pau, at the mature age of eighty years. For fifty-eight years he had been a labourer in the vineyard of the law, and to the last he retained the vigour of intellect, the love of law, the sound judgment, and the felicity of expression which had always distinguished him. For seven years he sat in the House of Lords, being the first Scotch Judge who had been elevated to the rank and dignity of a "Law Lord" since the accession of James I. An experiment which had been deferred for two hundred and fifty years bore fruits which may be of great value in the future. The jurisdiction of the House of Lords in Scotch and Irish appeals still exists, but it is impossible that it can endure. When Scotland and Ireland give in their adhesion to a new Court of Imperial Appeal, we shall hope to see eminent Scotch and Irish Judges selected to be members of the Court, and we shall confidently expect the best results, both in a legal and political sense, flowing from such a plan. In any discussion which may arise on this subject, the success of Lord Colonsay in the House of Lords will be cited, and will afford the strongest illustration in favour of the scheme. The learned peer showed perfect aptitude in the comprehension of the English law, and many of his judgments prove that he had mastered its principles. All his judgments are remarkable for good sense, and betray a northern solidity of intellect. Their extreme brevity is their sole defect, the modesty of the learned lord having deprived us of the full fruition of his powers.

Mr. Duncan M'Neill, the second but eldest surviving son of the late Mr. John M'Neill, of Colonsay, Argyllshire, was educated at St. Andrews and at Edinburgh. In 1816 he became a member of the Scottish Bar, in 1820 he was made an advocate deputy, and in 1824 he was appointed sheriff of Pertshire. Ten years later he was chosen to be Solicitor-General for Scotland, and in 1841 he returned to that office. In 1842 he was made Lord Advocate, and so continued till the downfall of Sir Robert Peel's administration. In 1851 Lord Russell appointed him an ordinary Lord of Session, and in 1852 he became head of the Court, and was sworn in a Privy Councillor. For fourteen years he presided over his Court with the highest credit to himself, and the pressure of business there proved the public confidence in him. In his seventy-fourth year he became entitled to his retiring pension, and removed the sphere of his labours from Edinburgh to the House of Lords. The noble lord was unmarried, and so the title expires with him.—*Law Journal.*

SOLICITOR'S LIEN.

The Lords Justices had occasion last week to consider the question whether the solicitor's lien for costs on property recovered or preserved in a suit in which he has been employed attaches to moneys paid to his client by way of compromise. The rule seems to be well settled that the solicitor's lien is not allowed to interfere with any *bona fide* compromise or arrangement entered into by his client; but if the motive for compromising is to defeat the lien, the Courts will prevent such a scheme from being successful. "The attorney's right," said Erle, J. in *Brunsden* v. *Allard* (7 W. R. 581, 2 El. & El. 19), "certainly goes to this extent, that, if a conspiracy between the plaintiff and defendant, to defraud the attorney of his costs, is clearly made out, the Court will interfere to prevent it." In *Hill* v. *Hibbit*, the recent case to which we have referred, a lady in destitute circumstances had employed a solicitor to prosecute a claim on her behalf in an administration suit. The Vice-Chancellor and the Court of Appeal had given judgment against her, but counsel had advised her to take her claim up to the House of Lords. At this stage of the proceedings, and when she had incurred costs in favour of her original solicitor amounting to over £3,000, a compromise was entered into between her and the other side, whereby, in consideration of releasing her claim, she was to receive an annuity of £75, to cease in case of any prior or future event which would, but for express provision to the contrary, cause it to be vested in, or payable to, or subject to any charge or lien in favour of, any person other than herself. The solicitor who carried out the compromise for her was not her original solicitor in the suit; and this latter gentleman applied for a declaration that he was entitled under the provisions of the Attorneys and Solicitors Act (23 & 24 Vict., c. 127, s. 28), to a charge for his costs upon the lady's interest in the annuity, and also for a personal order upon the parties to the suit and their solicitor who had arranged the compromise, and also on the solicitor who had acted in the matter for his former client, to pay the costs which the lady had incurred. The basis of the application was, of course, that the whole arrangement was a mere scheme to defraud the applicant of his costs. The Vice-Chancellor dismissed the application. The appeal was not heard as against the lady, but only as against the other parties; but the judgment of the Lords Justices clearly showed their opinion that, under the circumstances, the applicant had no right to any part of the relief for which he had asked. This decision was clearly in accordance with the authorities, assuming that no design existed for the purpose of defeating the solicitor's lien. It would be difficult to presume such a design merely from the provision in the deed of compromise that the lady's annuity was to cease in the event of any lien attaching to it; the object of the parties plainly being to provide against the chance of the lady's again becoming destitute, and so giving them trouble.—*Solicitors' Journal.*

NEW QUEEN'S COUNSEL (ENGLAND).

The *Gazette* announces the appointment of the following members of the bar to be Queen's Counsel:—Messrs. Charles Clark, Thomas Ewing Winslow, Samuel Joyce, Frederick Waller, William Henry Gunning Bagshawe, William Pearson, Charles Henry Hopwood, John Westlake, Joseph William Chitty, John Patrick Murphy, Alfred John Marten, Robert Griffith Williams, Arthur Cohen, and Samuel Danks Waddy.

The *Solicitors' Journal* thinks it is worthy of remark that within little more than two years the honour of "silk" has been conferred upon 14 gentlemen at the Chancery Bar, and upon 23 gentlemen at the Common Law and Parliamentary Bar, including nine members of the Northern Circuit. The appointments recently announced bring up the total number of Queen's Counsel now living (excluding those recently appointed to the Bench) to the number of 183.

ASSIGNMENTS OF CHOSES IN ACTION BEFORE AND AFTER INSOLVENCY.

There has been some conflict of decision in recent years as to the claims of mortgagees and transferees of an insolvent before and after insolvency as against assignees, and the cases were reviewed in a decision given by Vice-Chancellor Hall last term in the case of *Semphill* v. *The Queensland Sheep Investment Company (Limited)*. There the facts were these: Hickey, a domiciled Australian, agreed to sell an estate to the Queensland Company, but previously to the execution of the agreement he assigned half his interest under it to one Wright. Hickey became insolvent in Australia, and an official assignee was appointed there. Subsequently Wright gave notice to the company of his assignment, and afterwards the official assignee gave the company notice of the insolvency. The notice given by Wright was held to be inoperative as against the official assignee (29 L. T. Rep. N. S. 737). The position there will be seen to have been this: Notice given by Wright after the insolvency of Hickey, but before the official assignee had given notice of the insolvency. Notice having been given by Wright after the insolvency, could he be in as good a position as if he had given notice before the insolvency, simply because the official assignee delayed giving his notice until after Wright had given his? We shall briefly consider the authorities presently. Upon principle and the balance of authority the Vice-Chancellor came to the conclusion that notice after bankruptcy or insolvency is inoperative as against the bankrupt or insolvent, in the case of the party giving notice claiming under a title acquired previously to the bankruptcy or insolvency. His Honour said: "It would certainly be strange if such a person,

Digitized by Google

having omitted to give notice and thus left the property in the order and disposition of the bankrupt or insolvent, should be able immediately after the insolvency and bankruptcy to perfect his title and take from the general creditors that which he had led them to believe was the insolvent's or bankrupt's property, and upon the faith of which the general creditors had dealt with him."

We quite agree with the learned Vice-Chancellor that "this would be against the spirit of the law, which is that persons who have unconscientiously entrusted the bankrupt with personal property under circumstances in which a false credit might be acquired in respect of such entrusting should, upon the bankruptcy, lose their right to the property."

A word here about notice to assignees, which, in a collateral manner, affects the general question. Is there any necessity for an assignee of a bankrupt's interest, or a mortgagee of his property, to give notice to his trustee? Mr. Justice Willes pointed out in *Cooke* v. *Hemming* (28 L. T. Rep. N. S. 772), what indeed, we think, has always been clear as a legal principle, that notice to assignees or trustees in bankruptcy is necessary only to defeat the reputed ownership clause in the Bankruptcy Act. Assignees or trustees are not in the position of subsequent purchasers for value without notice.

A prominent case on the general question is *Stuart* v. *Cockerell* (23 L. T. Rep. N. S. 442), where the tenant for life of a fund in court mortgaged his interest, and afterwards became bankrupt. After the bankruptcy the mortgagee obtained a stop order on the dividends; the assignee in bankruptcy did not obtain a stop order, and the mortgagee was held entitled to priority over the assignee in bankruptcy. Vice-Chancellor Malins, in giving judgment in that case, said:—"It is clearly settled by a line of authorities ending with *Bartlett* v. *Bartlett* (1 De G. & J. 127), that if the assignee of a *chose in action* omits to give notice of the assignment to the debtor or trustee, or, in the case of a fund in court, to obtain a stop order, and the assignor becomes bankrupt, the *chose in action* remains in the order and disposition of the bankrupt with the consent of the assignee, and passes to the assignee in bankruptcy." The Vice-Chancellor had previously decided *Re Brown's Trusts* (17 L. T. Rep. N. S. 241), where one Brocklebank, in 1838, being entitled in right of his wife to a reversionary interest in a sum of stock standing in the names of trustees, became insolvent, and in the schedule of his assets filed under his insolvency he inserted such reversionary interest. No formal notice of the insolvency was ever given by the provisional assignee to the trustees of the fund, and no creditors' assignee was appointed until shortly before the hearing of the cause. In 1844 Brocklebank and his wife assigned the reversionary interest to a Mr. Burkitt to secure an annuity, and in 1849 mortgaged it to one Boston. Formal notice of these deeds was given to the trustees of the fund. Mrs. Brocklebank died in 1861, and the fund representing the reversionary interest being in court, a petition was presented by Boston for payment out. The Vice-Chancellor there said: "The true principle on which questions of priority depend is, that it is incumbent on all persons dealing with *choses in action* to do all that is in their power to perfect their title, and they do not do so unless they give notice to the persons in whose hands such property is." His Honour said, moreover, "I think these questions of notice should not be left open to speculation, but that formal notice should be required," and he held that the mere fact of the trustees' solicitors knowing of the insolvency was not sufficient notice to the trustees to take the fund out of the disposition of the insolvent. The assignee was therefore postponed to the two mortgagees.

We may here mention that Vice-Chancellor Malins, in *Re Russell's Policy Trusts* (27 L. T. Rep. N. S. 706) declined to follow an earlier case of *Re Webb's Policy* (16 L. T. Rep, N. S. 529), and acted on *Stuart* v. *Cockerell*. In *Webb's* case it was decided that no act of an assignee for value of a *chose in action* done after the bankruptcy of the assignor can give effect to his assignment as against the assignees in bankruptcy, unless his title is perfected before the bankruptcy by notice to the legal holders of such *chose in action*. *Stuart* v. *Cockerell*, as we have seen, supports the proposition that by notice or a stop order subsequent to the bankruptcy the operation of the law as to reputed ownership may be prevented. In *Re Russell's Policy Trusts* a policy effected by A. on his life was mortgaged in 1860 without notice to the office. A. became bankrupt in 1862, and in 1868 joined in a transfer of the mortgage to B., who had no notice of the bankruptcy. After the death of A. B.'s solicitor gave notice to the office that this and other policies were mortgaged, and that he acted for the mortgagees, not naming them. Subsequently notice of the bankruptcy was given to the office. "The question is not," said his Honour, "between the assignee in bankruptcy and a general assignee, but between him and an assignee of the particular thing; and I can see no grounds for thinking that there is any difference between an assignee in bankruptcy and a particular assignee. The particular assignee loses priority by not giving notice, and the assignee in bankruptcy does the same thing."

Now as to these cases Vice-Chancellor Hall points out that in *Re Webb's Policy* and in *Stuart* v. *Cockerell*, the assignments preceded the bankruptcy, and in *Brown's Trusts* and *Russell's Policy Trusts*, the assignment took place after the insolvency or bankruptcy, and his Honour said: "I apprehend a great distinction exists between a case in which the bankrupt or insolvent has made an assignment after the bankruptcy or insolvency, and a case in which he has done so previously to bankruptcy or insolvency. In the former case it may be that the bankrupt's or insolvent's assignee, having neglected to give notice, his title will be postponed. His omission to give notice enabled the bankrupt or insolvent to deal with the fund." There doubtless ought to be this distinction, and in *Re Tichener* (35 Beav. 317), where the assignment (which was by way of mortgage), preceded the bankruptcy. Lord Romilly held that the title of the bankrupt's assignee prevailed over the title of the mortgagee, although he gave notice, and in *Bartlett* v. *Bartlett* (1 De G. & J. 127), the assignee before bankruptcy who had given notice, was held not entitled as against the assignee in bankruptcy, although it does not appear that the assignee in bankruptcy had given notice.

Having thus considered all the cases, the conclusion of Vice-Chancellor Hall seems sound, as we have already given it, that notice after bankruptcy or insolvency is inoperative against the bankrupt or insolvent in the case of the party giving notice claiming under a title acquired previous to the bankruptcy or insolvency. And this is the view which in our issue of Feb. 1873 we expressed in opposition to the decision of Vice-Chancellor Malins in *Stuart* v. *Cockerell*.—*Law Times*.

TAUNTON ELECTION PETITION.

(Before GROVE, J.)

Jan. 26th.

To render a candidate responsible for the unlawful acts of persons who have supported his canvass, he must be proved by himself, or his authorised agents, to have employed such persons to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election.

The learned judge, in delivering judgment, stated that the respondent was charged with bribery and treating by himself and his agents, and that there was also an imputation of general bribery and treating. He intimated that there were no proper grounds for making any personal imputation against the respondent, and that with regard to general bribery and treating and corruption so as to taint the whole constituency, and thus render the election void, he saw no reason for coming to the conslusion that extensive bribery or corruption prevailed at the election. He then proceeded to say:—I come now to the point upon which the great contest in this case arose. Did the respondent, not by himself or by any conscious authority, but by the hands or an agent or agents for whom he is responsible, so bribe or treat that this election must be declared void? The law of agency, as applied to election petitions, has been sufficiently expressed by different learned judges, some of whom have likened it to the relation of master and servant, and another to the employer of persons to run a race for him; but no

Digitized by Google

exact definition, meeting all cases, has, as far as I am aware, been given. Two learned judges—the late Mr. Justice Willes, and Mr. Justice Blackburn—have pointed out the difficulties of arriving at one. All agree that the relation is not the Common Law one of principal and agent, but that the candidate may be responsible for the acts of one acting on his behalf, though the acts be beyond the scope of the authority given, or, indeed, in violation of express injunction. So far as regards the present case, I am of opinion that to establish agency for which the candidate would be responsible, he must be proved, by himself or by his authorised agent, to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate with responsibility must, it seems to me, be a question of degree and of evidence to be judged of by the Election Petition Tribunal. Mere non-interference with persons, who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with any unlawful acts of theirs of which the tribunal is satisfied he or his authorised agent is ignorant. It would be vain to attempt an exhaustive definition, and possibly exception may be taken to the approximate limitation which I have endeavoured to express. It must also be borne in mind in these cases that, although the object of the statute by which the tribunal of election judges was created was to prevent corrupt practices, still the tribunal is a judicial and not an inquisitorial one. It is a Court to hear and determine according to law, and not a Commission armed with powers to inquire into and suppress corruption. Without expressing myself in equally strong terms with Baron Martin in the Wigan case, I am of opinion that the evidence of corrupt practice must establish affirmatively, to the reasonable satisfaction of the judge, that the acts complained of were done. The learned judge then proceeded to consider the evidence in the case. Witnesses were called who said they had seen a man named Rollings, against whom bribery and treating were alleged, either accompanying Sir Henry James during his actual canvass, or so in company with him as to lead to a reasonable inference that he was aiding him in his canvass. The best of these witnesses admitted that they had only seen the backs of Sir Henry James and the man with him. The other evidence was slender, and when Sir Henry James was examined he most emphatically contradicted it, stating that, if he had met him in the street he did not know him, and that most certainly he never canvassed with him, or with his sanction for him. It was admitted by the counsel for the petitioners that the fair result of the evidence was that there was not enough to satisfy me of any agency deduced from personal canvass with the candidate himself with the exception of Turner. I am clearly of this opinion, and it applies also to Turner, Stuckey, and Govier, and I decide that on the whole case there was no reasonable evidence to satisfy me of agency by personally accompanying the candidate on his canvass. The learned judge, after stating that it was admitted that Burman was Sir Henry James's agent, for whose acts he was responsible, commented on Smith's evidence with regard to the sale of timber and the payment of £5 for drink, and stated that it was obvious that Smith came forward under circumstances which threw the greatest suspicion on his testimony. He came forward as an informer of a corrupt transaction to which he had been a party, for he had induced his daughter knowingly to make a false and fraudulent alteration in a bill to enable Rollings to obtain repayment from the respondent or from some agent of his by false pretences. As he admitted having bribed a voter, and his antecedents were far from satisfactory, he looked upon his evidence, not as that of a credible witness, but to see how far it was corroborated. His wife was called to support his veracity, and it was alleged that she had detected a conspiracy to injure Farrant and Brannan; but it was admitted that £15 had been paid by Farrant and Brannan to Poole. Smith was also said to have received money from Small to bribe, but the evidence of the bribery by Smith was utterly unworthy of credit. Here Rollings was said to have treated voters, but there was little or no evidence to connect him with the respondent, although he was frequently alleged to have been in company with Burmans, and had been seen to go into committee-rooms—Sir Henry James having no committee-rooms in the ordinary election sense of the term. The evidence was of very little value, as many witnesses could not fix dates; the times and occasions had been probably multiplied by different persons called, and most of them spoke to the facts happening before the committee-room was really taken. Other evidence of small bribes or offers to bribe and treat was adduced as having been committed by Stuckey, Turner, and Govier, who were alleged to be agents, for whom Sir Henry James was said to be responsible. The best of these cases was that deposed to by a man named Mogg, a man of the highest character, who gave his evidence with remarkable apparent truthfulness, and, small as the incident is, the question of Sir Henry James's seat might have depended on the question of Govier's agency, but no evidence of his agency was given by the petitioners, beyond his having paid for Burman small sums for services connected with the canvass of Sir Henry James. The learned judge then continued as follows:—A *primâ facie* case was made which certainly had an impression upon me, viewing, in the light of probabilities, the evidence which from the character of the witnesses—at least many of them—could not be regarded as thoroughly reliable. Serjeant Ballantine did not propose to call Rollings, perhaps fearing damaging disclosures, and I suggested his being called, and I think the truth has more fully appeared in consequence. For the respondent were called himself, Mr. Biron, Rollings, Burman, Cornish (Collard, who contradicted Jane Cox), and Turner. Sir Henry James disproved to my entire satisfaction any agency by canvassing on the part of Rollings, Turner, Stuckey, and Govier, and, so far as he was concerned, denied all agency but that of Burman. Rollings contradicted Smith, emphatically stating that the timber transaction was a pure business one, and that what he had done in furtherance of Sir Henry James's election was spontaneous, and he showed that his evidence, in the main, might be relied on. Burman gave his evidence in a singularly candid and apparently truthful manner, shrinking from no inquiry, exhibiting evidences of veracity in incidental matters, and answering questions against himself; so that he was either a most truthful witness or a consummate actor, and no hint or insinuation was made as to his antecedents. He denied Smith's story, and stated that he had seen Rollings but rarely during the election, and had not employed him directly or indirectly to promote Sir Henry James's election. The case does not depend on the veracity of Smith and Rollings further than so far as the former directly contradicts Burman. I hesitate to decide between them, as the statements of Smith directly implicating Burman are entirely uncorroborated. It is enough to say that if I believe Burman's evidence, all agency traced through him is displaced, and I do believe Burman's evidence, and cannot imagine that such unassailable evidence is a piece of accomplished acting; and if it were, he would not be a man likely to put himself in the power of such a man as Smith for a very trifling consideration. With regard to the cases of Turner, Stuckey, and Govier, I am inclined to believe Turner, though I regret that Stuckey and Govier were not called. I consider that neither they nor Turner were proved to be agents for whose acts the respondent was responsible. Govier was stated by Burman to have assisted him as a volunteer in paying some of the petty cash, but there was no evidence, in my judgment, to fix him with agency in promoting the election, even giving a wide latitude to these relations. One other point was urged much more in reply than in opening the petitioner's case by Mr. Russell—that the respondent and his agents, by having mixed themselves with and availed themselves of the aid of the members of the Labour League, were bound by their acts as by the acts of agents. I do not find that any corrupt acts charged were shown to have been committed by the Labour League as a body or any representative of theirs, and I am further of opinion that neither the respondent nor Burman did more than not interfere with persons who were assisting the candidate for reasons of their own. Burman, it is true, paid a particular bill, in

Digitized by Google

which were some items which had been ordered by the Taunton Working-men's Liberal Association, and I believe the statement that he was, up to the time of his cross-examination, ignorant of having paid them. I am therefore of opinion that the petitioners have failed to prove agency, and that Sir Henry James was duly elected, and I shall report to that effect to the Speaker. Mr. Marshall's position was unassailable, but that of Mr. Brannan was open to observation with reference to the pecuniary transaction with Smith and the £15 paid to Poole. I am not satisfied with the way in which the evidence has been got up. I exonerate Mr. Ellis, but no doubt the shortcomings are owing to the youth and inexperience of Mr. Blake, who was responsible for the petition; and, considering the matter fully, I am of opinion that there is nothing to take the case out of the ordinary rule that costs follow the event and should be paid by the petitioners.

MANCHESTER CITY POLICE COURT.

Wednesday, Jan. 21.

(Before Mr. HEADLAM, the Stipendiary.)

Bona fide travellers—Licensing Act.

S., a licensed victualler, was summoned for having his house open, for the sale of intoxicating liquors during prohibited hours, on Sunday. The only persons proved to have been served were omnibus drivers and guards travelling from Manchester to considerable distances and back.

Held, *that they were bona fide travellers.*

Jordan, barrister, appeared for the defence.

This was a case involving the question as to who is a *bona fide* traveller under the Licensing Act. The defendant was Mr. Walter Stopford, of the Old Boar's Head Hotel, Withy-grove, and he was summoned for having his house open for the sale of liquors during prohibited hours on a Sunday.

Police-constable Enoch Wilkinson stated that last Sunday but one he entered the defendant's house by the back door, and found five men inside, one of whom was drinking a glass of rum. Under cross-examination the witness said the man who had the rum was the guard of the Bury omnibus.

There was no other evidence for the prosecution.

Jordan said that the question involved in this case was a very important one, viz., whether his client was or was not bound to treat as travellers omnibus drivers and guards, who were constantly on a Sunday travelling to and from places at a considerable distance from Manchester. The defendant was extremely desirous that by the magistrate's decision so important a question might be settled, and he was very willing to conform to the law. *Jordan* said he would prove that the men seen in the house by the policeman were all known to the defendant's manager as being of the class he had mentioned. He argued that such men were *bona fide* travellers within the meaning of the law, and entitled as such to demand refreshment from a publican, the refusal of the publican rendering him liable to an indictment. This view of the matter was supported by the decision of Erle, C.J., in the case of *Taylor*, app., v. *Humphreys*, resp. The learned counsel submitted that omnibus guards, drivers, and the like, were travellers by profession, and if they were to be refused necessary refreshment while pursuing what was in some respects a difficult and dangerous business a great injustice would be done.

Witnesses were then called who proved that of the men seen by the policeman when he visited the defendant's house, two were drivers of omnibuses which had shortly before come into Manchester from Bury and Pendleton; one was a guard, and the other two were drivers who had travelled from Swinton.

On the conclusion of the evidence, Mr. HEADLAM said there was no doubt that men of the class referred to by Mr. Jordan were *bona fide* travellers, and entitled to refreshments at any time during Sunday; but it was necessary for public-house keepers to look very carefully after the men who accompanied the guards and drivers, for it might happen that they would bring in their friends who were not travellers at all.

Jordan said that it was the custom at his client's house to be very careful in that respect.

Mr. HEADLAM went on to say that there had been considerable difficulty about this question, because men often obtained drink by falsely representing that they were travellers, and a publican was liable to a penalty for refusing refreshment to a *bona fide* traveller. In this case the summons would be dismissed.

COMMON PLEAS (WESTMINSTER).

[From the *Solicitors' Journal*.]

(Sittings in Banco.—Before Lord COLERIDGE, C.J., and KEATING and DENMAN, JJ.)

Jan. 27.—*In re The Exeter Election Petition.*

The Proceedings upon an Election Petition drop upon the dissolution of Parliament.

This was an application with reference to the Exeter Election Petition.

Chandos Leigh appeared for the petitioners.

Petheram for the respondents.

Chandos Leigh said that the petition had been appointed to be heard before Bramwell, B., on the 3rd February, but the question had now arisen as to what was the effect of the dissolution of Parliament. Under the circumstances he and the counsel for the respondent had gone before Bramwell, B., who had drawn up a memorandum to be signed by them, but expressed the wish that the matter should be first brought before the Court. The memorandum was in these terms:—"Considering that the main object of the petition cannot now be attained, and that it is very doubtful whether by the dissolution of Parliament it is not abated and ended, which indeed we think it is; and there never having been any intention of charging Mr. Mills with personal bribery or corruption; we agree that all proceedings on the petition drop, and that the money deposited be paid out of court, and an order made to that effect." He now applied for a rule to carry out this arrangement. The statute (31 & 32 Vict. c. 125) said nothing as to a dissolution, but the 35th section said that a petition should be proceeded with, notwithstanding a prorogation, and the petition could not be withdrawn, because the statute said that in that event the petitioner should be liable to pay costs.

Lord COLERIDGE, C.J.—Before the Act passed the Parliamentary practice was that a petition dropped by dissolution, and you say that as the Act says nothing upon the point this practice continues. You simply want a rule that the money should be paid out of court.

Petheram said that he was instructed to consent to a rule that the money should be paid out of court on the distinct statement that there never had been any intention of charging Mr. Mills with personal bribery or corruption.

Lord COLERIDGE, C.J.—We have nothing to do with that. I am of opinion that the Queen having been pleased to dissolve Parliament—of which the Court will take judicial notice—a case has occurred which is not provided for in the 31 & 32 Vict. c. 125; and therefore we must guide our proceedings by the old Parliamentary practice, according to which a petition dropped or abated by a dissolution. This being so, I have no doubt that there should be a rule to return the £1,000 which has been deposited.

Rule absolute granted.

QUEEN'S BENCH (WESTMINSTER).

Jan. 29.

RAEBURN *v.* ANDREW.

RAEBURN *v.* ANDREW AND WIFE.

Security for Costs—Plaintiff resident in Scotland—31 & 32 *Vic., c.* 54, *s.* 2.

These were actions commenced in this Court by the plaintiff, who was resident in Scotland. The defendants had taken out summonses calling upon the plaintiff to give security for costs. The Master refused to make orders, and upon appeal to Martin, B., the matter was referred to this Court.

Digitized by Google

Lanyon now moved for a rule calling upon the plaintiff to show cause why he should not give security for costs. He contended that the old rule of practice ought to remain in force, and that 31 & 32 Vic., c. 54, s. 2, had not made any alteration in the law which would justify a departure from the old practice.

Lewis appeared to show cause in the first instance, but was not heard.

Per Curiam (Blackburn, J., Quain, J., and Archibald, J.): We do not think that a rule *nisi* ought to be granted. The old practice was established because, as said by Buller, J., in *Pray* v. *Edie*, 1 T. R., 267, "if a verdict be given against the plaintiff, he is not within the reach of our law so as to have process served upon him for the costs." The reason has now ceased, inasmuch as the effect of 31 & 32 Vic. c. 54, s. 2 is to give the defendants a remedy against the plaintiff for their costs in case the plaintiff fails in his action. This remedy is obtained by registering the judgment in Scotland. *Cessante ratione cessat lex.*

Rule refused.

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, February 16th, 1874, when the following subject will be debated :—"That the present system of Legal Promotion requires Reform."

SPEAKERS :

Affir. Mr. E. Wren. | *Neg.* Mr. T. Overend.

The Chair will be taken at Eight o'clock.
All Meetings open to ladies and gentlemen.

LEGAL AND LITERARY DEBATING SOCIETY.

The usual Weekly Meeting of this Society will be held on Thursday evening, the 19th February, at 53, Lower Sackville-street. Chair to be taken at Eight o'clock, by Mr. Trevor Overend, President. An essay will be read by Mr. J. H. Franks on "Irish Land Tenures."

A Ballot for Members after the meeting.

COURT PAPERS.

THE CIRCUITS.

SPRING ASSIZES, 1874.

NORTH-EAST CIRCUIT.
Judges—KEOGH, J. and LAWSON, J.

Drogheda—February 16, at 11.
Dundalk—February 17, at 11.
Monaghan—February 19, at 3.
Armagh—February 23, at 11.
Downpatrick—March 2, at 11.
Belfast—March 5, at 2.
Carrickfergus, at Belfast—same day.

MUNSTER CIRCUIT.
Judges—FITZGERALD, J. and BARRY, J.

Ennis—February 23, at 4.
Limerick (co.)—February 27, at 12.
Limerick (city)—same day & hour.
Tralee—March 9, at 1.
Cork (co.)—March 13, at 3.
Cork (city)—March 18, at 10.

HOME CIRCUIT.
Judges—O'BRIEN J., and DEASY. B.

Trim—February 23, at 12.
Mullingar—February 26, at 12.
Tullamore—March 2, at 12.
Maryboro'—March 6, at 12.
Carlow—March 10th, at 12.
Naas—March 13, at 12.

NORTH-WEST CIRCUIT.
Judges—WHITESIDE, L. C. J., and FITZGERALD, B.

Longford—February 23, at 2.
Cavan—February 25, at 2.
Enniskillen—February 27, at 3.
Omagh—March 2, at 3.
Lifford—March 7, at 11.
Londonderry—March 11, at 12.

CONNAUGHT CIRCUIT
Judges—MONAGHAN, L. C. J., and MORRIS, J.

Carrick-on-Shan.—Feb. 24, at 10.
Sligo—February 26, at 10.
Roscommon—March 3, at 2.
Castlebar—March 6, at 4.
Galway (co.)—March 12, at 11.
Galway (town)—same day & hour.

LEINSTER CIRCUIT.
Judge—DOWSE, B.

Nenagh—March 3, at 11.
Kilkenny—March 7, at 11.
Clonmel March 11, at 11.
Waterford—March 16, at 11.
Wexford—March 19, at 11.
Wicklow—March 23, at 11.

EASTER SESSIONS, 1874.

COUNTY OF DUBLIN.

At Balbriggan, Monday, 30th March, 1874.

Last day for Service		*over* £20, - -	12th March, 1874.
Do.	do.	not exceeding £20,	21st March, 1874.
Do.	do.	for Ejectments, -	12th March, 1874.

At Kilmainham, Tuesday, 31st March, 1874.

Last day for Service		*over* £20, - -	13th March, 1874.
Do.	do.	not exceeding £20,	23rd March, 1874.
Do.	do.	for Ejectments, -	13th March, 1874.

CITY OF DUBLIN.

Monday, 20th April, 1874.

Last day for Service		*over* £20, - -	3rd April, 1874.
Do.	do.	not exceeding £20,	11th April, 1874.
Do.	do.	for Ejectments, -	3rd April, 1874.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—K. A. Cox, from 5th.—Trustees L. Dickinson, schedule.—G. J. Aylmer, allocation.

IN COURT.—Henry Haig, schedule.—J. Davidson, do.—Patrick Ennett, do.—A. C. Gaffikin, do.—E. T. White, do.—M. D. Anketell, to stay proceedings.

Before EXAMINER (Mr. Dobbs).

W. Jack, proofs.—F. Stuart, do.—W. H. De Burgh, do.—W. Elliott, rental.

TUESDAY.

IN COURT.—D. M'Nulty, schedule.—R. R. Campion, do.—G. Church, from 10th.—M. Roberts, do.—Sir C. O'Loghlin, do.—Trustee O'Brien, do.—H. Mulreany, ditto.

WEDNESDAY.

IN CHAMBER.—W. Blair and Wife, title.

IN COURT.—Church Commissioners (Armagh), from 9th.—T. N. Underwood, schedule.—Trustees De Bazancourt, do.—C. M. M'Neale, ditto.

Before EXAMINER (Mr. Dobbs).

Ellen Moore, rental.

Before EXAMINER (Mr. M'Donnell).

Trustee O'Brien, to vouch.—R. W. Fearon, do.—Administrator Plunket, rental.

THURSDAY.

IN CHAMBER.—E. and D. Barry, from 12th.

Before EXAMINER (Mr. Dobbs).

Nicholas Ormsby, rental.—Mary F. Waldron, do.—T. Murray and others, proofs.

FRIDAY.

SALES AT 12 O'CLOCK.

G. BOWLES.
JULIA LAWTON.
M. D. ANKETELL.
WALTER FITZSIMONS.
JOHN DIGNAM.

Digitized by Google

LANDED ESTATES' COURT.

PETITIONS FILED *from 7th to 31st January*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Jan. 7	Francis Lorenzo Comyn, owner and petitioner	Sale	Galway and Clare	2,423 19 1	*Mathew Kenny*
" "	Francis Lorenzo Comyn and Walter B. Comyn, owner; *Sarsfield John Comyn and others, petitioners*	Sale	Galway and Clare	1,475 3 6	*Benjamin Whitney*
" "	John Webb, owner; *George W. Bassett, petitioner*	Sale	Cavan	Not stated	*Edward Hartigan*
" "	Ellen Cummins Browne, owner; *Edward Bolton and others, petitioners*	Sale	Roscommon	160 5 5	*Davis & Montfort*
" "	William Cowden, owner; *William Baird, petitioner*	Sale	Down	18 18 7	*George Hazlett*
" "	John Cowden, owner; *William Baird, petitioner*	Sale	Down	13 5 0	*George Hazlett*
" "	Lorenzo W. Hartstonge, owner and petitioner	Sale	Carlow and Dublin	238 19 1	*A. H. Goddard*
" "	William M'Clintock, John A. M'Clintock, Richard M'Clintock, Walter M'Clintock, Mary M'Clintock, Catherine M'Clintock, and Frances M'Clintock, owners and petitioners	Sale	Leitrim	152 14 9	*Orpen, Sons, & Sweeny*
" "	Eliza Browne, Emily Browne, and John Browne, owners; *John A. M'Clintock, and others, petitioners*	Sale	Leitrim	254 11 3	*Orpen, Sons, & Sweeny*
" "	George Minchin and Patrick Fitzpatrick, owners; *Gertrude Crosthwaite, petitioner*	Sale	Kildare	Not stated	*John Malcomson*
" 8	Alexander Jason Hassard, owner and petitioner	Sale	Fermanagh	810 0 0	*George O'B. Kennedy*
" 9	Denis O'Brien, owner and petitioner	Sale	Cork	90 12 0	*Michael Bourke*
" "	Joseph John Saffery and George Emden, trustees of Christophilus Garstin, a bankrupt, owners and petitioners	Sale	Louth	962 12 10	*William Lewis*
" 10	John M'Clelland, Charles H. James, and Lucius H. Deering, owners; *James M'Clelland, petitioner*	Sale	Antrim	12 5 0	*C. Dickey*
" "	James Cowden, owner; *William Baird, petitioner*	Sale	Down	21 2 6	*George Hazlett*
" 12	Martin Riddle, owner and petitioner	Partition and sale	Down	44 5 7	*William Findlater & Co.*
" "	John M'Mullen, owner; *Rev. J. W. D'Evelyn, petitioner*	Sale	Antrim	In owner's possession	*J. & S. Cramsie*
" "	Christopher St. George, owner; *Thomas Kyne, petitioner*	Sale	Galway	4,267 12 0	*Richard Macnamara*
" "	George O'Brien and Mary Jane O'Brien, his wife, owners; *Edward Fottrell, petitioner*	Sale	Tipperary	157 15 0 Tenement valuation	*G. D. Fottrell & Son*
" 13	Thomas Henry Davies, owner; *William Alexander and John Glenny, petitioners*	Sale	Galway	83 2 0	*Robert Mecredy*
" 14	George E. Eyre, Henry Hulse Berens, and Sir Edward Hulse, owners and petitioners	Sale	Tipperary	1,178 12 8	*William Lewis*
" 16	George M'Clelland and others, owners; *William M'Murray petitioner*	Sale	Down	142 0 0	*Thomas Crozier & Son*
" "	Robert Richard W. H. Gore, owner and petitioner	Sale	Wicklow	46 1 8	*William Neilson & Son*
" 21	Charles Mahon, owner and petitioner	Sale	Clare	831 5 11	*John Cullinan*
" 22	Hugh Green and Eliza Green, his wife, and several others, owners; *Hugh Green and others, petitioners*	Sale	Cork	550 17 0	*B. Franklin*
" 23	Susanna Slacke, Matilda Slacke Susan Slacke, and Dorcas Slacke. owners; *Rev. William R. Slacke, petitioner*	Sale	Cavan	238 14 0 Tenement valuation	*William Lawder*
" "	William Speight, owner and petitioner	Declaration of title to a fishery	Clare	7 0 0	*George Bolton*
" "	Patrick Marcellinus Leonard, owner; *William M. Tuffnell, petitioner;*	Sale	Roscommon	86 13 4	*William White*
" "	Rev. Daniel G. Browne, owner; *Andrew William M'Creight, petitioner*	Sale	Armagh	175 10 0	*Robert Mecredy*
" 27	John Francis Davies and Thomas Henry Davies, owners; *Samuel Murphy, petitioner*	Sale	Galway	116 0 0	*Robert Mecredy*

Digitized by Google

LANDED ESTATES' COURT.

SALES.

January 30th, before the Hon. JUDGE FLANAGAN.

COUNTY DONEGAL.—The estate of the assignees of Daniel M'Nulty, owner; Sir J. Arnott and another, petitioners. House and premises in Ballyshannon; held in fee; estimated value, £40. Sold to Mr. Francis M'Gowan, for £630. Solicitor, *H. Milford.*

COUNTY MAYO.—The estate of C. J. O'Donel and trustees of J. M. O'Donel, owners and petitioners.

Lot 1.—Part of the lands of Knockvilla and Loodurraun, situate in the barony of Gallen, containing 205a. 1r. 5p.; profit rent, £83 2s. 11d. Sold to Mr. O'Rorke, for £1,560.

Lot 2—Part of Ballintemple, same barony, containing 142a. 1r. 16p.; profit rent, £61 14s. 3d. Same purchaser, for £1,200. Solicitor, *J. R. Colfer.*

COUNTY CORK.—Estate of Robert E. Gibbings, owner and petitioner. Life estate of the owner of the house, demesne, and lands of Curryglass, in the barony of Ossory and Kilmore; held in fee-farm; containing 488a. 3r. 6p.; profit rent, £218 7s. 1d. Sold in trust for Captain R. Rintoul, for £1,550. Solicitors, *Nunn and Jones.*

The estate of trustees under will of R. M. Gaggin, owner; E. J. Whittaker and another, petitioners.

Lot 1.—Part of the lands of Ballyrickardmore, in the barony of Barrymore, containing 61a. 3r. 11p.; held in fee; profit rent, £37 1s. Sale adjourned.

Lot 2.—Part of same lands, containing 30a. 0r. 24p.; profit rent, £23 1s. 7d. Sold in trust for Michael Lawton, for £585. Same lands, containing 100a. 1r. 15p. Sale adjourned. Solicitor, *B. Franklin.*

COUNTY DUBLIN.—The estate of Anne Clarke and others, owners and petitioners.

Lot 1.—House and premises, 2, Keegan's Buildings, Glasnevin; held under lease for ever; net rental, £15. Sold to Mr. Halpin, for £195.

Lot 2.—No. 3, Keegan's Buildings; net rental, £25. Sold to Mr. Halpin, for £305.

Lot 3.—No. 4, Keegan's Buildings; net rental, £30. Sold to Mr. Patrick Ward, for £300.

Lot 4.—No. 3, Prospect-terrace, held under fee farm grant; net rental, £24 10s. Sold to Mr. Halpin, for £300. Solicitor, *James Plunket.*

The estate of James M'Creery, owner; W. F. Littledale, petitioner.

Lot 1.—Nos. 20, 21, 22, and 23, Ranelagh-road; held under fee-farm grant; producing a yearly rent of £104 10s. Sold in trust for Thomas Daniel, for £950.

Lot 7.—Nos. 12, 13, and 14, Ranelagh-road; profit rent, £99 16s. 2d. Sold to Mr. Robert Warren, for £860.

Lot 8.—No. 15, Ranelagh-road; profit rent, £42 14s. 2d. Sold in trust for Amelia Kerin, for £490.

Lot 11.—Field and premises, off Ranelagh; profit rent, £10. Sold to Mr. M'Keogh, for £245.

Lot 12.—No. 16, Ranelagh-road; yearly rent, £50. Sold to Mr. Allingham, for £475. Solicitor, *W. F. Littledale.*

COUNTIES OF TIPPERARY AND KILKENNY.—The estate of W. Gabbett and others, owners and petitioners.

Lot 1.—Lands of Mount Rivers, in the barony of Owney and Arra and Rossarybeg, containing 103a., and producing an annual profit rent of £172 5s. 7d. Sold in trust for W. Gabbett, for £5,550.

Lot 2.—Part of the lands of Doonane, containing 341a. 1r. 22p.; profit rent, £120 6s. 10d. Sold in trust for Robert H. Collis, for £2,100.

Lot 3.—The lands of Boolatin, containing 567a. 2r. 37p.; net profit rent, £147 16s. 8d. Sold to same purchaser, for £2,500.

Lot 4.—The lands of Killeen, containing 288a. 1r. 9p.; net rental, £355 8s 4d. Sale adjourned.

Lot 5.—Part of the lands of Kiddane, containing 101a. 1r. 13p.; net rental, £63 14s. 2d. Sold in trust for same, for £1,800.

Lot 6.—Part of the lands of Rossaquile, containing 89a. 3r. 10p.; net rental, £51 1s. Sold to Mr. J. J. O'Flanagan, for £1,250.

COUNTY LIMERICK.

Lot 7.—The lands of Curraghduff, in the barony of Small County, containing 206a. 2r. 17p.; net rental, £98 7s. Sold in trust, for £2,550.

Lot 8.—Sale adjourned.

Lot 9.—Part of the lands of Ballybricken East, in the barony of Clanwilliam, containing 168a. 3r. 37p.; net rental, £260. Sold in trust for W. Gabbett, for £4,000. Solicitors, *Roche and Sons.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Nolan	Reference	*Butler*
George Rogers	Prove debts and vouch	*Tincler*
Henry L. Dymoke	do	*Molloy & Watson*
John Connor	Vouch account	*Lynch*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Dever	1st public sitting	*Casey & Clay*
John Neil	To consider composition offer	*Casey & Clay*
Richard A. Burns	Final examination	*Neilson*
James Logan	Adj. choose assignee	*Lynch*
Same matter	Final examination	*Lynch*
Andrew Rogers	do	*Gerrard*
Francis Harvey	Adj. choose assignee	*Rosenthal*
Same matter	Final examination	*Rosenthal*
Same matter	2nd composition sitting	*Fay & M'Gough*
Samuel Hawkins	Adj. choose assignee	*Forsythe*
Same matter	Final examination	*Forsythe*
John Joseph Kelly	do	*Molloy & Watson*
Thomas Little	Application for certificate of conformity	*Orr*
John C. Walsh	Motion	*West*
Robert Porter	Confirm sale	*Cronhelm & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
C. J. Bridgford	Prove debts and vouch	*Goff*
Francis Harvey	Prove debts	*Fay & M'Gough*
Darby Flood	Costs	*Adams*
Richard Boyle	Reference	*Larkin & Co.*
Francis Cusack	Costs	*Colman*
Bernard Cummings	do	*Darley*
Same matter	Reference	*Darley*
John H. Sweet	Prove debts and vouch	*Maxwell & Weldon*
John Murphy	do	*Maxwell & Weldon*

THURSDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Christopher Flynn	Charge and discharge	*M'Govern and Mathews*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Alfred Parker	Prove debts and vouch	*Mathews*
John Molony	do	*Lett*
John Connor	Reference	*Lynch*

Digitized by Google

FRIDAY.

Before the COURT, at 11 o'clock.

Michael Farrelly	1st public sitting	*Lett*
Anna M. M'Givney	2nd composition sitting	*Rynd*
Same matter	Final examination	*Oldham & Eaton*
Andrew Kehoe	do	*Hamilton & Craig*
James Grierson	do	*Oldham & Eaton*
Samuel Doyle	do	*Meldon & Sons*
Michael Cullinan	do	*Colman*
Bernard M'Lenegan	Confirm sale	*Mathews*
Judith Gannon	Motion	*Robinson*
Alfred Parker	Application for certificate of conformity	*Lett*
Sherlock & Rourke	Audit and dividend	*Findlater & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

John O'Donnell	Vouch account	*Findlater & Co.*

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	FEBRUARY Fri. 6	Sat. 7	Mon. 9	Tues. 10	Wed. 11	Thur. 12
	Government.						
—	3 p c Consols	—	92	91⅞	91⅞	91⅞	—
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	90⅝⅞	90⅝¾	90⅞	90⅝⅞⅞	90⅝⅞	90⅝⅞⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	107½	107½	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	102⅞	—
	Banks.						
100	Bank of Ireland ..	304	304	—	—	—	304
25	*Hibernian Banking Co.* ..	—	58 ½	—	—	58½	58½
3½	*Munster Bank (Limited)*	8⅞	—	8⅞	—	—	—
30	*National Bank*	56½	56⅝⅞	56½	—	56⅝⅞	—
15	*National of Liverp'l (Ltd)*	—	—	—	—	—	—
25	*Provincial Bank* ..	—	—	—	—	—	—
10	Do. New ..	38	—	—	—	—	—
10	*Royal Bank*	28⅞	28⅞	28⅞	—	—	28⅞
15	*Union of London* ..	—	—	—	—	—	—
	Steam.						
50	British & Irish	—	—	—	—	—	50½
100	City of Dublin	—	—	108	108	—	108½
20	Drogheda (limited) ..	—	—	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	55½	—	—	—
50	Peninsular and Oriental ..	55	—	—	—	—	—
	Mines.						
2½	Wicklow Copper	—	—	—	—	—	3½
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A ..	10	9⅞ 10	—	—	—	9⅞ 10
10	B ..	10	—	-	—	—	—
8½	*Dublin Tramways* ..	—	—	—	—	—	7½
9-4-7	*Patriotic Assurance* ..	—	—	—	—	—	10⅞
	Railways.						
10	Athenry and Tuam ..	—	—	—	-	—	—
50	Belfast and County Down	—	—	—	—	—	15½
50	Belfast and Northern Cos.	—	—	—	—	—	x d
100	Dublin and Belfast Junct.	—	—	—	—	91½	—
100	Dublin and Kingstown ..	—	—	215	—	—	—
100	Dublin, W'klow, & W'ford	74¾	—	75½	75	—	—
20	*Do.—issued at £35* ..	—	—	22	—	22	—
100	Gt. Northern and Western	98½	97½	—	—	—	—
100	Gt. Southern and Western	—	111⅝⅞	111⅞	111⅞	111⅞	111½
100	Do. do. free of Stamp	112	—	—	—	—	—
100	Midland Gt. Western ..	91½	—	91½	—	91⅝⅞	91½
50	Ulster	—	-	—	—	—	x d
12½	Do, Quarters	—	—	—	—	—	x d
50	Waterford and Limerick ..	33½	34	33⅞	—	—	—
	Railway Preference.						
50	Belfast and Co. Down 5 p c	—	—	—	—	—	x d
10	Do. do. 4½ p c	—	—	—	—	—	x d
100	Belfast & Nth'n Cos, 4 p c	94	—	—	—	—	x d
100	Do. do. 4½ p c	—	—	—	—	—	x d
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	-	—	—	—	x d
100	Do, B 5 p c	—	—	—	—	-	x d
100	Do., C Guaranteed 5 p c	—	—	—	—	—	x d
100	Mid. Great Western, 5 p c	—	112	—	—	—	—
100	Ulster 4½ Per Cent. Stock	—	—	—	—	—	x d

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—February 26th, and March 12th, 1874.
Account Days—February 27th, and March 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

ADJUDICATIONS IN BANKRUPTCY.

Callaghan, John, Middleton, Cork, farmer. Sittings, *Friday, March* 6, and *Tuesday, March* 24. *Mathews*, solr.

Cardiff, James, Wexford, county Wexford, grocer and publican. Sittings, *Friday, March* 4, and *Tuesday, March* 24. *Ryan & Lett*, solr.

Fitzsimons, Walter, Seafield Cottage, Sandycove, Kingstown, gentleman. Sittings, *Friday, March* 6, and *Tuesday, March* 24. *Tincler*, solr.

O'Brien, John, No. 1, Shelbourne-road, in the county of Dublin, grocer and spirit dealer. Sittings, *Friday, March* 6, and *Tuesday, March* 24. *Perry & Co.*, solrs.

O'Connell, Ellen, The Mall, Tralee, Kerry, widow, grocer, and publican. Sittings, *Tuesday, March* 3, and *Friday, March* 17. *Stone*, solr.

DIVIDENDS IN BANKRUPTCY.

Mitchell, Patrick, Portumna, Galway, ironmonger. 1st and final dividend 6s. 9½d. in the £. L. H. Deering, official assignee. *Tincler*, solr.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BRENAN—February 6, at 8 James's-terrace, Clonskeagh, County Dublin, the wife of Henry Brenan, Esq., solicitor, of a son.

HODDER—February 8, at 92 Lower Leeson-street, the wife of Franc G. Hodder, Esq., barrister-at-law, of a son.

DEATHS.

PATTISON—February 6, at her residence, 31 Waterloo place, Upper Leeson-street, Anna Helena, widow of the late Lieutenant-Colonel Alexander Hope Pattison, C.B., Commander of the Forces of the Bahamas, and youngest daughter of the late Honourable Robert Johnston, Judge of the Common Pleas, in her 84th year.

WILKINSON—February 11, at 51 Aughrim-street, Anne Wilkinson, the dearly-beloved aunt of Louisa White and Alice Gibson, and daughter of John Wilkinson, solicitor, Gosport, and granddaughter of Admiral Saradine.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price - whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY.

SALE OF
VALUABLE LEASEHOLD INTEREST
IN THE CITY OF DUBLIN.

In the Matter of William Harris, of Middle Abbey-street, in the City of Dublin, Glass Merchant, a Bankrupt.

TO BE SOLD BY TENDER, By Order and subject to the approval of the Court, and subject to the Conditions of Sale, filed in the Office of said Court,

All that the Dwelling Houses and Premises, known as Nos. 101 and 102 Middle Abbey-street, in the City of Dublin. No. 101 is held under Lease, dated 31st December, 1864, for 99 years, from the 1st January, 1865, subject to the yearly rent of £28 sterling, payable half-yearly, on every 1st July and 1st January; and No. 102 is held under Lease, dated the 27th December, 1837, for 109 years, from the 1st day of January, 1838, subject to the yearly rent of £25 sterling, payable half-yearly, on every 25th of March and 29th September.

Sealed Tenders for the purchase of the Interest in the said Premises will be received by LUCIUS HENRY DEERING, Esq., Official Assignee, at his Office, 33 Upper Ormond-quay, Dublin, up to Twelve o'clock noon, on THURSDAY, the 19th day of FEBRUARY next, when same will be opened in presence of the parties attending, and the Tenders will be submitted for the approval of the Court on the 20th inst.

Dated this 5th day of February, 1874.

WILLIAM PERRIN, Chief Registrar.

For further particulars apply to

MICHAEL LARKIN & CO., Solicitors having carriage of Sale, 51 Dame-street;

LUCIUS HENRY DEERING, Esq., Official Assignee, 33 Upper Ormond-quay;

Messrs. OLDHAM & EATON, Solicitors for Assignees, 42 Fleet-street.

Digitized by Google

HIGH COURT OF CHANCERY.

ADVERTISEMENT FOR CREDITORS.

Pursuant to an Order of the High Court of Chancery, made in the Matter of the Estate of Nicholas Sinnott, late of number 90 James'-street, in the City of Dublin, Grocer, deceased, Catherine Sinnott, plaintiff; David Rogerson, defendant—the Creditors of the said

NICHOLAS SINNOTT—who died in or about the month of July, 1871—are, on or before the 26th day of FEBRUARY, 1874, to send by Post, pre-paid, to Mr. W. J. STUART, of 5 St. Andrew-street, in the City of Dublin, the Solicitor of the defendant, the executor of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Order.

Every Creditor holding any security is to produce the same before the Right Honourable the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 18th day of MARCH, 1874, at Twelve of the Clock at noon, being the time appointed for adjudicating on the claims.

Dated this 3rd day of February, 1874.

A. T. CHATTERTON, Chief Clerk.

THOMAS WALSH, Plaintiff's Solicitor, 13 Merchants'-quay.

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause of Susanna Lawe, plaintiff; Robert Lawe, Henry Watson, and Helena Shaw Watson, otherwise Lawe, his wife; Sarah Caroline Lawe, Robert Arthur Blaine, and Francis Smith Blaine, otherwise Lawe, his wife; and Alexander Wrightson Lawe, the younger, defendants—the Creditors of

ALEXANDER WRIGHTSON LAWE, late of Glanmire, in the County of Cork, Merchant—who died in or about the month of February, 1868—are, on or before the 3rd day of MARCH, 1874, to send by Post, pre-paid, to Mr. FRANCIS HODDER, of 12 Upper Ormond-quay, in the City of Dublin, the Solicitor of plaintiff, the executrix of the deceased, their Christian and surnames, addresses, and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 13th day of MARCH, 1874, at Twelve o'clock at noon, being the time appointed for adjudicating on the claims.

Dated this 9th day of February, 1874.

A. T. CHATTERTON, Chief Clerk.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

SALE,

On FRIDAY, the 27th day of FEBRUARY, 1874.

In the Matter of the Estate of Anne Wilme, widow and administratrix of Benjamin Wilme, deceased, Owner; Mary Speer, Petitioner.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Inns'-quay, In the City of Dublin,

On FRIDAY, the 27th day of FEBRUARY, 1874, At the Hour of Twelve o'clock,

The Dwelling-house and Premises No. 12 Upper Leeson-street, in the County of Dublin, held under lease dated the 9th day of February, 1846, for the term of 200 years, subject to the annual rent of £5 10s 0d, and producing a profit rent of £50 10s 0d.

Dated this 20th day of January, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The House and Premises are situate in the best part of Upper Leeson-street, close to the Molyneux Church.

The occupying tenant holds by the year.

For Rentals and further particulars apply to the Registrar's Office, Landed Estates' Court, Dublin; or to

WILLIAM M. MOORE, Solicitor having carriage of the Sale, 41 Upper Sackville-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MEATH.

SALE,

On FRIDAY, the 6th day of MARCH, 1874.

In the Matter of the Estate of Drake Christopher O'Reilly, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 6th day of MARCH, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, Dublin,

In One Lot,

Part of the Town and Lands of Drinadaly, situate in the Barony of Moyfenrath, and County of Meath, containing 128a 2r 36p, statute measure, held in fee-farm, and producing a net profit rent of £188 15s 6d.

Dated this 26th day of January, 1874.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This Estate consists of a portion of the Townland of Drinadaly, known as Boyne Lodge, containing 128a 2r 36p, statute measure.

The House is handsome and commodious, with first-class Stabling, Coach-house, and Farm Offices.

The Lands are all in grass, and are of superior quality, and situate on the Banks of the River Boyne, a short distance from the Town of Trim, and in the centre of a hunting district.

The Fields are conveniently divided, each division having an excellent supply of water from the River Boyne.

The entire Estate is in possession of the owner, and the purchaser can have immediate possession.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inns'-quay, Dublin; to

CHRISTOPHER P. DUIGENAN, Trim; to

JOHN THOMAS HINDS, Solicitor having carriage of the Sale, No. 37 Westmoreland-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF KILDARE.

SALE,

On FRIDAY, the 13th day of MARCH, 1874.

In the Matter of the Estate of Susanna Quinn, administratrix of Michael Quinn, deceased, Owner and Petitioner.

TO BE SOLD, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inn's-quay, Dublin,

On FRIDAY, the 13th day of MARCH, 1874,

In One Lot,

As particularised in the printed Rental for Sale in this Matter,

Part of the Townland of Cholmondsey, otherwise Brian's Farm, otherwise Rathbane, otherwise Rathbawn, containing 401a 3r. 15p, or thereabouts, statute measure, situate in the Barony of South Salt, and County of Kildare, held under lease bearing date the 23rd day of March, 1822, for the term of 900 years, from the 25th March, then instant, subject to the yearly rent of £369 4s 7½d, and producing an annual rental of £173 0s 5d, after payment of head-rent, but subject to deduction of rates and taxes.

Dated this 4th day of February, 1874.

C. E. DOBBS, Examiner.

MICHAEL LARKIN, Solicitor having Carriage of Sale, 51 Dame-street, Dublin.

DESCRIPTIVE PARTICULARS.

The Lands to be Sold, which contain about 401a 3r 15p, statute measure, are situate in the Barony of South Salt, and County of Kildare, are of good quality, and the entire are now in the occupation of three respectable tenants, who pay their rents not only regularly, but the two largest of them in advance.

The Lands are situate about six miles from the Town of Naas, in the County of Kildare, and about three miles from the Town of Blessinton, in the County of Wicklow, and adjoin the Village of Kilteel.

For Rentals, Maps, Conditions of Sale, and further particulars, apply at the Registrar's Office, Landed Estates Court, Inns'-quay, Dublin; to

JOHN BARRY MEREDYTH, Esq., Solicitor, Naas;

EDWARD S. LENNON, Esq., the National Bank, Athy; or to

MICHAEL LARKIN, Solicitor for Petitioner, having carriage of the Sale, 51 Dame-street, Dublin; by whom proposals to purchase will be received up to the 27th day of February, 1874, and submitted to the Judge for approval.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, February* 14, 1874.

Digitized by Google

// THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, FEBRUARY 21, 1874. No. 369.

LAWYERS IN PARLIAMENT.

THE Elections are now over, and we rejoice, for the sake of our chances of Legal Reform, that so many of the Legal Profession have been returned in Ireland and England. So many protestations had been made by the constituencies, particularly in Ireland, that they would no longer return lawyers, that we may naturally conclude they changed their minds, from a comparison of the legal with the lay candidates. The practising barristers who have become Members of Parliament are mostly younger than former aspirants, while the other branch is well represented by Messrs. Murphy, Downing M'Carthy, Fay, and Lewis. It is true the last named gentleman is an Englishman, and practises in London, but we are much mistaken if he does not make the common interests of the Irish and English solicitors his especial study. He is already well known in London (independent of his large practice) for his exertions in reference to the Incorporated Legal Society of England, and has also, we believe, had the good sense to recommend his English friends to imitate the energy and intelligent zeal for the interests of their profession displayed by their brethren of the Incorporated Law Society of Ireland. When we consider the position of legal reforms in England, and the anxious expectation with which their extension to Ireland is looked forward to, we feel consoled to think we shall have in the House of Commons sufficient representatives of our professional interests to provide that due care shall be taken of our interests, and that efficiency of legal administration shall not be considered less important than a diminution of the charges on the Consolidated Fund. Some time since we called the attention of the profession to the necessity of agitating for a repeal of the duty which is now annually levied from them. The amount of this duty is not much, it is urged, and Solicitors in practice do not feel it while it may be useful; but we think it is positively of no use in the interests of the profession or the public; it brings in a mere trifle to the treasury, and we think the present a most opportune occasion to appeal to the Government for its remission. There is a large surplus to be disposed of, and most people admit that the way to keep up a high professional standard is not to impose more taxes but to make entrance to the profession a difficult matter by responsible apprenticeship and examinations. We look forward with interest and curiosity for some announcement on the part of the new Government of its intention with regard to the extension to Ireland of the Judicature Act, and the extension of the County Courts, which we were promised under the old *régime*. These, though brought in by members of the Government, were in no sense party questions, and, therefore, we expect that Lord Cairns, who is the reported new Lord Chancellor of England, and who was confessedly mainly instrumental in securing success for those enactments, will not oppose their extension to this country. It is important that we should have, as nearly as possible, a uniformity of practice in the two countries, and this would be endangered were there to be any long delay in the matter. It is also satisfactory to learn that the exhibition of public opinion, and, we trust, honest and convincing arguments, have been sufficient to induce the late Government to re-consider their intention as to reducing the judicial staff of the Irish Bench, so far as the Court of Exchequer is concerned, for, although it does not appear that the Lord Chief Baron has been yet sworn in, it is quite certain that Mr. Palles has been appointed to that important office. But the duty yet remains for the legal members in the House to press upon the new Government the necessity of appointing a Judge to the vacancy which has so long existed in the Landed Estates Court.

LEINSTER CIRCUIT.

WE understand that the new Lord Chief Baron will accompany Mr. Baron Dowse on the Leinster Circuit.

CLERICAL MEMBERS OF PARLIAMENT.

It is stated that the question of the eligibility of a clergyman to be elected a Member of the House of Commons is likely to be raised, we presume by petition, in the case of the Rev. Professor Smyth, M.P. for the county of Londonderry. The 41st George III., cap. 63, was passed in consequence of Horne Tooke's case, whose election had been declared void by an arbitrary resolution of the House of Commons, on the ground that he had been admitted to deacon's orders. It provides that "No person ordained a priest or deacon, or being a minister of the Church of Scotland, shall be capable of being elected a Member of the House of Commons;" that the election of such person shall be void; and if any person after his election shall be ordained a priest, &c., he shall vacate his seat. The words "Church of England" in that Act mean "the United Church of England and Ireland as by law established," and, of course, until lately included the Church of Ireland. We believe that the case of the Queen *v.* Miles, in the Irish Court of Queen's Bench, decided that if a clergyman had been ordained according to the forms of the Church of Scotland, he came within the meaning of the words in the aforesaid statute "Church of Scotland," whether he ever officiated in that country or not. The 33 and 34 Victoria, cap. 91 (1870) provides a means whereby clergymen in England can get rid of this and other disabilities, technically called "unfrocking" themselves, and entitling them ever afterwards to be named black squires. The process would appear to be a very simple one. The clergyman resigns, executes a deed of relinquishment, gives notice of resignation, and a copy of the enrolled deed to the Archbishop of the province. After the lapse of six months the deed is registered, whereupon certain clerical disabilities cease to exist, and among them the disqualification to sit as a member of the Imperial Parliament. We do not find any provision in the Irish Church Act, 32 and 33 Victoria, cap. 42, removing the disabilities before alluded to; and, dissolving as it did the union created by Act of Parliament between the Church of England and Ireland, as by law established, it prevented the possibility of the unfrocking provisions of 33 and 34 Vic., cap. 91, being extended to Ireland. On the other hand it becomes a question whether, as the Church of Ireland is no longer by law established, the disqualification to sit in Parliament, created by the 41st George III., any longer affects an Irish "Clerk in Holy Orders."—*Evening Mail.*

NEW QUEEN'S COUNSEL.—The following gentlemen have been called to the Inner Bar this week:—Messrs. Ferguson, Litton, Neligan and Webb.

Digitized by Google

NOTANDA.

Security for costs; married women suing by next friend. —Motion that proceedings be stayed, until security for costs be given by the plaintiff's next friend. The bill was filed by the plaintiff, a married woman, suing by a next friend, against the defendants, as assignees in bankruptcy of her husband: Held, that the affidavit of the next friend, in opposition to the motion, should clearly state that, over and above all his debts and liabilities, he was possessed of sufficient means to pay the costs of suit; and that, as the affidavit was defective in this respect, the motion should be granted (*Savage* v. *James*, before CHATTERTON, V.C., Jan. 26, 1874; aff. on app., Feb. 18, 1874).

Substitution of service; part of cause of action arising within jurisdiction.—Where, in an action against a defendant resident out of the jurisdiction, several causes of action are joined, the Court may permit service of the writ to be substituted, if any one of the causes of action arises within the jurisdiction: per WHITESIDE, C.J.; O'BRIEN, FITZGERALD and BARRY, JJ. And per WHITESIDE, C.J., and O'BRIEN, J. (and BARRY, J., *hæsitante*)—Where part of a cause of action arises within the jurisdiction, the Court has power to order substitution of service. Per FITZGERALD, J.—It is not enough that any part of a cause of action should have so arisen. Per BARRY, J.—Where the Court has jurisdiction to order substitution of service, the order will not be granted *ex debito justiciæ*, but it must appear to the satisfaction of the Court that the case is a proper one in which to exercise the jurisdiction in question.

The action was brought by a Dublin merchant against a London ship-broker, complaining—firstly, that it was agreed by charter-party that a ship of defendants should load at Santander 300 tons of flour from the plaintiff's factors, and should therewith proceed to Dublin, on being paid freight at a certain rate, yet the defendant so loaded only 200 bags; secondly, for breach of warranty, that the vessel was capable of carrying 300 tons of flour, under which the vessel was chartered; thirdly, that the defendant, by falsely representing that the vessel could carry 300 tons of flour, induced the plaintiff to charter her, yet that she was not so constructed. The charter-party was sent by the defendant to the plaintiff, and signed and accepted by the latter, in Dublin. Cause having been shown against an order made to substitute service: Held, per WHITESIDE, C.J., and O'BRIEN, J.—That part of the causes of action in the first count, and the entire causes of action on the other counts, arose within the jurisdiction, and the order should be made absolute. Per FITZGERALD, J.—Service should not be substituted if the order rested merely on the first count, but, having regard to the others, the order should be made absolute. Per BARRY, J.—It was doubtful if the plaintiffs having signed the contract in Dublin would have been enough, and if the case rested on the first count and the failure at Santander to take the flour on board, there would be a difficulty in holding that any part of the cause of action arose in the jurisdiction, but that the order might be sustained on the other counts, and it was a fit case for so doing (*Macken* v. *Ellis*, Q. B., Jan. 17, 1874).

Election petition; inspection of ballot-papers.—Motion, on behalf of petitioner, for inspection of ballot-papers. The sheriff had returned that there was an equality of votes for each candidate, but he had rejected some votes, the voters having marked their votes inside the space in which was the candidate's name. On behalf of the respondent, it was submitted that counsel should be present at the inspection, as the question would probably be whether the marks were so placed as to lead to identification; that it was desirable this should be allowed, as in a case of forgery; and that the result might determine whether or not the prosecution of the petition would be continued. BARRY, J., said that this was not usual, and as this was a motion by the petitioner, he would for the present follow the precedent of the Tyrone case, and make no order as to permitting counsel to be present; but, if it were found that there was any practical inconvenience or disadvantage arising, in consequence of not having the presence of any person not specified in the order, the parties might make any application they might be advised (*Re Athlone Election Petition*, Q. B. Chamber, Feb. 18, 1874; before BARRY, J.).

Disclaimer of lease by assignees in bankruptcy; time extended.—*Clay*, solicitor, on behalf of the assignees of the bankrupt, applied for an extension of time under B. A. Act, 1872, s. 98, to take or disclaim a lease of lands held by the bankrupt, stating that the circumstances of the case made it necessary in the opinion of the assignees. *Collins*, solicitor, opposed on behalf of the landlord, on the ground that it was only fair to him that the decision should be made as quickly as possible. MILLER, J., granted an extension of time to September 18, the assignees undertaking to pay the rent of the lands up to that date if they then disclaimed the lease (*In Re Boyle;* Ba., July 22, 1873.)

Debtors Act, 1872; *judgment for debts before and after; amendment.*—In an action by a lessor against the executors of a lessee, on a covenant in a lease, to recover two half-years' gales of rent—one of which accrued due May 1, 1872, before the death of the lessee, and the passing of the Debtors Act, and the other of which accrued before his death, but after the passing of the Act—judgment was recovered against the defendants for the whole debt (£108) and costs, on January 15, 1874. It appeared that the defendants had since abandoned the lands and had possessed themselves and disposed of all the other assets. *Colquhoun*, on behalf of the plaintiff, moved for liberty to issue a *ca. sa.* on foot of the portion of the debt due before the Act or to amend the judgment. DOWSE, B., said that if the first alternative could be granted, it should have been applied for on notice, but that he would give liberty to amend the judgment by striking out all the causes of action accruing subsequent to August 6, 1872 (*Shaw* v. *Dunlop*, Con Ch. February 17, 1874.)

Debtors Act, section 7; *delay in marking judgment.*—A plaintiff having issued, Jan 13, 1874, a writ under the Summary Procedure on Bills of Exchange Act, on the same day procured an order under the Debtors Act, s. 7, for the arrest of the defendant, who was about leaving the country, under which defendant was to be imprisoned for two months unless security given. The defendant was arrested, but although the plaintiff was entitled to judgment, Jan. 28, no defence being filed, the plaintiff omitted to mark judgment. The defendant assigned all his property to trustees for the benefit of his creditors, and there was no way in which the plaintiff could realize the fruits of a judgment if marked. *Weir*, for defendant, now moved, that he be discharged from custody. *Seeds*, *contra.* DOWSE, B., held that he had power, under the 6th G. O., 1872, to order defendant's discharge; and as it was avowed that there was nothing to be gained by marking judgment, and that the defendant was sought to be detained for the mere purpose of pressure, ordered that he should be discharged at the end of a week unless final judgment, marked meantime, and if marked, that the defendant be thereupon discharged (*Hester* v. *Byrne*, Con. Ch., Feb. 17, 1874).

Digitized by Google

Remitting acion for breach of promise.—*Colquhoun* moved to remit to the Civil Bill Court, under C. L. P. A. Act, 1870, s. 5, an action for breach of promise of marriage claiming £500 damages. *M'Laughlin, contra*: In this case the amount claimed is over £40, and for that reason the Court has no power to remit the action; *O'Meara* v. *Cummins*, 7 Ir. L. T. R. 160; *Cruise* v. *Lenehan*, Ir. R. 6, C. L. 220. Motion refused with costs (*Cudden* v. *O'Brien*, Con. Ch. Feb. 13, 1874; before Barry, J.)

Remitting action of tort; C. L. P. A. Act, 1872, *s.* 6; *visible means.*—Action for false arrest and malicious prosecution. *Falconer*, for the defendant, moved that the plaintiff should give security for costs, or that the case should be remitted to the Recorder's Court. The plaintiff was a carter to the defendant, a dairyman. *Rynd*, for plaintiff, opposed; and read an affidavit of plaintiff, which stated that the plaintiff, on an average, made 12s. per diem; and further, that the case was a fit one to be tried in the Superior Court, as the plaintiff had been given into custody to a policeman, locked up for a night, and charged in the morning with having committed a felony, by the defendant, before a magistrate, who dismissed the charge. Motion granted (*Ennis* v. *Murphy*, Con. Ch., before Dowse, B., Feb. 18, 1874).

Remitting action; *question of forgery.*—*Holmes* moved to remit an action for £36, of which £25 was claimed on a bill of exchange, and the rest for goods sold. The defendant alleged that the bill was a forgery. *M'Laughlin* opposed the motion. Barry, J.—As there is a question of forgery raised I think that is good cause why the case should be tried in the Superior Court. Motion refused, plaintiff's costs to be costs in the cause (*Hackett* v. *M'Neill*, Con. Ch. Feb. 14, 1874.)

THE LIBERTY OF THE BAR.

Clarendon is at much pains to show that the rebellion against Charles I. was not brought about by the levying of ship money, but by the decision of the Exchequer Chamber in favour of the alleged right of the King to levy the tax. The people for various reasons submitted to the tax as an imposition by the State; "but when they heard this demanded in a Court of Law as a right, and found it, by sworn judges of the law, adjudged so, upon such grounds and reasons as every bystander was able to swear was not law, and so had lost the pleasure and delight of being kind and dutiful to the King, and instead of giving, were required to pay, and by a logic that left no man anything which he might call his own; they no more looked upon it as the case of one man but the case of the kingdom, nor as an imposition laid upon them by the King, but the judges, by which they thought themselves bound in conscience to the public justice not to submit to." In like manner we think no careful student of the French Revolution can fail to see that it was mainly due—not to the monopolies of the nobles and the consequent imposition—but to the impossibility of the people obtaining justice. The Courts of Justice were tainted by a corrupt influence. There may have been some magistrates who did not bow their knees to the Baal of Aristocracy and Property; but the people naturally and inevitably distrusted the impartial as well as the partial administrators of the law. Nor is it unduly straining the argument to say that the American Civil War was principally the result of a just or unjust distrust of the Supreme Court. The immediate cause of secession was the election of a President who represented the party resolved to destroy the institution of negro slavery, by defining its limits and not allowing its extension to the territories of the Union; but the passions of the contending sections had been inflamed to the pitch of civil strife, by the decision of Chief Justice Taney on the Fugitive Slave Law. Those who read history for instruction and not merely for amusement, see that civil discord is not so often caused by bad laws, as by the unjust administration of the law, or by a want of confidence in the impartiality of the judges. The apophthegm that a judge, like Cæsar's wife, should not only be pure, but above suspicion, is trite and true. Only those communities of which the interpreters and administrators of the law are trustworthy and trusted, can be assured of civil peace and national progress.

The immunity of England from revolution since 1688 is remarkable. Our laws were not perfect, and our legislative history is for the most part a record of change and reform. But all this time there has been no question about the fair administration of the law. The wise clause in the Act of Settlement which deprived the Crown of the right to remove judges at pleasure, and enacted that "judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established," rendered the judges independent, and from that date there has been no suspicion of their being influenced by the Sovereign. Moreover, our plan of nomination and selection has answered admirably. The appointment of the judges is virtually vested in responsible ministers of the Crown, but not less virtually are the candidates publicly nominated—we might almost say elected—for no minister ventures to give a judgeship to a barrister who has not by the discretion of solicitors and the approval of litigants, attained to high standing in his profession. Combined with the independence and proved ability of the judges there has been the unrestrained liberty of the advocate; and the freedom of the advocate is as necessary for the due administration of justice as is the independence of the judge. For these and other reasons—we must not forget the benefit of justice being administered before the whole nation by the agency of the press—not only has there been an impartial administration of justice, but, what is of equal consequence, there has been perfect faith in the integrity of the Courts of Law. It has happily become a habit with all classes of Englishmen to treat our judges with a marked and becoming deference. We trust that this noble and most beneficial faith may never be shaken either with reason or from base calumny.

Holding these views, we were profoundly impressed by the eloquent exordium of the summing up of the Lord Chief Justice of England in *Reg.* v. *Castro*. It was a stern and dignified rebuke; but there is no member of the profession, and, we may add, no gentleman not in the profession, who will think Dr. Kenealy does not deserve the reprimand. We cannot express the surpise, pain, and indignation, which we have felt at the conduct of the learned counsel. We thought it our duty to abstain from comment; but it is now our duty, as a representative of the profession, to declare our emphatic agreement with the rebuke of the learned judge.

The two offences of Dr. Kenealy were his slanderous imputations and statements about the witnesses for the prosecution, and his treatment of the judges. As to the latter, the offence is aggravated by the fact that the offender was specially bound to treat the judges with respect. What would have been said if a witness, perhaps a very ignorant person, had dared to insult the Bench? The public would have been vexed and surprised if the offender had not been punished. But here we have a person, a barrister, a Queen's counsel, who ought to set an example of good behaviour in a Court of Justice, being guilty of conduct towards the judges that is happily altogether without precedent. The Lord Chief Justice says, "We were met by contumely and disrespect, by insult, by covert allusions to Scroggs and Jeffries—judges of infamous repute—as if in days when such a spirit as theirs animated the administration of justice, the learned counsel would not have been quickly laid by the heels and put aside." The absurdity of the allusion to Scroggs and Jeffries does not in any degree excuse the slanderous insult. Why did Dr. Kenealy so flagrantly misconduct himself? The Lord Chief Justice said it would appear to be "through a desire to produce an effect upon the outside world, and to lead them to suppose that the counsel on his side of the case are treated unfairly." How do we know that the foul aspersions of Dr. Kenealy did not instigate the ignorant mob to attack Mr. Hawkins? Dr. Kenealy appeared to boast of his courage in attacking the judges. Unless there is moral restraint, what courage is needed for a wrongful act that can be done with impunity? Dr. Kenealy knew very well that he could not be punished. The Benchers of the Inns have no authority to interfere with the demeanour of counsel in Court. The judges, Dr. Kenealy knew, would

Digitized by Google

not be provoked into depriving the defendant of the services of his counsel. Dr. Kenealy did not display courage. It was not couargeous but cowardly to insult the judges, who were forced to submit to the insult. He who bullies an unarmed and bound captive, might as well boast of being brave.

Dr. Kenealy seems to have been annoyed because the learned judges again and again interfered with his address. Why did the judges interfere? The Lord Chief Justice assigns a sufficient reason :—

" Our position was rendered painful also from the fact that we had again and again to interfere with the address of the learned counsel in order to correct misstatements and misrepresentations which could not be allowed to pass without such interference on our part. When witnesses are misrepresented, when evidence is misstated, when facts are perverted—and that not for the purpose of argument in the cause, but in order to lay the foundation of foul imputations and unjust accusations against parties and witnesses—when one unceasing torrent of invective and foul slander is sent forth wherewith to blacken the character of men whose reputations have been hitherto without reproach, then it is impossible for judges to remain silent."

As we have remarked, the liberty of the bar is essential to the proper administration of justice. A fettered advocate can no more do his duty to a client than a dependent judge can be trusted to be just to a litigant. We are not supporting the extravagant and false doctrine that an advocate is to do anything for his client. The true doctrine is that of the Lord Chief Justice that an advocate must seek to win *per fas*, and not *per nefas*. But it is necessary to leave to the discretion and honour of the advocate what is *fas* and what is *nefas* in the particular case. Directly an attempt is made to limit the discretion of an advocate there is sure to be a hinderance to the cause of justice. A counsel is not infallible. Suppose he were held legally responsible for what he does in Court—that is, suppose he were liable to an action for defamation of character—how could he then do his best for his client? How could he be expected to break down the credibility of a witness, according to his instructions, when an error in those instructions, or a slip of the tongue in the heat of advocacy, would render him liable to the trouble and costs of an action, and perhaps to the payment of heavy damages?

This liberty of the bar is a tremendous trust, and hitherto it has been rarely abused. But if such conduct as Dr. Kenealy's were common, nay, if it were to be repeated a few times, what would happen? Does anyone imagine the public would submit to such a cruel and wicked injustice? Would the bar be allowed to blacken the characters of men and women, of the living and the dead? There would be a demand for the suppression of the advocate that no Government or Parliament could resist. Thus, in interfering with the address of Dr. Kenealy, the judges did not interfere with the liberty of the bar. They interfered with a gross abuse, which, if permitted, would be fatal to the cherished liberty which is necessary for the advocate, because it is necessary for his client, which is allowed to the bar for the public good, and which, we repeat, is essential to the due administration of justice. We have no fear that Dr. Kenealy's example will be followed, and we rejoice that the Lord Chief Justice of England has vindicated the honour of the bar, defended the liberty of advocacy, and upheld the sacred dignity of the bench.—*Law Journal.*

THE NON-REGISTRATION OF MORTGAGES INCLUDING FIXTURES.

Once more a decision has been given upon the question of the necessity for registering as a bill of sale a mortgage of premises, including the trade fixtures; but the judge who decided it was able to hold that the case was governed by the recent decision of *Ex parte Daglish, re Wilde* (29 L. T. Rep. N. S. 168; L. Rep. 8 Ch. 1072). The last decision was *Meux* v. *Allen*, before the Master of the Rolls, on the 22nd ult., and the facts were these :—The defendant, W. Allen, being entitled to the possession of a public-house, and to certain fixtures and fittings upon the premises for the residue of a term, applied to the plaintiffs for an advance of £800, which was made to him on the security of the house, upon the terms of a deed-poll of the 11th August, 1869, whereby Allen agreed to execute a legal mortgage when required, and the lease was at the same time deposited with the plaintiffs. By an indenture of the 7th December, 1873, the defendant, Allen, mortgaged, by way of demise, the premises comprised in the lease to the plaintiffs, for the residue of the term. Neither the equitable deposit, nor the mortgage was registered under the Bills of Sale Act. Allen subsequently executed two registered bills of sale to the other defendants of the fixtures and fittings of the house, some of which had been placed there before the date of the deed poll, and some subsequently, and the plaintiffs filed their bill alleging that such fixtures formed part of their security, and praying an injunction to restrain the defendants from removing them. And, as we have said, the Master of the Rolls held that the case was governed by *Ex parte Daglish*, and dismissed the bill.

We may here remind our readers shortly of what *Ex parte Daglish* decided and the decisions which it affected. There was a mortgage of premises by way of demise, and the mortgage included trade fixtures—the premises being a mill, and the fixtures machinery, and in the deed there was a power of sale of the machinery; fixed and movable, either with the mill or separately. And the decision was, that so far as the deed dealt with the fixtures, it required registration under the Bills of Sale Act, and therefore that the fixtures were the property of the trustee on the bankruptcy of the mortgagor. This decision is in confirmation of *Begbie* v. *Fenwick* (24 L. T. Rep. N. S. 58), and *Hawtrey* v. *Butlin* (28 L. T. Rep. N. S. 532; L. Rep. 8 Q. B. 290), but is not in accordance with *Boyd* v. *Shorrock* (L. Rep. 5 Eq. 72; 17 L. T. Rep. N. S. 197). The latter case turned in the main upon the nature of the fixtures, being looms fastened by nails to the floors of a cotton mill. Vice-Chancellor Wood there followed the principle which was laid down in *Ex parte Barclay* (5 De G. M. & G. 403), and which he himself followed in *Mather* v. *Fraser* (2 K. & J. 536), namely, that if the tenant has affixed to the freehold, during his tenancy, articles in such a manner as to make it appear that during the term they are not to be removed, and that he regards them as attached to the property, according to his interest in the property, then, on any dealing by him with the property to which these articles are affixed, the Court would presume that he meant to deal with the property as it stood, with all these things so attached, and to pass the property in its then condition. In *Mather* v. *Fraser* the Vice-Chancellor had applied to the fixtures which would pass to a mortgagee of the leasehold the term "quasi-permanent"—those articles which are affixed in a quasi-permanent manner. And this term was approved and adopted by the Court of Queen's Bench, in *Longbottom* v. *Berry* (L. Rep. 5 Q. B. 123; 22 L. T. Rep. N. S. 385), all the machinery in that case which was annexed to the floor, ceilings, or sides of the building in a "quasi-permanent manner" by means of bolts and screws, being held to pass to the equitable mortgagee of the fee.

In judging of these cases attention must be directed to the distinction between mortgages by owners of the freehold and by lessees of a term, pointed out by Lord Justice Mellish in *Ex parte Daglish*. The "cases," his Lordship said, "where the mortgagors have been freeholders, are plainly distinguishable, because a freeholder cannot be said to be in possession of fixtures which he has put up, although the same things, if put up by a lessee, would be trade fixtures; for in point of law the machinery affixed to the premises is just as much part of the premises as the bricks." On this ground *Boyd* v. *Shorrock* has been dissented from, the looms having been put up temporarily by a lessee of a term for his convenience, and being detachable without damage to themselves or the freehold; and although such fixtures put up by a freeholder would pass under a mortgage of the freehold, they are nevertheless "in the possession" of a leaseholder, so that a pledge of them must be registered under the Bills of Sale Act. In *Begbie* v. *Fenwick*, (24 L. T. Rep. N. S. 58) Vice-Chancellor Mallins said he was unable to understand the grounds of Vice-Chancellor Wood's decision in *Boyd* v. *Shorrock;* and in *Hawtrey* v. *Butlin* (L. Rep. 8 Q. B. 290; 28 L. T. Rep. N. S. 532) both Mr. Justice Blackburn and Mr. Justice Mellor preferred the decision of Vice-Chancellor Mallins in *Begbie* v. *Fenwick* to

Digitized by Google

that of Vice-Chancellor Wood in *Boyd* v. *Shorrock*. Mr. Justice Mellor thought that Vice-Chancellor Wood's attention could not have been called to the interpretation clause of the Bills of Sale Act, and we may remind our readers that "personal chattels" are interpreted to mean "goods, furniture, fixtures, and other articles capable of complete delivery," and as between landlord and tenant, lessor and lessee looms fixed by nails to a wall for the convenience of the tenant or lessee, are clearly fixtures, and are in the apparent possession of a tenant or lessee. The true construction of the Bills of Sale Act according to Lord Justice Mellish, is that, "if a person is in possession of fixtures, then he cannot pledge those fixtures so as to give a title to the mortgagee, except by an instrument which is to be registered as a bill of sale." This passage precedes that which we have already quoted as to the distinction between mortgages by freeholders and by tenants or leaseholders, the freeholder not being merely in possession of the fixtures, but they being a part of his freehold: and Lord Justice James said, "When you once arrive at the fact that a person has the property in fixtures as distinct from their connection with and adhesion to the freehold, then they are, in my opinion, the very class of things which were intended to be provided for by the Bills of Sale Act."

The law is made quite clear by the cases which we have referred to, and it is plain that the Master of the Rolls could not, had he desired it, have come to a conclusion other than he did in *Meux* v. *Allen* without upsetting a string of consistent cases.—*Law Times.*

COUNTY LEITRIM ELECTION PETITION.

A petition was lodged to-day (Friday), by Francis O'Beirne, of Jamestown Lodge, county Leitrim, against the return of Wm. Richard Ormsby Gore, as Member of Parliament for the county Leitrim. It set forth that John Brady, Wm. Richard Ormsby Gore, and the petitioner, were candidates at the late election, which was held on the 7th inst., and the returning officer returned the two former as duly elected. The High Sheriff, Sir Morgan George Grafton, Bart., was the returning officer, and he returned Mr. Brady duly elected by a majority of 250 votes, and Mr. Gore by a majority of 43; and that the number of votes polled for the former was 1,318; for the latter 1,098; and for the petitioner 1,055. But petitioner submitted that such return was erroneous, as he polled 1,128 votes, and had, therefore, a majority over Mr. Gore, and should have been returned as elected instead of him. At Keshcarrigan polling-station, where 73 voters voted for the petitioner and Mr. Brady respectively, and 16 for Mr. Gore, the presiding officer, James Francis Moore, after putting the usual questions to each of the voters on entering the polling station, delivered to each a voting paper, having first written on the back of it a number corresponding with the number of the voter in the registry. The voters had no suspicion, and did not perceive there was any irregularity whatever in so placing the figures on the polling papers, nor had they any act or share in the irregularity, which was entirely the act of the presiding officer. On the following Monday the returning officer, on examining the voting papers, examined the back of each, and rejected the 73 votes given for the petitioner and Mr. Brady, and the 16 given for Mr. Gore, because of those figures on the backs of the voting papers, on the ground that they were marks by which the voters could be identified. This rejection was objected to at the time by Mr. Brady and the petitioner. Since the election the presiding officer admitted that he wrote the figures on the back of the voting papers. In conclusion, petitioner submitted that if those votes had been counted instead of being rejected, he would have been returned by a majority of 14 over Mr. Gore, and therefore, accordingly, he prayed that he should, with Mr. Brady, be declared the sitting member.

The solicitor for the petitioner is Mr. Kiernan. John Farrell Byrne, Esq., Drumsna, county Leitrim, and Mr. Patrick Barrett, of Carrick-on-Shannon, grocer, wine, and spirit merchant, have entered into the necessary recognizances for £1,000 in respect of the costs of the petition.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to The Editor, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

LAND TRANSFER.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—From the opinion expressed in my last letter, you will, of course, be aware that whatever suggestions I have to make respecting improvements in land transfer, they will not be in the direction of the present "Record of Title" system, which I hold to be utterly inadequate to the purpose for which it was designed. As I do not approve of the Record of Title, it is needless to say that I am not favourable to the suggestions contained in Mr. Donnell's paper (Ir. L. T., Dec. 20, 1873), in which he advocates local Records of Title, with the Clerk of the Poor Law Union as the Recorder; nor am I a believer in the numerous beneficial results which he is sanguine enough to think would flow directly from such a reform. If, as I believe, the Record of Title, conducted, as no doubt it is, by an educated lawyer experienced in matters of title, is objectionable and dangerous, what could we expect from local registries presided over by the Clerk of a Poor Law Union, who, however excellent an authority upon the standard consistency of workhouse soup, is certainly not an authority upon real property or conveyancing.

I suppose I am safe in asserting that all who propose any reform or improvement in land transfer admit that such reform can only be applicable to *future* transactions in landed property, and that there is no process by which we can clear the titles already complicated, save by a declaration of title or sale in the Landed Estates Court. On this assumption I will proceed. Admittedly the chief cause of complaint respecting land transfer at the present time is the delay in such transactions. It is the wearisome waiting upon the examination of title, including first the preparation and furnishing of an abstract, the obtaining of counsel's opinion upon it, and getting out the searches in Deeds Office, and afterwards their examination by counsel, that causes most complaint. Of all the causes of delay, I think that connected with the searches is the most aggravating, and when the search is obtained it contains a number of acts of which the vendors are totally ignorant, but which turn up as what are technically called "general charges," or acts by some person of the same name as the person searched against, or affecting premises of the same name as those to which title has been shown, but which (although in a different county) are returned, because the person who registered it was not as definite as he should have been in his description of the premises. Of course, the evils I have referred to are not only the cause of delay, but also of expense; but I think, upon the whole, the former is considered by the public the greater evil of the two, but both should be removed as far as they can be with safety.

The plan which I desire to bring before your readers has, at least, one advantage, namely—that it would not disturb the existing law or the present freedom enjoyed in dealing with land, but would leave landed proprietors the same power they now possess of settling their estates to such uses and limitations, or otherwise dealing with them as they consider most beneficial.

My plan is simply as follows:—

I would establish in the Registry of Deeds Office a Registry of Title, which, I think I will be able to show, might be worked with the business of this department with convenience, and without any confusion. Those who chose to avail themselves of its provisions, and to register their estates, should sign a simple requisition to that effect, and thereupon the Registrar should be obliged to open a register of that property, as one would open a separate account in a ledger, to which register a number should be affixed, beginning with the first title registered, and so on consecutively

Digitized by Google

In every transaction respecting registered land this number should be attached to the memorial, and certified by the solicitor to be the correct number of the registered title. The memorial should, in all respects, correspond with the ordinary memorial in use, and should be entered in the books of the office in the usual way; but it should be the duty of the Registrar, in the case of a memorial with a "title number," also to enter it in the Register of Title indicated by the number, adding on the register the reference to the memorial itself in the books of the office.

The Register of Title should contain—(1) grantor's name; (2) grantee's name; (3) date of deed; (4) character of deed (mortgage conveyance, &c.); (5) consideration, and, as I have said, the reference number of the memorial. In all cases I would require the memorial to state the real consideration, and in cases of settlement or deeds of trust, the trusts and limitations contained in the deed shortly abstracted, and the accuracy of such abstract should be certified by the solicitor registering it. In cases of land the title to which was so registered, every deed to effect it should be registered against the title, and unless so registered should be void against such registered land. It may be asked—how is it to be known that the land is so registered? Very easily. When any deed affecting a registered title is entered in the index books of the Registry Office, besides the ordinary reference number indicating in which book the memorial is to be found transcribed, there should be added the Registry of Title number, so that any one searching in the Registry of Deeds against the lands, would at once come upon the fact that the title was registered, just as now they come upon the registry of the fact of lands being recorded in the Record of Title—with this difference, however, that they can in the latter case, at once, in the same office, refer to the Registry of Title, where they will at a glance learn all about the title of the premises searched against. This Registry of Title would have this advantage over the Record of Title—namely, that any one who desired to register property purchased might do so whether it had been purchased in the Landed Estates Court or by private sale, out of Court. Of course, to open a register of title with such a conveyance would not be any warranty of the title to the lands antecedent to such registry, but it would have the effect of making a title in course of time; and if, as has been proposed, the period under the Statute of Limitations, be reduced to 10 years instead of 20, this result would be materially facilitated. If the register opens with a conveyance for substantial value, a purchaser may reasonably suppose that the title has been fully investigated by the grantee, and will be disposed, if there is a clean register following such conveyance for a sufficient number of years, to take the property upon the title thus shown. Of course, where a property has been purchased in the Landed Estates Court the advantage is far greater, for there he has a parliamentary and indefeasible root to the Registry of Title.

In cases of sub-division of registered land the course would be simply to open another register with another number, which number would appear in the registry of the act dividing the property. For example—A has registered his estate of Blackacre, Register of Title, 521, and sells a portion of it to B. The conveyance appears on the Register of Title, 521, but B having opened a new register for his part, the number of the new register is mentioned, so that any one interested in that part can refer to it, where he will find the sub-title and all transactions respecting it.

The practical effect of the system I have suggested would be, that in the case of registered titles a vendor, when about to furnish his title, would bespeak at the Registry a copy of the register of such title, which would be furnished with the copies, deeds, or it may be with an abstract of the title compared with the original deeds, which is the English fashion, and upon this (if the title were not too simple to require counsel's opinion), counsel would advise *finally*. There would be no direction of searches, for the register would contain all the deeds affecting the lands. This, I think, my professional readers will admit, would be an immense saving of time and of expense also. The priorities would all be settled by the register, and the only question which could arise would be on the construction of the deeds upon it, and if counsel advised good title, the conveyance might be prepared and executed without further delay, the purchaser's solicitor having nothing further to do in protection of his client's interests save to see that since the copy register was furnished no further act appears upon it. In order to complete the scheme I have sketched, I should require that recognizances and *lis pendens* should be registered in the Registry of Deeds as judgment mortgages are registered, and thus they would appear also on the register. I see no difficulty in this being done upon the affidavit of the solicitor for the plaintiff in Chancery, stating (as in affidavit of judgment mortgage) the disposing power over the lands mentioned of the person sought to be made responsible. I can see no reason why the same diligence and inquiry should not be necessary, and is not as practicable in the case of recognizances and *lis pendens* as in the case of judgments. If this were done there would be no further occasion for the office of Registrar of Judgments, and much expense would be saved, not only to the State, but to every person dealing in land, who in every case now must search in that office. I would further require that chattels real should not be sold by the sheriff under an execution until some record of such proceeding were lodged in the Registry of Deeds Office, or else that the conveyance from the sheriff should only take effect from its registry. It seems to me very unreasonable that in transactions respecting lands held under such title the purchaser shall be bound to search up to the last moment for executions lodged with the sheriff. If the transfer of land is to be facilitated, the purchaser should be able, in one place, to find everything relating to the premises he is about to buy.

There is one other point I would like to add to my plan to make the Register of Title more complete, but I would hesitate to make it compulsory—namely, an entry of the register of the deaths and marriages of parties interested in the registered land; but such entries should, I think, be voluntary and not absolutely necessary.

As I have said, I would make the registry by register number imperative in all cases of registered land, and further, make it plain beyond all doubt that no unregistered charge, legal or equitable, whether created by deed or agreement, or by simple deposit of title deed, should be a lien upon registered land. This would make the possession of the title deeds to registered land of much less consequence, and enable the owner, if all his title deeds were lost, to make title from the memorials and the register of title. Once a deed was received by the Registrar and entered on the Registry of Title, I should not allow the regularity of its registry to be open to question, and the deed should be considered registered; but I would give power to the Court of Chancery, on evidence of a deed being registered against wrong lands, to order the Registrar to remove it from the register—of course on notice to the party registering it. This, however, would scarcely be necessary, as if, upon reference to the memorial, it was found the land did not correspond with the registered land, the purchaser should be satisfied, as although no unregistered act could be a lien on registered land, the registry, if erroneous, would not make it a charge. To facilitate reference to the registered titles, I would have an index to them, separate from the ordinary lands-index, so that any one wishing to satisfy themselves on the subject would only have to search in this book, for which a small charge should be made, and, if the lands sought for were registered, they could be found at once.

My scheme is now before the Legal Profession, and I would be glad to answer, in your columns, any questions respecting it, or to receive any practical hints which the experience of my professional brethren may suggest. It does not pretend to make land as easily transferable as government stock, but it does pretend to facilitate such transfer without restricting the owners of land in dealing with their property, and to do so without establishing a system so dangerous that it can only be carried out by a system of caveats. I believe such a system as I have suggested could be carried on without the expense of a new establishment; and, being both simple and safe, that it would have the confidence of the Legal Profession.

I remain, Sir,

Your obedient servant,

HENRY T. DIX.

Digitized by Google

TAXATION OF SOLICITOR'S BILL AFTER TWELVE MONTHS.

In re Elmslie & Co., V.C.B., 22 W. R. 54, L. R. 16 Eq. 326.

The general rule as to the special circumstances on proof of which, under 6 & 7 Vict. c. 73, s. 37, a bill of costs may be ordered to be taxed, has been clearly laid down by Wood, V.C. :—"To entitle a client to an order for taxation of his solicitor's bill of costs after the expiration of twelve months from the delivery, he must show one of two things—either pressure or gross overcharge, amounting to what this Court designates as fraud." (*In re Strother*, 5 W. R. 797, 3 K. & J. 528). But although this is useful as expressing the principle on which the Court generally acts, it cannot be looked upon as an exhaustive definition of words so elastic as "special circumstances," and it is therefore advisable for the practitioner to take note of the negative cases which limit the extent of this expression. In this point of view the case of *In re Elmslie & Co.* (*ubi sup.*), is of some value. A regular bill was delivered by a firm of solicitors to their clients, and at the time when the bill was delivered, and for more than twelve months afterwards, the relation of solicitor and client continued. The clients sought to have the bill taxed after the expiration of this period, and relied upon the continued relation as a special circumstance within the meaning of the 37th section. In support of this contention the case of *In re Nicholson* (9 W. R. 441, 3 D. F. and J. 93), and *In re F*—— (16 W. R. 749), were cited, in which undoubtedly expressions occur which lead to the conclusion that the continuance of the relation might, in conjunction with other circumstances, operate upon the mind of the Court. It is satisfactory to note that in the recent case, Bacon, V.C., came to the conclusion that in none of the authorities was it "said or meant to be said" that the continuance of the relation of solicitor and client is of itself sufficient to justify a reference for taxation more than twelve months after the delivery of the bill.—*Solicitors' Journal.*

COMMON PLEAS (WESTMINSTER).

[From the *Solicitors' Journal.*]

(Before Lord COLERIDGE, C.J., KEATING, BRETT, and HONYMAN, JJ.)

Jan. 23—*In the Matter of an Attorney.*

Garth, Q.C., on behalf of the Law Society, applied for a rule calling upon an attorney to show cause why he should not be struck off the roll. He had an affidavit of Mr. S., who said that in 1871 he became responsible for the debts of a person named H., who became insolvent, and as H. had already employed the attorney in question, Mr. S. also employed him to pay the debts. From October, 1871, to the end of that year, various specific sums were sent to the attorney to pay specific debts, and in February he assured Mr. S. that all the debts had been paid and the claims discharged. In April, 1872, Mr. S. was astonished at having a writ issued against him for £21 7s. 7d., for which he had paid a specific cheque in December, and on the same day an execution was put into his house for £45, being a debt and costs for which judgment had been given in December, and to pay which a specific cheque had been sent to the attorney. Mr. S. put himself into the hands of another attorney, who could not get the money from the attorney, but got a so-called security. He then placed the matter in the hands of the Law Society, and in answer to Mr. Williamson's demand for an explanation, the attorney wrote, not denying the receipt and misappropriation of the money, but asserting that Mr. S. was mistaken in saying that the security held by him was worthless, as it was worth £200 as soon as a decision of the Scotch courts should be given. Whatever the value of the security, the Law Society had nothing to do with it, but had only to deal with the misappropriation.

The Court granted a rule *nisi.*

COURT OF BANKRUPTCY (LONDON).

Saturday, Jan. 31.

[From the *Law Times.*]

(Before Mr. Registrar SPRING RICE, sitting as Chief Judge.)

Ex parte NICOLL ; *Re* NICOLL.

Solicitor's costs—Right to prove for.

This was an appeal from an order of Mr. Registrar Keene, whereby he refused to register a resolution of creditors.

De Gex, Q.C., and *Bagley*, appeared for the appellant; *Brough*, for Messrs. Frege & Co.; and *Finlay Knight*, for other creditors.

The debtor, Mr. Donald Nicoll, carried on business at 58 and 59, Paternoster-row, as a wholesale clothier and warehouseman. Some weeks since he filed a petition for liquidation by arrangement, his debts and liabilities being stated at £58,453, with assets, inclusive of a surplus from securities in the hands of creditors fully secured, £20,391. At the first meeting of creditors, held on the 28th November, a resolution was passed for the acceptance of a composition of 7s. in the pound, payable by instalments, and at the adjourned meeting, which was held shortly afterwards, the resolution was confirmed; but, upon the matter being brought before the registrar, he upheld objections made to certain of the proofs, and declined to register the resolution on the ground that the necessary majority in number of the creditors had not assented thereto. The debtor appealed, and the material points involved seemed to be whether a solicitor was entitled to prove and vote in respect of an untaxed but admitted debt for costs, and whether a creditor, who had appointed a proxy could, after the meeting of creditors, sign a resolution in favour of a composition, his proxy having, at the meeting, signed a "protest" against its acceptance.

His HONOUR, at the close of the arguments, held that a solicitor was entitled to prove and vote under liquidation proceedings in respect of costs, although the bill might not have been taxed at the time, and that the signature of the "protest" by the proxy did not operate so as to prevent the creditor from signing the resolution before registration.

The result of the order will be to render the resolution effectual.

APPOINTMENT.

The Right Hon. the Attorney-General has appointed Mr. P. J. M'Kenna, of the Home Bar, as Counsel to the Board of Excise and Inland Revenue, in place of Mr. William M'Loughlin, resigned.

LAW STUDENTS' JOURNAL.

LEGAL AND LITERARY DEBATING SOCIETY.

The usual Weekly Meeting of this Society will be held on Thursday evening, the 26th February, at 53, Lower Sackville-street. Chair to be taken at Eight o'clock.

SUBJECT FOR DEBATE:

"Was the Loss of the American Colonies injurious to Britain?"

SPEAKERS:

Affir. Mr. W. Nolan. | *Neg.* Mr. A. W. Gamble.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—F. Stuart, allocation.—Trustees Johnston, do.—L. Montfort, do.—J. O'N. Brennan, proposal.—E. E. Widdup, do.—W. Blair, from 19th.

Digitized by Google

☞ IN COURT.—J. Shuldham, to be mentioned.—F. Henderson, as to costs.—Anne Greene and another, re-entry final schedule.—J. Flanagan, do.—N. Hone, objection.—S. W. H. Browne, order to proceed.—Marquis Waterford, objection to rental.—E. O'Keeffe, 2 notices from 19th.—Reverend G. Bull, ditto.

Before EXAMINER (Mr. Dobbs).

W. Jack, proofs.—R. R. Campion, do.—D. M'Nulty, do.

TUESDAY.

IN CHAMBER.—H. Mahony, from 17th.—W. De Burgh allocation.

IN COURT.—Earl Darnly, final schedule.—G. J. Sheil, do.—Reverend L. Arthur, do.—E. Moran, do.—W. Cox, tenant's objection.

Before EXAMINER (Mr. Dobbs).

Executors Mullins, rental.—T. J. Lannigan, ditto.

WEDNESDAY.

IN CHAMBER.—E. D. Barry, as to No. 3 on schedule.

IN COURT.—M. Ryan, from 4th.—Assignees Birmingham, from 18th.—R. King, final schedule.—Trustees Despard, do.—R. Rawson, ditto.

Before EXAMINER (Mr. M'Donnell).

M. M'Nanna, rental.—T. Murphy, vouch.—T. N. E. O'Halloran, do.—A. C. Gaffiikin, do.—Lord Lisle, ditto.

THURSDAY.

Before EXAMINER (Mr. M'Donnell).

M. W. Fitzmaurice, for deeds.

FRIDAY.

SALES AT 12 O'CLOCK.

R. G. BRINKLEY.—1 lot.
ANNE WILME.—1 lot.
TRUSTEES TATE.—1 lot.
D. DALY AND ANOTHER.—1 lot.
W. G. GRAHAM.—2 lots.

Before EXAMINER (Mr. Dobbs).

Trustees R. Hynes, rental.—John Patton, do.—Church Commissioners, ditto.

LANDED ESTATES' COURT.

SALES.

February 6th, before the Hon. JUDGE FLANAGAN.

COUNTY GALWAY.—The estate of Nicholas Kirwin, owner and petitioner. Part of the lands of Quinaltagh, held in fee-simple; containing 271a. 1r. 6p. Sale adjourned. Solicitor, *H. T. Graham.*

COUNTY CARLOW.—The estate of Elizabeth E. Widdup, owner and petitioner. Part of the manor of Clonegal, Cronesgrove, Lackabeg, and Kildavin village, containing 890a.; held in fee-farm. Sale adjourned. Solicitors, *Messrs. J. D. Meldon.*

CITY OF DUBLIN.—The estate of R. S. Hawksworth and others, Trustees of W. W. Despard, owners and petitioners. House and premises, 76, Thomas-street, held for lives renewable for ever; profit rent, £47 1s. 7d. Sold to Mr. Richard Despard, for £810. Solicitor, *T. Turpin.*

COUNTY OF DUBLIN.—The estate of Anne O'Neill, owner; the Royal Land Building and Investment Society, petitioners. Three houses and premises in Brighton-square, Rathgar, held under a lease for 450 years; profit rent, £89. Sold to Mr. Whitsitt, for £645. Solicitor, *B. Thompson.*

COUNTY ARMAGH.—The estate of Robert King, owner; the Provincial Bank of Ireland, petitioner. A perpetual rent of £14 17s. 1d., issuing out of part of Ballycullen and the townland of Shanmullagh, containing 100a.; held in perpetuity. Solicitors, *Longfield, Davidson, and Kelly.*

COUNTY MEATH.—The estate of Gerald O'Ferrall, owner and petitioner; and another matter. The lands of Bruslanstown, in the barony of Fore, containing 127a.; held in fee-farm; profit rent, £126 16s. 8d. Sold to Mr. Henry C. C. Singleton, for £8,020. Solicitor, *J. T. Hinds.*

COUNTY WEXFORD.—The estate of T. S. Hagerty, owner and petitioner. Part of the lands of Lower Kilbride, containing 105a. 1r. 3p.; held under lease for 999 years; profit rent, £57 10s. Sale adjourned. Solicitors, *L. W. Corcoran and Son.*

COUNTY WEXFORD.—The estate of Henry Lambert and others, owners; North British and Mercantile Insurance Company, petitioners.

Lot 10.—Life estate of owner, in part of the lands of Tellarought, containing 306a.; held under fee-farm grant; profit rent, £213 12s. 8d. Sold to Mr. David Beatty, for £1,625.

Lot 12.—Part of same lands, containing 252a. 1r. 25p.; profit rent, £194 19s. 1d. Sold to same, for £1,800.

Lot 14.—The mansion house and demesne of Carnagh, containing 753a.; profit rent, £446 18s. 3d. Sold to same, for £5,400. Solicitor, *M. Larkin.*

CITY OF DUBLIN.—The estate of Gregory Murphy, owner; John Daly, petitioner.

Lot 1.—31, Kingsland Park, held under lease for 147 years, from 1867; profit rent, £23 2s. 6d. Sold in trust, for £170.

Lot 2.—32, Kingsland Park; profit rent, £25 10s. Sold for £180.

Lot 3.—33, Kingsland Park; profit rent, £25 10s. Sold for £210.

Lot 4.—1, Walworth-road; profit rent, £33. Sold to Mr. Frederick Stokes, for £225.

Lot 5.—2, Walworth-road; profit rent, £28. Sold to Mr. George Dunlevie, for £195.

Lot 6.—3, Walworth-road; profit rent, £28. Sold to Mr. Richard Gamble, for £210.

Lot 7.—4, Walworth-road; profit rent, £28. Sold to same, for £190.

Lot 8.—5, Walworth-road; profit rent, £28. Sold to Mr. Thompson, for £195.

Lot 9.—6, Walworth-road; profit rent, £28. Sold to same, for £205.

Lot 10.—7, Walworth-road; profit rent, £30. Sold to same, for £245. Solicitors, *Anderson and Lee.*

February 13th.

CITY OF DUBLIN.—Estate of Anne Bergin and another, owner; William Whitsitt, petitioner. House and premises, 36, Lower Rutland-street, producing a profit rent of £46 annually, and held under lease for 900 years. Sold to Mr. J. P. Cuffe, for £810. Solicitor, *William Sterne.*

COUNTY DUBLIN.—Estate of Joseph Lemas, owner; M. P. Darcy, petitioner. House and premises, 57, Leinster-terrace, Irishtown-road, held under lease for 20 years, from 1870. Sale adjourned. Solicitor, *W. P. M'Evoy.*

Estate of Charles Toole, owner and petitioner.

Lot 1.—The house and premises, 2, College-street; held in fee-simple; and producing £120 net annual profit rent. Sold for £2,400.

Lot 2.—House and premises, 1, College street, held under lease for lives renewable for ever, and producing a net profit rent annually, of £24 16s. 11d.

Lot 3.—House and premises, 41, Westmoreland-street; same tenure; net profit rent, £171 14s. 4d. All sold in trust for the Scottish Widows Insurance Society, for £4,200. Solicitors, *Messrs. William Roche and Son.*

COUNTY OF SLIGO.—Estate of Thomas M. Wood, owner and petitioner. Lands of Cartrongrangemore, or Fallavaney, containing 104a., in the barony of Tirergah; held in fee-simple; and producing a profit rent of £85 11s. 2d. Sale adjourned. Solicitors, *Messrs Lawlor and Frazer.*

Digitized by Google

COUNTY KERRY.—Estate of Maurice O'Connor, owner; Thomas Carney, petitioner. Premises in the town of Tralee. Sale adjourned. Solicitor, *F. C. Dowing.*

COUNTY CARLOW.—Estate of B. W. Falkiner, owner; Rev. J. T. O'Neill, petitioner.

Lot 1.—Lands of Castletown, with mansion-house and demesne, containing 485a., barony of Carlow; held in fee-simple; and producing a net profit rent of £799 8s. 2d. Sold to Mr. Charles Preston Kennedy, for £20,000.

Lot 2.—Part of the lands of Graiguealug, in the barony of Forth, containing 142a.; held in fee-farm; and producing a net annual profit rent of £133 13s. 4d. Sold in trust for the Right Hon. A. Brewster, for £3,100.

Lot 3.—Part of the lands of Ballybrommell, containing 84a., in the barony of Idrone East; held in fee-farm. Previously sold by private contract. Solicitors, *Messrs. T. Jameson and Son.*

COUNTY CAVAN.—Same estate.

Lot 1.—Part of the lands of Derrylane, containing 58a., in the barony of Clonmahon; held in fee; profit rent, £36 9s. 7d. Sold in trust for Mr. John Doherty, for £700.

Lot 2.—Part of the lands of Garryross, barony of Castlerahan, containing 383a.; profit rent, £248 11s. Sale adjourned.

Lot 3.—Part of the lands of Baroony Grattan, containing 44a.; same tenure; profit rent £33 3s. 3d. Sold to Mr. John Murphy, for £710.

Lot 4.—Part of the lands of Lacken, barony of Clonmahon, containing 71a.; same tenure; profit rent £73 2s. 10d. Sale adjourned.

Lot 5.—Part of same lands, containing 262a.; profit rent £120. Sale adjourned.

Lot 6.—Part of the lands of Legaweel, containing 115a.; same tenure; profit rent, £73 14s. 7d. Sold in trust for P. and M. Sheridan, for £1,600.

Lot 7.—Part of the lands of Legagunny, containing 179a.; same tenure; profit rent, £67 10s. 3d. Sold in trust for Mr. Peter Corr, for £1,700. Solicitors, *Messrs. William Roche and Son.*

Estate of Charles Langdale and another, owners and petitioners.

Lot 1.—Houses and premises, 72, 73, 74, 75, 76, 77, 78 and 79, Queen-street, and 1, 2 and 3, Tighe-street; held in fee-simple; profit rent, £70 12s. 9d. Sold in trust for M. Clarke. for £1,050.

Lot 2.—House, &c., 75, Queen-street; same tenure; profit rent, £25. Sold to Mr. Peter Brennan, tenant, for £370.

Lot 3.—Houses, &c., 1 to 5, Hendrick-street; same tenure; profit rent, £39 13s. 10d. Sold in trust for W. L. Coates, for £830.

Lot 4.—Houses, &c., 71 to 90, Cork-street, and 48, Marrowbone-lane; held on lease for lives renewable for ever; profit rent, £42 16s. 10d. Sold in trust for Thomas Ord, for £565.

Lot 5.—House, &c., 73, Cork-street; same tenure; profit rent, £44 15s. Sold in trust for Mr. Marshall, for £500.

Lot 6.—Houses, &c., 46 and 47, Marrowbone-lane; same tenure; profit rent, £29 15s. Sold in trust for Messrs. Jameson and Co., for £470. Solicitors, *Messrs. William Roche and Son.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Delany	Vouch account	*Larkin & Co.*
John Connor	Reference	*Lynch*
John R. Payne	Prove debts and vouch	*Molloy & Watson*
Alfred Parker	Prove debts	*Mathews*

TUESDAY.

Before the COURT, at 11 o'clock.

Martin Hickey	1st public sitting	*Mathews*
Miles Roland	Final examination	*Meldon & Son*
C. & P. Maguire	do	*Larkin & Co.*
Walter O'Donnell	do	*Findlater & Co.*
John Forde	do	*Mathews*
Anthony M'Nulty	do	*Hamilton & Craig*
James M'Loughlin	do	*Walsh*
George Duncan	do	*Colman*
Mary Clancy	do	*White*
Same matter	Examine witnesses	*White*
Richard A. Burns	Final examination	*Neilson*
Andrew Rogers	do	*Gerrard*
Samuel Hawkins	do	*Forsythe*
John O'Donnell	do	*Hamilton & Craig*
Same matter	Motion	*Hamilton & Craig*
Same matter	do	*Hamilton & Craig*
Joseph Jermyn	Final examination	*Hamilton & Craig*
Nicholas Dormoy	Audit and dividend	*O'Dowda*
James Delany	do	*Larkin & Co.*
Thomas Delany	do	*Larkin & Co.*

The following at 12 o'clock.

James Grierson	Sale	*Oldham & Eaton*

Before the CHIEF REGISTRAR, at 12 o'clock.

Joseph H. Smith	Prove debts and vouch	*Walsh*
James Murphy	Costs	*Leachman*
Francis Harvey	Prove debts	*Fay & M'Gough*
Nicholas Dormoy	Costs	*M'Govern*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Robert Midgley	Prove debts and vouch	*Neilson*
Cochrane & Lyons	do	*Perry & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

John Hacket	1st public sitting	*Mathews*
John Neil	Final examination and adj. choose assignee	*Casey & Clay*
Michael Hickey	Final examination	*Mathews*
Anne Ryan	do	*Perry & Co.*
Same matter	2nd composition sitting	*Perry & Co.*
Francis Cahir	Final examination	*Dennehy*
Parrick Ahern	do	*Larkin & Co.*
Patrick Monaghan	do	*Perry & Co.*
Anne Travers	do	*Stuart*
MargaretBradshaw	do	*Larkin & Co.*
Arthur Crosbie	Audit and dividend	*Sullivan*

Before the CHIEF REGISTRAR, at 12 o'clock.

M. & T. Donnelly	Vouch account	*Perry & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Armstrong, Simon Peter, Main-street Tipperary, draper. Sittings, *Tuesday, March* 10, and *Friday, March* 27. *Mathews*, solr.

Broomfield, David, 15, York-road, Belfast, watchmaker and jeweller. Sittings, *Tuesday, March* 10, and *Friday, March* 27. *Rosenthal*, solr.

Cardiff, James, Wexford, grocer and publican. Sittings, *Friday, March* 6, and *Tuesday, March* 24. *Lett*, solr.

Dillon, John, Stradbally, Queen's County, farmer and general grocer. Sittings, *Tuesday, March* 10, and *Friday, March* 27. *Casey & Clay*, solrs.

Donnelly, Peter, 33, North-street, Newry, county Down, boot and shoe-maker. Sittings, *Tuesday, March* 10, and *Friday, March* 27. *Mathews*, solr.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	FEBRUARY Fri. 13	Sat. 14	Mon. 16	Tues. 17	Wed. 18	Thur. 19
	Government.						
—	3 p c Consols	91⅝	91⅝¾	91⅝¾	91⅝	91¾	91⅝
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock	90⅝¾	90⅝¾	90⅝¾	90⅝¾	90⅝¾	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	107	—	—	107	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	102¼	—
	Banks.						
100	Bank of Ireland	—	—	—	303⅞	—	303⅞
25	*Hibernian Banking Co.*	58½	—	—	58⅝	58½	—
20	*London and Westminster*	—	—	67½	67¾⅞	67⅞	68
3½	*Munster Bank (Limited)*	—	—	8⅝¾	—	—	—
30	*National Bank*	56⅞–7	—	57 ½	57⅜½	57⅜½	58 ½
15	*National of Liverp'l (Ltd)*	13⅝¾	13⅝¾	13⅝	—	—	13⅞ 14
25	*Provincial Bank*	—	—	93½	—	95	—
10	*Royal Bank*	—	28⅝	28⅜½	28⅜½	—	—
	Steam.						
50	Belfast St. Ship Co. (lit'd)	—	—	—	—	—	—
50	British & Irish	—	—	—	—	52 ½	52½
10	*City of Cork S. P. Co. (lit'd)*	—	—	—	—	—	—
100	City of Dublin	—	—	—	—	108	—
10	Cork Steam S. Co. (lit'd)	—	—	—	—	—	—
20	Drogheda (limited)	—	—	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	—
50	Dublin and Glasgow	—	—	—	—	—	—
10	Dundalk (Limited)	—	—	—	—	—	—
50	Peninsular and Oriental	—	—	—	—	—	—
10	*Do. do. New* 1867	—	—	—	—	—	—
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	—	—	27⅞	—	—	—
1	Killaloe Slate Co. (lit'd)	—	—	16/3	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A	—	—	9⅝	9⅝	—	—
10	B	—	—	9⅝	9⅝	—	—
8½	*Dublin Tramways*	—	—	—	7½	7½	—
100	Grand Canal	54	—	54	—	—	—
25	*National Assurance*	—	—	—	—	—	47
9-4-7	*Patriotic Assurance*	—	10⅝	—	10⅝	10⅝	—
	Railways.						
10	Athenry and Tuam	—	—	—	—	—	—
50	Belfast and County Down	—	—	—	—	—	—
50	Belfast and Northern Cos.	—	—	67½	—	—	—
50	Cork and Bandon	—	—	—	—	—	—
20	Cork, Blackrock & Passage	—	—	—	—	—	—
10	Cork and Macroom	—	—	—	—	—	—
100	Dublin and Belfast Junct.	—	91	91	—	—	92
100	Dublin and Drogheda	—	115	—	—	—	115
100	Dublin and Kingstown	—	—	215	—	—	—
25	Dublin and Meath	—	—	—	—	—	—
100	Dublin, W'klow, & W'ford	75	—	—	—	—	—
20	*Do.—issued at £35*	—	—	—	—	—	—
100	Gt. Northern and Western	—	—	—	—	—	—
100	Gt. Southern and Western	111⅞	112 ¼	112	111½	111½	—
100	Do. do. free of Stamp	112	112¼½	112⅝	112	—	112⅝
30	Irish North Western	—	—	—	—	—	—
25	Limerick and Ennis	—	—	—	—	—	—
100	Londonderry & Enniskillen	—	—	—	—	—	—
100	Midland Gt. Western	—	91½	91½	91¼½	91½	91
20	Newry, W'point & Rost'vor	—	—	—	—	—	—
25	Portdn. Dun. & Omh. Jun.	—	—	—	—	—	—
50	Ulster	—	—	—	—	—	—
12½	Do, Quarters	—	—	—	—	—	—
100	Waterford & Cent. Ireland	—	—	—	—	—	—
50	Waterford and Limerick	—	33¼½	33⅝	—	34¼⅜	—
10	Waterford and Tramore	—	—	—	—	—	—
	Railway Preference.						
100	D., W., & W., 6 per cent	130	—	—	130	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	54⅝	—	55
100	Gt. South'n & West'n 4 p c	—	100½	100	—	100½	100½
10	Irish North Western A 5 p c	5½	—	—	—	—	—
100	Mid. Great Western, 5 p c	—	—	—	112½	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new redeemable 5 p c	—	—	—	49⅞	—	49⅞
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	—	—	—	—	99 f st	95 f
—	Do., 4½ p c	—	—	—	—	—	99⅝¾ f
—	Gt. South'n & West'n, 4 p c	—	—	—	—	—	98½ f
—	Irish Nth Westn 1st C 5 p c	100	—	100	—	—	—
—	Derry & Enniskillen 5 p c	—	108	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Waterford & Central 5 p c	—	—	100	100	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	101½	101½	101½

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—February 26th, and March 12th, 1874.
Account Days—February 27th, and March 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

PARLIAMENTARY PROMOTIONS.—The *Daily News* points out that during the tenure of office of the present (the late) Government the elevations to the bench of Parliamentary supporters have been few. Besides Lord Moncrieff and Sir Robert Collier, the members of the late Parliament appointed to Judgeships were Lord Coleridge, Sir George Jessel, Mr. Sullivan, Mr. Baron Dowse, and Mr. Justice Denman. The majority of the appointments both to the Chancery and Common Law Bench have certainly, as our contemporary avers, been honourably distinguished by absence of political bias. Not one of the three Lords Justices or of the three Vice-Chancellors selected can be said to have been active politicians. Three out of the four Judges of the Judicial Committee and five of the Common Law Judges were not in Parliament, and the latest appointment to the Common Law Bench in England is an instance of the promotion of a political opponent.

NEW ILLUSTRATED WEEKLY PAPER.—A New high class Illustrated Weekly Newspaper is announced for first appearance on the 7th March. The title is *The Pictorial World*. The list of artists and contributors comprises many well-known names; and, as the paper will be published at a popular price—three-pence—a large circulation is anticipated for it by its projectors.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

KENNEDY—February 16, at 61 Mountjoy-square, West, Dublin, the wife of Hugh Vincent Kennedy, Esq., solicitor, of a daughter.

MACDERMOT—February 15, at 14 Ely-place, the wife of H. H MacDermot, Esq., barrister-at-law, of a daughter.

MARRIAGE.

WAUGH and LIMRICK—February 14, at Trinity Church, Rathmines by the Rev. Loftus T. Shire, M.A., John Waugh, M.B., Surgeon, Toddington, Bedfordshire, second son of Richard Waugh, Carhue House, Clonakilty, County Cork, Esq., to Anna E. C. Limrick, only daughter of the late Paul Limrick, Esq., solicitor and coroner, Skibbereen, County Cork.

DEATHS.

DALY—December 18, at Wethersdane, near Melbourne, Victoria, in childbirth, Linda Gordon Daly, the beloved wife of Hyacinth Richard Daly, Esq., and eldest daughter of Thomas Picton Reede, Esq., solicitor, 5 Upper Temple-street, Dublin.

GALVIN—January 24, at Washington, United States, Bartholomew Clifford Galvin, Esq., barrister-at-law, son of the late B. Galvin, Esq., solicitor, of Elmview, Rathgar, County Dublin.

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

SALE,
On FRIDAY, the 13th day of MARCH, 1874.

In the Matter of the Estate of Michael Cahill, Owner and Petitioner.

TO BE SOLD, In One Lot, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, the 13th day of MARCH, 1874, At the hour of Twelve o'clock noon,

Part of the Lands of Rathmana, containing 233a 1r 5p, statute measure, in the Barony of Eliogarty, and County of Tipperary, held in fee-farm, and producing an estimated profit rent of £135 15s 11d.

Dated this 29th day of January, 1874.

C. E. DOBBS, Examiner.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Dublin; or to
EDMOND POWER, Solicitor having carriage of the Sale, 35 Upper Ormond-quay, Dublin; and Clonmel.

DESCRIPTIVE PARTICULARS.

Rathmana lies within less than two miles of the Town of Thurles.
The lands are laid out in fields of convenient size, well fenced and sheltered, with a never-failing supply of water, and are ornamentally planted.
They comprise meadow, permanent pasture, and arable, are of the best quality, and there are only about 26 acres of tillage.
The dwelling-house is substantial and commodious.
The offices are lofty, and in every respect suitable to the requirements of the lands, and all are in perfect repair, and fit for the immediate occupation of a gentleman's family.
At the rere of the dwelling-house is a large and well-stocked garden, entirely enclosed by a high wall.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, February* 21, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, FEBRUARY 28, 1874. No. 370.

CONDITIONS EXEMPTING RAILWAY COMPANIES FROM LIABILITY.

It is our anxious aim not only to record, in our Reports, every useful and noteworthy case affecting the law of Railways, but to render our Reports more generally advantageous by pointing out and explaining, in accompanying commentaries, the principles and practical consequences involved in the decisions themselves, at the same time illustrating such subjects by reference to other cognate authorities. We shall, however, for the present, pass by the curious case of *Collier and Wife* v. *the Dublin, Wicklow, and Wexford Railway Company*, which appeared in the last issue of our Reports, p. 24, in which it was held that, where a Railway Company contracted to carry one of the plaintiffs (the wife of the other), but neglected to do so in a reasonable time, in consequence of which she was detained for a night at the defendants' station, her husband was entitled to only nominal damages, as it happened that, not being at home on that night, he was not deprived of his wife's society and companionship merely by reason of the defendants' breach of contract. In our present issue a case of *Ranahan* v. *the Midland Great Western of Ireland Railway Company* appears, which, while it was only a Quarter Sessions decision, not only deserves respect as being the decision of the learned Chairman for the County of Longford, but is entitled to some attention, as it happens that the question involved is one of very grave consequence, and one upon which there is but little direct authority. We need not here recapitulate the facts, as they are fully given in the accompanying Report. The principle acted upon appears to be accurately formulated in the head-note of the case—namely, that where goods are consigned to a Railway Company for carriage, to be continued, beyond the limits of their own line of railroad, over another not worked by them, subject to a condition, printed on a consignment-receipt accepted (though not signed) by the consignor, that the Company will only be accountable for loss occurring on their own line, and not for any occurring beyond the line worked by themselves, the Company will thereby be absolved from liability for loss or damage occurring, during transit, upon another line not worked by them. We have considered the bearing of the recent case which is there cited, *Zunz* v. *the South Eastern Railway Company*, and that authority appears to us fully to sustain the Longford decision. The plaintiff, in the case so cited, had taken from the South Eastern Railway Company a through ticket from London to Paris, on the back of which was printed, in small type, a condition that the Company were not to be liable for loss beyond what might arise in connexion with their own trains and boats. The plaintiff's portmanteau was lost on the Great Northern of France Railway; and he brought an action against the South Eastern Railway Company, and recovered a verdict for £93 14s. 6d. The case having been afterwards argued in the Court of Queen's Bench, Westminster, the Court were unanimously of opinion that the South Eastern Railway Company, by the condition on the ticket, were exempted from liability for losses occasioned by negligence beyond their own line and in connexion with their own boats, and that it was not necessary that the plaintiff should have signed or seen the condition if, in fact, he had an opportunity of knowing what the condition was. There, also, as in *Ranahan* v. *the M. G. W. Railway Company*, it was argued that the Railway and Canal Traffic Act (17 & 18 Vict., c. 31) applied; but, it was held not to apply to conditions affecting the carriage of goods on other Railways which the Company did not work themselves. It had, indeed, been further urged that the Act would not apply for an additional reason—namely, that it does not apply to personal luggage, but the Court abstained from saying anything about that, and rested their decision on the other question. This abstention of the Court does seem to leave it open to further question whether 17 & 18 Vict. c. 31 applies to personal luggage, so as to avoid the imposition of any unjust or unreasonable conditions; but the case of *Stewart* v. *The London and North-Western Railway Co.*, 3 H. & C. 135, is a decision in favour of the view that it does not apply to personal luggage—a case which is also instructive apart from that question. There the defendants had issued an excursion ticket, "subject to the conditions contained in the company's time and excursion bills," which bills contained the condition—"Luggage under 60 lbs. free at passenger's own risk." It was held that 17 & 18 Vict. ch. 31, s. 7, did not apply, and that, therefore, whether this was or was not a reasonable condition, did not matter; and further, that a purchaser who had the means of knowing, but did not in fact know of the condition, could not recover for loss, during transit, of his personal luggage under 60 lbs., though properly addressed, and though he was not allowed to retain it under his personal control. It was urged that the defendants were bound in law to carry a certain quantity of personal luggage, but in answer to that it was said that, although such is the case where the ordinary fare is charged, yet, if a person chooses (as there) to be conveyed with his luggage at a reduced rate, on special terms, he must abide by them. And, no doubt, that was but reasonable. But, on the other hand, it is no less reasonable that railway companies should be subject to certain fair restrictions in relation to the imposition of protective conditions, and it was for that reason that Cardwell's Act (17 & 18 Vict. 31) was passed. Prior to that Act they might contract subject to any special conditions as to liability they might choose to affix, whether as regards goods or passenger traffic. And, certainly, the operation of that Act, restricting, as regards goods traffic, conditions which in themselves are unjust and unreasonable, can hardly be regarded as otherwise than fair and beneficial, and should receive its full effect. "It would materially restrict the operation of the statute, and would be inconsistent with the manifest intention of the Legislature in passing it," observes O'Brien, J., in *Lloyd* v. *The Waterford and Limerick Railway Co.* (15 Ir. C. L. 37), "to hold that railway companies, who have acquired almost a monopoly of traffic, and to whose terms the public are in a great measure compelled to accede, could evade the statute by handing a delivery ticket prepared with clauses relieving them from all responsibility, and then refusing to take the cattle, goods, &c., except the ticket was signed by or on behalf of the owner. He may have no other alternative than that of sending his cattle, goods, &c., by the railway, on such terms as the company thought fit to impose, or of not sending them

Digitized by Google

at all. In many cases he would be compelled to submit to those terms, however unjust he might regard them; in other cases, from the manner in which the railway traffic of this country is carried on, the ticket would be signed by or on the part of the owner as a matter of course, without considering the effect of its terms; and the railway companies would thus be enabled (notwithstanding the statute) to secure for themselves that exemption from liability which they had previously enjoyed, and of which it was the manifest intention of the Legislature to deprive them." In all candour, the good sense, as well as the force of these observations must be admitted. But then, as we have seen, there is a considerable class of cases to which the statute does not apply; and we shall proceed to advert to yet another exception.

At common law there was nothing to prevent a Railway Company contracting with a passenger to carry him at his own risk, and Cardwell's Act does not apply to passenger traffic. Nevertheless, it seems to have been but recently that the practice of actually contracting in this way, as regards personal injuries, has sprung up, and it was not until November, 1872, that the legality of such a contract was tested by decision. In *M'Cawley* v. *Furness Railway Co.* (L. R. 8 Q. B. 57) the plaintiff, a passenger on the defendants' line, complained that by their negligence an engine came into collision with the train, whereby he was injured. The defendants, in answer, pleaded that they had received the plaintiff, to be carried under a free pass, as the drover accompanying cattle, on the terms that he should travel at his own risk. The plaintiff filed a replication, upon which the question arose whether, upon a condition that a passenger was to travel at his own risk, the defendants were or were not to be liable for an accident happening through their own gross negligence. The Court held that the defendants were absolved from even that liability. "Those terms," said Cockburn, J., "must be taken to exclude *all* liability on the part of the Company for *any* negligence for which they would otherwise have been liable." It would, of course, be a different thing if an action were brought for an independent wrong, such as an assault or false imprisonment, and neither would the agreement take away any liability that might be incurred as to criminal proceedings—for instance, if manslaughter had been committed; but the agreement was held to regulate the right of the plaintiff (or of his representative, had the plaintiff been killed) to recover damages, even for gross negligence by the defendants. In a case now pending, *Johnson* v. *The Great Southern and Western Railway Co.*, the doctrine there laid down has been, for the first time, brought forward in this country, and came before Palles, C.B., in Consolidated Chamber, on last Thursday, on a motion to set aside defences, &c. To an action by a passenger against the defendants, for damage occasioned by negligence, the defendants pleaded that the plaintiff was carried in a passenger carriage attached to a goods train, subject to a condition printed on his ticket, the material portion of which was "that the Company shall be relieved from all pecuniary or other responsibility to the holder, for personal injury, or for delays consequent upon or in any way arising by reason of such passenger carriage being attached to a goods train," and that (in effect) the injuries complained of arose within the meaning of that condition. That case has been reported as a Law Report *exclusively* for this Journal, and will appear in a subsequent issue. For the purpose of the present reference, it is sufficient to observe that Palles, C.B., was clearly of opinion that, whether this consideration were reasonable or not did not matter, as Cardwell's Act had no application. It is of extreme importance to Railway Companies and to the public that the law upon this subject should be intimately understood. The question is novel, and there is but little authority on it; and a great deal, no doubt, will turn in each case upon the particular words of the conditions. We have seen another condition attached to a through ticket issued by the Midland Great Western (of Ireland) Railway Co., as follows:—"Issued by the M. G. W. R. Co., as principals, for the journey over their own line only, and for the journey beyond their own line as agents for other Companies;" a condition which must have been under consideration, and have had a material bearing in relation to the actions now pending, some of them against the Waterford and Limerick Railway Co., and one, at all events, against the Tuam and Athenry Railway Co., arising out of the collision which occurred last October at Ballyglunin Station. Indeed, the fact that different Companies have, in this instance, been sued in relation to the same accident shows the difficulties which these conditions create; and this one in particular opens up another important question, as to the liability of a Company issuing a through ticket, for accidents happening on another line during transit—a question upon which there have been some very recent important decisions, but upon which we cannot treat within the limits of our present paper. And in now concluding, while we concede that in many cases these conditions are necessary for the due protection of Railway Companies, yet, under ordinary circumstances, we rather think that, in the words of Mellor, J., "it will be found to be for the convenience of the public, and also for the benefit of the railways, not to adopt such conditions."

THE NEW LORD CHIEF BARON.

MR. PALLES was duly sworn in as Chief Baron of the Court of Exchequer, before the Lord Chancellor, on Saturday last, at his private residence in Rutland-square, and the profession and the public alike rejoice to think that the Bench has been spared the blow with which it was threatened, and the Exchequer Court restored to its normal condition of high judicial strength. As Attorney-General to the late Government, Mr. Palles had, by right of long-continued custom, a claim to the vacancy which had been caused by the decease of the lamented late Chief Baron Pigot, and we speak the opinions of all when we say that no man could have been more completely fit for the high position, in every sense of legal knowledge, high moral tone and uprightness, and professional pre-eminence. The opinion of the profession, barristers and solicitors, was unanimous on these points, and clients thought they almost secured the success of their cause when they had retained Mr. Palles as their advocate—his unflinching perseverance in asserting the rights of his clients being only equalled by his courtesy to his brethren, and his respect for the Court. The new Chief Baron is younger in age than most of his predecessors, having been born in 1831. He is descended from an old family long settled at Little Mount Palles, in the County Cavan, and was educated at the University of Dublin, where he took a senior moderatorship, and gold medal in logic and ethics at his degree. He was called to the Bar in Hilary Term, 1853, and chose the Home Circuit. Mr. Palles soon obtained a large practice, and in 1865 he was made a Queen's Counsel, and soon after became an acknowledged leader in the Equity Courts, which he mostly affected.

Our readers will recollect his exertions and distinguished success in the *cause celébre*, *Croker* v. *Croker*. In 1872, he was appointed Solicitor-General, and in the

Digitized by Google

same year succeeded to the post of Attorney-General. He was also a Privy Councillor, a Justice of the Peace for the County Meath, and a Doctor of Laws of his University. Mr. Palles unsuccessfully contested the County of Meath and the City of Londonderry; and, never having sat in Parliament, therefore we feel the more pleasure in hailing his appointment, which was solely due to professional merit, and not political services.

NEW LEGAL APPOINTMENTS.

It is now known that the Right Hon. Abraham Brewster has been offered and has accepted the Lord Chancellorship of Ireland, and that Dr. Ball, Q.C., senior member for the University, has undertaken the duties of Attorney-General. These functionaries have not yet been sworn in, nor have the Solicitor-General and the Law Adviser of the new Government been yet appointed. We, therefore, hold over our remarks on the new Law Officers until next week.

COURT OF CHANCERY—Saturday, 21st Feb.

RETIREMENT OF THE LORD CHANCELLOR.

Lord O'Hagan sat at twelve o'clock on Saturday last. It being understood that his Lordship would for the last time preside in Court as Lord Chancellor of Ireland, and that a farewell expression of regret from the members of the Bar would be made, a crowded assemblage of both branches of the legal profession and of the public filled the Court.

Amongst the members of the Inner Bar present were—The Solicitor-General, M.P.; Serjeant Armstrong, John O'Hagan, Q.C.; J. C. Coffey, Q.C.; C. H. Hemphill, Q.C.; H. B. Jellett, Q.C.; James S. Green, Q.C.; E. B. Lawless, Q.C.; John B. Murphy, Q.C.; George E. C. May, Q.C.; James Monaghan, Q.C.; Piers F. White, Q.C.; A. Richey, Q.C.; J. A. Byrne, Q.C.; M. J. Leech, Q.C.; Dr. Webb, Q.C.; J. Ferguson, Q.C.; J. T. Litton, Q.C.; W. O'Brien, Q.C.; W. M. Johnson, G. Waters, Q.C.; J. Carleton, Q.C.; M. Beytagh, Q.C.; Gerald Fitzgibbon, Q.C.; H. M. Pikington, Q.C.; H. De Moleyns, Q.C.; A. Jackson, Q.C.; W. T. Darley, Q.C.; James Gibson, Q.C.; S. Walker, Q.C.; C. Kelly, Q.C., jun.

The Bar were present in large numbers, and every available seat of the outer benches was occupied by them.

When his lordship had disposed of the business on the list,

The Solicitor-General rose and said—"My lord, we understand that the delivery of the judgment we have just heard leaves no further judicial business to be done by your lordship, and that therefore you will not now sit again in this court. Under these circumstances, I must ask your lordship to permit me, on behalf of the Bar, to express our appreciation of the manner in which you have presided here during the last five years. We would cordially acknowledge the attention and patience with which you have ever listened to each one of us, as well as the kindliness and unfailing courtesy which you have shown to us all from day to day, and the dignity with which you have throughout discharged the duties of your office. We feel that your exercise of the important jurisdictions committed to you as Lord Chancellor has been such as to command the respect and confidence of the Bar and of the public; and now that you are about to retire from amongst us, we desire to assure your lordship that you carry with you the very best wishes of the Irish Bar for your welfare and your happiness."

The Lord Chancellor, who was deeply affected, said in reply—"Mr. Solicitor-General, I am deeply moved by the words you have spoken, and by the feeling which they indicate on behalf of the Bar of Ireland. With that distinguished body it has been my pride to be identified throughout the chequered years of a laborious life, and never in all its chances and changes have I for one instant failed to maintain with them the relations of cordiality and confidence; and now, when my judicial career is closing, I feel a just pride in receiving such signal proof that those relations have continued unbroken to the end. Fully conscious of many shortcomings, I am conscious also that I have striven to fulfil the duties of my great office with impartiality and faithfulness, and I thank the eminent persons who have thronged to meet me to-day, for their spontaneous assurance that I have not so striven entirely without success. I pass from the Bench, remembering with the truest pleasure, the uniform courtesy, consideration, and respect which I have received at all times, from all to whom I have so long had the daily privilege of listening in this court; and I should be the most ungrateful of men if, in the coming years, and in the new sphere of activity on which I may enter, I should not be eager and earnest on all fit occasions to aid in advancing the honour and the interest of our noble profession. I believe that the maintenance of the Irish Bar and the Irish judiciary, in full integrity, efficiency, and independence, is essential in the highest sense to the welfare of Ireland, and I trust that the day may never come when either of them will lose its lustre or sink into decay. Again I thank you for your great kindness, and with a full heart and faltering tongue I bid you all farewell."

The entire Bar, rising from their seats, greeted the conclusion of the Lord Chancellor's speech with loud applause, which was continued until his lordship had retired from the Bench.

ADDRESS TO THE LORD CHANCELLOR.

A deputation from the Council of the Incorporated Society of Attorneys and Solicitors waited, on Wednesday, upon the Lord Chancellor (Lord O'Hagan), at his residence, Rutland-square, for the purpose of presenting him with an address on his retirement from office. The deputation comprised the President of the Society, Sir Richard J. T. Orpen, Arthur Barlow, Wm. Findlater, Matthew Anderson, John Galloway, David Fitzgerald, Henry T. Dix, Robert J. T. Macrory, William Dalton, William Sullivan, Charles J. G. Stannuel, Arthur Molloy, William Fry, Shapland M. Tandy, Thomas Jameson, Robert O. Longfield, Edward F. Stapleton, Henry A. Dillon, and Mr. John H. Goddard, Secretary to the Society.

Sir Richard T. Orpen read the following address:—

"*To the Right Honourable* Thomas Lord Baron O'Hagan, *Lord High Chancellor of Ireland.*

"My Lord—The Council of the Incorporated Society of the Attorneys and Solicitors of Ireland desire, on the occasion of your retirement from office, to convey to your Lordship, on behalf of their profession, the deep sense they entertain of the dignity, courtesy, and high-minded impartiality which have been invariably displayed by your Lordship in discharging the important duties of your exalted office. They feel it an especial happiness, notwithstanding the many conflicting political opinions entertained by the members of their profession, that, on your retirement from an office which, by the Constitution, is political, you leave with them the recollection of a Judge whose courtesy and kindliness knew no distinction of politics, and who ever gave a patient and dispassionate consideration to such matters as were brought under his notice in the interest either of our profession or of the public at large. Neither can the Council omit, on this occasion, to express the grateful thanks of the profession for the distinguished patronage you invariably extended to the Solicitors' 'Benevolent Association'—a society in which our body naturally feels the warmest interest. The sea of politics has rarely an unruffled surface; but, however the waves may rage and swell, we earnestly trust that the haven to which they will bear your Lordship may be one of unclouded peace and prosperity, in the expression of which hope we feel confident that we give utterance to the universal desire of the profession."

Lord O'Hagan read the following reply:—

"Sir Richard Orpen, and Gentlemen,—I thank you very sincerely for this cordial address, and for your assurance

Digitized by Google

that it truly represents the feeling of the body you so worthily control. It is not the less grateful to me because it was unexpected, and is, I am informed, without any precedent. I value it because, appreciating the importance of your profession, I have always held its members in great respect. They watch and guard the most serious transactions of our lives; they command inevitably the confidence of families; and the purity and efficiency of their action are of the last consequence to our individual and social well-being. I can judge as well, perhaps, of the Irish Solicitors and Attorneys as any living man. I have known them in very various relations—as a barrister, largely practising within and without the Bar, as having presided at Quarter Sessions, as Attorney-General, as Judge of the Common Pleas, and as Lord Chancellor—and from no idle wish to indulge in reciprocity of compliment, but from my own full knowledge, I can say that, with exceptions which must exist in all large bodies of men, they deserve the esteem and trust in which they are held amongst us. Thinking thus, I have necessarily exhibited towards them the courtesy and consideration of which you have spoken so warmly, and I deserve no thanks for yielding that which was their due, and which I could not have denied without a painful sense of impropriety and injustice. Neither can I claim any praise for my co-operation in advancing the interests of your Benevolent Society. It has been to me a source of true satisfaction to note the progress of that noble institution. I heartily wish it an ever-increasing success, and, if you permit me, I shall be very happy still to aid you in sustaining it. I thank you for all the good and genial wishes with which you accompany my retirement from judicial life, and for the proof they give that, by you and your brethren, I shall sometimes be held in kindly remembrance."

The deputation then withdrew.

LOSS OF QUALIFICATION AFTER REGISTRATION.

If the name of a person is on the register, is he entitled to vote at a Parliamentary election, although since the registration he has lost his qualification or has ceased to reside? There can be no doubt that last week in this metropolis some hundreds of persons voted who had ceased to reside in the city or borough in which they voted; and we know for a fact that some were induced to do so by the representations of agents, canvassers, and committees that such a course was legal and proper. We propose now to consider the question whether such persons had a right by law to vote; and we think that, whatever conclusion may be drawn by our readers, from the array of law and statute bearing upon the point, all will agree that the Legislature is much to be blamed for the obscurity in which it has by recent legislation involved a question which before the year 1872 had been rendered perfectly clear. If we go back to the law in time of old, it is manifest that both as regards the forty-shilling freeholder in counties, and the freeman pot-walloper and scot-and-lot elector in cities and boroughs, the right to vote was determined by the possession of the qualification on the day of election. The system of registration has tended to blind the eyes to this patent fact, and has induced the idea that registration is everything, and the actual possession of the qualification nothing. Now, before the year 1843, it was part of the common law of Parliament that, if a person parted with his qualification after registration, his vote was null and void, and could be struck off on a scrutiny; and cases are on record in which committees of the House have struck off such votes. Then came the Act 6 Vict., c. 18, s. 79. The first words of that section are these:—"At every future election the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are annexed to their names respectively in any register in force at such election." Subjoined to which is a proviso "that no person shall be entitled to vote at any election for a member or members to serve in Parliament for any city or borough, unless he shall ever since July 31, in the year in which his name was inserted in the register of voters then in force have resided, and at the time of voting shall continue to reside, within the city or borough, or place sharing in the election for which he shall cliam to be entitled to vote, or within the distance required by the said recited Act [the Reform Act of 1832], to entitle such person to be registered in any year." Now, without concerning ourselves with the practice of committees of the House between 1843 and 1868, we may usefully cite the decisions of learned judges who have tried election petitions under the Act of 1868. In the Guildford case Mr. Justice Willes, speaking of certain persons who had been tempted by a bribe, said:—"These men were in the employment of the ordnance survey, and were on the register prior to the election. Being so, they had the power to vote; but before the election occurred, they ceased to reside at Guildford, not temporarily, but permanently, and had no residence but that in Chester at the time of the election. They had, therefore, no right to vote. It is clearly so laid down in the Act (6 Vict., c. 18, s. 79.)" (O'M. & H. Rep. p. 14.) So in the Bewdley case it appeared that one Evans had been sold up and left his house between the registration and the polling day. Being called as a witness, he was asked by counsel, "Were you staying at an inn in the borough at the time of voting?" upon which Mr. Justice Blackburn interposed and said:—"That is not the question; he has broken up his house within twelve months. It does not matter where he was at the time of the election; the question is, whether he has since the registration broken his residence?" (O'M. & H. p. 174). Again, in the Oldham case, counsel attempted to show that the Act 6 Vict. c. 18 s. 79, did not apply to voters under the Act of 1867. But Mr. Justice Blackburn ruled that it did, and struck off a vote given by a man who had ceased to reside before the polling day. Therefore the avoidance of a vote by non-residence, at the time of polling, was beyond all doubt up to the year 1872; and so the question is reduced to the point whether the Ballot Act has altered the law in this respect. But, before we look at that Act, we must pause to contemplate one feature in the case put, upon which light has yet to be thrown. Of course residence and occupation are wholly immaterial so far as concerns the ancient and honourable franchise of the forty-shilling freeholder, while occupation is necessary both for the lessee at a rent of £50 a year under the Act of 1832, and the lessee at a rent of £12 under the Act of 1867, claiming the franchise in counties. But, although there is no positive enactment declaring that ownership of the freehold or occuption of the leasehold must continue down to the time of voting, that has never been doubted in spite of the sweeping language of the first part of section 79 of 6 Vict., c. 18, making the register conclusive evidence. So, also, the qualification in a city or borough is one thing and residence another. A man may vote in right of a warehouse of the proper value, so long as he resides within the city or borough, or within seven miles of it. By the proviso in section 79 he loses his vote if he so ceases to reside; but that proviso does not pretend to touch the case of a man losing his warehouse qualification and yet not changing residence. But if the warehouse qualification were gone between registration and polling day, the person so losing it would have no right to vote; and that not by virtue of section 79, but by the common law of Parliament, and upon the construction of the section giving him the franchise by virtue of his occupation of the warehouse. We see, therefore, that the proviso in section 79, which we have cited, relates only to the residence required, not to the qualification itself in respect of which the vote is claimed. A man may hold his qualifying house, warehouse, or countinghouse, and yet cease to reside, or he may continue to reside and lose his qualifying tenement, or he may lose both residence and qualification. The proviso in section 79 only extends to the first and third of these alternatives, and of course only partially to the third.

With these considerations before us we approach the Ballot Act (35 & 36 Vict. c. 33), and we find that in the schedule of repealed statutes is the proviso which we have cited from section 79 of 6 Vict. c. 18. Probably this has been a startling discovery to many persons, and the utility of it is wholly unintelligible; indeed, it looks like a mere mistake. However, there it is. Viewed by the light of previous explanations the effect of this appeal is limited. It merely comes to this, that where a person retains that

Digitized by Google

which forms the qualification of his vote—for example, a counting-house in the city of London—but between registration and the polling day has ceased to reside within the city or within seven miles of it, he may vote, by virtue of his name being on the register and of his retention of the qualifying tenement. The repeal does not operate to give the right of voting to any one whose name is on the register for a city or borough, but who, since the registration, has ceased to occupy his qualifying tenement under the Act of 1832, or has ceased to be an "inhabitant occupier of a dwelling-house," as required by the Act of 1867. The common case is that of a man whose name is on the register in a city or borough for his dwelling-house as occupier or inhabitant occupier; and if such person breaks up his house between registration and polling day, he, in our opinion, loses his right to vote, and his case is not touched by the repeal of the proviso in section 79 of 6 Vict. c. 18.

We must not, however, fail to notice section 7 of the Ballot Act, which is in these words:—"At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough; and every person whose name is on such register shall be entitled to demand and receive a ballot paper, and to vote, provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting." We must confess that this section is a painful instance of the art of legislation; and that, when it is read with the first sentence of 6 Vict. c. 18, s. 79, and is compared with the common law of Parliament, it presents some singular incongruities. But we may be quite sure that, in construing it, the judges will hold firmly by the sheet-anchor of the common law of Parliament, and will not admit that a section designed to secure to every voter his ballot-paper ought to be read as conferring the franchise on people who have no right to it.

If it be asked whether, in the face of the peremptory language of section 7 of the Ballot Act, the returning officer dare refuse a ballot-paper to a person on the register—even though the person may, to the knowledge of the officer, have no qualification on the day of the poll—we may safely reply in the negative. To which reply a zealous partisan may rejoin that, if he is on the register, and if he can get a ballot-paper, why should he not vote, although his qualification may have been lost? To this pertinent query we would make two answers. First, a moral answer; second, a legal answer. For the moral answer, we are content to cite Mr. Justice Willes in the Coventry case. That learned judge there said:—"A man who ceases to reside, and has gone off and taken up his residence elsewhere, leaving behind him no wife or household goods in the city for which he intends to return—who cannot fairly be said to retain a residence in the city, but has entirely removed his residence elsewhere beyond the city, and the statutory seven miles which are considered part of it for the purpose of residence—I say that that person, knowing the law and coming here to vote, even if there were no remedy—which I think there is in the event of his doing that which by law he is not entitled to do—has done an act which is unjustifiable in point of fairness and honesty. If he does not know the law, or if he is in doubt about the fact, I should say nothing about his honesty; but if he does know the law and does know the fact, I say that that man, in voting, does an act which cannot be maintained in point of honesty, as it certainly cannot in point of law" (O'M. & H. p. 109). As to the legal answer, we may say, first, that, according to the opinion of Mr. Justice Willes, a person so voting would be liable to an indictment at common law for a misdemeanour—for that is, no doubt, the remedy to which the learned judge alluded; second, that the vote so given would be struck off on a scrutiny upon an election petition, the Ballot Act having secured the means of following the vote, and having given the election judge authority to get at an unlawful ballot-paper. Of course a man, in energetic support of a political cause, may laugh at the elevated morality of Mr. Justice Willes, and may choose to run all risks of indictment and scrutiny, and such a man will always find plenty of persons whom he has imitated and who will imitate him. But we think that he is as much open to censure—assuming, of course, that our interpretation of the law is right, and that he knows the law—as a man who, being by mistake on the list at two different polling places in one borough, gives a double support to the candidate of his choice.—*Law Journal.*

THE NEW LORD CHANCELLOR OF ENGLAND.

The *Solicitors' Journal* says:—We are enabled to announce that Lord Cairns has accepted the Chancellorship. As legal journalists our chief concern is as to the influence the change is likely to exercise on the great measures of law reform still in prospect. As regards one of these measures—the Land Transfer Bill—there is no reason to anticipate that any want of zeal will be displayed by the new Chancellor in pressing it upon the attention of the Legislature. In the course of the debates last session, he emphatically declared that the general scheme of the bill had his hearty support, his chief criticisms being bestowed on the machinery by which it was to be worked, and in particular on the undefined *status* and qualifications of the registrars. We may anticipate that the bill will be re-introduced at no distant period in a revised and improved form. As regards the re-organization of the local courts, if the opinions of Lord Cairns may be gathered from his published reasons for not signing the second report of the Judicature Commission, we may conclude that he generally approves the recommendations made by the Commissioners with reference to the concentration of the county courts; but he thinks that effect ought not to be given to them otherwise than in connexion with adequate arrangements for supplying regular sittings of the Supreme Court in thickly populated parts of the country, and especially in Lancashire and Yorkshire. This may merely mean that assizes should be held more frequently in the provincial centres of population, but it is consistent with the establishment in some of those centres of divisional courts, presided over by judges of the High Court. Upon the question of legal education the opinions of the new Lord Chancellor, as developed by him before the Commission of 1854, were in favour of providing for the instruction in general jurisprudence of those who proposed to follow the legal profession by assistance given by the Inns of Court to the universities in the foundation of lectureships and law scholarships. But, if no active help is to be expected from the new Chancellor in the passing of the measure promoted by the Legal Education Association, it may, at least, be hoped that he will not strenuously oppose the bill, to which Lord Selborne will be free to lend his powerful support.

ARBITRATION CLAUSE—LANDLORD AND TENANT.

Dawson v. *Fitzgerald*, Ex., 22 W. R. 162, L. R. 9 Ex. 7.

This decision is the boldest act of judicial legislation (not excepting the decisions under the Bankruptcy Act) which we can recall within any recent times. The action was brought by a tenant on a covenant by his landlord to keep down the hares and rabbits on the land; and that if the landlord should keep so many as to injure the trees, &c., *he would pay* the plaintiff a fair and reasonable compensation. The defendant pleaded that one of the terms of the tenancy was, that if any such injury were done by the defendant he would pay a fair and reasonable compensation, the amount of which should, in case of difference, be referred to arbitration, and that no arbitrators had been appointed, nor award made. This plea was demurred to, and, according to the law as it is commonly understood, one would have supposed the demurrer must have been successful. Hitherto no decision has trenched upon the rule of law that an arbitration clause does not oust the jurisdiction of the Courts; the only exception being where the clause is so drawn that the obligation to payment only arises upon a determination by arbitration, or in other words, when the determination of a sum by arbitration is a condition precedent to anything becoming due. In the present case, however, it is to be observed that the whole deed was not set out, so that in order to determine in favour of the defendant it was necessary to hold that a clause in the form set out in the plea, wherever it occurred in the deed containing the covenant sued upon, was a good plea in bar to an action on the

Digitized by Google

separate and independent covenant to pay for the damage, so that the only kind of action which could be maintained would be an action for a sum awarded, or an action for refusing to appoint arbitrators. The Court, however, have not only decided that the plea was good; they have decided that it was good upon the broad ground that wherever an arbitration clause occurs in an instrument which contains an independent covenant to pay damages, it furnishes a good answer to an action on the covenant. If this is law, we cannot help asking why it should have been thought necessary to enact the 11th section of the Common Law Procedure Act, 1854, and why defendants have so often troubled themselves to apply under that section for orders to stay actions—applications which judges, exercising the discretion vested in them by that section, have so often refused? A much more simple remedy seems by this decision to have been open to them all the while. The rule of law, indeed, by which they were deterred from raising this defence. is declared by the Court to have *ceased* to exist; the authority, however, for that proposition does not ascend higher thon the present case. But we must add that this decision was not unanimous. It was pronounced by Kelly, C.B., and Pigott, B.; but Bramwell, B., emphatically dissented from it, in a judgment where both the authority and the good sense and reason of what we must still believe to be the rule are expressed with all his usual force and clearness. It is impossible to rely on the authority of the case, which can, we think, scarcely fail of being appealed against. —*Solicitors' Journal.*

THE COMING ELECTION PETITIONS.

[From the *Law Times.*]

Many of the misdeeds of the past fortnight connected with the general election will doubtless soon be arraigned before the election judges, and it will not be amiss, perhaps, if we remind the profession of the nature of the case which has to be established before an election can be invalidated.

Anything which actually interferes with the freedom of election is a ground for declaring it void. Thus we remember in the Nottingham case, before a committee of the House of Commons, it was a question whether the "lambs" had actually prevented voters from going to the poll by the terror which they excited. This is a form of intimidation more likely to come into prominence as the working population begin to take greater interest in politics under the ballot; it is indeed the only certain mode of insuring that undue influence has its effect upon the result of the election. The enactment on this subject is that every person who shall directly or indirectly, by himself or by any other person on his behalf make use of or threaten to make use of any force, violence, or restraint, or threaten the infliction by himself, or by or through any other person, any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction or duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere, with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence. And it has been held that though no damage, harm, or loss be sustained by the voter, if the doing of the act inflicts loss on the other side it is within the statute. Therefore, as to

Undue Influence.

We may say that an election will be vitiated

By mob violence,

By the violence of individual partisans,

By spiritual intimidation,

By threatening withdrawal or withdrawing of custom,

By threat of eviction by landlord,

By threats by fellow-workmen of ill-treatment or expulsion from place of employment,

By dismissal from employment.

As to withdrawing custom, it has been a subject of judicial doubt whether a lady looking at a box of ribbons, and on learning the politics of the tradesman refusing to purchase, would be undue influence. We need hardly say that in the case of intimidation of single voters, the agency of the person exercising the influence must be proved; but in the case of general riot or violence it is a question of degree, and it must appear that the result was affected. Where the majority is a large one, and the rioting has not been extensive, the return would not be avoided.

It would seem hardly necessary to say very much about

Bribery.

But it has taken so many forms that some questions may arise as even to the limits which kindness and benevolence may reach before offending against the law for securing free elections.

The act must be corrupt.

[Which means that the man who does it knows that he is doing what is wrong, and doing it with an evil object.]

The Judges have cast upon them the difficult duty of judging of intention, and very great difficulty has been experienced in deciding upon the motive with which hospitality has been dispensed or employment given. One good illustration is furnished by the request of a candidate to an elector to come some distance to vote. There is no implied promise to pay travelling expenses. The payment of travelling expenses has been held to be bribery, but a request to come and vote simply holds out no inducement. Promises must be intended to influence the vote.

The prominent instance in which a corrupt intent will be implied is where money or its equivalent is given to a voter without any consideration. But even here the mere fact of the recipient being a voter will not be conclusive; it will be open to the candidate or his agent to show that the payment was innocent.

Bribery by strangers has assumed an important position under recent decisions. By receiving a bribe a voter loses his status, just as a candidate loses his by giving one. The vote of the corrupt voter may be struck off on a scrutiny, and although the candidate and his agents knew nothing of any corrupt practice, the majority may melt away before a petition which the respondent defends as being in his opinion wholly groundless. The evidence to impeach the return in this way, however, must be cogent. Bribery, therefore, may take the form of:

Payment to induce the voter to vote.

Offering money to induce a voter to vote.

Employing electors for reward.

Payment of voters for loss of time.

Corrupt payment of rates.

Corrupt payment of barristers' court money.

Buying the influence of another candidate.

Payment of travelling expenses.

Charitable gifts (a question of degree).

Payment to induce personation.

It is immaterial how long before an election the consideration for the vote was given. It will be regarded as having influenced the voter.

There is nearly as much difficulty in deciding upon what amounts to

Treating.

The statute speaks of corruptly giving, or providing, or causing to be given or provided, or paying expenses incurred for any meat, drink, entertainment, or provision, in order to be elected, or to induce a voter to refrain from voting. Treating may be either before or after the election —if treating subsequent is relied upon, a previous understanding must have existed. The mere giving refreshment is not in itself a corrupt act, although punishable under the statute, but if it be given to influence votes, or to gain popularity, it is corrupt, and a single act of this kind done corruptly by an agent avoids the election.

General treating is the supply of refreshments in such excessive quantities with reference to the election as to produce a general corruption of the constituency. In this case the election would be void at common law, even if no agency were proved.

A question of the first magnitude with reference to corrupt practices is, of course, that of

Digitized by Google

Agency.

Very concise and clear expositions of the law as far as it can be considered to be established on any plain principles will be found in the work of Messrs. Leigh and Le Marchant, which we review to-day (in chap. 2), and also in a treatise by Mr. F. O. Crump, in Cox and Grady's Election Law. From the former we take the following passages :—

"An agent is a person authorized by the candidate to act on his behalf in affairs connected with the election, and the candidate, as regards his seat, is as liable for acts committed by his agent as if he himself had been personally concerned therein ; although the agent may not only have exceeded the authority committed to him, but have acted in opposition to the express commands of the candidate. So extreme, in fact, is the liability of the candidate for his agent, that the relation between them is not analogous to that existing at common law between principal and agent.

"The candidate is answerable for the acts of his agent in the same way as a master is answerable for the acts of his servant done in the course of his employment, whether lawful or not, notwithstanding a prohibition may have been given to him by his master.

"A candidate has been held answerable for acts committed by a person employed in a subordinate capacity by the agent for the purposes of the election on his own responsibility to the same extent as if those acts had been committed by the superior agent himself.

"Besides the agent for election expenses, there are other said persons whose names would appear in the detailed statement of election expenses under 26 & 27 Vic., c. 29, s. 4.

"The mere fact of their names appearing in that statement as paid by the candidate for the purpose of the election would probably be held as sufficient evidence of their agency, unless they were merely employed and paid in some subordinate capacity, such as that of a messenger or bill-sticker, &c. The candidate may be bound also by acts committed in the course of the election by other persons on his behalf, though not named in the election accounts and unpaid.

"A man's wife, if she interfere in the election, is *ipso facto* his agent. Hastings, Judgments, 235.

"Any act, however trifling, is evidence of agency, and an aggregate of isolated acts will by their cumulative force constitute agency ; though no one of them alone, if severed from the others, might be conclusive.

"*Exempli gratiâ* :—

"1. Being a member of the committee.
"2. Canvassing alone, and with or without a canvassing-book.
"3. Canvassing in company with the candidate.
"4. Attending meetings and speaking on behalf of the candidate.
"5. Bringing up voters to the poll."

CAN AN INFANT BE MADE BANKRUPT?

The Law Times, in calling attention to this subject, says that a point of bankruptcy law of some importance was before Mr. Stonor, County Court Judge at Wandsworth, on the 12th inst. The debtor, an infant, had been sued in the Superior Court for false imprisonment, and a verdict for more than £300 was recovered. Upon this judgment-debt a petition in bankruptcy was presented in the Wandsworth County Court, and the learned Judge adjourned the hearing in order to ascertain whether the debtor had appeared in the action by his next friend, expressing his determination, if the debtor did so appear, to make the adjudication. This raises the question of the liability of an infant to be made a bankrupt. The learned County Court Judge rested his judgment upon *Re Smedley* (10 L. T. Rep. N. S. 432), and *Re Purser* (19 L. T. Rep. N. S. 23). In *Smedley's* case the petition was by a debtor in gaol for adjudication against himself, and Mr. Serjt. Wheeler held that an infant was within the operation of the Act of 1861. *Purser's* case also was an adjudication on a debtor's own petition, and Mr. Commissioner Winslow relied upon the words of the 86th section of the Act 1861—"Any debtor may petition for adjudication against himself"—as being sufficiently general to include an infant. But a debtor adjudicating himself a bankrupt, and being adjudicated a bankrupt on the petition of a creditor, are surely two different things. Under the present law a debtor cannot make himself a bankrupt. He may, however, file a petition for liquidation ; and we apprehend there can be no doubt that an infant could resort to this process. But can an infant be made a bankrupt? In *Maclean* v. *Dummett* (22 L. T. Rep. N. S. 710) it was held by the Judicial Committee of the Privy Council, after an argument in which *Re Smedley* was cited, that an infant could not be adjudicated insolvent. In argument in *Maclean* v. *Dummett* the present Lord Chancellor said, "That an infant cannot be made a bankrupt has been well settled since Lord Hardwick's time. (See *Ex parte Henderson*, 4 Ves. 163.) . . . . And it is clear that a commission of bankruptcy against an infant is void, and not voidable merely." The cases cited on the other side were thus dealt with by the Judicial Committee : "These cases proceed on this, that the infant has fraudulently asserted himself to be of age when he was not of age, and that he has, by that fraudulent assertion, induced persons to give him credit, and thereby has contracted debts in the trade." The adjudication of insolvency was set aside and annulled with costs. Mr. Stonor has decided that he could adjudicate an infant bankrupt on a creditor's petition upon the authority of two cases which decided that an infant could make himself a bankrupt. They, therefore, only go half way in supporting him in his conclusion, which is met directly by *Maclean* v. *Dummett*. The soundness of his decision must therefore be doubted, if not positively disputed.

OBITUARY.

[From the *Law Times*.]

W. JENKINS, ESQ.

The late William Jenkins, Esq., Q.C., LL.D., of Clifton Court, near Bristol, who died on the 22nd ult., in the sixty-eighth year of his age, was the eldest son of the late William Jenkins, Esq. formerly of the Treasury, Dublin Castle, and a lineal descendant of the learned lawyer and judge David Jenkins, who was detained a prisoner in the Tower of London, and again in Wallingford Castle, for his loyalty to Charles I. He was born in the year 1805, and was educated at Trinity College, Dublin, where he took his Bachelor's degree in 1826, proceeded M.A. in 1832, and was made LL.D. in 1856. He was a student of the Inner Temple, and was called to the Irish Bar in Trinity Term, 1829. He was appointed a Q.C. in 1860, by the then Lord Chancellor of Ireland, Sir Maziere Brady, and retired from the Bar in 1863, since when he resided at Clifton Court. Mr. Jenkins had the reputation of being a sound equity lawyer, and was particularly successful in investigating titles. He also practised in the Court of Chancery, where he distinguished himself in many important cases. Mr. Jenkins married on the 26th September, 1835, Helen, eldest daughter of the late John Thompson, Esq., of Bath, by whom he leaves one son, William, barrister-at-law of the Western Circuit, and also two daughters.

A. M. ALEXANDER, ESQ.

The late Adam Murray Alexander, Esq., some time a puisne judge of British Guiana, who died at Enagh Lodge, on the 2nd inst., was the second son of the late John Alexander, Esq., of Caw House, in the county of Londonderry, Ireland, a relative of the noble house of Caledon. He was born about the year 1810, and was educated at Trinity College, Dublin, where he graduated B.A. in 1830, and proceeded M.A. in 1834. He was called to the Irish Bar in Easter Term, 1832, and practised for some time in Dublin ; he was subsequently appointed to a puisne judgeship of the courts of British Guiana, which he held for a period of ten years.

A PETITION is being prepared against the return of the members for the county of Kerry on the ground of insufficient time between the Sheriff's notice and the day of election.

Digitized by Google

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

BANKRUPTCY LAW.

BANKRUPTCY—COMPOSITION—SUBSEQUENT RESOLUTION TO REDUCE—WHEN PERMISSIBLE—ACTION BY DISSENTING CREDITOR—INJUNCTION—POWERS OF CREDITORS—32 & 33 VICT. C. 71, S. 126, CLAUSES 1, 5, AND 6.—Under sect. 126 of the Bankruptcy Act 1869, creditors have power by an extraordinary resolution to reduce the amount of a composition previously accepted by them when the circumstances require it, and it will be for the benefit of the debtor and the creditors generally. A dissentient creditor is as much bound by such extraordinary resolution as he was by the resolution accepting the original composition. The word "persons" in clause 5 of sect. 126 of the Bankruptcy Act 1869 does not mean "creditors," but "persons" other than creditors, whose interests may be affected by the proceedings: (*Ex parte The Liquidators of the Radcliffe Investment Company (Limited): Re W. H. Glover and Co.,* 29 L. T. Rep. N. S. 694. Bank.)

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, March 2nd, 1874, when the following subject will be debated:— "That the Career of Edmund Burke deserves our approval."

SPEAKERS:

Affir. Mr. R. Andrews, Mr. H. De Burgh. | *Neg.* Mr. J. H. Hickey, Mr. L. P. Dillon.

The Chair will be taken at Eight o'clock.
All Meetings open to ladies and gentlemen.

LEGAL AND LITERARY DEBATING SOCIETY.

The usual Weekly Meeting of this Society will be held on Thursday evening, the 5th March, at 53, Lr. Sackville-treet. Chair to be taken at Eight o'clock.

An Essay will be read by Mr. A. Gartlan on "Novels and their Relation to Real Life."

SPEAKERS:

Mr. N. Goddard, Mr. H. S. Lee, Mr. A. L. Barlee, and Mr. A. C. Hallowes.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—W. Jack, allocation.—G. J. Alymer, do.—E. T. White, do.—M. H. Smithwick, proposal.—Anne Reynolds, do.—J. Dignam, for liberty to bid.—M. Cahill, to amend rental.

Before EXAMINER (Mr. Dobbs).

Trustee Hynes, rental.

TUESDAY.

IN CHAMBER.—J. Spencer, confirm sale.—W. Turquand and another, ditto.

IN COURT.—J. Lawton, final schedule.—Anne Clarke and others, do.—W. J. Graham, do.—W. Gabbett and others, do.—Sir C. O'Loghlin, from 17th February.—J. W. Browne, from 23rd.

WEDNESDAY.

IN CHAMBER.—John Nolan and others, from 24th.—R. Shegog, as to conveyance.—K. A. Cox, as to Board Works loan.

IN COURT.—C. Blake, allocation.—B. W. Falkiner, final schedule.—S. Cunningham, do.—J. O'Donel, ditto.

Before EXAMINER (Mr. Dobbs).

Trustees Fitzherbert, rental.

Before EXAMINER (Mr. M'Donnell).

Trustee O'Brien, vouch.—Executor Luton, do.—James Gorman, do.—A. O'Neil, do.—Trustee Reynolds, do.—Reverend E. Richards, rental.—M. Kerwin, do.—R. Blackhall, ditto.

THURSDAY.

Before EXAMINER (Mr. Dobbs).

E. J. Coopers, proofs.

FRIDAY.

SALES AT 12 O'CLOCK.

D. C. O'REILLY.—1 lot.
G. HARDING.—1 lot.
J. MULLEN.—1 lot.
EXECUTOR STRETCH.—2 lots.
M. H. SMITHWICK.—2 lots.
THOMAS BELL.—3 lots.

Before EXAMINER (Mr. Dobbs).

H. T. Parnell, rental.

SATURDAY.

M. F. Waldron, rental.—J. Patton and another, do.—D. S. Ker, proofs.

LANDED ESTATES' COURT.

SALES.

February 20th before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN.—Julia Lawton and another, owners and petitioners. In one lot, houses and premises in Seville-place, held under lease for residue of a term of 150 years, and producing an estimated annual profit rent of £229 2s. Sale adjourned. Solicitor, *John Hone.*

COUNTY DUBLIN.—John Dignam and another, owners; John Dignam, petitioner. In one lot, part of the lands of Ballymaden, held under lease for a term of 31 years, from 1864, situate in the barony of Balrothery West, and producing an estimated annual profit rent of £50 6s. 5d. Sold to John Dignam, for £420. Solicitor, *James Plunkett.*

COUNTY CORK.—Walter Fitzsimons, owner; John Lawler, petitioner.

Lot 1.—The life estate of the owner (aged 45), in premises known as Almorah-villas, Queenstown, held under lease for three lives, and producing an annual profit rent of £91 9s. Sold to Thomas H. Tarrant, for £560.

Lot 2.—The life estate of owner, in an annuity of £100, charged on the lands of Rathgrove, held for residue of a term of 987 years, from 1730, situate in the barony of Kinalea. Sold to same purchaser, for £810. Solicitor, *Thomas Lawler.*

COUNTY CORK.—George Bowles, owner and petitioner. In one lot, part of the lands of Curriglass, and Glasshouse, held for residue of terms of 999 years and 900 years, and producing an annual profit rent of £107 19s. 11d. Sale adjourned. Solicitor, *John Harris.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
Henry L. Dymoke	do	*Molloy & Watson*
T. M. O'Shaughnessy	Vouch account	*Molloy & Watson*
John H. Sweet	Prove debts and vouch	*Maxwell & Weldon*
John Murphy	do	*Maxwell & Weldon*
Robert Baird	Vouch mortgagee's act.	*Perry & Co.*

TUESDAY.

Before the COURT, at 11 o'clock.

John Dillon	1st composition sitting	*Casey & Clay*
Patrick Hanlon	do	*Fay & M'Gough*
Patrick Hanlon	1st public sitting	*Sullivan*
Ellen O'Connell	do	*Stone*
John Neil	1st composition sitting	*Casey & Clay*
William Holmes	Final examination	*Oldham & Eaton*
John H. Sweet	do	*Maxwell & Weldon*
James Grierson	do	*Oldham & Eaton*
Richard A. Burns	do	*Neilson*
Wm. Henry Harris	Application for certificate of conformity	*Casey & Clay*
Eugene Shehan	Confirm sale	*O'Connell*
John Keane	Audit and dividend	*Fay & M'Gough*
Robert Baird	Audit mortgagee's act.	*Perry & Co.*
Michael Walsh	Audit and dividend	*Molloy & Watson*

Before the CHIEF REGISTRAR, at 12 o'clock.

Andrew Rogers	Prove debts and vouch	*Gerrard*
Anthony Connors	Title and posting	*Macnamara*
Same matter	do	*Macnamara*
John O'Donnell, jr.	Costs	*Findlater & Co.*
Walter O'Donnell	do	*Findlater & Co.*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

John K. Kelly	Prove debts and vouch	*Molloy & Watson*
James Carroll	do	*Perry & Co.*
Philip Lyster	Vouch mortgagee's act	*Molloy & Watson*

FRIDAY.

Before the COURT, at 11 o'clock.

John Callaghan	1st public sitting	*Mathews*
Walter Fitzsimons	do	*Tincler & Son*
James Cardiff	do	*Lett*
John O'Brien	do	*Perry & Co.*
John Dever	Final examination	*Casey & Clay*
Potter & Gillman	do	*Larkin & Co.*
Patrick Carver	Audit and dividend	*Sullivan*

ADJUDICATIONS IN BANKRUPTCY.

Brittain, Patrick, and Henry O'Toole, trading as Brittain and O'Toole, Connaught-place, Dalkey, grocers and provision dealers. Sittings, *Friday, March* 20, and *Tuesday, March* 31. *Molloy & Watson*, solrs.

Crowley, Michael, Kilcronin, Cork, farmer. Sittings, *Tuesday, March* 17, and *Tuesday, March* 31. *Perry & Co.*, solrs.

Cullen, Daniel, junior, 17 and 18, High-street, Kilkenny, grocer and leather merchant. Sittings, *Friday, March* 20, and *Tuesday, March* 31. *Larkin & Co.*, solrs.

Ferguson, George, and Robert, trading as G. and R. Ferguson, Londonderry, builders and contractors. Sittings, *Tuesday, March* 17, and *Tuesday, March* 31. *Perry & Co.*, solrs.

M'Kenna, James, Drumlish, Longford, grocer. Sittings, *Friday, March* 20, and *Tuesday, March* 31. *MacEvoy*, solr.

Philipson, William Francis, Wellington-quay, Dublin, furniture dealer. Sittings, *Tuesday, March* 17, and *Tuesday, March* 31. *Oldham & Eaton*, solrs.

Pigott, Francis, Baltinglass, Wicklow, baker and grocer. Sittings, *Tuesday, March* 17, and *Tuesday, March* 31. *Molloy & Watson*, solrs.

Sloan, Joseph, Shercock, Cavan, grocer, spirit and provision dealer, hardware and guano merchant. Sittings, *Tuesday, March* 17, and *Tuesday, March* 31. *Hamilton & Craig*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	FEBRUARY Fri. 20	Sat. 21	Mon. 23	Tues. 24	Wed. 25	Thur. 26
	Government.						
—	3 p c Consols	91¾	91¾	91¾	—	91⅝¾	91⅝¾
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock	90⅝¾	90¾	90⅝¾	90⅝	90⅝¾	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	107	—
—	4 p c Oct. '88 } Bk. of Irel.	102½	—	—	—	—	102½
	Banks.						
100	Bank of Ireland	303½	—	—	303½	304	—
25	*Hibernian Banking Co.*	58⅛¼	58–7⅞	57⅞⅛¼	58	58¼	58¼
20	*London and Westminster*	67⅞	67⅞	—	67⅞	—	67⅞
3½	*Munster Bank (Limited)*	--	—	8⅝	—	—	8⅝¾
30	*National Bank*	57⅞⅝¾⅞	57⅞⅝¾	57⅝¾	57⅞⅝¾	—	57⅞
15	*National of Liverp'l (Litd)*	14	—	—	—	—	13⅞ 14
25	*Provincial Bank*	—	—	—	—	—	—
10	*Royal Bank*	—	-	—	—	—	29
	Steam.						
50	Belfast St. Ship Co. (lit'd)	—	—	—	—	—	—
50	British & Irish	—	52	—	—	—	51
100	City of Dublin	—	—	108	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	56	—	—	—	—
	Mine.						
2½	Wicklow Copper	—	—	—	—	—	3⅝
	Miscellaneous.						
	Alliance & Dublin Cons.						
10	Gas, viz.: —A	9⅞	—	-	—	—	—
10	No. 2 C	—	—	9¾⅞	—	—	—
8½	*Dublin Tramways*	—	—	—	—	—	7 x d
100	Grand Canal	—	·		54	—	x d
9-4-7	*Patriotic Assurance*	10⅛⅝	—	—	—	—	10⅛⅝
	Railways.						
50	Belfast and Northern Cos.	67	—	—	—	—	—
100	Dublin and Belfast Junct.	—	—	—	—	—	x d
100	Dublin and Drogheda	-	—	—	—	—	x d
100	Dublin, W'klow, & W'ford	—	—	—	74½	—	73 x d
25	*Do.—issued at £35*	—	--	—	—	—	x d
100	Gt. Southern and Western	—	111¾	—	111¾	—	109½xd
100	Do. do. free of Stamp	112⅝	·	—	—	—	109⅝
100	Midland Gt. Western	—	—	—	91¼	91¼	91
25	Portdn. Dun. & Omh. Jun.	—	—	—	—	—	x d
50	Waterford and Limerick	—	-	—	—	—	34
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	93¼
100	Do. do. 4½ p c	—	—	—	—	—	101⅝
6¼	Cork & Bandon, 5½ p c	—	—	—	—	—	x d
5	Do. do. 4 p c	—	—	—	—	—	x d
100	Grand Trunk of Canada, 2	—	—	—	—	—	—
100	Do. do. 3	—	—	—	—	—	32⅝
100	Gt. South'n & West'n 4 p c	—	—	100	—	—	x d
25	Portadown, Dun., &c., 5 p c	—	—	—	—	—	x d
—	Do., 4½ p c	—	--	—	—	—	x d
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	—	—	98	—	—
	Railway Debentures.						
--	Derry & Enniskillen 5 p c	-	—	—	—	—	—
—	Do., 4½ p c	100	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	--	—	—
—	Do., 4½ p c	—	—	—	—	—	99⅝
—	D., W., & W., 4½ p c	—	—	—	99	—	—
—	Do., 4½ p c	102½	—	—	102½	—	—
—	Gt. South'n & West'n, 4 p c	98⅛ f	98⅛ f	98⅛ f	98⅛ f	98⅛ f	98⅛ f

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—March 12th and 30th, 1874.
Account Days—March 13th and 31st, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

THE JUDICATURE ACT.—The *Law Times* says that it is considered certain that the new Government will ask the House of Commons to postpone the operation of the Judicature Act. We hear also that an effort will be made to restore the jurisdiction of the House of Lords.

Digitized by Google

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

KENNEDY—February 23, at 32 Merrion-square, Dublin, the wife of Frederick Kennedy, Esq., solicitor, of a daughter.

MARRIAGE.

HERON and MANNING—December 22, at St. John's Church, Sydney, New South Wales, W. Henry Heron, Esq., to Emily, second daughter of Sir W. H. Manning, Q.C.

DEATH.

REYNOLDS—February 23, at the Benedictine Convent, Teignmouth, Devonshire, in the forty-fourth year of her age, and seventeenth of her religious life, Louisa, in religion Dame Mary Maura Reynolds, second daughter of Edward Reynolds, Esq., solicitor, formerly of this city. R.I.P.

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

GENERAL NOTICE TO CLAIMANTS.

In the Matter of the Estate of Thomas Beggs and William Beggs, Owners and Petitioners.

THE Court having Ordered a Sale of one undivided one-sixth of the Lands of Carnlea, situate in the Barony of Antrim, and County of Antrim, held under fee-farm grant, dated the 6th day of December, 1871, under the Renewable Leasehold Conversion Act.

All parties objecting to a Sale of the said Lands are hereby required to take notice of such order.

And all persons having claims thereon may file such claims, duly verified, with the Clerk of the Records.

Dated this 23rd day of February, 1874.

C. E. DOBBS, Examiner.

ALEXANDER CARUTH, Solicitor having carriage of Sale, 30 Bachelors'-walk, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF MAYO AND DUBLIN.

SALE,

On FRIDAY, the 24th day of APRIL, 1874.

In the Matter of the Estate of William McCormick, Owner; The Honourable and Rev. Alwyne Compton and William Dickins, Petitioners.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Dublin, On FRIDAY, The 24th day of APRIL, 1874, At Twelve o'clock noon, In Five Lots, The following Valuable Property:—

LOT 1.

The Lands of Tonregee East and Tonregee West, containing 1,327a 2r 11p, statute measure, situate in the Barony of Burrishoole, and County of Mayo, held under fee-farm grant dated 11th June, 1850, from the Rev. Peter Browne to John McLoughlin.

LOT 2.

Bolinglanna, with its sub-denominations, Knocknacassa, Bunanior, otherwise Bunanioo, with its subdenominations, Knocknamona, and Glossilan, otherwise Glosslaun. Meewillin, Belfarsad, and Gubnahardia, situate in the Barony of Burrishoole, and County of Mayo, held under fee-farm grant dated 11th June, 1850, from Rev. Peter Browne to John McLoughlin.

LOT 3.

Six separate Plots of Ground, with the Houses and Premises thereon. One Plot or Parcel of Ground situate in Market-street, Two Plots or Parcels of Ground situate in Weavers'-row, Four Acres of Land adjoining Moses Evans and William Harding's former holdings at the back of the Barracks, with Nine Acres of Cottings-row, together with the Houses, Buildings, and Appurtenances thereunto belonging, in and adjoining the Town of Newport, situate in the Townlands of Knocknageeha, Barrackhill and Newport, Barony of Burrishoole, and County of Mayo, held with other Premises under fee-farm grant dated 11th June, 1850, from Rev. Peter Browne to John McLoughlin.

LOT 4.

Three Dwelling-houses in Park-place, Conyngham-road, being part of Long Meadows, situate in the Barony of Castlenock, and County of Dublin, held under fee-farm grant dated 19th April, 1851.

LOT 5.

Other part of Long Meadows, with the Cottages and Premises thereon, known as Sarah-place, situate in said Barony of Castleknock, and County of Dublin, held, together with lot 4, under fee-farm grant.

Dated 16th day of February, 1874.

C. E. DOBBS, Examiner.

BYRNE, KENNEDY, & CO., Solicitors.

Private proposals will be received by the Solicitors having the carriage of the Proceedings, up to the 11th day of April, 1874, and submitted to the Judge for his approval without further notice.

DESCRIPTIVE PARTICULARS.

Lots 1 and 2 are situate adjacent to Clew Bay and the Sound of Achill. They contain over 8,000 acres of land, the greater part of it a table-land, profitable, or capable of being made so.

There are about 1,800 acres at present let, and nearly 3,000 in addition could readily be made profitable land, and let at fair rents, so as considerably to increase the present rental.

There is also a grant or licence from the Fishery Commissioners for the establishment of oyster beds in the sound of Achill. Oysters can be procured from public beds adjoining another portion of the Estate, and could be planted at a very moderate cost; and if planted, would, in a few years, produce a very large revenue.

This property is about twenty-five miles from Westport, by a good road, and four miles south of the ferryboat station at the Achill Sound, in the direction of Clew Bay, with Achill Bay and Achill Island to the West. It commands a magnificent view of Clew Bay, with its numerous Islands.

There is Railway communication from Dublin to Westport.

The roads through the Estate, especially in the neighbourhood of the mines are skilfully constructed, and with little additional outlay, would form excellent communication through the various parts of the property, which embraces about ten miles of sea coast.

The communication between Westport and the Island of Achill is by a daily mail car.

The mineral indications are great, and promise to be a source of much wealth, as it has been ascertained beyond doubt that there are extensive deposits of sulphur ore (iron pyrites), copper, and hematitic iron, of the very best quality.

Lot 3—This lot consists of lands and premises situate in and adjoining Newport, a rising and flourishing Town, five and a-half miles from Westport, situate at the extremity of Clew Bay, the original port for discharge for the County of Mayo. The River Burrishoole flows through these lands, and abounds with salmon. Newport is a market town, and four fairs are held there yearly.

THE DUBLIN PROPERTY.

Lot 4 comprises three Dwelling-houses, known as Park-place, Conyngham-road, with a small Field, situate on the banks of the River Liffey, just outside the City Boundary, and adjoining Islandbridge, they are held by respectable tenants who pay their rents punctually.

Lot 5 consists of two rows of Cottages, and Premises adjoining Lot No. 4, and known as Sarah-place; the tenants pay their rents weekly.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin;

Messrs. CLARKE & HOWLETT, Solicitors, 8 Ship-street, Brighton, England; or to

BYRNE, KENNEDY, & CO., Solicitors having carriage of the Sale, No. 4 Lower Ormond-quay, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

PATRICK BRITTAN and HENRY O'TOOLE, of Connaught-place, Dalkey, in the County of Dublin, Grocers and Provision Dealers, trading as Brittan and O'Toole, were on the 20th day of February, 1874, adjudged Bankrupts.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 20th day of MARCH, 1874, and on TUESDAY, the 31st day of MARCH, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupts are to attend, and to make a full disclosure and discovery of their Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupts are required to finish their Examination.

All persons having in their possession any Property of the Bankrupts, must deliver it, and all Debts due to the Bankrupts must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

MOLLOY & WATSON, Solicitors, 18 Eustace-street, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN NOLAN, of No. 20 North Earl-street, in the City of Dublin, Provision Dealer, was on the 27th day of February, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 24th day of MARCH, 1874, and on FRIDAY, the 10th day of APRIL, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES H. JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

MICHAEL LARKIN & CO., Solicitors, 51 Dame-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, February* 28, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MARCH 7, 1874. No. 371.

EFFECT OF DIVORCE ON CONTRACTS BETWEEN HUSBAND AND WIFE.

THE law on this subject has been illustrated in so startling a manner by the decision of the Court of Exchequer in England, in the case of *Charlesworth* v. *Holt*, 43 L. J. Ex. 25, that we propose setting before our readers a statement of the law on the subject as decided by the recent authorities. In *Jee* v. *Thurlow*, 2 B. & C. 547, it was held that a plea by the husband, setting up the fact of a divorce *a mensa et thoro*, having been obtained against his wife on the ground of adultery, was no answer to an action by the trustee of a post-nuptial deed, by which the husband covenanted to pay an annuity to his wife during his life. In *Goslin* v. *Clarke*, 12 C. B. N. S 681, the circumstances were similar, except that the divorce in this case was *a vinculo*. In this case, also, the fact of the adultery and subsequent divorce was held to afford no protection to the unfortunate husband; but in this case the covenant had no qualifying words—a circumstance which renders the decision in *Charlesworth* v. *Holt* a step forward in a direction which we cannot but think unfortunate. In *Charlesworth* v. *Holt* an indenture was made between Richard Holt of the first part, "Lucy Holt, his wife," of the second part, and the plaintiffs, as trustees, of the third part. After a recital that a separation was to take place between the husband and wife, in which, and all other recitals in deed, the lady was described as the wife of the defendant, a covenant appeared by which the defendant covenanted to pay, during his own life and the life of Lucy Holt, and so long a time as they should live separate and apart, an annuity of £63 to his wife. After the execution of this deed the wife committed adultery, and the defendant brought a suit against her in the Divorce Court, and by decree absolute of the Court the marriage was absolutely dissolved; the defendant ceased paying the annuity, and the trustees of the deed proceeded against him on the covenant contained in it. The husband pleaded the facts above mentioned, and this plea was demurred to. Counsel for the defendant contended that the covenant was only to pay the annuity so long as the woman had the status of wife. The instrument was expressed to have been made between the defendant and "Lucy, his wife," and the payment was to have been made during so long a time as they lived separate and apart, which, it was contended for the defendant, meant so long as either had the power to insist at law on living with the other. The intention of the instrument was, that it should apply only so long as the relationship of husband and wife existed, and if a strict interpretation of the covenant was to be made, it was to pay "Lucy Holt, his wife," and the lady was no longer Lucy Holt, and had ceased to be the wife of the defendant. The Chief Baron met this argument by asking what would be the effect of such an interpretation in case the *husband* had been the guilty party, and the wife had obtained a divorce. Their lordships, who certainly, throughout the case, showed no inclination to draw any distinction which might separate the present case from the earlier cases we have referred to, put a somewhat strained interpretation on the clause in the deed containing the words, "and during so long time as they shall live separate and apart," by declaring that they did not refer to the annuity being paid only so long as the marriage was subsisting, but to the contingency of the parties returning to live again with each other, in which event it was not to be paid. The decision of the Court was that the covenant held good, even under the circumstances which had happened, and the plea could not stand. We regret that the Court did not take advantage of the special words of the deed in order to distinguish the present case from *Goslin* v. *Clark*, and so not only defeat what was characterized by a member of the Court as "rather an impudent claim," but also establish a precedent of an interpretation put upon an instrument of this nature, which would permit some chance of escape to an unfortunate husband, and not render it absolutely necessary to insert a clause in every such instrument, expressly providing that the annuity shall only be paid in the event of the wife's conducting herself with propriety. The Chief Baron seemed to think that a clause of this nature would be quite a natural thing, for persons standing in the relation of husband and wife, to insert in a deed, providing for the future support of the wife. But we submit that, in the great majority of instances, such an idea does not cross the minds of the parties, and, even if it did, would hardly be expressed by persons who are still willing to retain towards each other the conjugal relationship. What *Charlesworth* v. *Holt* strongly impresses on our mind, is the desirability of a power being given to the superior courts of law and equity, similar to that possessed by the Divorce Court, under the provisions of 22 & 23 Vic., c. 61, sec. 5, which provides that "the court, after a final decree of nullity of marriage, or dissolution of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements, and may make such orders, with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage, or of their respective parents, as to the court shall seem fit." Surely some such power as this might be exercised by the Common Law and Equity Courts, in cases where a decree of dissolution of marriage has been pronounced by the proper tribunal, and one of the parties seeks, as in this case, to obtain benefits from an innocent person under an instrument made in a totally different state of circumstances. Were this the case, we should not see such a scandal as this case of *Charlesworth* v. *Holt*, where a woman, after having inflicted on her unhappy husband the greatest wrong it is in the power of a wife to inflict, is permitted to add insult to injury, by requiring him to support her in adultery.

As to the justice and common sense of such an enactment, there cannot, we conceive, be any difference of opinion. But it is, also, in full conformity with the spirit which has influenced almost every code of legislation on the subject of contracts from the days of Justinian to the present hour. Such a contract as was entered into between the parties in *Charlesworth* v. *Holt* could only have been intended to be co-existent with the marriage, on the condition of one party to the contract voluntarily abstaining from exercising certain legal rights which she possessed as against her husband during the existence of the marriage state; but the moment she, by her own misconduct, incapacitated herself from enforcing these rights, surely, on every principle of jurisprudence, the consideration for the performance of the husband's portion of the contract

Digitized by Google

having failed, he should not be held to his engagement. Without entering into the question of the policy of permitting divorce *a vinculo*—a question which has always been looked at from widely different standpoints in Ireland—we may assume that every party will agree that so long as, by the law of the land, such a separation can be obtained, it is a cruel mockery to the injured party to tell him he is free, when his guilty partner possesses a right in a Court of Law or Equity to extract from him money settled by him on her before the marriage tie had been dissolved by the Divorce Court.

THE NEW APPOINTMENTS.

THE public are anxiously expecting the announcement of the legal appointments of the new Government, but hitherto there has not been any certain information on the subject, except that the Right Hon. John Thomas Ball has accepted the office of Attorney-General, though this is understood to be only an *ad interim* arrangement. The career of Dr. Ball is so well known to the public, and his high character as a lawyer and a politician so established, that it is scarcely necessary to go into the usual details of his career, and almost the only question mooted was, what office he would take, as he seemed, by common consent, to be entitled to the highest, from the standpoint of professional pre-eminence and political services, though we hope less weight will, in future, be attached to the latter. Suffice it to say, that Dr. Ball was called to the Bar in Michaelmas Term, 1840, went the Home Circuit, became Queen's Counsel in due time, was appointed Queen's Advocate, and finally was chosen Member for the University of Dublin in troubled times, and again in the late general election. The Government is to be congratulated upon securing the services in this capacity of the ablest lawyer in the lower House of Parliament, and certainly one of the most capable men in Ireland. Dr. Ball has the highest reputation as an equity lawyer, but does not appear in Court so frequently as other leaders, owing to his Parliamentary position. The duties of the Attorney-General are more conversant with criminal law than with equity, but owing, as we have had occasion previously to remark, to their Circuit experience, every eminent lawyer is with us, *teres atque rotundus*, and, we must say, we feel the most abundant confidence in the new legal officer. We are pleased that we shall have the benefit of Dr. Ball's assistance in the Commons in passing a Judicature Act for Ireland, and in finally settling the vexed question of the Appellate Jurisdiction of the House of Lords. Dr. Ball will be assisted by another great constitutional lawyer, Mr. Isaac Butt, in this task, though we have reason to believe that the latter gentleman is of opinion that the transfer of the jurisdiction of the House of Lords in legal matters to an ordinary Court of Appeal would be unconstitutional and impolitic. It is possible with reference to this new measure that no Lord High Chancellor for Ireland will be, at all events for the present, appointed, and that the Great Seal is to be put into commission. But we honestly believe that such a course would be injurious to the interest of suitors and the due administration of justice, and we confidently expect, before the commencement of next Term, to hear that a Lord Chancellor has been appointed and entered on his duties.

The offices of Solicitor-General and Law Adviser to the Castle have already been given away several times in the "Hall" and by the public papers; but, according to our usual practice in such matters, we await the notification in the *Gazette* before noticing the appointees.

NOTANDA.

Debtors Act, section 6; *payment by instalments.*—Motion, on behalf of the defendant, for an order that the plaintiff should pay by instalments the amount of a taxed and certified bill of costs, under the Debtors Act, s. 6. The plaintiff having brought an action against the defendant for libel, a verdict was had for the defendant. The costs amounted to £71 10s. 11d., of which £42 10s. 6d. remained due. A motion had been made to remit the case to the Civil Bill Court, under the C. L. P. A. Act, 1870, but had been refused on the faith of an affidavit made by the plaintiff, that he was manager of St. Mary's National School, Cork, at a salary of £100 per annum, with perquisites, and had a furnished house, and chattels worth at least £100. But judgment having been marked for the costs of the trial, and a *fi. fa.* having issued, the sheriff made a return thereon of *nulla bona.* And it now appeared, on the affidavit of the plaintiff in opposing this application, that, on the day after service of the notice of motion, the plaintiff had lost his appointment in Cork; and that he was now able to pay only £5 per annum, for that reason, and having spent all his means in the progress of the litigation. *Litton*, in support of the motion. *Holmes, contra* The Court ordered that the debt should be paid in instalments of £5 annually (*Moore* v. *Gaussen*, Q. B., Jan. 23, 1874, before O'BRIEN and FITZGERALD, JJ.)

Setting aside judgment; substitution of service on agent; writ not forwarded to plaintiff.—The defendant had been sued as acceptor of a bill of exchange for £100, dated Jan. 9, 1866, payable at two months. He went to America, March 1, 1866. In June, 1866, service of the writ was ordered to be substituted on his brother, as his agent, who continued to carry on a contract here, which had been originally entered into by the defendant in the names of himself and his brother; and cause not having been shown, the order was made absolute after six weeks. Judgment was marked for principal and interest, July 28, 1866. The defendant subsequently returned to Ireland, and was served in person with a conditional order for a suggestion to revive the judgment in December, 1873. He now moved to set aside the judgment, on the ground that he had not been served with the summons and plaint, and that his brother was not his agent; the defendant deposing that he never knew or heard of the writ or proceedings till he was served with the order for the suggestion, and his brother deposing that he was unaware of the defendant's address at the time of the service, and had not forwarded the writ, or communicated the knowledge of it. [At the same time, cause was shown against making absolute the order for the suggestion, on different grounds, immaterial as regards the setting aside of the judgment, leave to enter the suggestion having been obtained without certain facts having been brought under the notice of the Court. The Court set same aside.] The defendant had admitted owing the debt for which the bill was afterwards passed; and there was no affidavit of merits. *O'Brien*, Q.C., and *John Roche*, in support of the motion. *Murphy*, Q.C., and *O'Hea*, *contra.* Cases cited: *Martin* v. *Williams*, 2 IR. L. T. 91, 243, Ir. R. 3 C. L. 5; *Sheehy* v. *Prof. Life A. Co.*, 13 C. B. 787; *Ferguson* v. *Mahon*, 11 A. & E. 169. The Court, considering that the defendant's brother was his agent, held the service good as substituted, but being satisfied that the writ never came to the hands of the defendant, and that he did not know of the service, set aside the judgment, and allowed the defendant to come in to defend; no costs (*Pim* v. *Sheehan*, Q. B., Hil. T., 1874).

Setting aside final judgment; unliquidated demand

Digitized by Google

interest.—Action for £155 3s., for goods sold, money had and received, money paid, and on accounts stated; praying judgment for same, with interest thereon. The particulars specified the items as the price of goods sold, amounting to £155 3s., claiming in blank interest thereon till paid. No defence having been taken, final judgment was marked, Feb. 17, 1874, for £155 3s., as claimed, with £6 interest. On a motion to set aside the judgment as irregular, it appeared that no interest was payable by express or implied contract between the parties. *Ryan*, Q.C., and *Edge*, in support of the motion, contended that the interest was an unliquidated demand, for which final judgment should not have been marked. *Naish*, *contra*. Palles, C.B., held that the final judgment should not have been marked for interest, and that same should be set aside (*Minors* v. *Purvis*, Con. Ch., Feb. 27, 1874).

Ejectment on title; defence after time expired.—One of the defendants in an ejectment on the title having taken defence for all the lands, *O'Connell*, for another defendant named in the ejectment, moved for liberty to defend, though the time for pleading had expired on the day previous: Held, that an affidavit of merits was necessary (*Galvan* v. *Nunan*, Con. Ch., Feb. 27, 1874, before Palles, C.B.)

Remitting action for unliquidated damages.—Motion, to remit to Civil Bill Court an action for £30 damages, for breach of warranty of a horse. *B. Smith*, in support of the motion, cited *Guy* v. *Hinde*, Ir. R. 5 C. L. 247. *Collum*, *contra*.—There is no power under the C. L. P. A. Act, 1870, s. 5, to remit an action for unliquidated damages, even though the amount claimed is less than £40: *Cruise* v. *Lenehan*, Ir. R. 6 C. L. 220: Kav. & Quill, C. L. P. A. Act, 1870. *Smith*, in reply.—The only limit intended by section 5 is where the claim does not exceed £40, corresponding to the limited jurisdiction of the Civil Bill Courts in actions remitted under section 6. *Cruise* v. *Lenehan* only decides that actions will not be remitted under section 5, where the claim is over £40. There was no decision on the other question, which is there put as a *semble*, arising from an ambiguous *obiter* expression of one of the judges only, and unnecessary to the decision of the case. It would be absurd to hold that no action, however trivial, for unliquidated damages, could be remitted under section 5. Dowse, B.—I shall order the action to be remitted; if the plaintiff is so advised, he may appeal. It may be said that though the point is an absurd one, that is no reason why it should not be good law. I shall grant the motion (*Walsh* v. *M'Manus*, Con. Ch., Feb. 18, 1874, unappealed from).

Certificate of conformity; failure to pay 10*s. in* £1; *audit meeting not held.*—Application on behalf of the bankrupt, at a sitting appointed for the purpose, to obtain his certificate of conformity, under B. A. Act, 1872, s. 56, sub-s. 1, of which three weeks notice had been given under 214 G. O. 1872. The official assignee reported under 215 G. O. that the bankrupt had given every assistance to realize the estate, and that nothing had come to his knowledge, during such realization or otherwise, to show that the failure of the bankrupt to pay 10s. in £1 had arisen from circumstances for which the bankrupt could not be held responsible or otherwise. *Rosenthal*, solicitor for a creditor, objected that the audit meeting should have taken place first, but had not yet been held; until then the assignee could not be in a position to report fully. *Perry*, for the bankrupt, urged that, although in general a certificate of conformity ought not to be granted until after the audit meeting, yet, exceptional circumstances here existed, as the great proportion of the creditors consented to the application, and as the bankrupt's house had been advertised for sale, which his friends were willing to assist him in purchasing if he obtained his certificate. Harrison, J., said that the rule was a wholesome one, which ought to be carefully guarded, so that the granting of the certificate should have the sanction of the officer, founded on a full knowledge of the circumstances of the bankruptcy, and that, in his opinion, sufficiently substantial grounds were not shown for dispensing with the previous holding of the audit meeting. And ordered that this sitting be adjourned until the audit, and that the sale be adjourned until a week after the audit (*Re Parker*, Ba. 20 Feb., 1874.)

Act of bankruptcy; imprisonment for non-payment of money; arrest under Debtors Act, sec. 7.—A defendant was arrested and imprisoned under the Debtors Act, 1872, sec. 7. for two months, unless and until he should deposit in Court a specified sum of money by way of security, or give a bond to be executed by himself and two sureties in that amount, that he would not leave Ireland without the leave of the Court. On a petition by a creditor, *Leachman*, solicitor, moved to adjudicate him bankrupt under B. A. Act, 1872, sec. 21, sub-s. 8: Held, that his lying in prison under the order was not upon an arrest or commitment for debt, or non-payment of money, or upon a detention for debt, so as to constitute an act of bankruptcy (*Re B. ex-parte Hester & Co.*, Ba. Feb. 27, 1874, before Harrison, J.)

Arrangement; debts barred by Statute of Limitations.—Objection, at second private sitting, that debtor had not statutable majority of creditors to a sufficient amount, as part of debt barred by statute. *Perry*, for the debtor. *Carton* for opposing creditor, Held, that debts barred by the Statute of Limitations cannot be proved for in arrangement matters, any more than in bankruptcy. But, it afterwards appearing that the amount was still sufficient, the objection fell through (*Re J. F. B., an Arranging Debtor*; Ba., Oct. 13, 1873, before Harrison, J.)

Town-parks; notice to quit; stamp.—Ejectment for overholding, on notice to quit. It appeared that the lands in question consisted of nearly eight statute acres, situate in the townland of Drumcashlone, about a mile from the town of Newry. The tenant was a shop-keeper residing in Newry, and held the lands as an accommodation, at the yearly rent of £21 11s., which had always been the rent; and he had always used it as an agricultural holding. *Carey*, attorney for the defendants, objected that the lands were not town-parks, and that the notice to quit proved should have been stamped. *Brown*, attorney for the plaintiff, *contra*.—The lands are town-parks, and a stamp unnecessary, therefore. The Chairman.—It is not necessary, in order to constitute a town-park, that it should be used as pasture land. In deciding what is a town-park, I must take into consideration the size and population of the town, the contiguity of the land to it, and the circumstances of other farms at a similar distance. I would not hold that land lying a mile from a village of half a dozen houses was a town-park, but I would hold that land lying considerably more than a mile from Belfast was a town-park. Considering the extent of the town of Newry and the requirements of the inhabitants, I think that this farm must be regarded as a town-park; and the fact of cultivating it in any way the proprietor thinks proper does not alter its character of town-park. Decree for possession (*Trustees of Lord Kilmorey* v. *Anderson and Another*, Newry Q. S., Jan. 15, 1874, before R. Johnston, Q.C.)

Arrest on Sunday.—The High Court of Madras, consisting of Justices Holloway and Keran, have decided that an arrest on a Sunday is perfectly legal.

Digitized by Google

THE COMING COURT OF FINAL APPEAL FOR IRELAND.

We take the following from the *Morning Mail* of 6th March :—

Lord Justice Christian has published another pungent and masterly pamphlet with the title given above, and, having obtained an early copy, we proceed to supply our readers with a summary of its contents. The treatise is accompanied with a preface, in which the distinguished writer speaks of the interval which is now elapsing between the passing of the Judicature Act and the application of a similar measure to Ireland as "the most critical that has yet arisen in the history of Irish jurisprudence." The foremost of the controversies it is rife with, he adds, is the constitution to be given to the new tribunal which is to supplant the House of Lords as our Court of Final Appeal. The subject of a supreme appeal, the Lord Justice adds, has special bearings towards Ireland which English legal statesmen would be prone to overlook, because there is nothing corresponding to them in the country for which their original measure was devised. To legislate without heed to them would, it is further observed, be to legislate in the dark. "But through what channel shall the conception of them reach the quarter where it is needed? Certainly not through that of Irish officialism. It must come from outside, if it comes at all. This paper has been delayed till the last moment, too long, probably, for much hope of present usefulness, in the anxious wish that discussion on a subject so momentous would originate in some other quarter. But it could be treated only by lawyers, and, in this particular, unhappily, the interest of lawyers is not coincident with that of the public. At all events, they have been silent. And thus it was that, with deep reluctance, in haste, in intervals snatched from other occupations, and with some departure from conventionality, the following pages have been thrown together. That they will evoke dissent and disapproval from some whose opinion the writer highly values—boundless misrepresentation, perversion, and calumny from others whom he holds in no regard—is no more than he is prepared for. He will be amply recompensed should he be the means, however remotely, of causing it to be realized by a single responsible statesman that there are points of view which had escaped him, from which, yet, it is needful that this great and perilous subject should be regarded, before it passes finally into the category of accomplished facts."

Having described the Judicature Act, and admitted that it may be beneficial for England, the Lord Justice asks—"Under what conditions shall this measure be extended to Ireland, as extended it is sure to be? If (says his lordship) the Union has grown to be anything better than a bond of parchment—if it has penetrated at all the moral and intellectual tendencies and social life of the Irish people—if it has within it any principle of life and growth, it is to the Unity of Jurisprudence, far more than to the Act of Union, these things are owing." A main link in keeping unbroken "that most precious unity has been the absolute identity of the Supreme Appeal." The contentment of Ireland with the House of Lords as its Court of last resort "has, in fact, been boundless." During forty years' experience the Lord Justice has never heard a murmur against it. It may be taken for granted, he continues, that the nationality of Ireland will be represented in the new Court by some quota, more or less, from her own Bench or Bar. He hopes the English law lords will not be governed in determining the matter by what are called Irish ideas. The Court is not to be one for Ireland only; the problem is critical, and the knowledge of the facts which affect it gravely, "will assuredly here reach those who need it from Irish official quarters." The former Court—the House of Lords—had the distinctive qualities of Unity and Anglicanism, and these were the main factors in keeping the course of law in Ireland moving still upon the English lines. "Will they," asks the Lord Justice, characterize also the coming Court?" He believes that quality of the final utterance under the law will deteriorate under the new English system—the weight and dignity of the Supreme Court will be "dispersed by decentration"—and these results will be an evil which Ireland will share with the Empire at large. "It is a fact, out of all doubt," the Lord Justice continues to say,

"That this knot of English Law Lords commanded the confidence of the Irish in a measure far surpassing what they ever gave to the tribunals that were manned from among ourselves; nor was this, it must unhappily be admitted, confined to the House of Lords. It applied also to the Anglo-Irish Chancellors while we had them. Will this most potent and vital element be still in force under the promised Government scheme? The answer is simple. It will be annihilated and reversed. As the existing Court, while nominally English, Scotch, and Irish has been practically English only for all the three, so the new Court, though still nominally English, Scotch, and Irish, will be practically for Ireland, Irish only—or, at all events, predominantly."

Both Englishmen and Irishmen would be dissatisfied with the state of things existing, and there would certainly be a clamour raised in Ireland against the Court of Irish Appeals being held anywhere but in Dublin, and being composed of any but Irish judges :—

"Why should the old affront to the dignity of our nationality be permitted any longer? Why should our suitors and judges be dragged from their homes to London, when we now have happily the materials for a Court at our own doors? If we are not to have Home Rule, let us, at least, have Home Law. The inevitable outcome of it all would be that the function of supreme appeal for Ireland would fall eventually into the hands of a little band of local judges located in Dublin. Now would that be a consummation to be wished for? There are many in Ireland who, of course, would answer—Yes, it would be just as it ought to be. With some very simple or ignorant people that answer might be an honest one; with others it would be mere clap-trap."

All this would tend to "disunion of jurisprudence." His lordship digresses here to suggest an illustration or two of the probable working of the Government scheme of last session should it be passed into a law, and inquires—"But is there no remedy, or rather preventive, for matters are still, in a great degree, *in fieri?*"

"One there is, most obvious and most effectual. Repeal the Appellate clauses of the Judicature Act, and so restore the House of Lords to the position it has abdicated. This may, however, be at once dismissed as hopeless. It would be idle to expect that a step which has been taken as very good for England will be retraced for the sake of merely Irish interests. Then, let the measure rest where the Judicature Act has placed it. Let the House of Lords continue to be the Court of Appeal for Ireland, though having ceased to be so for England. This has been strongly pronounced against by the Irish Bench and Bar, upon the double ground of separation of the Final Courts and retention of one that had lost its prestige by the surrender of its own higher jurisdiction. But since those pronouncements were made, the Government scheme has been expounded, and it has, in the writer's opinion, entirely changed the question. The reasons which then determined the Irish judges and barristers weigh now in the other scale. The divisional court to which the Irish appeals would fall would be, in composition, far more dissimilar to its co-divisions than the House of Lords, even in its shorn condition, would be; while, in point of authority, it would be infinitely inferior. The writer, at all events, is now of opinion that to leave the Act as it is—*i.e.*, confined to England, would be far preferable to an extension of it to Ireland, if that were accompanied by so large an addition from that country to the *personnel* of the new court, without a corresponding increase in the quorum for a divisional court."

The writer, however, thinks that this solution will also be discarded, and goes on to propose—

"A very simple and effectual way—to extend the new court to Ireland and Scotland, *simpliciter*, without making any change at all in the composition which the Judicature Act has already given to it. And the writer of this paper does not hesitate to avow his conviction (*pace* all home patriots) that that would be by far the best *denouement*, next to the restoration of the House of Lords *in pleno jure* by repeal of the appellate clauses of the Act. We should be

Digitized by Google

told, doubtless, about 1782 and the Volunteers, and how this would be an undoing of their glorious work, and a restoring of the subordination of Irish to English courts. There, fustian and bombast."

The new Court, says the writer, as composed by the Judicature Act, "is not so exclusively English as the judicial section of the Lords has been any time since the Union. The notion of the Representative Peerage making any difference in this is mere myth and illusion." "In truth, an even exclusive Anglicanism in the new Court would embody a far more distinct presentment of Irish independence than the Anglicanism of the judicial caste of the Lords has ever done, inasmuch as it would be a direct product of a Legislature which is Ireland's as much as England." "The ante-volunteer grievance was that an appeal lay from the Irish Chancery to the English House of Lords, and from the Irish King's Bench to the English King's Bench—that is, to foreign Courts, in the composition and creation of which Ireland had no voice at all." He asserts that "in fixing the number the main object to be kept in view ought to be that it shall be such as not to leave it possible that the Divisional Court could ever be composed, in the whole or in the majority, of Irish Judges—such, in short, as shall, on the contrary, make always inevitable a majority, at least, from the English Bench. To this end careful regard should be had to the relative proportions between the Irish contingent and the number for a Divisional Court. If the latter must remain at three, then the former should be but one; if it is to be two, the quorum should be five; if three, then, how inconvenient soever, the quorum should be seven. I say again this touches, not remotely, the integrity of the Union. I hold that for the maintenance of that already threatened Union, Unity of Jurisprudence is an essential element. So far Lord Justice Christian's dealing with the question of *number;* then he turns to that of *quality* :—

"It must be admitted that the Chief-Justiceship of Ireland stands in this respect, as in other, *exceptione major.* Putting it at the lowest, it is at least as likely, *a priori*, as any other Irish office, to fulfil the required conditions. It is one of the ordinary judgeships, and the foremost among those. Its tenure is permanent, its duties none but judicial. It is as far removed as any Irish office can be from associations of politics or of party, and consequently, there is none in the appointments to which professional merit is less likely to be disregarded. In fact it has been always filled by men of exceptional weight and eminence. If there *must* be *ex-office* members from Ireland, there is no office more suitable for providing one than the first judgeship of law. But, as regards the other of the two selected offices, very grave considerations present themselves. It is obvious that equity should be at least as strongly impersonated as law in the composition of a court to which, by and by, will be confided the delicate and critical task of reviewing, correcting, and guiding the courts, theretofore of common law, when they shall be called upon to dispense an unfamiliar jurisprudence. It is the theory of the Government plan that this indispensable element is sure to be always present in its utmost perfectness in the person of the Chancellor of the day. Moreover, that official would be the customary president and mouthpiece of the Divisional Courts that would ordinarily assemble for Irish business. Therefore, it behoves us to be well assured that the Chancellorship does indeed stand forth before all the other judgeships of Equity—before the Mastership of the Rolls, the Lord Justiceship of Appeal, the Vice Chancellorship—as the one best qualified for bringing forward those guiding spirits who would be fit to assume the lead in the great and delicate work of transforming a jurisprudence. In pursuing such an inquiry, it is obvious that the first point to engage attention should be whether there are any and what structural differences between these competing judgeships, which should materially affect the choice. Well, here is one to begin with, the tenure of the Chancellorship is transitory. It presents the evil union of judge with political partizan—Irish party and politics, be it always remembered. It depends upon the Minister's ability to obtain a majority in the House of Commons—a matter in which the present close balance of parties in Great Britain has given to what is called the Irish vote an ominous importance. Then, the office being thus political, and the holder of it being usually the chief Irish member of the Irish Government, he is prone to become the centre of shabby Irish politics, should his breeding or his association have been such as to incline him in that way."

An English lawyer would say that "the days are past when any Minister would dare to take his Chancellor from any but the *elite* of the most practised skill and most trained ability of which he could dispose." The writer, profoundly impressed with the momentous importance of the structure of the new Court, will not shrink from saying that "by far the most extreme exemplification of the changed uses of the Irish Chancellorship is afforded by what took place when its last vacancy was filled up." He will not evade an at least general reference to—

"The more salient features of the event which astonished the Irish legal world five years ago, without a knowlege of actualities that would be impossible in England, and which, even for Ireland, will probably sound incredible in English ears, English legislators could not realize how wide and radical the difference is between the chancellorships of the two countries in the light of fixed ex-officio contributors to an Imperial Court of last resort. The new Government came into office in December, 1868, with a certain Irish policy in the foreground of their programme. It was indispensable to its success that the Irish Catholic hierarchy should be conciliated and enlisted. Two appointments were made, one to an English administrative office, the other to an Irish judicial one, both of Irishmen. In each instance the person was selected notoriously, if not avowedly, as a concession to that hierarchy. The entire exclusiveness of that as the motive—the ignoring of considerations of previous training and personal aptitude—were not a whit more signal in the case of the administrative office than in that of the judicial one. It is generally known that, in Ireland, the division of the bar into Chancery and Common Law is, as a rule, less broadly drawn than it is in England. To the more or less of diversity resulting from this, in the early or middle training of the successful Irish barrister, there have been not many exceptions, but by far the most signal and complete of them is that of the eminent person who now holds the Irish seals. [This was written before the Elections.] As a practising barrister he achieved a respectable success, but it lay, from first to last, with an exclusiveness here unprecedented, within a particular speciality. For the purpose now in hand, let it suffice to say that his estrangement from the Court of Chancery and its jurisprudence was, throughout, as entire and unchequered as that of any serjeant who ever wore the coif in the Common Pleas of England could by possibility have been. Of no other Irish barrister of mark could this have been said with a literalness so unique. With others it would be a question of degree, with him it was absolute. It may, it is confidently believed, be taken to be no less than a literal truth that the first problem of equity law that ever seriously engaged his thoughts was the first that he had to decide in his capacity of Lord Chancellor. Or, if any unnoted exceptions there were, they must have been of rareness and triviality so infinitesimal as would prove the rule. Even at common law his reputation was rather that of the eloquent jury advocate than of the erudite lawyer in banco. Nor has the true *point d'appui* from which his fortunes made their wondrous advance lay elsewhere than at the Four Courts. One incident may be noted as marking with precision his pre-official forensic grade. When selected by the late Lord Carlisle for the Solicitor-Generalship (being then in the twenty-fifth year of his standing) he was still, a thing unprecedented, holding the place of a county judge; an office, no doubt, both honourable and useful, but not (in those days at least) usually retained after reaching any notable eminence. There is not now upon the Superior Bench one other judge by whom it was ever held, and to most of them an offer of it at a corresponding stage of his career would have been regarded as a slight. His promotion to a puisne judgeship in the Common Pleas was not much remarked upon, as it was but the ordinary sequel to his tenure of law-office; but men held their breaths when it went out that one bred in such a school was about to occupy the seat of Sugden and of Redesdale. Other incongruities,

Digitized by Google

more inward, might be dwelt upon, but the writer has confined himself to a bare narration of overt facts, which were notorious in Ireland when this event took place, and are incapable of denial, unless it might be within some little circle of kindred or dependents, or expectants. They are here detailed in no spirit of disparagement or ill-will towards the eminent person whose professional course they outline. Nor do they import aught of discredit or derogation, unless to fall below a very high standard of excellence must be regarded as such. The writer has kept well within the limits of his allotted task. The person is to him nothing; the embodiment of the danger he is raising his voice of warning against, much. He has stated not more than enough, but yet, he trusts, enough for that essential step in his argument, the bringing out in distinct relief the phase of its history upon which the Irish Chancellorship has at length definitively entered. The *coup d'etat* of 1868 has conclusively settled that. It carried the office, once for all, across the line at which it had been hesitating since 1846. Its legal and judicial ascriptions have faded into the background, its political have come to the front. And what a place in politics! It has been ranked with the posts of the second order among the English departments which are habitually bestowed on grounds of party expediency, with little or no thought about anterior training or fitness. This may not matter much in those minor departmental places where there are permanent sub-officials or all-absorbing chiefs, by either of whom, it is known, the real work will be done; so that a scandal rarely transpires, unless something very exceptional happens to bring it to light. But now, for the first time, a high judicial office has been so used. A Postmaster-General, a First Commissioner of Works, an Irish Chancellor, are all on one level in the eyes of an English Minister, as regards any necessity for special training or aptitude. And what has been the result? The Chancellorship of Ireland—the proposed supplier, in permanency, of the chief adjunct for Irish business to the new Court of Supreme Appeal—stands proclaimed to all aspirants as a post to the candidature for which, hereafter, no habituation to the jurisprudence of Equity or the erudition of the Common Law will be needed, but, in place of them, the one all-atoning, all-sufficing merit, the favour of some sect or faction potent in electioneering. It would be a grievous error to regard this act as one that could not be imitated by any future Minister. The example is much more likely to be bettered than shunned. Does any one imagine that, after such a precedent, in case it should chance hereafter that, at some time of difficulty, some band of Home Rulers or Repealers, or Fenians, or what not, who had become powerful in Parliament, could be quieted by one of their number being made an Irish Chancellor, the Minister of the day, of what side soever, would be over-nice in scanning his forensic antecedents?"

The means were at hand, Lord Justice Christian adds, by which the Minister on succeeding to office might have otherwise shown that the Act which had opened the Irish Chancellorship to Roman Catholics was not to remain a dead letter:—

"I shall mention but one name. There is not a *gentleman* (italic in original) in Ireland, Catholic, Episcopalian, Protestant, Presbyterian, or Freethinker, but would have acclaimed the appointment of that practised equity lawyer, approved judge, and true gentleman, Baron Deasy. To pass him over, with some others, gave the finishing touch of colour to the choice that was made."

The writer, after a commentary on the fusion of law and equity, returns to his immediate point, thus:—

"If, then, there must be an addition of Irish *ex-officio* members to the Court of Supreme Appeal, at least let the selected offices be those in which equity and law have been used to be most worthily impersonated. What are those? For law, the Chief Justiceship—for equity, the Mastership of the Rolls. It is in that latter office (if not in the person of some Master in Chancery) that, since Sir E. Sugden's departure, with but two brief intervals, the true judicial representatives of equity in Ireland were to be found. In any case it is for equity what the Chief Justiceship is for law, the first of the normal and permanent judgeships. It is a purely legal office, with none but legal attributes, and has, consequently, never been put to the lower uses which have tarnished, if not obliterated, the judicial quality of the nominally greater place."

He goes into a number of details as to the comparative cost of the Chancellorship to the country in England and Ireland, and the work respectively done, "with the view of bringing out the material fact that the only judicial work now done by the Irish Chancellor, which has even the semblance of substantiality, lies in the share he takes in the work of the Court of Appeal." "Will anyone," he says again, "have the boldness to affirm, in the face of these facts, that judicial service is what this *incubus* is now maintained for, or that its pretension to hold the position of the chief equity judgeship is any longer more than mere stimulation and anachronism?" It is added—

"It is freely spoken of in legal circles in Dublin (with what truth the writer cannot vouch for) that there is in the hands of an eminent person in that city a letter written by the Prime Minister in December, 1868, excusing the disposal he was making of the Irish Seals, on the plea of 'political necessity.' If political necessity be the *ultima ratio* for this office, let it live and flourish for that high destiny, for aught the writer cares. Let it still serve as a go-between for a Minister with some occult influence or other (what next, who knows?) with which he dares not openly ally himself. But surely the time has come for dissociating it from the administration of justice."

The changes the writer recommends are, to—

"1. Re-unite to the Court of Chancery those branches of its old jurisdiction of which it has been stripped during t last quarter of a century. The exigency which, in 1849, called for a separate land tribunal no longer exists. There is now no reason whatever why the Court of Chancery should not resume its proper place as the leading forum for all real estate affairs. Abolish, then, the Landed Estates Court, and transfer all its peculiar title-giving and title-recording powers to Chancery. Neither does there seem to be any necessity for a separate Court of Bankruptcy and Insolvency. Abolish that also. Let one of the Vice-Chancellors (to be after mentioned) be, as in England, chief judge of the Dublin district, with power of delegation, as there, to a competent registrar; and let the assistant-barristers be, like the county court judges in England, the "local bankruptcy judges" for the county districts, with right of appeal to the chief judge, and from him to the Court of Appeal in Chancery. The effect of these changes would be no more than to replace the Court of Chancery in Ireland in its old position, and in the same position as the Court of Chancery in England is still in as to the sources of its business, but *intervallo longissimo* as to amount.

"2. Re-model the Court of Chancery itself to suit its renovated *status*. Begin by clearing off its dead weight. Abolish the Chancellorship—that is to say, let the office cease after the first vacancy that shall occur after a date to be named. Or, retain it as a political office, but withdraw it from all relations with the administration of justice.

"3. So much for demolition—now for reconstruction. Move up the Master of the Rolls from his present position of a judge of the first instance to the Presidency of the Court of Appeal. And, as he would thus be placed at the head of the Equity department, raise him in rank and salary to a level with the head of the Law department, the Chief Justice of Ireland. To supply his place below, and to meet all possible requirements of the restored jurisdictions, appoint two new Vice-Chancellors, one of them, as a mere necessity of the transfer of the Landed Estates Court jurisdiction, to be the present masterly administrator of the affairs of that department, the other, probably, one of the existing judges of the Court of Bankruptcy and Insolvency. The Court of Chancery would thus be put on a sound and rational footing. All its ancient jurisdictions restored to it, with ample provision made for their efficient discharge—and, at its head, a permanent magistrate—a judge of the highest order, and not aspiring to be anything else. With the present Master of the Rolls presiding in the court of intermediate appeal, it is anticipated with confidence that

Digitized by Google

before a term had elapsed that court would be re-instated in the place it held five years ago.

"As to the effect of these changes from the point of view of economic retrenchment, those who are solicitous on that score can make their own calculations. Five judgeships would be struck off (including the giant-waste of the Chancellorship with its costly and fantastic following), and only two would be substituted. In judges' salaries alone there would ultimately be a saving of £9,000 a year, thus—

Retrenched.		Substituted.	
Chancellor	£8,000	Vice-Chancellors (two)	£8,000
Landed Estates (two)	6,000	Increase for Master of the Rolls	1,000
Bankruptcy (two)	4,000		

Besides retiring pensions, outfits, and personal and clerical staffs. And there would be no creating of new staffs, but a transfer of so much of the old one as might be needed."

The most striking passage in the pamphlet, perhaps, is the following :—

"There are two modes of dealing with Irish disaffection, one of which is sure to fail; the other, to succeed, if only it be consistently and resolutely persevered in. The first is alternate bluster and cajolement—to-day proclaiming that, at all hazards, the integrity of the empire must be maintaimed; to-morrow, that the wishes of the Irish people must be referred to, which 'Irish people' the enemies of British connexion invariably assume to mean themselves. These things but add fuel to flame. The other mode is steadfast, persistent, uncompromising action. I do not mean physical coercion, but the sort of action which will be most likely, if anything can do it, to supersede the necessity for that *ultima ratio*. What is wanted is a course of conduct which would show, by acts, not words, that the British mind has settled down immutably in the tenet that an Irish Parliament, under what disguise soever, is not within the possibilities of politics. To remove from time to time, not abruptly or spasmodically, but as occasions naturally present themselves, institutions which keep alive, in the minds even of the well-affected, the idea of separateness, this would be a course of action worth volumes of talk. Two relics of the ante-Union Parliament still linger behind it—the Lord Lieutenancy and the Chancellorship. They are now mere anachronisms—utter unrealities. But their existence keeps fresh the memory of the constitution of which they once formed a part. A precious opportunity now offers for suppressing one of them—quietly, naturally, as part of a great reconstruction of all the judicatures of the United Kingdom, as a necessary step towards at once re-invigorating the Irish Chancery, diminishing its cost, and averting the worst evil that menaces the coming Court. That one once gone, the other would not long survive. There would be one Chancellor for the United Kingdom. The 'Castle' would merge in the Home Office."

The writer concludes his observations thus :—

"Give us true identity of Court, not diversity in disguise—no *ex officio* members at all—not even ex-Chancellors or Lords Justices—but only, at the outside, one Judge Ordinary, salaried, and settled permanently in London. Or, if we must have all those others, take them from our worthiest, raise the quorum in proportion, and make it obligatory for every division to sit always in London, without regard to the nationality from which its business may come. The proposal of July last, if carried into effect, would make the first step towards a disastrous portioning by nationalities of the Supreme Pronouncements of the Law, a dislocating of our one living Unity, the Unity of Jurisprudence, and a slackening of our best curb upon the disintegrating forces which underlie the Irish policy of these latter years. The fusion of law and equity is very well in its way, but the fusion of England and Ireland is a greater subject still; and if the so much vaunted Judicature Act should be found so to work as to obstruct or retard by even a little that noblest consummation, it will have done a mischief for which not all the good that the most devout of its votaries could anticipate for it, within its own more narrow sphere, would be an adequate equivalent.

THE CONSIDERATION OF A SIMPLE CONTRACT

The consideration sufficient to support a promise not under seal has been defined as any advantage to the person promising, or any damage, inconvenience, liability, or charge to the person to whom the promise is made. If there be a consideration, courts of justice will not, in the absence of fraud, enter upon the question whether it be adequate. Thus in *Traver* v. —— (1 Sid. 57), a woman after the decease of her husband promised a creditor that if he would prove her husband had owed him £20 she would pay that sum; and although there was no benefit to the woman, yet proof of the debt was held a good consideration for her promise to pay the amount of it, because it was trouble and charge to the creditor to prove his debt. This case appears to have been cited with approbation in *Williamson* v. *Clements* (1 Taun. 523), in which a declaration alleged that the defendant was indebted to the plaintiff on a bill of exchange, and that the plaintiff being unable to produce it, had, at the defendant's request, given him a bond acknowledging payment, and conditioned to indemnify him against the bill, and it was held that there was a good consideration for a promise by the defendant to pay the contents of the bill. Upon a like principle, in *Harris* v. *Venables* (20 W. R. 974, L. R. 7 Ex. 235) the withdrawal by the plaintiff of a petition to wind up a company was held to be a valid consideration for a promise by two of the directors to pay a portion of a debt owing by the company to the plaintiff; for the performance of the consideration by the plaintiff was a thing which might be injurious to the plaintiff and beneficial to the defendant, or at least to the company; and a real benefit was gained by the withdrawal because of the disinclination to commence a new proceeding after labour and expense had been wasted. The well-known case of *Coggs* v. *Bernard* (1 Smith's L. C. 177) is a strong authority to the same effect, and it follows from that decision that if a man undertakes to carry goods safely and securely, he is responsible for any damage which they may sustain in the carriage through his neglect, though he is to have nothing for his trouble. A similar case to *Coggs* v. *Bernard* is *Bainbridge* v. *Firmstone* (8 A. & E. 743), where a declaration was held sufficient which alleged that in consideration that the plaintiff at the defendant's request, had consented to allow the defendant to weigh two boilers of the plaintiff, the defendant promised to give them up after weighing in as perfect condition as they were in at the time of the consent. PATTESON, J., remarked:—"There is a detriment to the plaintiff from his parting with the possession for even so short a time."

But it has been held in a variety of cases that no action lies upon an alleged contract, where the only consideration for the defendant's promise is the promise of the plaintiff to do, or his actually doing, something, to do which he was previously bound, either to the defendant or a third person (Chitty on Contracts, 43, 9th ed.) Upon this ground in *Herring* v. *Dorell* (8 Dowl. 604), it was held that where a plaintiff (before the abolition of arrest upon civil process) discharged one of two joint debtors, the other had a right to be discharged, and therefore that a promise by a third person to pay the debt, in order to obtain such discharge was void for want of consideration. When interest is payable by mercantile usage, an undertaking to pay interest upon a debt forms no consideration for a promise by the creditor to allow an extended time for payment (*Orme* v. *Galloway*, 9 Ex. 544, 2 W. R. 263). And a promise by a captain to pay additional wages to seamen during the time which they have agreed to serve, is not binding upon either the owners or the captain *Harris* v. *Watson*, Peake, 73; *Harris* v. *Carter*, 2 W. R. 409, 3 E. & B. 559; with which cases *Hartley* v. *Ponsonby*, 5 W. R. 659, may be advantageously compared).

It is necessary to distinguish a class of cases wherein it has been held that the circumstance of the plaintiff being by a contract with a third person already bound to perform the consideration for the defendant's promise, does not prevent the plaintiff from suing for breach of the defendant's agreement. A promise by A. to B. to marry the neice of B. is a good consideration for a promise by B. to make A. a yearly allowance, although A. has already contracted to marry the

Digitized by Google

niece (*Shadwell* v. *Shadwell*, 9 W. R. 163, 9 C. B. N. S. 159); and a promise by the plaintiffs to deliver a cargo of coals to the defendants is a good consideration for the defendant's promise to unload the coals, although the defendant had previously bought the coals of other persons, who had directed delivery thereof to be made by the plaintiffs to the defendant (*Scotson* v. *Pegg*, 9 W. R. 280, 6 H. & N. 295). Of this class the very recent decision in *Bolton* v. *Madden* (22 W. R. 207) may be cited as an instance. The plaintiff and the defendant subscribed to a charity, the objects of which were elected by the subscribers. It was agreed between them that if the plaintiff would give twenty-eight votes for an object of the charity whom the defendant favoured, the defendant would, at the next election, give twenty-eight votes for such object as the plaintiff should then favour. The plaintiff performed his part of the agreement, but the defendant made default. It was objected that this contract was invalid, on the ground that a subscriber to a charity is under an obligation to give his votes for the best object, and the plaintiff, if he gave his vote for the best candidate, at the first election, incurred neither trouble nor prejudice, so that there was no consideration for the defendant's promise; and that if he gave his vote for the candidate whom he did not think the best, the contract was void as being against public policy. The Court of Queen's Bench held the agreement binding, on the ground that the subscriber to a charity may give his vote as he pleases, and is answerable only to his own conscience and reputation for the method in which he exercises his power. The contention that if the plaintiff, at the first election, in point of fact voted for the best candidate, he thereby incurred no trouble, as he was already bound so to do, seems to be answered by the decisions in *Shadwell* v. *Shadwell* (*ubi sup.*) and *Scotson* v. *Pegg* (*ubi sup.*), for even if it was no detriment to the plaintiff to vote according to the defendant's request, yet it was an advantage to the latter to ensure that the candidate whom he favoured should receive the plaintiff's support; and the fact that the defendant could rely upon the plaintiff's promise to vote as he requested was a sufficient benefit to him to render binding his own undertaking with the plaintiff; it therefore became immaterial that the plaintiff was otherwise bound to vote (if indeed he was bound to vote at all) for the object whom he deemed most deserving. Moreover, the duty cast upon the plaintiff to vote for the best candidate was only a moral obligation, and, being of no account in law for the purpose of contract, did not fetter the exercise of the plaintiff's discretion (*Beaumont* v. *Reeve*, 8 Q. B. 483). The decision of the Court of Queen's Bench in *Bolton* v. *Madden* seems to have been well warranted by the authority of preceding cases.

Another mode of stating the above-mentioned doctrine is that simple contracts must be mutual, that is, that each party shall be bound to do, or not to do, or to suffer to be done, something; thus, where B. contracted in writing to work for a manufacturer in his trade, and for no other person during twelve months, and so on from twelve months to twelve months, until B. should give notice, it was held that the agreement was bad for want of mutality, the manufacturer not having been bound to employ B. (*Sykes* v. *Dixon*, 9 A. & E. 693). From cases proceeding upon this principle must be distinguished those decisions where it has been held that a promise to do a certain thing upon the performance of a consideration is valid, although at the time of the promise it may be uncertain whether the consideration will be performed. In *Mills* v. *Blackall* (11 Q. B. 358, 364), Patteson, J., remarks:—"The mutality of obligation is not a sound criterion. In a contract of guarantee for further advances to a third person, the plaintiff is not always bound to make the advances; but the duty to see him harmless arises upon the advances been made." In *Kennaway* v. *Treleavan* (5 M. & W. 498, 401), Parke, B., in giving judgment, says:—"But a great number of the cases are of contracts not binding on both sides at the time when made, and in which the whole duty to be performed rests with one of the contracting parties. A guarantee falls under that class; when a person says:—'In case you choose to employ this man as your agent for a week, I will be responsible for all such sums as he shall receive during that time, and neglect to pay over to you'—the party indemnified is not, therefore, bound to employ the person designated by the guarantee, but if he do employ him, then the guarantee attaches and becomes binding on the party who gave it."

The objection that a contract was bad for want of mutality, and was not supported by any consideration, was vainly urged in the recent case of *The Great Northern Railway Company* v. *Witham* (22 W. R. 48, L. R. 9 C. P. 16, noticed *ante* p. 240). The plaintiffs having advertised for tenders for the supply of iron, the defendant offered to deliver any quantity which they might order; his tender was accepted, but he failed to supply all the iron which they required, and was sued for the breach of this contract by the railway company, who obtained the verdict. It was argued on behalf of the defendant that the verdict could not be upheld, for the contract was unilateral, and was not binding upon him. It is plain that the company were not bound to give any order for iron, and it clearly lay within their option whether the defendant should reap any benefit from the agreement into which he had entered. These reasons did not prevail with the judges of the Court of Common Pleas, who refused to disturb the verdict. They were of opinion that the contract was valid, for, when an order was given by the plaintiffs they were bound to accept the iron supplied by the defendant in performance of it, and to pay the price This case strongly resembles the judicial opinions as to the liability of guarantors and sureties which have been above cited. The real consideration for the defendant's promise to supply the goods was the plaintiffs' promise to pay for the goods when supplied by him; if no goods were ordered by the plaintiffs, he suffered no loss on that account.—*Solicitors' Journal.*

BARRISTERS OF LINCOLN'S INN, AND THEIR LIABILITY TO FEES.

A case of considerable interest to barristers has just been decided, though not decisively on the merits, in the Court of Chancery, Lincoln's Inn. The plaintiff, Mr. Charles Neate, filed a bill for an injunction to restrain an action brought against him by the Society of Lincoln's Inn to recover £23 11s. 10d., being the amount of arrears due from him as a member of that society. Mr. Neate was called to the bar by the society in the year 1832, and being desirous recently of ceasing to be a member of the society, he was informed in the usual way that, before being allowed to withdraw from it, he must not only pay all arrears due from him, but also a composition as regarded future annual dues, and must sign a declaration to the effect that he did not intend to continue to practise as a barrister in any part of the United Kingdom, or in India, or in any of the colonies. To these terms Mr. Neate refused to submit. He insists that the society has no right to exact fees to the end of their lives from such members as wish to withdraw from it, but do not desire to retire from the bar. He was willing, however, to pay the dues demanded in the action and a composition if the court should be of opinion that the society could legally impose it, but he contended that on withdrawing from the society he should have a right to practise as a barrister in the United Kingdom, in India, and the colonies. The case came on upon a demurrer for want of equity, and the defendant appeared in person. He denied the right of the Inn to enforce its monopoly by requiring him to sign a declaration which was utterly opposed to public policy as being in restraint of trade. A court of common law or a court of equity ought to declare that the Inn had no right to privileges which were in restraint of trade. Vice-Chancellor Malins held, however, that the Court of Chancery had no jurisdiction in the matter, and allowed the demurrer. The plaintiff had, he said, become a member of a voluntary society, and signed a ond by which he made himself liable to pay certain dues and charges. His retirement from the society was entirely a matter of internal regulation, and if he had any complaint to make with regard to the bond, a court of law had jurisdiction to deal with the complaint. It is to be hoped that the case may be carried to a court of law, and that so important a question may not be allowed to remain any longer unsettled.

Writing on this subject the *Solicitors' Journal* says:—Whether Mr. Neate had not a right to retire from membership of the Inn merely on payment of what was due from

Digitized by Google

him to the Inn up to the time of his signifying his desire to withdraw. The Benchers had required him to present a petition stating that he did not intend to practise as a barrister either in this country, India, or the colonies, and praying that his name might be taken off the books of the society on payment of arrears and the composition on leaving. Mr. Neate objected to contract himself out of any right he might have to practise as a barrister without being a member of any Inn of Court, and he also objected to paying any sum on leaving, and he particularly objected to the term "composition," as implying that the Benchers have a right to retain a man on their books for the term of his life. The bill showed that Mr. Neate was prepared with an array of arguments against the policy of conferring upon private and irresponsible bodies the monopoly of creating barristers, and against the validity of the claim of the present bodies to their alleged monopoly, but at the hearing, where he appeared in person, he was stopped by the Vice-Chancellor upon the question of jurisdiction, and his arguments were confined to that subject. In the result his Honour held that he had no jurisdiction to try the case. He pointed out that the bond was silent as to the terms on which the plaintiff might withdraw from the society. Those terms were left to the regulations of the Inn, and the plaintiff's right to retire was a question solely between himself and the society. Questions of that sort were within the cognizance of the judges, as visitors of the Inn. They were the proper *forum* to apply to, and it had been decided at law that in such cases they have exclusive jurisdiction. The present state of authority on the important question raised in this suit seems therefore to be that neither the Courts of Law nor the Courts of Equity will interfere in any question between one of these great societies, and a member of it, *quâ* member. The only appeal from the benchers is to the judges in their capacity of visitors of the Inns. We may add that as to any person seeking admission to one of the societies, the case of *Rex* v. *The Benchers of Lincoln's Inn* (4 B. & C. 855), shows that if such an application be rejected, the person making it has no appeal either to the judges or the Courts.

WANDSWORTH (LONDON) COUNTY COURT.

Tuesday, Feb. 10.

(Before H. J. STONOR, Esq., Judge.)

Re LANDON (an infant); *Ex parte* HODGSON.

Liability of infants under the present Bankruptcy Act (1869).

His HONOUR said :—This is a petition for adjudication in bankruptcy against Sidney Clarke Landon, an infant under the age of twenty-one years, by Annie Hodgson, also an infant under twenty-one years, by her next friend, John Hodgson, under the following circumstances :—The debtor was robbed on the Brighton racecourse of his watch, and, subsequently meeting the petitioner, gave her in charge of a policeman, who brought her before a magistrate, by whom she was committed for trial at the next borough sessions, but admitted to bail. The defendant subsequently discovered that he was mistaken, and withdrew the charge at the sessions. The petitioner brought her action in the Common Pleas for false imprisonment; the defendant appeared but did not defend, and on an inquisition in pursuance of a writ of trial, recovered £320 damages and costs. It does not appear by the writ of trial whether the defendant appeared by guardian or next friend, or in person, or by attorney, and counsel were unable to inform me as to the fact. If he did not appear by guardian or next friend it was error in fact, and the court will order all the proceedings to be set aside, and the defendant to appear by guardian: (*Carr* v. *Cooper*, 4 L. T. Rep. N. S. 323.) For the present I am bound to assume that all things were rightly done, and that there is a valid subsisting judgment for damages and costs against the debtor, and the question I have to decide, and which I am told has never yet been raised under the existing bankruptcy law, is whether the infancy of the debtor, which has been proved before me, is a bar to his being adjudicated a bankrupt. Before the Bankruptcy Act of 1861, only traders could be made bankrupt, and by the law of England no infant could trade, and it was consequently held that an adjudication of bankruptcy against an infant was not only voidable but void. See the cases of *Rex.* v. *Cole* (1 Raym. 443); *Ex parte Sidebottom* (1 Atk. 146); *Ex parte Adam* (1 V. & B. 494), and *Belton* v. *Hodges* (9 Bing. 365). Although under some circumstances the court refused to supersede bankruptcies in which proceedings had taken place: (*Ex parte Moule*, 14 Ves. 602; *Ex parte Watson*, 16 Ves. 265; and other cases.) But under the Act of 1861 "All debtors, whether traders or not, are made subject to its provisions" sect. 69; and it was held by that eminent judge in bankruptcy, Mr. Serjt. Wheeler, in the County Court of Liverpool, in *Re Smedley* (10 L. T. Rep. N. S. 432), that an infant, whether a trader or not, was liable to the operation of the bankruptcy law under the Act of 1861; and that decision was approved of and followed by the commissioners of the London Court of Bankruptcy in *Re Purser* (19 L. T. Rep. N. S. 23). By the present Bankruptcy Act, 1869, sect. 6, all persons, non-traders as well as traders, are likewise liable to be adjudicated bankrupts for any debts due by them, and, *a fortiori*, for debts due by them upon judgments recovered against them in actions of tort, like the present, and there is no exception in the Act as to infants. I therefore think that the petitioner is entitled to an order of adjudication against the debtor if he appeared by guardian or next friend, or in the event of his not having so appeared if he does not take steps to set aside the judgment now recorded against him without delay. I propose to adjourn the hearing of this petition until it has been ascertained whether the defendant appeared by guardian or next friend. If he did so appear, adjudication will pass at once; if not, I shall further adjourn the hearing until he has had an opportunity to set the judgment aside. If he succeed in setting the judgment aside, the present petition will be dismissed without costs, if he fail, adjudication will then pass.

Adjourned to the next court.

Feb. 17.—An affidavit was handed to the court showing that the debtor in this case had appeared by his next friend in the action, and thereupon adjudication passed.

LORD MAYOR'S COURT—(LONDON).

Feb. 18.—LANE *v.* OAKES; MACKENZIE, Garnishee.

Married Woman's Property Act, s. 7—"*Become entitled to*" —*Reduction into possession.*

This was an attachment cause tried at the December sittings of this Court, when a verdict was obtained for the plaintiff. It appeared at the trial, that the money sought to be attached, amounting to £137, was bequeathed to the defendant's wife before her marriage, subject to a life interest. The defendant married in 1871. The life interest expired in 1873, when the defendant and his wife presented a joint petition to the Court of Chancery, where the estate was being administered, to pay to the husband, in right of his wife, the money in question. In pursuance of that petition the money was paid to the garnishee, who was the attorney and agent of the defendant, and in his hands it was attached by the plaintiff or creditor of the defendant. A rule for a new trial having been obtained on the grounds that there had been no reduction into possession, and that the case came within section 7 of the Married Woman's Property Act,

Kemp, for the plaintiff, showed cause.—The husband's receiving the fund or authorizing some one to receive it for him, is enough to change the wife's interest in the property and reduce it into possession of the husband (*Fleet* v. *Perrins*, 17 W. R. 862; *Jones* v. *Cuthbertson*, 20 W. R. 381). Mrs. Oakes became entitled to the money when the will was proved in 1865. Her right was perfect before the expiration of the life interest, and, therefore, the Married Woman's Property Act, which did not come into force till 1870, does not apply. She became entitled before, and not during, her marriage.

M'Call, for the garnishee, in support of his rule.—There was no reduction into the possession of the husband. This is often a difficult question to determine; the *onus* is upon the plaintiff to show "some clear and distinct act" on the part of the husband (*Scarpellini* v. *Aitcheson*, 7 Q. B. 864). In *Hart* v. *Stevens* (6 Q. B. 937) the interest on a promissory note given to the wife before marriage was received by

Digitized by Google

the husband during coverture, and it was held not sufficient to reduce the debt into possession of the husband. In *Prole* v *Soady* (16 W. R. 445), where the fund was carried over to the joint account of husband and wife, it was held no reduction into possession by the husband. "Reduction into possession is a question of intention, therefore the joint authority of husband and wife negatives any intention on the husband's part to reduce the money into possession," per Cleasby, B., *Jones* v. *Cuthbertson* (21 W. R. 919). Secondly, the case comes within section 7 of the Married Woman's Property Act, which provides *inter alias* that "Where any woman married after the passing of this Act shall, during her marriage, become entitled to any sum not exceeding £200, under any will, such property shall belong to the woman for her separate use." It was intended so far to do for married women what is sometimes accomplished by marriage settlements. The Act is to be construed with reference to its policy (*Winter* v. *Winter*, 16 L. J. Ch. 112). Her property in expectancy needed no such protection, but that in possession, or capable of being reduced, did, being subject to the marital rights of the husband, and the language of the section bears out this view. This section, as well as the 8th, which refers to real property, follows the language of the usual covenant in a marriage settlement. In *Archer* v. *Kelly* (8 W. R. 684) Kindersley, V.C., held that "became entitled" signified a change of condition from expectancy to possession. According to the plaintiff's construction, the language of the section should have been 'shall have become entitled to any interest whatsoever" (*Mackenzie's Trusts*, 15 W. R. 662). The construction for which I contend is upheld in *Clinton's Trust* (20 W. R. 326), where Wickens, V.C., discusses all the cases. The wife of the defendant, therefore, became entitled to this money upon the death of the tenant for life, that is during her marriage, and after the passing of this Act. The money being, therefore, due to the wife, and the judgment being against the husband, this is not a debt owing or accruing to the judgment-debtor, so as to be attachable (*Dingley* v. *Robinson*, 26 L. J. Ex. 435).

The DEPUTY-RECORDER (Sir Thomas Chambers).—In this case an action was brought against the defendant and the garnishee, and the question was, whether a sum of money in the hands of the garnishee could be attached by the plaintiff. At the trial a verdict was found for the plaintiff. Objection was made by Mr. M'Call, for the garnishee, that the money in question was bequeathed to the wife of the defendant, and was reduced into possession by the husband. This objection is not tenable. The husband and wife presented a joint petition to the Court of Chancery, and upon that petition an order was made for the money to be paid to the defendant in right of his wife. The money was paid to the garnishee, under a power of attorney given by the husband alone. That is sufficient to reduce the fund into the possession of the husband.

The second objection made was that under the Married Woman's Property Act this money belonged to the wife for her separate use, and, therefore, could not be attached for the debt of the husband. Two cases in particular were cited where it was decided, upon similar terms, in a marriage settlement, that such words covered a reversionary interest which falls into possession during coverture. The property of the defendant's wife in this case would be protected by such a covenant. These cases (*Archer* v. *Kelly* and *Clinton's Trust*, *ubi sup.*) were decided by Kindersley, V.C., and Wickens, V.C., and their decisions seem to me to apply to this section of the Act. Although at first the property seemed to me to be unprotected by the statute, after conferring with Quain, J., I think the case comes within the protection of the statute. On this ground, therefore, the rule will be made absolute for a new trial. I make no order as to costs.

Solicitors for the garnishee, *Lake, Beaumont, & Lake.*

Solicitors for the plaintiff, *Reep, Lane, & Co.*

IS A LICENSED VICTUALLER A GENTLEMAN?—Sir G. Jessel, the English Master of the Rolls, had before him on Monday a suit arising out of a marriage settlement, and in the course of the arguments Mr. Bagshawe, Q.C., having referred to one of his witnesses as "this gentleman" (the gentleman in question being a licensed victualler), his Honour asked the learned council, "Since when has it become the fashion to designate a publican as a gentleman? Since the last general election, I suppose."

BANKRUPTCY OF MARRIED WOMEN.—An important point under another section of the same statute was yesterday decided by the new Lord Chancellor and the Lords Justices in a case of *Re Heneage*, where they held, affirming the decision of Mr. Registrar Hazlitt, that a married woman (at any rate if she has no separate property) is not liable by virtue of section 12 of the Married Women's Property Act, 1870, to be made a bankrupt. The section in question provides that a husband shall not, by reason of a marriage after the Act came into operation, "be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried." The Lord Chancellor and Lord Justice James concurred in holding that the effect of this section is only to enable the creditor to reach the separate property by means of a judgment at law, instead of by the proceeding in equity which would formerly have been necessary. They thought that the Legislature did not intend to make married women subject to the law of bankruptcy. Lord Justice Mellish agreed to this extent—that a married woman who has no separate property (as was the fact, so far as appeared, in this case) is not liable to be made a bankrupt, but he was not quite satisfied whether, if she had such property, she would not be so liable. He therefore guarded himself from going further than was necessary for the actual decision of the case. The decision amounts to a reversal of the judgment of Mr. Russell, the judge of the Manchester County Court, in *Re Philips* (17 S. J. 385.)—*Solicitors' Journal.*

LIABILITY OF INN-KEEPERS TO ACTION.—The death in the streets of a benighted wayfarer, who had sought admittance into no less than five public-houses at Barton-le-Clay, and had been refused at all of them, on the ground of their being "quite full," has raised the question whether the well-known obligation of inn-keepers to admit travellers has been extinguished by the Licensing Act of 1872. This is, of course, not the case, as a reference to sect. 25, which contains the express saving for *bonâ fide* travellers, will show; but it is equally certain that the inn-keeper is not bound to admit them when his inn is full. It is probable enough, however, as we have already remarked in connexion with the decision in *Roberts* v. *Humphreys* (L. Rep. 8 Q. B. 483; 29 L. T. Rep. N. S. 387), that the construction put by the Judges upon the Act in that case will make publicans more chary of admitting travellers than before. We have said the obligation to admit travellers is well known. It is, in fact, an obligation at common law, existing many centuries before Licensing Acts were thought of. And it was so recently as 1835 that an inn-keeper was indicted by an attorney for refusing to admit him late one Sunday night. The inn-keeper was fined 20s.; and Mr. Justice COLERIDGE said he had no doubt whatever about the law—the inn-keeper was bound to admit his guests at whatever hour of the night they might arrive: (*R.* v. *Ivens*, 7 C. & P. 213, where the form of the indictment is printed at full length). As to the *bonâ fide* traveller, he is a very modern invention. There were no closing hours at all in any Licensing Act until 1822, when Sunday closing was first introduced by 3 Geo. 4, c. 77. And until the Public House Closing Act 1864 (27 & 28 Vict. c. 64) public-houses were allowed to be open all night long. The epithet "*bonâ fide*," we may remark, first occurred in the short-lived Act of 1854 (17 & 18 Vict. c. 79), which, if our memory rightly serves us, caused no slight riots from the sharpness of its Sunday closing regulations, and was repealed the very next year by 18 & 19 Vict. c. 118, as having been "found to be attended with great inconvenience to the public." In the substituted Act "*bonâ fide*" did not appear; but the Licensing Act of 1872 has replaced the term. We doubt whether it will prove of any service either to publicans or travellers. "A man is either a traveller or he is not, and the addition of '*bonâ fide*' makes no difference," said Mr. Justice WILLIAMS, in *Atkinson* v *Sellers* (28 L. J. 13 M. C.), and we thoroughly agree with him.—*Law Times.*

Digitized by Google

LIST OF SHERIFFS FOR 1874.

Counties	High Sheriffs	Sub sheriffs	Returning Officers
ANTRIM - - - - -	Thomas Casement, Ballee House, Ballymena	Henry Haigh Bottomley	*Alexander O'Rorke*, 18, Middle Gardiner-street
ARMAGH - - - - -	James Johnston, Carrickbreda, Forkhill, Dundalk	Hugh Boyle	*John Kilkelly*, 46, Upper Mount-street
CARLOW - - - - -	James Eustace, Newtown, Tullow	Edward Leonard Jameson	*Thomas Jameson*, 182, Great Brunswick-street
CARRICKFERGUS (Town of) -	Conway E. Dobbs, Leeson-street, Dublin	Henry Haigh Bottomley, Belfast	*William M. Moore*, 41, Upper Sackville-street
CAVAN - - -	Alex. Wm. Sankey, Fort Frederic, Virginia	John Maxwell James Townley	*Barry Collins*, 17, Lower Ormond-quay
CLARE - - - - -	Captain Richard Studdert, Bunratty	Timothy J. O'Gorman, Ennis	*Michael Macnamara*, 33, Hardwicke-street
CORK - - - - -	John Adam Richard Newman, Dromore, Mallow	Joseph Bullen Johnson, Hermitage, Cork	*Richard H. M. Orpen*
—— City - - - -	Victor Beare Fitzgibbon, Sidney House, Cork	W. Bryan Gallwey, South Mall, Cork	*W. White*, 4, South Frederick-street
DONEGAL - - - - -	James Boyle Delap, Monellan, Strabane	John Smith M'Cay	*George C. Lett*, 43, Dame-street
DOWN - - - -	Stephen Roland Woulfe, Tiermaclane, Ennis	Hugh Cunningham Kelly, Newry	*Henry T. Stewart*, 33, Lower Ormond-quay
DROGHEDA (Town of) - -	Robert Bedford Daly, Laurence-street, Drogheda	George Butterly, West-street, Drogheda	*Michael Verdon*, 30, Bachelors'-walk
DUBLIN - - - - -	Edward Hudson Kinahan, Wickam, Dundrum	William Ormsby	*William Ormsby*, 2, Morgan-place
——— City - - -	James Martin, 26, Fitzwilliam-square	William Ormsby	*William Ormsby*, 2, Morgan-place
FERMANAGH - - -	John Caldwell Bloomfield, Castle Caldwell	Luke Patrick Knight, Abbey Lodge, Maguires-bridge	*William V. Lawler*, 50, Middle Abbey-street
GALWAY - - - - -	Captain John Blakeney, Abbert, Athenry	John Redington, Dangan House, Galway	*Samuel P. Redington*, 32, Rutland-square
——— Town - - -	Charles F. Blake Forster, Forster-street House, Galway	John Redington, Dangan House, Galway	*S. P. Redington*, 32, Rutland-square
KERRY - - -	Maurice Fitzgerald Sands, Oakpark, Tralee	William Harnett, Listowel	*W. Sterne*, 19, Parliament-street
KILDARE - - - -	George Mansfield, Morristown Lattin, Naas	Henry Albert Lee	*Henry Albert Lee*, 2, Inn's-quay
KILKENNY - - - -	Captain Thomas Poer Bookey, Doninga, Goresbridge	Peter M'Dermott, Parliament-street, Kilkenny	*Arthur J. Boyd*, 9, Blessington-street
——— City - - -	Thomas Hart, Windgap House, Kilkenny	Patrick J. Dillon, Patrick-street, Kilkenny	*Purefoy Poe*, 2, Clare-street
KING'S COUNTY - - -	Bassett William Holmes, St. David's, Nenagh	Robert Whelan	*Henry C. Neilson*, 30, Bachelors'-walk
LEITRIM - - - -	Sir Morgan George Crofton, Bart., The Castle, Mohill	Arthur Harrison, Drumlummon, Carrick-on-Shannon	*John Swanzy*, 5, Bachelors'-walk
LIMERICK - - - - -	William Henry Lyons, Croom Castle, Croom	John Ryan, Woodville, Limerick	*D'Alton and Smith*, 11, Stephen's-green
——— City - - -	Robert M'Donald, Harstonge-street, Limerick	John Hare DeCourcy	*Francis Kearney*, 9, Merchant's-quay
LONDONDERRY - - -	William Finlay Biggar, Riverview, Londonderry	Thomas Chambers, Londonderry	*Robert A. Hyndman*, 22, Bachelors'-walk
LONGFORD	John Samuel Galbraith, Clanabogan, Omagh	Philip M'Cutchan, Torboy House, Longford	*John Fleming*, 5, Berkley-street
LOUTH - - - - -	Thomas Mahon Richardson, Prospect, Dundalk	Burton Brabazon, Dromiskan House, Castlebellingham	*Burton Booth*, 184, Lower Gloucester-street
MAYO - - - - -	Joseph Pratt, Enniscoe, Crossmolina	James C. M'Donnell, Westport	*Benjamin Whitney*, 36, Dawson-street
MEATH - - - -	Thomas Fitzherbert, Black Castle	Harcourt Lightburne, Trim	*John Clarke*, 37, Westmoreland-street
MONAGHAN - - -	Sir William Tyrone Power, K.C.B., Annaghmakerig, Newbliss	William Mitchell	*Thomas E. Wright*, 14, Upper Merrion-street
QUEEN'S COUNTY - - -	William Compton Domville, Heywood, Ballinakill	John Malcomson, Maryborough	*Robert Malcomson*, 31, York-street
ROSCOMMON - - -	John Campbell, 27, Mountjoy square, Dublin	John Law Hackett, Ardcarn, Boyle	*G. H. Hackett*, 3, Lower Merrion-street
SLIGO -	Godfrey Brereton, Easkey	William Alexander	*Radel Peyton*, 24, Westland-row
TIPPERARY - - -	John Bally, Debsborough, Nenagh	Gerald Fitzgerald	*Thomas Francis O'Connell*, 28, Bachelors'-walk
TYRONE - - - -	Captain James Corry Jones Lowry, Rockdale, Dungannon	James Mackay, Seskanore	*Cecil Moore*, 42, Mountjoy-square
WATERFORD - - -	Edward Quin, Shanakiel House, Carrick-on-Suir	R. Garde Hudson, Dungarvan	*Shapland M. Tandy*, 2, Beresford-place
——— City - - -	Joseph B. Dobbyn, Leoville, Waterford	Patrick F. Hanrahan, Tramore	*Shapland M. Tandy*, 2, Beresford-place
WESTMEATH - - -	Major Walter Nugent	Thomas Murray, Mullingar	*William J. Morris*, 16, Fleet-street
WEXFORD - - -	Lieut.-Colonel C. G. Tottenham, Mount Talbot, New Ross	Thomas Wilkinson, Enniscorthy	*Henry Philip Woodroofe*, 30 Upper Mount-street
WICKLOW - - - -	Charles Stuart Parnell, Avondale, Rathdrum	William Henry Brownrigg, Elsinore, Bray	*Henry Ebbs*, 75, Harcourt-street

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

ARBITRATION — AWARD — COMPLAINT — LIMIT OF TIME FOR COMPLAINING—9 & 10 WILL. 3, c. 15, s. 2—The last day of term is not within the limit of the time fixed by 9 & 10 Will. 3, c. 15, s. 2, for making complaint of corrupt or undue practice in making an award on an arbitration. Complaint is made on the day on which notice of motion to set aside the award is served. *Harvey* v. *Shelton* (7 Bed. 455), not followed: (*Corporation of Huddersfield and Jacomb*, 29 L. T. Rep. N. S. 824. V.C.M.)

BILLS OF EXCHANGE ACT, 1855, s. 2—PETITION FOR LIQUIDATION PENDING REFERENCE.—Money paid into Court under the Bills of Exchange Act (18 & 19 Vic., c. 67), pursuant to a judge's order "to abide the event" of an

Digitized by Google

action then pending, forms no part of the debtor's estate but is a security to the creditor for the payment of the amount recoverable in the action, notwithstanding that the matters in dispute in the action have been referred, and bankruptcy supervened before any proceedings are taken in the matter of the arbitration: (*Ex-parte Tate & Co.; re Keyworth*, 29 L. T. Rep. N. S. 849. Bank.)

COMPROMISE OF ACTION FOR CAUSING DEATH BY NEGLIGENCE—ACTION FOR NOT APPORTIONING DAMAGES—9 & 10 VIC., c. 93; 27 & 28 VIC., c. 95.—The declaration alleged that defendant had brought an action as administrator of the plaintiff's mother, whose death was caused by the negligence of a railway company, against the railway company, for the benefit of himself and the plaintiff, according to 9 & 10 Vic., c. 93; that defendant, under 27 & 28 Vic., c. 95, compromised the action for a lump sum of money, without any apportionment by a jury of the amount of damages payable to the plaintiff in respect of his interest; and that defendant received the whole of the said sum, and retained it to his own use. Defendant pleaded that he, being plaintiff's father, had sued the said railway company in two actions, one for causing injury to himself, and the other under the statute mentioned in the declaration on behalf of himself, the plaintiff, and another child of defendant; the judgment in both actions was obtained in default of plea that he compromised the said actions for the amount mentioned under a judge's order, in good faith, and believing the terms of the compromise to be the best he could obtain; and that no division or apportionment of the said money was ever required or made: Held, that under the circumstances stated in the plea, no action was maintainable at law: (*Condliff* v. *Condliff*, 29 L. T. Rep. N. S. 831. Q.B.)

COVENANT BY TWO PARTIES, TO BE PERFORMED ON NOTICE—NOTICE TO ONE ONLY INSUFFICIENT.—The defendant and F. M. covenanted with the plaintiffs that they would, upon receiving six months' notice in writing, pay to the plaintiffs two several sums of money. Notice to pay one of the sums was given to the defendant only. Held, that the notice ought to have been given to both the covenanting parties, and that a notice to the defendant only was insufficient: (*Moul* v. *Moul*, 29 L. T. Rep. N. S. 844. Ex.)

INFANT—RECOVERY OF MONEY PAID UNDER PARTNERSHIP AGREEMENT—RESCISSION OF AGREEMENT BEFORE MAJORITY—FAILURE OF CONSIDERATION.—The plaintiff, during infancy, agreed with the defendant in writing to buy one half-share of a public house business of the defendant, agreeing to pay an instalment of the purchase-money at once, and the balance at a future uncertain time, the defendant to provide board and lodging for the plaintiff and his wife, and the plaintiff not to receive any fruits of the partnership until the balance should be paid. The plaintiff paid an instalment of the purchase-money, and went with his wife to board and lodge with the defendant, and shared the management of the business, but afterwards, and before his majority, rescinded the agreement. Held, that the plaintiff might, in an action for money had and received, recover back the instalment paid under the agreement, less the amount expended by the defendant in providing board and lodging for the plaintiff and his wife: (*Everett* v. *Wilkins*, 29 L. T. Rep. N. S. 846. Ex.)

DEVISE OF A MORTGAGED ESTATE—PAYMENT OF DEBTS—LEASEHOLD—LOCKE KING'S ACT.—A testator directed that all his just debts should be paid out of a fund consisting of the moneys arising from the sale of an estate devised in trust for sale and the residue of his personal estate. Held, that this direction was not a sufficient expression of a contrary intention within the statute 17 & 18 Vic., c. 113, as amended by 30 & 31 Vic., c. 69, and therefore that the devisees of certain estates in mortgage were not entitled to have the mortgage debts paid out of the fund: (*Gael* v. *Fenwick*, 29 L. T. Rep. N. S. 822. M. R.)

SPECIFIC DEVISE—APPORTIONMENT OF RENTS.—The Apportionment Act, 1870, applies to all wills coming into operation after the passing of the Act, whether made before the passing of the Act or not. A testator seised in fee, by a will made prior to, but confirmed by a codicil made subsequently to, the passing ot the Apportionment Act, 1870 devised his lands in the county of N. to A. for life, with remainders over, and died between the two half yearly days for payment of rent. Held, that the apportioned part of the rent accruing between the last half-yearly rent day, and the day of the death of the testator, formed part of his general personal estate, and did not go to his devisee: (*Capron* v. *Capron*, 29 L. L. T. Rep. N. S. 826. V.C. M.)

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, March 9th, 1874, when the following subject will be debated:—"That the Debtors Act of 1872 is conducive to the public interest."

SPEAKERS:

Affir. Mr. G. R. H. Nash,	*Neg.* Mr. M. Bodkin,
Mr. P. Payne.	Mr. E. Wren.

The Chair will be taken at Eight o'clock by Andrew Read, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 10th and 11th days of April, 1874, *at Eleven o'clock.*

N.B.—All Papers to be lodged on or before *25th March*, 1874.

The FINAL EXAMINATION of Candidates seeking admission as Attorneys will be held at the same place, on Monday and Tuesday, the 13th and 14th days of April, 1874, *at the same hour.*

By order of the Council,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 21st of April, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

TRINITY TERM, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers *on or before the first day of next Easter Term.*

By order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

[Monday, the 9th day of March, instant, will be the last day for serving Notices of Motion for the present sittings, movable not later than Friday, 13th instant.]

MONDAY.

IN CHAMBER.—M. Connor, confirm sale.—M. M'Inerrey, do.—D. S. Ker, allocation.—Anne Reynolds, do.—Same, examine notice.—Executor Litton, allocation. — Anne O'Neil, do.—J. B. Daly, do.—L. A. Tottenham, do.—B. W. Falkiner, do.—M. W. Knox, for order to lodge.—A. J. Hassard, for carriage.—E. O. Flinn, for absolute credit.—H. M'Calmont, attachment.—C. G. Douglas, re-entry since 8th January.

IN COURT.—T. Davison, final schedule.—Anne Greene, from 26th February.—D. S. Ker, objection to final schedule.—A. H. Wood, tenant's objection.

Before EXAMINER (Mr. Dobbs).

T. O. Sullivan, proofs.—E. J. Cooper, do.—H. J. Parnell, rental.

TUESDAY.

IN CHAMBER.—Trustees Johnston, for deeds.—O. Ellwood, compensation.

IN COURT.—Trustee O'Brien, to discharge purchaser.

Before EXAMINER (Mr. Dobbs).

E. Moran and others, proofs.—A. Clarke and others, do.—E. Kelly, for deeds.

WEDNESDAY.

Before EXAMINER (Mr. Dobbs).

S. Craig, rental.—H. T. White, do.—C. Crawford, ditto.

Before EXAMINER (Mr. M'Donnell).

W. H. Pim, rental.—J. A. Dyer, do.—J. M'Creery, vouch.—S. Cunningham, do.—Trustee Goff, ditto.

THURSDAY.

Before EXAMINER (Mr. Dobbs).

T. T. Lannigan, rental.—Church Commissioners Mohill, do.—Trustee Fitzherbert, ditto.

FRIDAY.

SALES AT 12 O'CLOCK.

M. CAHILL.—1 lot.
S. QUINN.—1 lot.
E. A. KEMMIS.—1 lot.
TRUSTEE KEMMIS.—2 lots.

Before EXAMINER (Mr. M'Donnell).

J. H. Ryan, rental.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas F. O'Neill	Prove debts and vouch	*Maxwell & Weldon*
Anna M. M'Givney	Prove debts	*Rynd*
Patrick Flinn	Prove debts and vouch	*Maxwell & Weldon*
Robert Midgley	do	*Neilson*
Anne Ryan	do	*Perry & Co.*
T. M. O'Shaughnessy	Vouch account	*Molloy & Watson*
Jane Young	do	*Merrick*
James Murphy	do	*Leachman*

TUESDAY.

Before the COURT, at 11 o'clock.

John Hackett	1st composition sitting	*Barlow*
S. P. Armstrong	do	*Mathews*
Same matter	Motion	*Larkin & Co.*
Same matter	1st public sitting	*Mathews*
John Dillon	do	*Casey & Clay*
Peter Donnelly	do	*Mathews*
David Bromfield	do	*Rosenthal*
Michael Farrelly	Final examination	*Lett*
Walter O'Donnell	do	*Oldham & Eaton*
John H. Sweet	do	*Maxwell & Weldon*
Wm. Henry Harris	Application for certificate of conformity	*Casey & Clay*
James Keegan	Take charge as proved	*Hardman*
John Kane	Examine witnesses	*Larkin & Co.*
Andrew Rogers	Audit and dividend	*Tincler & Son*
Patrick Fleming	do	*Maxwell & Weldon*
John O'Donnell	do	*Findlater & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Rea Payne	Costs	*Molloy & Watson*
James Carroll	do	*Leachman*
Patrick Carew	do	*Sullivan*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Patrick Moylan	Prove debts and vouch	*Stone*
Terence O'Connor	do	*Oldham & Eaton*

FRIDAY.

Before the COURT, at 11 o'clock.

John Dillon	1st composition sitting	*Casey & Clay*
Martin Hickey	Final examination	*Mathews*
Charles Dowler	do	*Browning*
Anthony Connor	do	*Macnamara*
Andrew Kehoe	do	*Hamilton & Craig*
Samuel Doyle	do	*Meldon & Sons*
John Neil	1st composition sitting	*Fay & M'Gough*
Same matter	Take charge as proved	*Fay & M'Gough*
William Holmes	Confirm sale	*Larkin & Co.*
C. J. Bridgford	Audit and dividend	*Goff*
Mary M'Donagh	do	*Perry & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

Arthur Noble	Prove debts	*Rosenthal*

ADJUDICATIONS IN BANKRUPTCY.

Nolan, John, North Earl-street, Dublin, provision dealer. Sittings, *Tuesday, March* 24, and *Friday, April* 10. *Larkin & Co.*, solrs.

Stevenson, Mercer, Ballynary, Armagh, farmer. Sittings, *Tuesday, March* 24, and *Friday, April* 10. *Stewart and Cochrane*, solrs.

DIVIDENDS IN BANKRUPTCY.

Connor, John, York-road, Belfast, builder. 1st dividend 1s. 2½d. in the £. C. H. James, official assignee. *Seeds & Lynch*, solrs.

Crosbie, Arthur, Tralee, Kerry, builder. 2nd dividend 4$\frac{9}{16}$d. in the £, making, with 1st dividend, 4s. 10$\frac{9}{16}$d. in the £. L. H Deering, official assignee. *Huggard*, solr.

Delany, James, Coolcross, near Thurles, Tipperary, farmer. 1st and final dividend 1s. 10¼d. in the £. L. H. Deering, official assignee. *Larkin & Co.*, solrs.

Delany, Thomas Monaraheen, near Thurles, Tipperary, farmer. 1st and final dividend 4s. 6¼d in the £. L. H. Deering, official assignee. *Larkin & Co.*, solrs.

Dormoy, Nicholas, Curragh Camp, Kildare, messman. 1st and final dividend 4s. 7d. in the £. C. H. James, official assignee. *O'Dowda*, solrs.

Digitized by Google

Fergus, Edward, Dooleague, Mayo, farmer. 1st and final dividend 20s. in the £. L. H. Deering, official assignee. *Neilson*, solr.

Lucas, Charles P., Armagh, gentleman. 1st dividend 7s. 3d. in the £. C. H. James, official assignee. *Perry & Co.*, solrs.

M'Geary, William, Johnstown, Armagh, flax dealer. 1st and final dividend of 6s. 10½d. in the £. C. H. James, official assignee. *Carey*, solr.

Molony, John, Dundalk, Louth, grocer and spirit dealer. 1st and final dividend of 1s. 4d. in the £. C. H. James, official assignee. *Lett*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	FEB. Fri 27	FEB. Sat. 28	MARCH Mon. 2	MARCH Tues. 3	MARCH Wed. 4	MARCH Thur. 5
	Government.						
—	3 p c Consols	91¾	—	—	91¾	—	91⅝ ¾
—	3 p c Reduced	—	—	90⅝ ¾	—	—	—
—	New 3 p c Stock ..	90⅝ ¾	90⅝	90⅝	90⅝ ¾	90⅝	90⅝ ¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	102¼	—	—	—
	Banks.						
100	Bank of Ireland ..	303¾	—	—	—	—	—
25	*Hibernian Banking Co.* ..	58¼	—	58	57¾	57½	58
20	*London and Westminster* ..	—	68	—	68⅛ ¼	—	—
3½	*Munster Bank (Limited)*	8⅝	8⅝ ¾	8⅝ ¾	—	—	8⅝ ¾
30	*National Bank*	57⅝	57⅛ ⅝	57⅝	57½	57⅛ ⅝	57⅝
15	*National of Liverp'l (Ltd)*	—	—	—	13⅛	13⅞	—
25	*Provincial Bank* ..	—	93⅝	—	—	94½	—
10	*Royal Bank*	—	29¼	29¼	—	29⅝	—
	Steam.						
50	Belfast St. Ship Co. (lit'd)	—	—	—	—	—	—
50	British & Irish	51	—	—	51	51	—
100	City of Dublin	108	—	107¾	—	108	—
20	Drogheda (limited) ..	—	—	25	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	—
	Mine.						
2½	Wicklow Copper	—	—	—	3½	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A ..	—	—	—	—	—	—
10	B ..	—	—	—	9½	—	9⅛ ½
10	No. 2 C ..	—	—	—	—	—	—
8½	*Dublin Tramways* ..	-	7	—	7	7	—
100	Grand Canal	—	—	—	—	—	—
9-4-7	*Patriotic Assurance* ..	10⅛ ⅝	10⅛ ⅝	10⅛ ⅝	—	10⅛ ⅝	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	—
20	Cork, Blackrock & Passage	—	—	—	—	10¼	—
10	Cork and Macroom ..	—	—	—	—	7½	—
100	Dublin and Belfast Junct.	—	—	—	—	—	—
100	Dublin and Drogheda	—	110	—	109¾	109⅝	109¼
100	Dublin, W'klow, & W'ford	—	—	—	73⅝	—	—
20	*Do.—issued at £35* ..	—	—	—	—	—	—
100	Gt. Northern and Western	-	—	94¼xd	—	—	—
100	Gt. Southern and Western	109⅛		—	108¾	—	—
100	Do. do. free of Stamp	109⅛	109½	109¼	109⅝	109¼	109⅝
100	Midland Gt. Western ..	—	—	—	91¼	91½	—
25	Portdn. Dun. & Omh. Jun.	—	—	—	—	—	—
50	Waterford and Limerick ..	—	-	x d	—	—	32½
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	102¾	—
6½	Cork & Bandon, 5½ p c ..	—	—	—	—	—	—
5	Do. do. 4 p c	—	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	53¾	—	—	—	—	—
50	Do. do. (1865)	—	51¾	—	—	—	—
100	Grand Trunk of Canada, 2	—	—	—	—	—	—
100	Do. do. 3	—	—	—	—	—	—
100	Gt. North'n & West'n, 5 p c	—	—	x d	—	-	—
100	Do., new, 6 p c	—	—	x d	—	—	—
100	Gt. South'n & West'n 4 p c	97½	—	97½	97¾	97¾	98
25	Portadown, Dun., &c., 5 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	x d	—	—	—
100	Do., 4½ p c	—	—	x d	96	96½	—
50	Do., new redeemable 5 p c	—	—	x d	—	—	—
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	D., W., & W., 4½ p c ..	—	—	99	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Gt. South'n & West'n, 4 p c	98½	98½	—	98½ f	98½ f	—
—	Ulster 4 p c	95⅝	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	102 f

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—March 12th and 30th, 1874.

Account Days—March 13th and 31st, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

MURPHY—February 28, at 6 Mountjoy-square, the wife of John B. Murphy, Esq., Q.C., of a daughter.

MARRIAGE.

HARDMAN and BRIDGFORD—February 21, Townley B. C. Hardman, Esq., solicitor, eldest son of T. W. Hardman, Esq., Abilene, Blackrock, county Dublin, to Janet Blanche, third daughter of Thomas Trussel Bridgford, Esq., R.H.A., 66 Lower Mount-street, Dublin.

WINES AND SPIRITS (Foreign) on which Duty was paid in London by some of the principal Firms during the past year.

WINES (Foreign)	Gallons	SPIRITS (Foreign)	Gallons
W. & A. Gilbey	800,690	W. & A. Gilbey	306,504
Dingwall, Portal & Co. ..	142,949	Twiss & Browning ..	186,558
F. W. Cosens	133,424	Daniel Taylor & Sons ..	177,500
Cunliffe & Co.	124,513	Trower & Lawson ..	151,924
R. Hooper & Sons ..	115,887	Dingwall, Portal & Co. ..	131,560
Davy & Co.	101,933	R. Hooper & Sons ..	99,139
Daniel Taylor & Sons ..	98,750	Galbraith, Grant & Co. ..	78,954
G. A. Haig & Co. ..	86,038	E. S Pick & Co.	66,486
Dent, Urwick & Co. ..	84,574	R. Burnett & Son ..	66,448
J. Allnutt, jun., & Co. ..	84,218	Daun & Vallentin ..	54,250
P. Domecq & Co. ..	84,063	Osmond & Co.	53,410
Brooks & Oldham ..	79,296	J. Allnutt, jun., & Co. ..	45,139
R. Christie & Welch ..	76,492	Hills & Underwood ..	44,705
Max Greger & Co. ..	73,237	Fulcher & Robinson ..	43,886
Wolff & Stern	71,044	Bisquit, Debouché, & Co.	43,383

Besides the preceding there were upwards of 2000 Firms who paid Duty on Wines and Spirits in less quantities than those above mentioned.—*Wine Trade Review, 15th January, 1874.*

THEOLOGY AND STATUTE LAW.—An action which has been pending in the Sheriff's Court of Lanarkshire for some time was decided last week. It was brought by Mr. Page Hopps, Unitarian minister, Glasgow, against Mr. Harry Alfred Long, Protestant missionary, both members of the local school board, for the purpose of interdicting Mr. Long from pirating a book written and published by Mr. Hopps, entitled "The Life of Jesus, re-written for Young Disciples." Mr. Long had published a review of the work, containing the whole of the book, with notes and criticisms attached to each chapter, and this publication was sold at 6d., the price of Mr. Hopps's book being 1s. The plea put forward by the defender was that the pursuer could not claim the protection of the law for the book, as it was blasphemous and heretical, denying tacitly or expressly the divinity of Christ. To this the purser replied that, apart from the fact that it was written by a Unitarian, and set forth the Unitarian view of the Saviour's life, a more unobjectionable book did not exist. Mr. Sheriff Buntine declared the interim interdict, which Mr. Hopps had obtained, perpetual, and ordered Mr. Long to pay costs. He held that though the doctrine that Jesus Christ is the second person of the Trinity is statute law, yet the public are entitled to criticise and controvert any part of the statute law, provided they do it in such a way as not to endanger the public peace, safety, or morality.

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY, IRELAND.

MERCER STEVENSON, of Ballynary, Armagh, in the County of Armagh, Farmer, was on the 24th day of February, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 24th day of MARCH, 1874, and on FRIDAY, the 10th day of APRIL, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

WM. PERRIN, Chief Registrar.

HENRY F. STEWART and GEORGE C. COCHRANE, Solicitors, 33 Lower Ormond-quay, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, March* 7, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MARCH 14, 1874. No. 372.

UNSEAWORTHY SHIPS.

THE first conviction under Mr. Plimsoll's Act (34 & 35 Vict., c. 110) has been had in Ireland, in the case of *The Queen* v. *Quinn*, concluded at the Belfast Assizes before Lawson, J., and a petite jury, on the 9th instant. In England, in what have been termed the "Plimsoll cases," heard at the last sittings at Guildhall on the 25th ult., the allegation of unseaworthiness met with but little success—in two of them it was negatived by the jury, and in the third the jury were divided. These actions were brought against the underwriters on policies effected on the ships in question; and upon the defences raising the issue of seaworthiness or unseaworthiness when leaving port, the main question in one case, on a voyage policy, left to the jury was "whether the vessel was lost through being unseaworthy—*id. est*, was she too crank and topheavy to encounter the perils which she might reasonably expect to meet;" in a second case, on a time policy, "whether the plaintiffs knowingly overloaded the ship so as to render her unseaworthy, and sent her to sea in that condition, and whether the loss was occasioned by that condition;" and in a third case, on a time policy, "whether the ship was unseaworthy when she left port, and, if not, was she lost by unseaworthiness." Two inferences have been drawn from these cases and their results—that Mr Plimsoll, good man, exaggerated existing evils somewhat, although a little agitation did no harm, and that the Legislative interference he demanded was not imperatively needed, inasmuch as the common law appeared to supply an existing remedy for the alleged evils. For our part, we are by no means prepared to admit that the common law, even so far as it goes, stands upon a wholly satisfactory footing (see *Gibson* v. *Small*, 4 H. L. 353; *Thompson* v. *Hopper*, 6 E. & B. 172; *Faucus* v. *Sarsfield, ib.* 192); and we would further point to *The Queen* v. *Quinn*, as supplying an instance demonstrating the existence of an aggravated evil, for which Legislative interference was imperatively necessitated.

Peter and Thomas Quinn, shipowners, were indicted, under 34 & 35 Vict., c. 110, s. 11, for that they, on Nov. 21, 1873, did send a certain coal-ship, called the "Nimrod," to sea in an unseaworthy condition, so as to endanger the lives of the crew. She was built in 1847, of colonial timber, and belonged to a class which, according to the Board of Trade Surveyor, were generally "considered good for from seven to nine years," although, "of course, they may not be dangerous to human life for some time afterwards." In Nov., 1873, she was put to sea for Ayr, with 45 tons of limestone as ballast on board, it being intended that she should return to Belfast with a cargo of coal; but failing to reach Ayr, she ultimately ran for Greenock, and was afterwards towed up to Glasgow. What was the condition of this vessel in Nov., 1873, built, as she had been, in 1847, and considered good for some nine years?—Admittedly unseaworthy. "The mate jumped off a coil-rope about 18 inches high, and the decks vibrated, showing that the beams were all adrift," said the Board of Trade Surveyor, who examined her at Glasgow; "four timbers in the bow (a portion of the vessel which should be strong) utterly gone," and "timbers full of maggots;" in the hold "from bulkhead to bulkhead fully half the timbers at the bilge utterly rotten;" "the lower beams of the vessel quite worthless;" "the knees under the deck nearly all rotten;" "the timber-heads perfectly rotten, resembling clay more than wood;" "the bulwarks in several places very bad;" "the bowsprit rotten at the heel, and decidedly unfit for service;" "the foremast rotten at the heel, as well as at the deck;" "the cut-water perfectly gone at the bobstay plates, and quite unsafe;" "the bowsprit back-stays very bad—one of them only fastened on with wire."—Admittedly unseaworthy. The Board of Trade Surveyor tried a little experiment; he tried if he could put his foot through the deck—it went through. He had seen enough to justify him in reporting the matter to the Board of Trade. We, too, have seen enough to know that the "Nimrod" was unseaworthy. "But then," said Lawson, J., in charging the jury, "If the vessel was sent unavoidably to sea unseaworthy, there was no offence committed. Did the traversers use all reasonable means in their power to make and keep the vessel in a seaworthy state? For she might be unseaworthy, and yet no person, though using due diligence, would know anything about it, and, if so, the owner would not be a criminal; whereas if the vessel was in such a state that a very slight examination would detect it, and if the owners never employed any person to overhaul her, but contented themselves to make such repairs as the master of the vessel suggested, it would be for the jury to say whether they had used all means in their power to have the vessel in a seaworthy state." Now, the law casts upon the person who puts a vessel to sea the onus of showing that he used all reasonable means to have her seaworthy, or that under all the circumstances, the sending was reasonable and unavoidable; and, having cast that onus upon the accused person, this law introduces, for the first time, the power for him to be examined as a witness, so that he may be heard on his own behalf to account for his act. The traversers took advantage of this provision and were examined. It appeared that they had purchased the vessel, in 1872, for £300 only—and that was as much as she was worth. They were not seafaring men, and did not understand the risk to which a ship was exposed by going to sea in the condition of the "Nimrod." They left it to the master to tell them what repairs were necessary, but could only swear positively to having this vessel, of 27 years of age, caulked once by the captain's advice. There was, indeed, a suggestion made that she was seaworthy for the coal trade, and that, therefore, the owners were not liable. But Lawson, J., in charging the jury, said he was "bound to tell them that there was no such distinction as regards seaworthiness for short voyages, or for a particular trade." And in the result the traversers were found guilty, and sentenced to two months' imprisonment and £150 fine. While ignorance would have been no excuse if they had not used due diligence, it was clear, said the learned Judge, that they ought to have known of the condition of the ship, and were determined to run her as long as they could make any money out of her. But then the jury recommended them to mercy, as this was the first case under the Act; and the vessel had not been insured, so that they could not be charged with the more serious offence of sending her to sea for the purpose of trying to reap the benefit of insurance.

Digitized by Google

Here, then, is a case in which there was no insurance, and no mere question as regards the liability of an underwriter upon a policy. The owners were not seafaring men, and it may well have been that, however culpable their neglect, they did not in fact know that the vessel was unseaworthy. She put to sea, and was unable to proceed, on account of a stiff gale of wind, not a storm, and she lost all her boats. Fortunately, she was not struck by a fair sea, and neither did she bump upon the ground—fortunately, "for had she done so," says the Board of Trade Surveyor, "she would have gone to pieces." Had she been lost with all hands, in all probability no punishment would have befallen the owners, who, it was admitted, had been "rather unfortunate, and had lost a good many vessels." Surely, for such cases Legislative interference was indeed imperatively demanded. It has been contended, however, that something more is yet needed, and that vessels of every class should be subjected to annual Governmental inspection, in like manner as, at present, British passenger steamers are annually surveyed. But it appears to us that a remedy simpler, less costly, and more practicable than a universal Government survey, is to be found in carrying out the principle of the Act of 1871 in its integrity. And thereby, not only will actual fraud or culpable neglect meet its deserts, but, seeing that reckless negligence will amount to a misdemeanour, shipowners in general will find that it is their interest themselves to take the reasonable precaution of annual inspection, which already the majority of the better class of shipowners do take on their own behalf.

THE POWER OF COMMITTAL FOR CONTEMPT OF COURT.

WHEN we mention the name of the Tichborne case, our readers need entertain no apprehension that we are about to lead them through the intricacies of that *cause célèbre*—a trial happily without parallel in the history of criminal law. We propose to consider its effects upon a subject of the gravest importance, in a constitutional point of view—the arbitrary power of fine and imprisonment vested in the Superior Courts for the purpose of punishing contempt of Court. That there should exist some power to punish high-handed contempts of a Court of Justice, none will be found to deny; but, at the same time, we think that the facts which took place at and prior to the trial which has just concluded, have demonstrated, beyond doubt, that the arbitrary power of fining and imprisoning vested in the Court of Queen's Bench and the other Superior Courts, is, at all events, capable of being abused, and that its unfettered exercise might be productive of possible danger to that liberty which every British subject should enjoy under our free constitution. The circumstances under which the power of the Court of Queen's Bench was brought to bear in relation to the "Claimant" himself, and to Messrs. Whalley and Onslow, were certainly such as to enlist a certain degree of sympathy on behalf of the persons who, no doubt, appeared to have rendered themselves amenable to punishment. This individual, Orton, had failed in a previous action, which had concluded, and was entirely at an end. During the course of that trial accusations of a most serious nature were brought against him. The Government of the day, with the unlimited resources of the Crown at its command, next instituted criminal proceedings against him; and a large portion of the press criticised his case in a manner which was hardly calculated to promote his chances of having a fair trial, and which, whatever its tendency, was at least inopportune. Under this state of facts, his own resources proving totally inadequate to meet the great expense involved by his defence, he went about the country holding public meetings, at which he and his friends, endeavouring to collect funds for his defence, stated their own version of the facts of the case, and criticised the evidence which had been heard at the previous trial, in opposition to the version which was sustained and propagated by the press. At some of these meetings a statement was made that the Lord Chief Justice—who, it was well known, would be the presiding Judge at the trial—was prejudiced against the Claimant, had already made up his mind on the case, and had so expressed himself in presence of witnesses. The Claimant and his friends, on these grounds, expressed their disapproval of the learned Judge presiding at the trial. For this conduct the Claimant and some other persons were summoned before the Queen's Bench to answer for contempt of Court; and the only instance in which they could be accused of an actual and not a mere constructive contempt was in the allegations made against the Lord Chief Justice. Notwithstanding the decision of the Court that this was a contempt (12 C.C.C. 358), we, to say the least of it, entertain grave doubts on the subject. Without insinuating for a moment that there was a word of truth in the imputations cast upon the Lord Chief Justice, it strikes us that, nevertheless, the objection itself was a most substantial one, if true, and, had the Claimant been able to prove it, would have been a most excellent reason why the Chief Justice should not have been the Judge to preside at the trial.

But, in any event, we fail to conceive in what manner the raising an objection to a certain Judge, and advancing arguments to show cause why he should not preside at a trial, can be construed into either a contempt of Court, or an attempt, "by means of vituperation," to deter the Judge from so presiding. The constructive contempt, if contempt it was, of making observations on the former trial, seems to have been not very astutely regarded by the Court in cases where it was said to have been committed by journals hostile to the Claimant. The case on which Blackburn, J., seems to have relied (*Charlton's* case, 2 Myl. & Cr. 316) contains nothing in the remotest degree resembling the present case. There, the contempt was a direct threat used to an officer of the Court. Here, the observations and reflections not only contained no threat to the Court, but were directed against persons who had given their evidence in a previous trial, and who possibly might not be called at all in the forthcoming criminal trial. In no case had it been held that a person is to be punished by committal for contempt of Court, when his only offence has been a reply to a series of uncalled-for and reiterated attacks upon himself in the public press. We think that the Court, in this, overlooked the just and equitable doctrine laid down by Lord Denman in the case of "*The Queen* v. *Proprietors of the Nottingham Journal*" (9 Dowl. 1043), a case which, although in its circumstances not precisely similar to the present case, still presents a broad and general principle, which should have guided the Court, or, at all events, prevented them from inclining so unrelentingly against a person who was trying to vindicate his character from a most serious charge, and to defend himself from the one-sided strictures of a hostile press, with which the Court declined to interfere save by what turned out to be but ineffectual remonstrance. "Persons who ask for the interference of this Court in their favour, by the exercise of its summary jurisdiction, must leave themselves wholly in the hands of the Court. If in any way they make attacks on the parties against whom they ask for our summary interference, they disentitle themselves to succeed in their application." To us it appears that, no matter by whom

Digitized by Google

a question of contempt should be tried, when the punishment is of the serious nature inflicted in this case, affecting the property and liberty of the guilty parties to so large an extent, and under powers so undefined and practically unlimited, the Court itself is a most unsatisfactory tribunal to try the question, whether its own dignity has been assailed? We do not think the maxim of English law, that no man should be a Judge in his own case, could be better or more forcibly stated than in the language of the claimant:—"But, you see, I am charged with contempt in complaining of the Lord Chief Justice—and you are his colleagues: it is not fair that you should try it without a jury."

THE NEW LAW OFFICERS IN IRELAND.

Instead of the appointment of a Lord Chancellor in Ireland, the "Great Seal" of that kingdom has been "put into commission," as it was here in England in the year 1835, prior to the appointment of Lord Cottenham; but as the other law officers of the Crown in Ireland under the new administration are definitely appointed, the following particulars of their career may be of interest:—The Right Hon. John Thomas Ball, Q.C., the new Attorney-General, is the eldest son of the late Major Benjamin Marcus Ball, formerly of the 40th Foot. He was born in the year 1815, and was educated at Trinity College, Dublin, where he took the usual degrees; he was called to the bar in Ireland, in the year 1840. He obtained silk in 1854, and was appointed Queen's Advocate in 1865. He has held the office of Judge of the Consistorial Court in Ireland, and Vicar-General of the province of Armagh. He is also a Bencher of the King's Inns, Dublin. He has represented the University of Dublin since the general election of 1868, having been an unsuccessful candidate three years previously. He held the posts of Solicitor-General and Attorney-General for Ireland for a few weeks, in the autumn of 1868. He was sworn a Privy Councillor, in 1868. Dr. Ball married, in 1852, Catherine, daughter of the Rev. Charles R. Elrington, Fellow of Trinity College, Dublin. Mr. Henry Ormsby, Q.C., who is appointed Solicitor-General for Ireland, was born about the year 1810, and was educated at Trinity College, Dublin, where he took his Bachelor's degree in 1834. He was called to the Irish Bar in Michaelmas term, 1835, and practised for many years in Dublin; he obtained a silk gown in 1858. Mr. Ormsby has never hitherto held a seat in Parliament. Mr. George Augustus Chichester May, Q.C., who succeeds to the post of "Law Adviser to the Castle," was born about the year 1816, and was educated at Magdalen College, Cambridge, where he took his degrees as Bachelor and Master of Arts in 1838 and 1841. He was called to the Irish Bar in Hilary Term, 1844, obtained silk in 1865, and was elected a Bencher of King's Inns, Dublin, last year.—*Times*

RECENT DECISIONS.

We find some interesting cases reported in the IRISH LAW TIMES of last week on the practice under the Debtors Act and in bankruptcy, and we will briefly summarise the decisions. In *M'Blain* v. *Weir*, in the Queen's Bench, it was sought to obtain an order to arrest a defendant unless he gave security that he would not leave Ireland. It was admitted that the plaintiff could prove his case without the defendant, but it was urged that the action would have to be abandoned if the defendant were allowed to leave, whereas if arrested he would pay the debt. There is a section in the Irish Act analogous to sect. 6 in the English Act, and the words are "that the absence of the defendant will materially prejudice the plaintiff in the prosecution of his action." It has been held by our Court of Exchequer that the section is not intended to give imprisonment as a means of enforcing payment of a debt, the defendant in *Hume* v. *Druyff* (L. Rep. 8 Ex. 214; 29 L. T. Rep. N. S. 64) being ordered to be discharged from custody after final judgment obtained in the action. The motion in *M'Blain* v. *Weir* was evidently made under a misapprehension as to the effect of the abolition of imprisonment for debt. The body of a debtor can only be detained so long as it is necessary to enable a creditor to obtain judgment giving him power to attach the debtor's goods or to compel payment where there is ability to pay. In a case of *O'Donnell* v. *Smith* in the Consolidated Chamber, application against a debtor for payment was made in court. By the Act, a "Judge sitting in chambers" is given the power to commit for non-payment. The motion was refused, it being held that it should be made to a Judge *in camerâ*. We should have thought the point barely arguable. In the matter of a disputed adjudication a question arose in the Court of Bankruptcy whether rent accruing due and payable after the passing of the Bankruptcy (Ireland) Amendment Act 1872, by a lessee or assignee of a lease, executed or assigned before the passing of the Act, was a good petitioning creditor's debt. Mr. Justice Harrison delivered an elaborate judgment, and said that his first view was that as there was no debt until the respective gales of rent in question fell due, which they admittedly did after the passing of the Act of 1872, it must be considered that the debt was then contracted, and was a good debt to support an adjudication against a non-trader. Further consideration, however, convinced him that this view was not correct, the authority which he mainly relied upon in coming to an opposite conclusion being the case of *Ex parte Harding, re Williams* (10 L. T. Rep. N. S. 117; 33 L. J. Bank. 22.) In that case it was held by Lord Westbury that a call ordered to be made after the passing of the Bankruptcy Act, 1861, on the winding-up of a joint stock company, whose deed of settlement bore date the 15th March, 1847, was a debt contracted after the passing of the Act of 1861, on which the official manager could present a petition in bankruptcy on which a valid adjudication could be made against the party making default in payment of such calls. That case was affirmed in the House of Lords.—*The Law Times.*

THE COMING COURT OF FINAL APPEAL FOR IRELAND.

The chief difficulty that will present itself for solution in the coming measure of Law Reform for this country is that of appellate jurisdiction. If it is the intention of the Government to assimilate the Irish to the new system of jurisprudence which will shortly come into force in England, and that it is also contemplated to have but the one Court of Appeal for the United Kingdom, a serious injury will be inflicted upon Irish suitors. Lord Justice Christian, in his remarkable pamphlet, "The Coming Court of Final Appeal for Ireland," has very fully and lucidly discussed this subject. If the "Supreme Court of Appeal" be constituted the ultimate court of resort for Irish appeals, preserving an intermediate appellate court in this country, in which are consolidated the Irish Courts of Exchequer Chamber and Chancery Appeal, with a full and efficient establishment of Judges, we shall not complain; but if there be but one appeal from the Irish courts of first instance, and the appellate court is in London, then we enter our protest against such a system. In the majority of cases it would be simply a denial of justice from the expense involved. Taking four Irish appeals carried to the House of Lords, we find in these cases the respondent's costs were respectively taxed to £402 16s. 10d., £406 1s. 2d., £457 10s. 6d., and £282 3s. We are not furnished with the appellant's costs, but Sir John G. S. Lefevre, examined before the House of Lords Committee, in 1872, in answer to Lord Cairns, said occasionally "it happens where costs are given to be paid out of the estate that we get the appellant's bill. In order to give some idea of the expense of these suits I have had a table of a certain number of cases taken rather at hazard, showing the amount of costs both of appellants and respondents. In the cases of the respondent's costs, and in the few cases which we have been able to find of appellant's costs, they varied from rather above £200, say between £200 and £300, to £500 or £600. There are now and then cases of a very much heavier kind, but those are of course exceptional only. The costs in error about the same; they are about £300 for the respondent's costs." It appears from the same witness's evidence that appellants' bills are not taxed, because if they succeed they do not get costs,

Digitized by Google

and if the appeal is dismissed, it is not the appellant's bill but the respondent's that is taxed. This would hardly be a pleasant state of affairs, even under the considerable modifications that will be extended to Irish suitors, who may find themselves in the "Supreme Court of Appeal," without the option of appealing to the now existing Irish intermediate courts of appeal should they like the English—and under the plea of assimilation between the two countries—be abolished. We are adverse to giving but one appeal. Lord Cairns has stated that "it is extremely plausible to say that there shall be only one appeal, but I doubt whether in principle it is quite sound. Great injustice may be done if a single appeal is insisted on, and it must be remembered that a third court has a great advantage over a first appeal court." The English appeal cases to the House of Lords have been about twenty in a year. "In twenty-three English and Irish cases," says Sir R. Baggallay, "the Lords reversed the decisions in the first appellate court, in eleven that court had affirmed the decisions of the court of first instance. There was no complaint of these decisions." In all these eleven cases justice was obtained only by the second appeal. In considering the value of appeals, the principle is generally correct, that in difficult and intricate cases no hearing can be completely satisfactory which is held before each party has already become acquainted with the case of his opponent. The necessary consequence is, that the first satisfactory hearing upon such cases is upon the first appeal. Principally for this reason, the cases carried to the first appeal court very far exceed in number those which are carried on to the second. It cannot be expected that in intricate cases the decisions will be uniformly correct even at the first hearing.—*Saunders's News Letter.*

LORD WESTBURY'S WILL.

The Master of the Rolls has been called upon for the third time to construe a passage in the will of the late Lord Westbury. That learned man was unrivalled for his power of deriding and construing the wills of stupid testators, crotchety testators, and incomprehensible testators. But, like many a great lawyer that had gone before him, he left, by way of legacy to that Court of Chancery which he so dearly loved, a document called a will, which is found on examination to be beyond measure unintelligible. When the present Lord Westbury was married, his father drew on a sheet of paper a memorandum of agreement for a settlement upon that marriage; and this memorandum, together with the will of the same draughtsman, are now declared by the Master of the Rolls to be more difficult of construction than any document his lordship had ever seen. Indeed, his lordship would have declined to attempt to construe either of them but for a decision of the late Lord Westbury himself, which precluded the adoption of that mode of escape from the difficulty. Lord Westbury had covenanted on his son's marriage to allow his future daughter in-law £400 during his own and her joint lives, and to give by his will £10,000 to trustees for her benefit and the benefit of her children. In his will he directed his trustees at the end of five years to pay £10,000 to the wife of the present lord and their children upon the trusts of the marriage settlement of that son. The question was, whether this direction amounted to a compliance with the covenant, or whether the trustees of the marriage settlement could prove for £10,000 against the estate of the testator. The Master of the Rolls held that the latter alternative was the true one, at the same time remarking that the Court was not at liberty to conjecture what was in fact the intention of the testator.—*The Law Journal.*

If anything in this world could have summoned back to us for a time the shade of the illustrious dead, it would have been the terms of the decision in the Rolls' Court on Tuesday last. What a sight and what a hearing that would have been for those who had dared to find fault with the deeds and language of departed greatness! The magnificently contemptuous wave of the hand which would have dismissed the offending judge, the short, neatly-balanced sentences which would have compressed into a few words the quintessence of all sarcasm, the air, all together would have completed a scene worthy even of Dante's Muse.

The more prosaic question remains, what lesson we may best learn from Lord Westbury's ill-success in carrying into effect his testamentary wishes. The first and most obvious feeling is that English law presents a series of pitfalls which the most careful and most experienced travellers are not always able to avoid. If Lord Westbury stumbled, who, we may ask, can expect to walk with safety? But this reflection would really be unjust to English law, so far as the particular case is concerned. Nor would it, again, be fair to draw from this suit a moral on the danger of neglecting the use and repetition of the proper cabalistic phrases of the law, as though our courts incline to punish curtness and plainness as offences against the genius of an essentially mysterious profession, whose aim it is to deter the steps of all unqualified intruders. The true lesson of the case, in fact, is that it is not very prudent for any one to be too entirely his own legal adviser, any more than it is prudent for him to be his own stock-broker or physician. Lord Westbury is far from being the first lawyer of eminence who has made himself involuntarily an occasion for the enforcement of this remark. It is not only the general public who cannot dispense with lawyers; lawyers themselves are scarcely less in need of one another's services. There are few men who can judge with any exactness of the nature of their own performances. The criticism even of an inferior mind will often be of the utmost value, and will often pronounce a truer, if only because a more unprejudiced, opinion. The case, as we have said, does not much differ whether the sphere be that of law, or of medicine, or of finance. There is a great deal in all of them which a qualified man may do well and easily for himself, and there is a great deal, too, which it would be prudent for him to commit to others. Some will, perhaps, err by too great caution and self-distrust, just as others have erred, in the contrary way, from too great self-confidence; but there is no comparison whatever between the consequences of the two mistakes.—*Times.*

COURT OF CHANCERY APPEAL—(LONDON).*

(Before LORD CAIRNS, L.C.; JAMES, L.J.; and MELLISH, L.J.)

Feb. 27.—Ex-parte HOLLAND. *In re* HENEAGE.

Married Women's Property Act, 1870 (33 & 34 *Vict.*, c. 93), s. 12.

The question in this case was whether, since the passing of the Married Women's Property Act, 1870, a married woman who had no separate property could be made bankrupt in respect of a debt contracted by her before marriage. Mr. Registrar Hazlitt, sitting as Chief Judge, had dismissed a petition for adjudication presented by the creditor, on the ground that the person whom it sought to make bankrupt was a married woman, and the creditor appealed.

Mr. De Gex and *Mr. Pollock*, for the appellant, relied on the 12th section of the Act, which is as follows:—"A husband shall not by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage; but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy such debts as if she had continued unmarried." They contended that the liability to be sued as if she were a *feme sole* carried with it the liability to be made bankrupt.

Mr. Roxburgh and *Mr. Robertson Griffiths*, who appeared for the respondent, were not called upon.

The LORD CHANCELLOR thought the object of the Act was to make the separate estate of a married woman liable for her debts contracted before marriage, and for this purpose she was made liable to be sued; but it would be straining the words of the Act to say that they altered the status of all married women by making them subject to the bankruptcy laws.

MELLISH, L.J., concurred, but was not at present quite satisfied that if the woman had had separate property she might not have been liable to an adjudication.

* From the *Law Journal.*

Digitized by Google

LIABILITY OF SOLICITOR TO MAKE GOOD WORTHLESS SECURITY.

MACKETT v. BAYLIS.

(Before BACON, V.C.)

Mrs. Sarah Mackett had lent considerable sums of money through her solicitor, Mr. Baylis, on mortgage, and, amongst other amounts, she lent, £2,300 on the faith of a building agreement, which was, in fact, of no value whatever. Mrs. Mackett being dead, her representatives now filed a bill against Baylis, asking that he might be held liable to refund this £2,300, and that he might be ordered to pay it into Court in the suit at once. For Baylis it was contended that it was competent for the testatrix to lend the money on any security she desired; and also that, as she was indebted to him for legal charges, for an amount exceeding the £2,300, the Court would not order this sum, which was only an item in an account, to be paid into Court.

BACON, V.C., held that Baylis owed to the testatrix the duty of a solicitor; and that, if he palmed such a piece of trash as this agreement on his client as a security, he was bound to make it good. He ordered Baylis to pay the £2,300 into Court within a month.

DEFAMATION.

There is no other class of lawsuits that represent human nature in so despicable a light as actions of libel and slander. The earlier judges frowned upon and discouraged them. From that extreme we passed to the other, when the most enlightened judges of England held that truth was no excuse for a libel, but rather an aggravation; a state of the law to which Churchill refers when he says:

> "By which it might be construed treason
> In man to exercise his reason,
> Which might ingeniously devise
> One punishment for truth and lies,
> And fairly prove, when they had done,
> That truth and falsehood were but one."

And of which Tom Moore sings:

> "For oh! 'twas nuts to the Father of Lies
> (As this wily fiend is named in the Bible),
> To find it settled by laws so wise
> That the greater the truth, the worse the libel!"

We have outlived both these eras, but actions of defamation are still too common. Happily we may say verdicts for damages are not. If it were otherwise, a bad-tempered man might, in one rash breath, blow away the fruits of a lifetime of worthy toil, or an excitable editor "his quietus make," so far as earthly possessions are concerned, "with a bare bodkin from a goose's wing." The history of literature assures us that the poets have done much toward correcting the law of libel, but it is to be suspected that they have also been greatly to blame for the prevalence of suits for defamation. No counsel for a plaintiff in such an action, for two hundred years at least, has ever refrained from quoting to the jury:

> "Good name in man and woman, dear my lord,
> Is the immediate jewel of their souls.
> Who steals my purse, steals trash; 'tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to thousands;
> But he that filches from me my good name
> Robs me of that which not enriches him,
> And makes me poor indeed."

Now as these, after all, are the sentiments of the greatest villain and hypocrite in fiction, and have become somewhat hackneyed, I would suggest to plaintiff's counsel, in such case, to quote instead this stanza from the *Orlando Innamorata*, from which, possibly, Shakespeare "filched" his famous lines:

> "The man who steals a horn, a horse, a ring,
> Or such a trifle, thieves with moderation,
> And may be justly called a robberling;
> But he who takes away a reputation,
> And pranks in feathers from another's wing,
> His deed is robbery, assassination,
> And merits punishment so much the greater,
> As he to right and truth is more a traitor."*

* White's Memoirs of Shakespeare, p. 37.

It is to be noted, in this connexion, that Shakespeare makes Iago also say: "As I am an honest man, I thought you had received some bodily wound; there is more offence in that than in reputation. Reputation is an idle and most false imposition; oft got without merit, and lost without deserving; *you have lost no reputation at all, unless you repute yourself such a loser*." Now, having a choice of views on the subject from the lips of the same character of the same great poet, we might be puzzled; but if Shakespeare is to be considered as of any weight on the point, at least we may be permitted to doubt the expediency and propriety of allowing one whose reputation has been injured by another's slander to salve his wounded honour by extracting a portion of the "trash" of that other's purse. At any rate, the defendant's counsel hereafter may offset one of Iago's utterances against the other, and claim that he is not an authority against slander. It may be suspected, if Shakespeare ever was a lawyer, as some people incline to think, that he was peculiarly strong in slander cases, especially where his client was a woman. He makes out a piteous case for Hero, "done to death by slanderous tongues;" and again for Imogen:

> "No, 'tis slander,
> Whose edge is sharper than the sword; whose tongue
> Outvenoms all the worms of Nile; whose breath
> Rides on the posting winds, and doth belie
> All corners of the world; kings, queens, and states,
> Maids, matrons, nay, the secrets of the grave
> This viperous slander enters."

This is, indeed, a good passage for the plaintiff's attorney.

We should certainly have an unquiet world if men were permitted to recover damages at pleasure for the wagging of wanton tongues. The son of Maclauren, the distinguished mathematician, felt aggrieved by Goldsmith's statement, in his History of Animated Nature, that the senior Maclauren was subject to fits of yawning so violent as to render him incapable of proceeding in his lectures, and although the senior Maclauren and Goldsmith were both dead, yet the son bullied the publisher into cancelling the offensive leaf. Dr. Johnson did not approve this course, but said, "it is of much more consequence that truth should be told than that individuals should not be made uneasy," and declared that the "uneasiness which a man feels on haivng his ancestor calumniated," is "too nice."* This pious son evidently thought that even if his father did open his mouth inordinately, that was no reason why other people should open theirs.

Let us now look at some of the peculiarities, contradictions, and absurdities of the adjudications on slander and libel.

The common law is not very tender of woman in respect to defamation. This is probably for the reason that women themselves are always uttering slanders, and are practically as irresponsible as children for the consequences. When the millenium of women's rights dawns, one of her rights will be to be sued for her defamations. Until then, however, there is no other of man's oppressions that is so well adapted to cause the fair sex to lose their temper as the common-law rule of defamation of female character. Calling a woman a whore was not actionable except in the city of London, by reason of the custom there to cart those of "that name."† This was a very fine distinction. The custom of the city to hold such persons in reproach was nothing; the custom of carting, on the other hand, was something practical and tangible, that appealed to the British Bull sense, and to the common-law doctrine of the inviolability of the person. The custom itself has probably fallen into desuetude, otherwise the business of carting would be much more extensive and lucrative in the great and wicked city of London than we understand it to be. Instead of being carted, ladies of this description drive in fine carriages, and set the fashions for their more virtuous and poorer British sisters. Again: it is no slander to say of a spinster that she is in the family way, or that she has had a child,‡ unless she is about to be married and loses her marriage in consequence, or suffers other pecuniary damage. Here, too, we see the solid sense of the founders

* Boswell's Life of Johnson, vol. 3, p. 12, Pickering's ed.
† *Robertson* v. *Powell*, 2 Selw. N. P. 1224.
‡ *Davis* v. *Gardiner*, 4 Co. 16 b., p. 11.

Digitized by Google

of our laws. The false report that a young woman has given birth to an illegitimate child is only a contingent injury to her character, because, perchance, nobody would ever seek her in marriage, and unless somebody should want to marry her, the lapse would be venial; but if a pending marriage should actually be broken off by the report, why that is an unwarrantable interference with her market which the law will punish. This is so excellent that it is a great pity that the New York Legislature should spoil it by enacting that words imputing unchastity to a woman shall be actionable in themselves.

When Falstaff called Dame Quickly "a woman," she replied, "Who, I? I defy thee. I was never called so in mine own house before." More recently it seems to be regarded more offensive to say of a woman that she is *not* a woman. Thus, calling a woman a hermaphrodite is not actionable.* But this was said of one who taught a dancing school, and the court thought that her sex for this purpose was immaterial. But in Ohio they are more particular about such matters, and have held the contrary.†

Charges which have a tendency to exclude a man from the society of his fellows for physical reasons, are actionable in themselves. So an action lies for writing in a letter that the plaintiff had the itch and stunk of brimstone.‡ This is evident enough; it tends to bring him into bad odour in society. The offence was not mitigated by the fact that the charge was in verse. But let us be accurate about the matter. If the charge had been that he had *had* the itch, and *had* stunk of brimstone, no harm would have come of that—the plaintiff would not be scratched from the rolls of good society, and his rank offence would have had time to diffuse itself in the air. See how luminously the law puts this doctrine: Charging a woman with having a venereal disorder is actionable, because it causes her to be shunned; § but charging her with having had a venereal disorder is not actionable, because it is no reason why her company should be avoided. ‖ But now let us see how consistent the law is; words charging an act, the commission of which would subject the offender to punishment as for a felony, are actionable in themselves, without proof of actual damage. Now, of course we should infer, if the charge is simply that the person *had been* to prison for stealing a horse, that this would not be slander, because the person charged would be in no danger of punishment, and "it is no reason why the company of a person so charged should be avoided." But no! the law grows strict all of a sudden, and holds that an action will lie for saying of a plaintiff "he is a returned convict," though the words import that the punishment has been suffered!¶ Now, why this distinction between the convict and the man with the itch? The convict is not contagious; having once been apprehended he cannot be caught again; and wherein, therefore, is the immorality of the latter charge greater than that of the former? The law tries to get around this by saying that slander "is always for the loss of character, and not the danger of punishment."** Well, that's what we always supposed. But *is* it, really? If it is, why make words charging a felony actionable, in themselves, while others, although imputing as deep moral degradation, are not? Old Coke had a more plausible explanation. Commend us to the ancients for ingenious injustice. He said:—"There is this difference of scandal in the past tense, when it touches the mind and when it touches the body. If it be a scandal to the mind and affections, as perjury, felony, &c., then the mind that remains is slandered; but if it be of an accidental infirmity or disease of the body, it is otherwise, for none now will forbear his company, though he had the plague in times past."†† We fear Coke was and is practically right; "none now will forbear his company though he had" any disgraceful disease "in times past."—*Albany Law Journal.*

* *Weatherhead* v. *Armitage*, 2 Levinz, 233.
† *Malone* v. *Stewart*, 15 Ohio, 319.
‡ *Villers* v. *Mouseley*, 2 Wils. 403.
§ *Williams* v. *Holdredge*, 22 Barb. 396.
‖ *Carslake* v. *Mappledoram*, 2 T. R. 473; *Bloodworth* v. *Gray*, 8 Scott N. R. 9.
¶ *Fowler* v. *Dowdrey*, 2 M. & Rob. 119.
** *Van Aukin* v. *Westfall*, 14 Johns. 233.
†† Smith's Case, Noy, 157.

RECENT BANKRUPTCY DECISIONS.

Cases arising under the Bankruptcy Act, 1869, multiply rapidly, and it is almost necessary at short intervals to take a retrospect. The question which perhaps has received the most attention is that which has reference to the position, under various circumstances, of secured and execution creditors. It is not yet very satisfactorily established what a secured creditor is, and, therefore, we will first look at recent decisions upon this point.

The 12th section of the Act speaks simply of a "creditor holding security," and by sec. 16, sub-sect. 5, a "secured creditor" is defined to mean "any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for a debt due to him." In illustration of the variety of circumstances under which this question may arise, it is only necessary to refer to two very recent cases, *Ex parte Tate and Co., re Keyworth* (29 L. T. Rep. N. S. 849), and *Emmanuel* v. *Bridger* (Weekly Notes, Feb. 21, p. 42). In the former case a plaintiff in an action on a bill of Exchange, claimed to be a secured creditor in respect of a sum of money brought into court by Judge's order to abide the event of the action. In the second a creditor had obtained a garnishee order, which was made absolute before the bankruptcy, and the question was whether in respect of the moneys attached he was a secured creditor within the meaning of the Bankruptcy Act. In the former it was held that he was not a secured creditor, and in the latter that he was. There does not appear to be any tenable ground of objection to either of these decisions. In the case of attachment the security is indisputable when the garnishee order is made absolute, and it would seem to be arguable that the mere service of the order would give the creditor a security liable to be defeated by the discharge of the order. It is equally clear, on the other hand, that money brought into court to abide an event, is not the property of the creditor until judgment in his favour, and neither is it the property of the debtor paying it into court so as to pass to his trustee on his subsequent bankruptcy. A very elaborate argument appears to have been presented to the Chief Judge by counsel for the trustee in *Ex parte Tate*, who seemed indeed to look upon payment into court under a Judge's order of a sum to abide an event as analogous to attachment under a garnishee order. The learned Chief Judge considered, however, that there was no analogy, and that the argument as to attachment had no application at all to the case before the Court. The most forcible part of the argument for the trustee was that which dealt with the fact of the action on the bill of exchange having been restrained by the County Court in which the liquidation proceedings were instituted. Said the learned counsel, "the deposit was to abide the result of the action, or to await until the action was determined. That, however, is a matter that can never arise; that is an event that now can never happen, because the Judge of the County Court has by his injunction made it impossible for the plaintiffs to proceed with the action." The Chief Judge admitted the plausibility of thus putting the case; but he referred to the remarks of Lord Hatherley in *Ex parte Rocke, re Hall* (25 L. T. Rep. N.S., 287), that the granting or not granting an injunction at the discretion of a County Court Judge cannot affect the rights of creditors *inter se*. The learned Judge again took occasion to deplore the failure to re-enact in the Act of 1869 the 184th section of the Act of 1849, a section the spirit of which he imported into the new Act by his decisions which were overruled by *Ex parte Rocke*. In the result he held that the plaintiffs in the action were entitled to have the question between them and the debtors determined. It was suggested that the amount paid into court should be transferred into the liquidation, and some proceedings taken to determine how much the plaintiffs were entitled to.

Another case on this subject of execution creditors—proving, we think, the absurdity of making a distinction between trader debtors and non-trader debtors, and executions for sums above and below £50—is that of *Ex parte Lovering, re Peacock* (29 L. T. Rep. N. S. 897). In this case again the Chief Judge points out that all the confusion has arisen from the failure to re-enact sect. 184 of the Act of 1849. In *Ex parte Lovering* creditors of a trader for sums

Digitized by Google

above £50 had seized but not sold. Then a creditor for less than £50 seized. Had the 184th section of the Act of 1849 been still law, there having been no sale, the creditors would have been entitled only to rateable parts of their debts. Section 87 of the Act of 1869, deals only with the case of the goods of a trader being taken in execution for above £50 and sold. If the sheriff, within fourteen days, receives notice of a bankruptcy petition having been presented, he will hold the proceeds on trust for the trustee. This section does not affect an execution creditor of a trader for less than £50, and the Chief Judge held that in such a case the small creditor was entitled to the proceeds—on the authority of *Slater* v. *Pinder* (24 L. T. Rep. N. S. 475).

The decisions, although by their conflict tending to confuse the law, in the result place it upon an intelligible footing. Seizure without notice of an act of bankruptcy vests the right to the goods in the execution creditor, and the only question then is whether he is within sect. 87. If he is, it matters nothing whether the execution is restrained by injunction or a petition merely is presented; the goods are, in the hands of the sheriff, *in custodiâ legis*, and it is the same thing whether they or their proceeds have to be dealt with. And by seizure under an execution a creditor does not become a secured creditor, for if he is within sect. 87 the goods belong to the trustee, and if he is not within that section, the creditor is not only a secured creditor, but absolutely entitled to the property seized. It appears to have been thought in *Ex parte Reynor, re Johnson* (26 L. T. Rep. N. S. 306) that there is some magic in a sale. A creditor who was within sect. 87, but who had only seized, wished to compel a sale. The sheriff had been restrained, and the goods were held to belong to the trustee, who was decided to be entitled to them, and not to be bound to sell.

The cases to which we have referred make it plain, we think, what is the meaning of the term "secured creditor." We quite agree with the Chief Judge, that it was a mistake to omit from the Act of 1869 a provision similar in terms to sect. 184 of the Act of 1849. The interpretation of terms in sect. 16, sub sect. 5, is too narrow, whereas the Act of 1849 was full and explicit. As the law stands, a creditor is not "secured" by seizing under an execution; he is absolutely entitled, or the goods belong to the trustee. Being absolutely entitled as not affected by sect. 87, he may, of course, treat the seizure as security, and place himself in the position of a secured creditor.—*Law Times*.

CARELESS TEXT BOOKS.

During the discussion in the Court of Queen's Bench, as to the power of the court to adjourn a criminal trial for the purpose of obtaining further evidence, one of the Judges read the following passage from *Arcbold's Criminal Pleading* (p. 145, 14th Sect.) "*Adjournment of trial.*—Where the witnesses for the prosecution have all been examined, the judge may order the court to be adjourned, and direct another trial to be proceeded with in order to give time for the production of a thing essential to the proof deposited at a distance. R. v. Wenborn, 6 Jurist, 267. And on a trial for murder before Maule, J., at York, 1848, after the opening address of the counsel, it was discovered that in consequence of the detention of the railway train, the witnesses for the prosecution had not arrived in the city, the trial was adjourned, the jury were locked up, a fresh jury was called into the box, and another case was proceeded with." R. *v.* Foster, 3, C. & K., 201. Now will it be believed that in neither of these cases was there any adjournment at all; but merely a temporary suspension of the trial for an hour or two; the prisoner being carefully kept in the dock in order to mark more clearly that there was no adjournment, but that the trial was still going on; all the judges being of opinion that there could be no adjournment for such purpose, and no adjournment having ever taken place in a criminal trial, except for necessary rest, and from actual physical necessity. In the one case the trial was suspended for an hour or two where a document, accidentally left behind in the assize town, was being fetched; and in the other case the same course was taken to allow time for the arrival of a witness accidentally delayed by the lateness of a railway train. That, as in both cases there was a very "brief" suspension of the trial on account of *an accident*, and in no other case was there any adjournment at all. In a note to the report in the *Jurist* attention is called to this, and it is stated that the same course is frequently taken at the Old Bailey. So that even although there was no adjournment, the propriety of a suspension of a trial was doubted, and Mr. Justice Willes and Mr. Justice Wightman denied it. (*Re Tempest*, 1 Foster and Finlason, *Re Fitzgerald* 3 Foster and Finlason) and it was even denied in civil cases, prior to the Common Law Procedure Act, 1854 (*vide* Finlason's Common Law Procedure Acts). Yet we have it stated, in Archibald's Criminal Practice, edited by Welsby that it was settled law that a criminal trial might be adjourned in order to obtain evidence, whereas all the authorities clearly show that a trial could not be adjourned, and could only be suspended for a portion of a day, on account of accident, and that even this was always doubted. This is the way in which text books are edited, even those which bear the names of eminent men. The truth is, however, that such men are often just those who have no time to edit books, and have to leave the editing to pupils or young assistants. Thus it was with men like the late Mr. Welsby, whose practice was enormous, and could not afford time to edit books. The publishers got a great name, and that was enough to secure the book a good sale, but in truth, the book was edited by some young man who did not know enough of law to know the distinction between a suspension of a trial and an adjournment, and so he abstracted the case according to his own erroneous ideas upon the subject. This is how an enormous quantity of loose or bad law gets into the minds of men, and when it is once in their minds it is difficult to get it out of them, and this bad law gets at last confirmed from the bench.—*The Law Magazine*.

BANKERS AS BAILEES.

We have often had occasion to consider the position of bankers as bailees of property belonging to their customers; and the two leading cases of *Giblin* v. *Macmullen*, 38 L. J. Rep. (N.S.), P. C. 25, and *In re The United Service Company, exparte Johnson*, 40 L. J. Rep. (N.S.), Chan. 286, determine exactly under what circumstances bankers are and are not liable to indemnify bailors against the loss of goods. The correlative rights of bankers as against property deposited with them by their customers are explained and illustrated by a case reported in the March number of our Reports (*Leese* v. *Martin*, 43 L. J. Rep. (N.S.) Chan. 193). In that case Mr. Leese, a share and stockbroker, had a banking account with the defendants, and used from time to time to borrow money of them upon share certificates and like securities deposited by him with them for the specific purpose of obtaining loans. Besides such securities as these, Mr. Leese also kept certain boxes for safe and convenient custody at the defendants' banking-house. Mr. Leese kept the keys of these boxes, and had access to them at all times, changing their contents as he pleased. The bankers never knew what was in these boxes, and there was no suggestion that any advances were ever made to Mr. Leese on the specific security of these boxes. Mr. Leese became a lunatic, and his committee applied to the bankers for the boxes; but the delivery was refused on various grounds, with some of which we need not now concern ourselves. But one of the objections to their delivery was that the bankers claimed a lien on them for moneys then due from Mr. Leese to the bank. They alleged that during all the time that Mr. Leese had access to the boxes, and removed or changed the contents, the balance against him was fully covered by specific securities. But, as there was at the last an uncovered balance, they claimed a right, in virtue of a custom in banking, to retain the boxes and their contents as security for the overdrawn account. It must be confessed that this is a startling claim. Persons who send their plate, jewels, title-deeds, debentures, or certificates to their bankers for safe custody, and for safe custody only, would, according to this doctrine, be in a very peculiar position. If they got into their bankers' debt, the goods so deposited could be held as security. On the other hand, they would have no redress if these same goods were destroyed, stolen, or lost.

Digitized by Google

In fact the banker would, in one event, claim to be a bailee for his own advantage; in the other a mere gratuitous bailee. It is true that bankers have a lien on the property of customers coming into their possession as bankers. But, in the principal case, the boxes were left at the bank as a mere place of safe and convenient deposit; which is a very different thing from property coming into the possession of bankers in the ordinary course of their business as such. The Vice-Chancellor had no difficulty in overruling the defendants' claim to a lien under the circumstances of the case. Probably the banking community will rejoice quite as much as the public at this decision; for perfect confidence is the foundation of sound relations between bankers and customers, and the claim put forward in this case was hardly conducive to that desirable state of things.—*The Law Journal.*

TENANT-RIGHT.

No class of claims require more attentive analysis and examination than those advanced under the name of tenant-right, and none are approached usually with more confusion of thought. The great cause of the obscurity which surrounds them is the ambiguity of the principal terms employed. Few words are used so constantly as if they always meant the same thing, and few in fact mean so many things, as "landlord" and "tenant." It cannot be too often repeated that when the relation between the landlord and the occupier of land is determined otherwise than by contract, they are in reality sharing the proprietorship of the soil between them. There is nothing intermediate between the division of the produce of the soil on the footing of co-ownership and its division on the footing of agreement. If, then, tenant-right exists anywhere, and is recognized by law, it is a form of property, and just as much entitled to protection as any other kind of property. If there is a proposal to create it by legislation where it has not existed heretofore, it is a proposal to take away a portion of one man's property and to confer it on another; and accordingly those who propose it must be prepared to grapple with the enormous weight of presumption which there is against any suggestion of the kind. It is the more necessary to state this distinctly because the arguments of old-fashioned political economists, who for the most part object to tenant-right, whether old or new, are not only rather weak, but not a little dangerous. They are accustomed to say that the attempt to protect one class of tenants against the competition of all persons who wish to obtain land by agreement must necessarily defeat itself, just as the endeavour to force trade into particular channels by fiscal laws notoriously failed in the days of Protectionism. It is a sufficient answer to this reasoning that tenant-right exists over the largest part of the world, and the assertion accordingly that the attempt to create it is futile becomes a paradox in the face of facts not difficult to ascertain. Putting aside the United States, in which there is practically no such thing as agricultural tenancy, there is no part of the world except the British Islands and the countries once included within the territories of the first French Republic and first French Empire, in which tenants with tenant-right are not found, and, indeed, in which they do not largely outnumber tenants-at-will. They are found in crowds in countries quite as close to us as Italy and Germany. They are, in fact, persons enjoying a joint ownership with the so-called proprietor, and the proposition that their existence is inconsistent with the operation of natural causes is the same thing as the assertion that property cannot exist except under the forms in which it is most familiar to Englishmen. When, moreover, the same school of writers and thinkers insist that tenants of this class cannot be protected against the pressure of a population outside eager for land, their argument becomes not merely unconvincing, but dangerous. Why should the pressure be exclusively confined to this peculiar form of property, and why should it stop short of becoming an undisguised demand for a system of pure Communism? The political economists who declare against tenant-right as such may in fact be suspected of tacitly assuming that some kinds of property are more sacred than others, and that an especial sacredness attaches to those forms of ownership which occur most frequently in the British Islands. No more indefensible position could be taken up, and the probable sources of the misconception are, first of all, the curiously limited knowledge of the economical facts spread over the world as a whole which was possessed by the founders of English political economy, and, next, the unfounded impression that the terms "landlord" and "tenant" can only be employed with propriety of the parties to a commercial bargain for the use of land, or, if employed otherwise, to be only so employed by a distortion of language.

The truth is that the important distinction is not between tenants with tenant-right and tenants-at-will, but between old tenant-right and new tenant-right. It should be clearly understood that tenant-right is in itself neither good nor evil, but that to create it where it did not exist before is to create a new kind of property—a feat which can only be performed at the expense of the old proprietors. What the new tenant-right members for Ulster really demand is a point upon which the English public is as yet very imperfectly informed. They are sometimes described as merely asking for the elucidation of a legal definition, a request so modest as to be extremely suspicious. The causes of their success are, in fact, very much of a mystery, and it is one of those surprises which Ireland has in store for us that the southern counties, which got comparatively little out of the Land Act, should elect a host of persons to represent a purely sentimental grievance; while the northern counties, where the farmer was supposed to have obtained all that he could desire, thrust aside a number of gentlemen who accurately reflected the religious opinions of the constituencies to replace them by others who are to press Parliament very strongly for something or other which they call tenant-right. The introduction of this element into the new Parliament is, however, important only in so far as it may help to stimulate the strange English demand for tenant-right, which is not unrepresented on the Conservative side of the House of Commons. Mr. Disraeli, in one of his recent speeches in Buckinghamshire, dwelt on the interest which he took in the Bill which bore the names of Messrs. Howard and Read, and suggested as an admissible compromise of the question it raised that two years' notice to quit should be required for the termination of a tenancy in lieu of the present period. The suggestion is one which may very reasonably be considered, particularly if the change be confined to the arrangements between landlord and tenant which the law prescribes in the absence of any express agreement between them. If, however, the new rule is to override contracts, the advantage conferred on the tenant will be obtained by a diminution of the landlord's proprietorship; and, though it is not to be set aside at once as inadmissible, it ought distinctly to be discussed as a substantial alteration of the law of property. The borderline between the two modes of dealing with this class of subjects is at once passed when the power of contracting oneself out of a given set of arrangements is overridden.—*Pall Mall Gazette.*

PASSENGERS' LUGGAGE.

Two County Court Judges have very recently given decisions on the *vexata quæstio* of passengers' luggage. At Liverpool, Mr. J. F. Collier was called upon to decide the case of *Bailey* v. *Lancashire and Yorkshire Railway Company.* There the passenger had in his portmanteau, which was sent to the wrong station, and so detained for a week, a number of sheets of paper in the nature of samples or patterns for his use as salesman for a commercial firm; also his journey accounts and account books. His HONOUR, after citing several cases, said that he thought the line must be drawn between articles intended for personal use and articles connected with trade or commerce, adding that it would be a great strain upon the ordinary interpretation of words and upon common sense to hold that a company, contracting to carry a man and his ordinary luggage, contracted to carry samples which might be of almost priceless value, and account books the loss of which could hardly be compensated by money. His HONOUR, therefore held, that the samples and accounts did not come within the definition

Digitized by Google

of ordinary or personal luggage, and so found a verdict for the company.

In the Wigan County Court, in the case of *Turner* v. *London and North Western Railway Company*, the plaintiff claimed damages for the loss of a hamper, containing a quantity of glass and other things, intended as presents to friends at Wigan. The plaintiff took the hamper to the station at Stamford, intending it to be carried as personal luggage. It was admitted by the plaintiff that punch-bowls and wine-glasses were not personal luggage, but the contention was that a hamper in itself is not an ordinary receptacle for personal luggage, and that the words "glass with care" upon the direction were equivalent to notice to the company that the hamper contained something different from ordinary luggage; so that if the company chose to allow such articles to be taken as personal luggage, with such knowledge or notice of their nature, they must be taken to have waived the protection of the law and so to have incurred liability as common carriers and insurers for the loss of the goods. The learned judge relied upon the words of Baron Parke, in the *Great Northern Railway Company* v. *Shepherd*, 8 Exch. 30. The learned baron there said:—"In this case nine-tenths of the articles were of the description of merchandise. If the plaintiff had carried these articles, or had packed them in the shape of merchandise, so that the company might have known what they were, and they had chosen to treat them as personal luggage, and carry them without demanding any extra remuneration, they would have been responsible for the loss."—*Law Journal.*

THE LIABILITY OF AN EXECUTION CREDITOR TO REFUND.

A creditor before resolving to sue out execution against the goods of a trader-debtor for a sum exceeding £50, should read, mark, and inwardly digest the decision arrived at by Lord Justice Mellish, on the 20th ult., in *Ex parte Villars, re Rogers.* In that case a creditor whose debt exceeded £50, purchased of the sheriff the goods seized in execution, and the sheriff, after retaining the purchaser's cheque for fourteen days, in compliance with the 87th section of the Act of 1869, returned the cheque to the creditor at the end of that period. Within six months after the sale, a petition for adjudication of bankruptcy against the debtor was presented, on which he was declared bankrupt. The registrar considering that the 5th sub-section of section 6 of the Act rendered the seizure and sale so followed by adjudiction, an act of bankruptcy, ordered the creditor to give up the goods to the trustee. Lord Justice Mellish held that the creditor was entitled to the goods by virtue of his purchase, but that he must refund the purchase money. This is a startling result. We do not say that on the true and fair method of construing the Act of 1869, the result is not a logical consequence of the language used. We do, however, say, that it is impossible to read carefully the 87th section without feeling that it could never have been the intention of the Legislature that a creditor, fairly and honestly pursuing his legal remedies, was to have his common law rights under an execution interfered with to any greater extent than was expressly provided for by the section; viz., that the sheriff should refrain from paying over the proceeds of the sale for fourteen days, in order that an opportunity might be afforded for the presentation of a petition in bankruptcy. If it had been intended that the right of the creditor should not be absolute at the end of the fourteen days, or at all events as soon as the money was paid over by the sheriff, it is most difficult to understand why such a period, instead of the period of six months mentioned in section 6, should have been arbitrarily fixed; and if such were not the intention, nothing could have been easier than to have provided that, notwithstanding payment to the creditor, his right should not be absolute, but on the contrary, should be defeated, if an adjudication should take place within twelve months, founded on a petition presented within six months from the time of the sale. If for six months the creditor was intended to remain in a state of doubt and uncertainty whether in consequence of the possibility of a petition for adjudication being subsequently presented against his debtor he might not have to refund, some clear intimation of the design of the Legislature should have been furnished, in order that the creditor, instead of dealing with the money recovered as his own, might as a prudent man place it to a suspense account. We observe that the Lord Justice attached considerable weight to the argument that it would be anomalous to allow validity to the sale, the *fons et origo mali*, which is declared by the statute to be an act of bankruptcy, and which defeats by relation all subsequent transactions between the bankrupt and persons affected with notice; and also to the argument that whereas section 73 of the repealed satute of 1861 expressly affirmed the rights of the execution creditor, the Act of 1869 is silent on the point. We by no means wish to underrate the force of these argnments, though we are far from satisfied that they are sufficient to outweigh other opposing considerations. However the judicial results may be arrived at, we confess that it does appear to us monstrous that a judgment-creditor, whose common law rights have been expressly suspended for fourteen days by the 87th section, should, after experiencing probably much trouble and delay in recovering what he very naturally must look upon as his own money, be exposed to the action of a piece of legal mechanism in the nature of a trap, by which after the interval of many months he is to be called upon and compelled to refund it. We regret that a question of this magnitude and difficulty should be decided on appeal by a single Judge—however eminent.—*The Law Times.*

THE LAW CLERKS' ASSOCIATION.

Chief Baron Palles.

A general meeting of this Association was held last Monday evening at 212 Great Brunswick-street. It was very numerously attended, and amongst those present were Messrs. Dowling, Pride, Norman, M'Dermott, Malony Dillon, Fitzwilliam, Pigot, Clarke, Flanagan, and Horan Vice-president Dowling took the chair at half-past eight o'clock. The minutes of the preceding meeting having been confirmed, and a resolution passed in favour of engaging permanent rooms for a library and a legal debating society, Mr. Flanagan moved—"That the Associated Law Clerks of Ireland do tender their respectful congratulations to the Right Hon. C. Palles, on his well-deserved elevation to the high office of Chief Baron of the Court of Exchequer." He stated that he had observed the career of this eminent man in all its stages at the bar—as a junior counsel springing into practice, and subsequently as Queen's Counsel, and Solicitor and Attorney-General, and in each of these positions he found him the self-same courteous gentleman. Mr. Norman seconded the resolution in a few appropriate words. The Vice-president put the resolution, which was carried *nem. con.* amidst considerable applause. On the motion of Mr. Malony, the Secretary was directed to forward a copy of the resolution to the Chief Baron. The meeting shortly afterwards adjourned.

Election Petitions.—By the Parliamentary Elections Act (31 & 32 Vict., c. 125) a petition against a member must be presented at the Rule Office of the Common Pleas within twenty-one days after the return has been made to the Clerk of the Crown in Chancery, and if it alleges corrupt practices and payment since the return in pursuance of such corrupt practices, then the petition must be presented within twenty-eight days of such payment. At the time the petition is lodged, or within three days, security must be given for £1,000 to pay costs or the deposit of the money be made.

Local Government Board.—Mr. Edward J. Browne, First Class Clerk, Local Government Board, has been promoted to the office of Auditor; Mr. Arthur M'Hugh, Second Class Clerk, has been promoted to the place on First Class, thus vacated; while Mr. Martin, Senior Third Class Clerk, has been promoted to Second Class. The increased duty imposed under the Local Government Act rendered it necessary to increase the auditors from six to seven, of whom five have been promoted from the Central Office. The salary is £700.

Digitized by Google

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

Partnership—Bankruptcy of one Partner—Sale of Book Debts and Goodwill by Private Contract.—The 72nd section of the Bankruptcy Act, 1869, gives the Court of Bankruptcy a very large authority to decide such questions as it may be found necessary or convenient to determine for the proper purpose of administration in bankruptcy, but it does not enable the Court of Bankruptcy to draw compulsorily within the sphere of its jurisdiction property, or the owners of property, not vested in the assignee, and not originally subject to the administration in bankruptcy. In 1864 a decree was made in a suit for the dissolution of a partnership, by which it was ordered that the partnership business should be sold by public auction. In the following year one of the partners was adjudicated bankrupt. In 1869, no sale having been made under the decree, the assignee of the bankrupt partner agreed to sell his share in the business to the other partners, and the agreement was carried into effect under an order of the Court of Chancery. On application to the Court of Bankruptcy by newly appointed assignees of the bankrupt partner to set aside the sale on the ground of alleged fraud: Held (reversing the decision of the Chief Judge in Bankruptcy), that the alleged fraud was not proved, but that if the sale of the bankrupt's share of the partnership assets was set aside, the Court of Bankruptcy would have no power, under the 72nd section of the Act of 1869, to work out the decree in the Chancery suit for the sale of the whole partnership business, including the shares of the solvent partners. Held, also, that the book debts and goodwill of a dissolved partnership, of which only one partner is bankrupt and the others continue solvent, are not assets distributable in the bankruptcy, and that the sale of the bankrupt's share in such property is not a sale of "book debts or goodwill" within the meaning of the 137th section of the Bankruptcy Act, 1861, and that there is nothing in that provision to prevent the assignee of the bankrupt partner from selling the bankrupt's share by private contract without the sanction of the Court of Bankruptcy: (*Maule* v. *Davis*, 29 L. T. Rep. N. S. 757. Chan.)

Partnership—Separate Adjudication in England—Subsequent joint Adjudication in Ireland—Joint Assets in England.—Two partners carried on business in England and Ireland. One of the partners executed an assignment in England for the benefit of his creditors, and was afterwards adjudicated a bankrupt in England. Some of the joint estate of the partners came into the hands of the trustees of the deed, who sold it, and the proceeds of sale were, under the order of the Court, deposited in a bank in the joint names of the trustees of the deed and the trustee in the bankruptcy. Before this was done, a joint adjudication of bankruptcy had been made against the two partners in Ireland. On an application by the Irish assignees of the joint estate to have the proceeds of sale paid over to them: Held, that the trustee under the separate adjudication in England, and the assignees under the joint adjudication in Ireland, were tenants in common of the joint assets, and that the latter had no better title to the proceeds of the sale in question than the former. And the application was refused on that ground, and also on the ground of convenience, as the greater number of the joint creditors lived in England and wished the fund in question to remain in this country: (*Ex parte James; re O'Rearden*, 29 L. T. Rep. N. S. 761. Chan.)

Trespass on Land—Notice to quit part of Demised Premises.—Defendant leased about twenty acres of land for five years, at a yearly rent, from the owner, in fee simple, under a memorandum of agreement, and immediately afterwards sub-let about six acres, part of the premises, to another person on a yearly tenancy. At the conclusion of the term defendant continued possession of the whole, and during the first year after the term expired the lessor conveyed to the plaintiff the six acres which the defendant had sub-let, and agreed with the plaintiff, but without the consent of the defendant, as to the amount of rent to be apportioned to this part of the premises out of the rent which the defendant paid. Although notice of the conveyance and agreed apportionment of rent was afterwards given to defendant, he never recognized plaintiff as his landlord, but continued to pay rent for the whole premises to his lessor, who handed over the agreed portion to plaintiff. Plaintiff gave defendant notice to quit the sub-let premises six months before the expiration of a year's tenancy; and the defendant forwarded this notice, with a further notice to quit from himself, to his sub-tenant. At the end of the year the sub-tenant gave up possession of his premises to plaintiff, but the defendant wrote to the latter claiming to hold the same as tenant to the original lessor, and requiring possession. Defendant then did certain acts upon the premises which had been in his sub-tenant's occupation, for which plaintiff brought this action of trespass. Held, that plaintiff's notice to defendant to quit part only of the premises demised to him was invalid; that his passing on the notice to his tenant did not preclude his disputing it; and that the action could not be maintained: (*Prince* v. *Evans*, 29 L. T. Rep. N. S. 835. Q. B.)

Ejectment—Parol Evidence of Boundaries—In 1861 Burgess Plowman, a common predecessor in title of both plaintiff and defendant, being possessed of 27 rods of land, conveyed to the defendant's predecessor in title "all that piece of garden ground, containing by estimation 20 rods, bounded on the south by other land, or garden ground belonging to the said Burgess Plowman." In 1866 the same Burgess Plowman conveyed the residue of the property to the plaintiff's predecessor in title, describing it as "15 rods, more or less;" the result being that if the measurement of the deed of 1861 was accurate, the defendant took under it 12 rods instead of 20, while, if the measurement of the deed of 1866 was accurate, the plaintiff took under it 7 rods instead of 15. The plaintiff brought ejectment for the 8 rods in dispute. Held, that the parol evidence of Plowman was admissible to show that he had conveyed 12, and not 20, rods by the deed of 1861: (*Jarvey* v. *Styring*, 29 L. T. Rep. N. S. 847. Ex.)

Licensing Act—Supplying Beer to a Constable on Duty.—Sect. 16 of the Licensing Act, 1872 (35 & 36 Vict., c. 74) enacts that "if any licensed person . . . supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable," he shall be liable to a penalty. The servant of a licensed person having supplied to a constable in uniform and on duty, a certain quantity of brandy in the ordinary course of business: Held, that the master was liable to the penalty imposed by the statute, personal knowledge on the part of the master not being necessary to constitute the offence: (*Mullins* v. *Collins*, 29 L. T. Rep. N. S. 838. Q. B.)

Will—Estates of Trustees—Payment of Debts—Rules of Construction—Contingent Remainders—Decree.—J. C., by will, in 1827, devised freeholds to trustees, their heirs, and assigns, and to the survivor of them, and his or her heirs, upon trust that they and their heirs, and the survivor of them, and his or her heirs, should stand seised thereof during the life of W. C., and also until the testator's debts were paid, upon trusts to set and let the same, and to apply the rents and profits, and the value of the timber, in discharge of debts, and then for W. C. for life, and then and after the debts were paid, for the heirs of the body of W. C., with remainder to his own heirs. In 1830, the debts having been paid, the trustees conveyed to W. C. for life. In 1838 W. C. suffered a recovery. He subsequently mortgaged to the defendant in fee. Upon a bill filed to have it declared that the conveyance of the life estate by the trustees was a breach of trust, and that the defendant was a trustee for the plaintiff, a son, and heir-at-law, of W. C.: Held (disapproving the decision of Lord Romilly in *Collier* v. *M'Bean*, 34 Beav. 426), that the trustees took an estate of freehold; that the devise to them "and their heirs" gave a fee simple, unless something appeared by the will to cut it down; that it is not to be cut down unless another estate can be pointed out on the face of the will for the trustees to take; that neither a chattel interest superadded to, or concurrent with, the life estate, until the debts were paid was a proper construction of the gift, nor was it a correct

Digitized by Google

view that they took a freehold interest *per autre vie* during the life of the tenant for life, with a further chattel interest, till the debts were paid; but that they took the fee; that a trust to "set and let" gives not a bare power, but an estate which, being indefinite, must be a fee simple; that a trust to apply the "value of whatever timber may be considered at its best growth" implies a fee for tenant *per autre vie*, as the owner of a chattel interest cannot cut timber; that the contingent remainder having gone at law by recovery, it did not remain in equity; that the trustees were not in any sense trustees to preserve contingent remainders; and that the conveyance to the tenant for life was not a breach of trust. There is no such thing as an implied trust to preserve. Held, also, that the mortgagee having in another suit, to which the present plaintiff was a party, obtained a decree for getting in the outstanding legal estate, the plaintiff was bound by that decree: (*Collier* v. *Walters*, 29 L. T. Rep. N. S. 869. M.R.)

Auctioneer—Memorandum in Writing of a Bargain—Internal Reference to several Documents—Statute of Frauds.—Plaintiff authorised defendant, an auctioneer, to sell a mare, which was accordingly entered as a lot in the catalogue attached to the conditions of sale for a certain day: "49—grey mare, 6 years old, 15-3 hands high; steady to ride and drive." She was knocked down at the sale on the day fixed for 33 guineas, and a clerk made an entry at the time, opposite the lot, in the defendant's sales ledger, of the price and name of the buyer. This ledger was headed "Select Sales by Auction," with the same date as the catalogue. The description had been entered before the sale, as "Lot 49—grey mare, aged 6." The buyer the same day returned the mare to the defendant, with a letter written and signed by him—"I herewith return the grey mare, Lot 49, bought at your sale this day, as not being steady in harness, as warranted." Held, in an action against the auctioneer for damages for not making a binding contract with the buyer, that, without express authority, an auctioneer's clerk cannot be taken to be agent to sign a buyer's name; and that there was not sufficient internal reference to each other in these three writings to constitute a note of a bargain within the 17th section of the Statute of Frauds: (*Pierce* v. *Corf*, 29 L. T. Rep. N. S. 919. Q.B.)

Collision—Fog—Right of Ferry Boat to Run—Liability—Practice.—A steam ferry boat continuing to cross and recross the river Mersey during a dense fog takes upon herself the responsibility incident to such a course, and is not entitled to set up public convenience against the probability of loss of life and property; but she will be liable for any damage done to other vessels with which she may come into collision, provided those vessels take the precautions required by law to warn her of their position. A receiver of wreck in taking depositions under the Merchant Shipping Act, 1854 (17 & 18 Vic., c. 104), sec. 448, should put down the facts deposed to as given by the deponent, and should not correct any statement made by the deponent which within the personal knowledge of the receiver is erroneous: (*The Lancashire*, 29 L. T. Rep. N. S. 927. Adm.)

Debtors Act, 1869, s. 15, Sub-Sect. 5—Fraudulent Removal of Property by Debtor—Assignment before Liquidation.—A debtor on the 17th October, 1873, filed his petion for the liquidation of his affairs by arrangement, and a trustee was duly appointed. In December, 1872, he had assigned his property to L. and W., to whom he was indebted (L. having then advanced a further sum of £350 for the purpose of enabling the business to be carried on), upon trust, for the benefit of L. and W. and his scheduled creditors. There were other creditors than those scheduled. On the 14th, 16th and 17th October, 1873, the debtor fraudulently removed portions of the property so assigned to L. and W., and in respect of these removals he was indicted under the Debtors Act, 1869, s. 11, subsect. 5, for having, within four months next before the commencement of the liquidation of his affairs, fraudulently removed part of his property, of the value of £10 and upwards: Held that the offence was not proved, for the property was not his at the time of removal, but that of L. and W., the trustees under the assignment. Secondly that the assignment required to be registered under the Bills of Sale Act, 17 & 18 Vict. c. 36, and was inoperative against the trustee under the liquidation: (*Reg.* v. *Creese*, 29 L. T. Rep. N. S. 897. Cr. Cas. Res.)

Apportionment—Partnership Profits—Income.—Profits in a partnership business partly earned in the testator's lifetime, but not ascertained until after his death, are not apportionable, but are income of the testator's estate: (*Lambert* v. *Lambert*, 29 L. T. Rep. N. S. 878. V. C. B.)

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, March 16th, 1874, when the following subject will be debated:—"That the closing of Public Houses on Sundays would conduce to the general good."

Speakers:

Affir. Mr. T. G. Overend,	*Neg.* Mr. John Joyce,
Mr. P. J. Tuohy.	Mr. J. F. Lyons.

The Chair will be taken at Eight o'clock by J. B. Killen, Esq., M.A., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The Preliminary Examination of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 10th and 11th days of April, 1874, *at Eleven o'clock.*

N.B.—All Papers to be lodged on or before *25th March*, 1874.

The Final Examination of Candidates seeking admission as Attorneys will be held at the same place, on Monday and Tuesday, the 13th and 14th days of April, 1874, *at the same hour.*

By order of the Council,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 21st of April, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Trinity Term, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers *on or before the first day of next Easter Term.*

By order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.

Digitized by Google

APPOINTMENT.

Town and Circuit Registrar.—The Chief Baron has appointed A. PALLES, Esq., 42, Lower Mount-street, his Town and Circuit Registrar.

COURT PAPERS.

LANDED ESTATES' COURT.

After this day, the Court is not expected to sit again, until the first day of next Term.

LANDED ESTATES' COURT.

SALES.

February 27th, before the Hon. JUDGE FLANAGAN.

COUNTY OF KILDARE.—Estate of trustees under the will of John Tate, deceased; owner and petitioner. Part of the lands of Belan, called Bushy Park, containing 78a. 12r. 30p., with mills thereon, held under fee-farm grant; profit rent, £119 10s. 10d. Sale adjourned. Solicitors, *Messrs. D. and T. Fitzgerald.*

COUNTY OF DUBLIN.—Estate of Anne Wilme, administratrix of Benjamin Wilme, deceased, owner; Mary Speer, petitioner. Dwelling-house and premises, No. 12, Upper Leeson-street, held under lease dated 9th February, 1846, for 200 years; profit rent, £50 10s. Sold in trust for Samuel G. Wilmot, M.D., for £670. Solicitor, *William M. Moore.*

COUNTY MAYO.—Estate of William John Graham, owner; John Riall, and William B. Drury, petitioners. The lands of Cloonaghboy, 295a. 0r. 36p., held with other lands under a lease for three lives renewable for ever, dated 18th February, 1771; net profit rental, £154 12s. 10d. Sold to Mr. Doherty, for £2,600. Solicitors, *Messrs. Cathcart and Hemphill.*

COUNTY OF SLIGO.—Estate of Richard Graves Brinkley, owner and petitioner. Part of the lands of Quagna, 140a. 3r. 16p.; part of the lands of Cullogh, 30a. 1r. 31p., and a yearly rent of £17 10s. 9d., issuing out of the lands of Dongelagh, held under lease, with covenant for renewal, *toties quoties*; net rental, £30 1s. 7½d. Sale adjourned. Solicitor, *John E. Tarleton.*

TOWN OF GALWAY.—Estate of Denis Daly and others *ex parte* Anne Blakeney, petitioner. Plot of ground on Middle-quay, Spanish-parade, having thereon three houses and one shed, held in fee; yearly profit rent, £27 10s. Sale adjourned. Solicitor, *Robert Stephens.*

March 6th.

COUNTIES OF DONEGAL AND TYRONE.—The estate of Thomas Bell, owner and petitioner; and another matter.

Lot 1.—Part of the lands of Ballyraine, barony of Kilmecrenan, County Donegal, containing 338a., held in fee-simple; net annual rental, £395 6s. 5d. Sold for £13,500, to Mr. John Hunter, of Rahan, Letterkenny.

Lot 2.—Part of the lands of Tullyglush, barony of Clogher, County Tyrone, containing 184a., held in fee-farm; net profit rent, £19 14s. 5d. Sold for £450, to Mr. E. Devlin, Greenhill, Ballygawley.

Lot 3.—The Port Acre of Ballyraine, and the Port Dues of Letterkenny, barony of Kilmacrenan, County Tyrone, held under lease for 999 years; profit rent, £25 5s. 5d. Sold for £800, to Mr. John Hunter. Solicitor, *Robert Mecredy.*

CITY AND COUNTY OF DUBLIN.—The estate of Arthur M'Mahon, executor of Stephen Stritch, owners; P. J. Mayne, petitioner.

Lot 1.—House and premises, 29, Dame-street, Dublin, held under lease for lives renewable for ever; profit rent, £37 13s. 10d. Sold to Mr. Waterhouse, for £700.

Lot 2.—House and premises, 76, York-street, and 1, 2, 3 and 4, Lower George's street, Kingstown, held under lease for 69 years, from 1826; net profit rent, £55 12s. Sold to Mr. Flynn, for £340. Solicitor, *P. J. Mayne.*

COUNTY TIPPERARY.—The estate of Martin H. Smithwick and others, owners; Margaret Smithwick, petitioner.

Lot 1.—Part of the lands of Athassel Abbey, South, containing 170a. 1r. 15p.; held under fee-simple, and lives renewable for ever; profit rent, £104 4s. 3d.; tenement valuation, £131; subject to a life annuity of £120. Sold to Mr. Charles Purcell, Clonmel, for £1,225.

Lot 2.—Reversion expectant on a term of 99 years, from 1822, in the lands of Suirville, containing 256a.: held by lease of lives renewable for ever, at a yearly rent of £60; tenement valuation, £241. Sold by private contract for *Messrs D'Alton and Smith*, solicitors.

COUNTY LONGFORD.—The estate of John Mullin, owner; D. R. Goodlatte and another, petitioners. Two houses and premises and plot of ground near the town of Longford, containing 3a. 1r.; held under lease for 99 years, from 1864; profit rent, £63 17s. Sold for £500, in trust for Mr. J. H. Evans. Solicitors, *Messrs. J. D. Meldon and Son.*

COUNTY OF MEATH.—The estate of Drake C. O'Reilly, owner and petitioner. Part of the lands of Drimadaly, containing 128a. 2r. 28p.; held in fee-farm; profit rent, £188 15s. 6d. Sale adjourned. Solicitor, *John T. Hinds.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Robert Gilmore	Prove debts and vouch	*Larkin & Co.*
M. & E. Donnelly	Vouch account	*Perry & Co.*
Thomas F. O'Neill	Prove debts and vouch	*Maxwell & Weldon*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Wm. F. Philipson	1st public sitting	*Oldham & Eaton*
Joseph Sloan	do	*Hamilton & Craig*
Francis Pigott	do	*Molloy & Watson*
Michael Crowley	do	*Perry & Co.*
G. & R. Ferguson	do	*Perry & Co.*
John Hackett	Final examination	*Mathews*
Ellen O'Connell	do	*Stone*
John Chas. Walsh	do	*Oldham & Eaton*
John Forde	do	*Mathews*
Anthony M'Nulty	do	*Hamilton & Craig*
George Duncan	do	*Colman*
Thomas Little	Application for certificate of conformity	*Orr*
John Rea Payne	Audit and dividend	*Molloy & Watson*
Jlia & Ellen Costello	do	*Mathews*
Alfred Parker	do	*Mathews*
Joseph H. Smith	do	*Walsh*
———	Application to dismiss debtor summons	*Cronhelm & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Joseph Jermyn	Title and posting	*Hamilton & Craig*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Moylan	Prove debts and vouch	*Stone*

Digitized by Google

FRIDAY.

Before the Court, at 11 o'clock.

John Chas. Walsh	1st composition sitting	*Dutch*
James M'Kenna	do	*Kennedy & Co.*
Same matter	1st public sitting	*MacEvoy*
Daniel Cullen, jr.	do	*Larkin & Co.*
Brittain & O'Toole	do	*Molloy & Watson*
Terence Fennell	Final examination	*Bentley*
George Craig	do	*Cronhelm & Co.*
Patrick Hanlon	do	*Sullivan*
Anna M. M'Givney	do	*Oldham & Eaton*
Michael Cullinan	do	*Colman*
Judith Gorman	Motion	*Robinson*
James Murphy	Audit	*Leachman*

ADJUDICATIONS IN BANKRUPTCY.

Byrne, Patrick, 22, Victoria-street, Belfast, dealer in tea. Sittings, *Tuesday, March* 31, and *Friday, April* 17. *Leachman*, solr.

Coady, James, Wexford, rope manufacturer. Sittings, *Tuesday, March* 31, and *Tuesday, April* 21. *E. H. Hunter*, solr.

O'Dwyer, William, Kilkenny, grocer. Sittings, *Tuesday, March* 31, and *Friday, April* 17. *Molloy and Watson*, solrs.

Thompson, Henry Morgan, Drumondbeg, Armagh, grocer and merchant. Sittings, *Tuesday, March* 31, and *Friday, April* 17. *Cochrane and Stewart*, solrs.

Broderick, Michael. Sittings, *Tuesday, March* 31, and *Tuesday, April* 21. *Hamilton & Craig*, solrs.

DIVIDENDS IN BANKRUPTCY.

Keane, John, Thomas-street and Stoneybatter, Dublin, chandler. 1st dividend 9s. in the £. C. H. James, official assignee. *Fay and M'Gough*, solrs.

Molony, James, Ballinagh, county Cavan, grocer and baker. 1st dividend 2s. 5½d. in the £. C. H. James, official assignee. *Meldon and Sons*, solrs.

O'Donnell, John J., Tullamore, King's county, shopkeeper and draper. 2nd and final dividend 5½d. in the £, making, with 1st dividend, 3s. 1d. in the £. C H. James, official assignee. *Findlater and Co.*, solrs.

Rogers, George, Anne-street, Belfast, wireworker. 1st and final dividend 3s. 1d. in the £. C. H. James, official assignee. *Tincler and Son*, solrs.

Sherlock and Rourke, 18, Dame-street, Dublin, merchant tailors. 1st dividend 10s. in the £. L. H. Deering, official assignee. *Findlater and Co.*, solrs.

Railway Liability.—The *Law Times* says that the "invitation to alight" has once more been discussed in the case of *Weller* v. *London, Brighton, and South Coast Railway Company* (29 L. T. Rep. N. S. 888), and the Court of Common Pleas has pretty successfully distinguished the four preceding decisions in the cases of *Bridges, Praeger, Cockle*, and *Lewis*, which contain the law of the subject. It was sufficiently established by the first of these cases that the mere calling out of the name of a station is no invitation to alight, this being done, as Mr. Justice Blackburn remarked in *Lewis's* case, "by way of preparing passengers to get out." But what remained to be settled was, what length of stoppage at a station would justify a passenger in taking it for the final standstill, and so alighting unbidden. "It is not for a judge to say what are the ordinary habits of railway companies or of passengers," says Mr. Justice Brett in delivering judgment in *Weller's* case, and the plaintiff having been non-suited, the court has very properly, we think, made the rule absolute for a new trial. The true principle in all these cases is, we imagine, that laid down by Mr. Justice Brett in *Hogan* v. *South Eastern Railway Company* (28 L. T. Rep. N. S. 271), that "negligence is always a question for the jury unless it would be a palpable want of reason in them to find for the plaintiffs." Now that the point has been so thoroughly ventilated—for three of the cases above referred to went to the Exchequer Chamber—a nonsuit on the "invitation to alight" may be expected to become comparatively rare.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	March Fri. 6	Sat. 7	Mon. 9	Tues. 10	Wed. 11	Thur. 12
	Government.						
—	3 p c Consols	91¾	—	91⅝	—	91⅝	91⅝¾
—	3 p c Reduced	—	—	—	—	—	-
—	New 3 p c Stock	90⅝	—	90⅝	90⅝¾	90⅝¾	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	106⅛⅜	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102¼	—	—	102⅛	102⅛¼	—
	Banks.						
100	Bank of Ireland	304	—	304	303½	302¾	302½
25	*Hibernian Banking Co.*	58¼	—	58⅜	—	58¾	58⅜
3⅛	*Munster Bank (Limited)*	—	—	—	—	—	8⅝
30	*National Bank*	57⅞–8	—	58¼	—	—	58¼
15	*National of Liverp'l (Litd)*	13⅞ 14	—	—	—	—	—
25	*Provincial Bank*	—	—	94⅞	—	—	—
10	*Royal Bank*	29½	—	—	—	—	28½ xd
2½	*Ulster Banking Co.*	—	—	—	—	—	x d
	Steam.						
100	City of Dublin	108	—	—	—	108	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	56⅝	—
10	Dundalk (Limited)	—	—	—	—	—	7⅛
	Mine.						
1	Killaloe Slate Co. (lit'd)	—	—	—	—	—	x d
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A	9½	HOLIDAY	9½	—	—	—
10	B	—		—	—	—	—
10	No. 2 C	—		—	—	—	—
8½	*Dublin Tramways*	-		-	—	—	7⅜
25	*National Assurance*	—		47	—	—	—
9-4-7	*Patriotic Assurance*	10⅝		10⅞	10⅝	—	10⅞ xd
	Railways.						
100	Dublin and Belfast Junct.	—	—	89	—	—	—
100	Dublin and Drogheda	—	—	—	—	109½	109½
100	Dublin, W'klow, & W'ford	—	—	—	—	—	73½
100	Gt. Northern and Western	—	—	96½	—	—	—
100	Gt. Southern and Western	—	-	—	—	—	109⅝
100	Do. do. free of Stamp	109⅝	—	109⅝	—	109½	109½
100	Midland Gt. Western	91 ⅛	—	—	—	—	89 x d
50	Waterford and Limerick	—	—	—	—	—	32½
10	Waterford and Tramore	—	—	—	—	—	x d
	Railway Preference.						
50	D., W., & W., 5 p c (1860)	53¾	—	—	—	—	—
50	Do. do. (1864)	—	—	53	—	—	—
50	Do. do. (1865)	—	—	-	—	53	—
100	Gt. South'n & West'n 4 p c	98	—	97⅞	—	—	97¾
10	Irish North Western A 5 p c	—	—	—	—	—	4½
100	Mid. Great Western, 5 p c	—	—	—	—	—	x d
50	Watfd. & Limerick, 5 p c rd	50	—	—	—	—	—
10	Waterford & Tramore 5 p c	—	-	—	—	—	x d

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.
Name Days—March 30th, and April 14th, 1874.
Account Days—March 31st, and April 15th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

ELGEE—March 3, at the Cottage, Cahircorr-road, Wexford, the wife of Richard W. Elgee, Esq., solicitor, of a daughter.

FITZGERALD—March 11, at 7 Merrion-square, East, Dublin, the Hon. Mrs. Fitzgerald, of a son.

MARRIAGES.

HYDE and JOHNSTONE—February 24, at All Saints' Church, Fulham, by the Rev. Frederick Horatio Fisher, Vicar and Rural Dean, assisted by the Rev. John Bush Ealy, Richard Carvall Hyde, of Essex House, Strandtown, Belfast, Ireland, son of Thomas Hyde, Esq., solicitor, Ballinasloe, to Emma, eldest daugter of James Johnstone, Esq., of Ranelagh Hou e, Fulham, Middlesex.

WESTMACOTT and RICHARDS February 7, by special license, at the Cathedral, Calcutta, by the Rev. A. Hardy, Edward Vesey Westmacott, Esq., Bengal Civil Service, eldest son of the late E. Westmacott, Esq., of Chartleton, Oxfordshire, and grandson of the late Sir Richard Westmacott, to Annie, only child of William Frederick Richards, Esq., formerly Captain in the 17th Lancers, and grand-daughter of the late Right Hon. Baron Richards, of the Irish Exchequer, and of the late Joshua Nunn, Esq., of St. Margaret's and Hill Castle, County of Wexford. Ireland.

DEATHS.

BRADY - March 8, at The Rectory, Clonmel, after a few hours painless illness, Francis Tempest Brady, Rector of Clonmel and Chancellor of Lismore, only surviving son of the late Francis T. Brady, Esq., Willow Park, Dublin, and youngest brother of the late Sir Maziere Brady, Bart., ex-Lord Chancellor of Ireland, aged 65 years.

BURNE—March 6, at 7 Hyde-grove, Manchester, aged 65, Margaret Alicia, the wife of John Robinson Burne, Esq., solicitor, late of this city.

WALKER—March 8, at Shanganagh-terrace, Ballybrack, after a long illness, James Walker, Esq., A.M., Record and Writ Office, Court of Chancery.

Digitized by Google

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in a Cause wherein Robert Lyle is plaintiff; and Mansfield Newton, Ruth Newton, Elizabeth Newton, Robert Berry, and William Berry, are defendants; and dated the 23rd January, 1874—the Creditors of

WILLIAM RYAN, late of No. 39 Waterloo-place, in the County of Dublin, Esq., M.D., deceased—who died in or about the 12th day of February, 1871, are, on or before the 1st day of APRIL, 1874, to send by post, pre-paid, to Messrs. H. and W. STANLEY, of 23 Lower Fitzwilliam-street, Dublin, the Solicitors of the said Robert Lyle, the plaintiff, the executor of the deceased, and trustee of his will, their Christian and surnames, addresses and descriptions, and in the case of firms, the names of the partners, and style or title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; and all persons claiming to be the next of kin or heir-at-law of the deceased; and all persons claiming to have charges affecting his real estate, are, by their Solicitors, to come in and prove their claims, at the Chambers of the VICE-CHANCELLOR, Four Courts, City of Dublin, on or before said 1st day of APRIL, 1874, or in default thereof, all such Creditors and Claimants will be peremptorily excluded from the benefit of said Decree.

Every Creditor or Claimant on real estate holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on FRIDAY, the 17th day of APRIL next, at Twelve o'clock, noon, being the time appointed for hearing and adjudicating upon the claims.

Dated this 2nd day of March, 1874.

A. T. CHATTERTON, Chief Clerk.

LANDED ESTATES' COURT, IRELAND.

GENERAL NOTICE TO CLAIMANTS.

In the Matter of the Estate of Isaac Cowden and John Cowden, Owners: William Baird, Petitioner.

THE Court having Ordered a Sale of the Farms of Land in the Townland of Islanderry, containing in the whole one hundred and four acres, and thirty-four perches, statute measure, situate in the Barony of Lower Iveagh, and County of Down, held under lease dated the 22nd day of January, 1870, for the term of twenty-one years from the 1st day of November, 1869.

All parties objecting to a Sale of the said Lands are hereby required to take notice of such order.

And all persons having claims thereon may file such claims, duly verified, with the Clerk of the Records.

Dated this 9th day of March, 1874.

C. E. DOBBS, Examiner.

GEORGE HAZLETT, Solicitor having carriage of Sale, 30 Bachelors'-walk, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

SALE,

On FRIDAY, the 24th of APRIL, 1874.

In the Matter of the Estate of Lewis Heinekey and Philip Edward Reilly, trustees for Sale (under deed dated the 7th of May, 1866), of the estate of Richard D. Lawless, Owners; *Ex-parte* Said Lewis Heinekey, Petitioner.

TO BE SOLD, In Two Lots, Before the Honourable Judge Flanagan, On FRIDAY, The 24th day of APRIL, 1874, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, Portion of the Estate in this Matter, Consisting of

LOT 1.

One undivided moiety of the Houses and Premises, Nos. 78, 79, 80, 81, 82, 83, and 84 Capel-street, in the Parish of St. Mary, and City of Dublin, held with the other undivided moiety under lease dated the 1st of March, 1822, from the Commissioners of Wide Streets to Richard Bergin, for lives renewable for ever, at the yearly rent of £18 9s 3d, the moiety now for sale, producing the net annual profit rent of £62 8s 5½d.

LOT 2.

An undivided moiety of the Houses and Premises, Nos. 29 and 30 Lower Mount-street, in the Parish of St. Peter, and City of Dublin, held with the other undivided moiety under lease dated the 30th day of June, 1821, from Arthur Grant to Richard Bergin, for the term of 137 years from the 29th of September, 1821, at the annual rent of £9 4s 7½d, the moiety now to be sold producing the net annual profit rent of £46 7s 8d.

Dated this 3rd day of March, 1874.

HENRY R. GREENE, Chief Clerk.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates' Court, Four Courts, Dublin; or to SAMUEL HUGHES, Solicitor having carriage of the Sale, 54 Middle Abbey-street, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

PATRICK BYRNE, of 22 Victoria-street, Belfast, Dealer in Tea, was on the 3rd day of March, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 31st day of MARCH, 1874, and on FRIDAY, the 10th day of APRIL, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

DENIS LEONARD & H. F. LEACHMAN, Solicitors for Assignees, 43 Dame-street, Dublin; and Belfast.

IN THE COURT OF BANKRUPTCY, IRELAND.

JAMES COADY, of Wexford, in the County of Wexford, Rope Manufacturer, was on the 10th day of March, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 31st day of MARCH, 1874, and on TUESDAY, the 21st day of APRIL, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS HENRY DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

EDWARD HAMILTON HUNTER, Solicitor to the Bankruptcy, 58 Rutland-square, West, Dublin.

COUNTY OF KILDARE.

COUNTY OF KILDARE—TOWN OF SALLINS.

SALE OF VALUABLE FEE-SIMPLE PROPERTY.

TO BE SOLD by Private Treaty, by direction of the Owner, all that the PLOT OF GROUND on which formerly stood a Small House and Old Walls, situate on the North side of Chapel-lane, in the Town of Sallins, and County of Kildare, containing in front 50 feet, and from front to rear 18 feet, and bounded on the East end by the house in which Thomas Coughlan formerly resided; on the West end by the back wall of the yard which the said Thomas Coughlan formerly held from Mr. Sweetman; and at the rear by the boundary fence of one of Mr. Bull's fields, together with all buildings, erections, fixtures, and appurtenances whatsoever to the said Plot of Ground and Premises, or any of them, appertaining, held in fee-simple.

DESCRIPTIVE PARTICULARS.

The Premises consist of Two Small Dwelling-houses, with a Corn Store built over same. The Houses and Corn Store have been recently erected, and are all in perfect order. The Houses were, until recently, let to two weekly tenants, and produced £7 18s 0d per year. The Corn Store is estimated at the yearly value of £7 7s 0d, so that by letting them a purchaser will secure a yearly rental of £15 5s 0d for ever, free from rent.

The Premises are quite close to the Grand Canal, and are admirably suited for Stores. Private offers, in writing, will be received by the undermentioned Solicitors, at whose Offices an Abstract of the Title and Conditions, subject to which the Premises will be Sold, can be seen.

For further particulars apply to

MICHAEL KAPPOCK, Esq., Owner, 4 Haymarket;

Messrs. CASEY and CLAY, Solicitors having Carriage of the Sale, 21 St. Andrew-street.

BINDING "THE IRISH LAW TIMES."—SUBSCRIBERS are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. Also the Acts of the past Sessions, printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates,

BY JOHN FALCONER,
Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL,
53 Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, March* 14, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MARCH 21, 1874. No. 373.

JUDICIAL ERRORS.—I.

WHAT honest man, asks George Elliott, does not feel rather tickled than otherwise on being taken for a housebreaker? Nay, how innocent soever he be, let him tremble. For, in the words of Chief Baron Pollock, "The annals of our criminal courts, unhappily, record many various instances where, by perjury or mistake (especially as to identity), by blunder or misapprehension, and sometimes by the misconduct and fatal indiscretion of the accused himself, a conviction has taken place which has been considered, upon further investigation, to be erroneous." One is panic-stricken, and takes to flight—

> "His flight was madness: when our actions do not,
> Our fears do make us traitors."

Another, overwhelmed by the insensate impulse of some strange mischance, confesses. Fatal error. In vain would he

> "Unspeak his own detraction, here abjure
> The taints and blames he laid upon himself."

And how many, paralysed in the coils of immitigable circumstance, have perished, the victims of judicial errors. It may, indeed, be hoped that now-a-days instances of such fatal misprisions of justice are extremely rare. The reaction produced in the public mind, in the early part of the present century, by the occurrence of cases of wrongful conviction, such as that of Eliza Fenning, and by the increased sense of the value of human life, still operates beneficially. And not only is the law more humane, but those who administer it are now more cautious. Yet are we warned, from time to time, by startling exceptions, that no precaution can be too great, and that whatever protection against error is afforded by the law of evidence cannot be too unswervingly sustained. It is not very long since that two brother swere sentenced to death in the county of Limerick—and one of them hanged—for a murder which was afterwards, in time to save the other brother, confessed by another criminal, who was himself under sentence of death for a different murder. We have not yet forgotten how Pelizzioni was sentenced to be hanged for a murder of which he was guiltless, and for which he would have been hanged but for the persevering exertions of Mr. Negretti. And it was but in 1869 that Bisgrove and Sweet were convicted, when, had it not been for the timely compunction of Bisgrove, Sweet, though wholly innocent, would have been hanged. In the same year, an extraordinary case of a judicial error was brought to light by an appeal before the Imperial Court of Nancy. Adèle Bernard, a girl twenty-two years of age, had been brought to trial, in 1868, on a charge of infanticide. The prosecution alleged that in October, 1868, she clandestinely gave birth to a child and threw it into a pigstye, where it was eaten. This allegation was confirmed by her own confession both before the Judge of Instruction and in open court. Moreover, a midwife and a parochial surgeon certified that they examined her immediately after her arrest, and found traces of recent delivery. On this evidence the correctional tribunal sentenced her to six months' imprisonment, for the concealment of the birth of a child who was not proved to have been born alive. She went to prison accordingly, and about a month later, on December 24, she was delivered of a fine healthy child, perfectly formed, and born in altogether normal conditions. The time allowed for her appeal against a sentence which circumstances appeared to show was manifestly unjustifiable had then expired, but the public prosecutor lodged an appeal in her interest. When interrogated by the President of the Appeal Court, she said that she had been induced to make a false confession by her mother and the midwife, who told her that if she confessed the crime she would get off easily, whereas if she persisted in denying the accusation she would certainly be condemned to fifteen or twenty years' imprisonment with hard labour. Some medical evidence was produced before the Court of Appeal to show the bare possibility of a superfetation. But the Court rejected this hypothesis; held that she had been impelled by intimidation to make a confession for which there was no foundation; and reversed the verdict against her. One is reminded of the similar case of Madame Doize, an innocent woman, who had been driven to confess herself guilty of a murder in order to get released from the torture of solitary confinement.

> "O white Innocence,
> That thou should'st wear the mask of guilt, to hide
> Thine awful and serenest countenance
> From those who know thee not!"

The case of the conviction of the Boorn brothers for the murder of Russell Colvin, is pretty well known from the statement in "Greenleaf on Evidence." But a full report of it* has recently been published by one of the counsel at the trial, taken from the minutes of Chief Justice Chase who presided at the trial (uncle of the late Chief Justice of the United States). In 1812 Barney Boorn, his wife, two sons, Stephen and Jesse, a daughter, and her husband, Russell Colvin, lived in the town of Manchester, Vermont. Colvin was a man of weak intellect, at times partially insane, and accustomed occasionally to wander away for weeks without giving an account of himself. In May, 1812, he suddenly disappeared. But now years went by and he came not back. Suspicions became rife. It was remembered that the brothers Boorn and Colvin had not lived amicably together; and it was reported that one of the brothers had stated that Colvin was dead, and the other that "they had put him where potatoes would not freeze." An uncle of the young men dreamed three times that Colvin came to him and indicated that his remains lay in an old cellar-hole, used as a place for burying potatoes. Then, a hat was found near the homestead, and recognised as Colvin's; and next, some bones were dug up out of a hollow stump on the property and pronounced to be human bones. Accordingly, in 1819, the brothers Boorn were arrested. Mr. Sargeant says:—"The country was scoured for evidence. The old cellar-hole was re-opened and a large knife, a pen-knife, and a button were found. The large knife and button were identified as having belonged to

* The Trial, Confession, and Conviction of Jesse and Stephen Boorn for the Murder of Russell Colvin, and the return of the man supposed to have been murdered. By Hon. L onard Sargeant, ex-Lieutenant Governor of Vermont. Manchester D. K. Simonds, 1873.

Digitized by Google

Colvin. The bones found in the hollow stump were brought into court, and four physicians were called, who, after an examination, pronounced them to be the bones of a human foot, together with some toe-nails, and perhaps a thumb-nail. One of the physicians, who lived in Arlington, after thinking the matter over, concluded there might, after all, be a doubt about it, and on examining a human skeleton at home was convinced that he had been mistaken, and the next day went into court and retracted his former statement. The other physicians were not satisfied, and to settle the matter sent to a neighbouring town, and had a leg that had been amputated and buried, exhumed and brought into court, and, on comparing the two specimens, every one was convinced that the bones alleged to be Colvin's were not human. This dampened the public ardour somewhat, and it is probable that Jesse would have been discharged, but that on Saturday he made a statement that he believed Colvin had been murdered, and that his brother Stephen was the murderer; that Stephen had told him the previous winter that he (Stephen) and Colvin were hoeing in what was called the 'Glazier lot;' that they had a quarrel, and Colvin attempted to run away; that he struck him on the back part of the head with a club, and fractured his skull; that he (Jesse) did not know what had become of the body, but mentioned several places where it might be found." In September following, an indictment was found against both the brothers, the principal witness being a fellow-prisoner who testified that Jesse had made a confession to him one night after awaking much disturbed. After the indictment was found they were visited in gaol by men of character and influence, and men of the law, who declared that the case was clear against them, but that if they confessed an attempt would be made to have their sentence commuted. Thereupon, Stephen made a written confession (coinciding in its general substance with what circumstantial evidence there was) that he killed Colvin, adding that it was done in a quarrel, and in self-defence—but the sequel shows how inconclusive may be even a written "death warrant" extracted from the self-condemned. The trial took place in November. The evidence against them was wholly circumstantial, and mostly unimportant, with the exception of the confessions. A verdict of murder was returned, and they were sentenced to be executed on the 28th of January, 1820—all efforts failing to secure a commutation. They then protested their innocence; and an advertisement was inserted in the newspapers, asking information respecting Colvin. On Nov. 29th, 1819, it attracted the notice of Mr. Chadwick, of New Jersey, who recognized the description as that of a man living at Dover, in his State. The man was brought to Vermont, and at once recognized and identified by scores of people as the veritable Colvin. He was partially insane, and could give no reason for his absence, but freely admitted that the Boorns had neither hurt him nor frightened him away. The Boorns were released, although the Court was at a loss to know what course to pursue for the purpose. Lord Norbury would unquestionably have shed tears on the occasion, and perpetrated, withal, some grim pun about that "bourn" whence no traveller returns.

We have selected those cases, and presented the facts in detail, for the purpose especially of illustrating the expediency of upholding the doctrine, that a conviction should not be had merely upon the confession of the prisoner without any other proof of the *corpus delicti*—a doctrine which has been recently questioned in the case of *The Queen* v. *Unkles* (8 Ir. L. T. R. 38), as we shall point out in a subsequent paper.

NOTANDA.

Attachment; Debtors Act, sec. 5; default by solicitor in payment of money, ordered by the Court to be paid.—A solicitor, acting under a power of attorney from a client, having received money in respect of an annuity, but not having paid over the amount, a petition was filed against him, whereupon it was ordered, Jan., 1873, with his consent, that within ten days £100 should be paid to the petitioner, and that an affidavit of credits due from the petitioner was to be furnished by the solicitor, and that the petitioner should pay the amount of credits found due. £40 was paid by the solicitor on foot of the order; but no further payment being made, the solicitor was noticed in June to pay the remaining £60, or that an attachment would be applied for. He did not furnish the affidavit as to credits. A motion having been made for an attachment, he alleged that certain credits were due, and it was then found that he was entitled to credit for only £1 13s. 4d.; and it was ordered that he should pay the balance, £58 6s. 8d., within one month. That balance not being paid, however, the petitioner now moved that the attachment should issue. *Ordered*, that half the money be paid within one month, and the residue within two months; otherwise an attachment to issue (*Re Wogan;* Rolls, March 4, 1874).

Production of documents; privilege; solicitor and client.—A. advanced money to B. on a mortgage of a real estate, upon a misrepresentation by C. that B. was entitled absolutely. The estate, however, was not B.'s absolutely, but was subject to certain trusts. E. and F. were the trustees. C. acted as solicitor for A. B. E. and F. A. filed a bill against B. C. E. and F., praying for an account of principal and interest, and that the defendants should be held jointly and severally liable for payment, on the ground of the misrepresentation of C., which the other defendants, by conduct amounting to equitable fraud, assisted. The plaintiff having obtained an order for production of documents, and it being then alleged that certain letters were privileged, having passed between C. E. and F., it was now *ordered* that E. and F. should produce the letters in question, except such as they should show, by affidavit, to contain legal advice or opinions merely (*Sankey* v. *Alexander;* V.C., Jan. 14, 1874).

Question of title ousting jurisdiction of justices; certiorari; showing by affidavit that question of title existed.—Motion to make absolute a conditional order for a *certiorari.* The prosecutor Roddy, and others, held some farms, as tenants, under the Rev. Mr. Thompson, in the county of Donegal, and were convicted at Petty Sessions, under 24 & 25 Vict., c. 97, s. 25, for destroying a fence, put up by the landlord to exclude the cattle of the tenants from a piece of bog over which the tenants claimed a right of pasture, as appurtenant to their holdings. The magistrates had inquired into the title of the tenants to the pasture, and had made an affidavit to the effect that the evidence before them had satisfied them that the claim was unfounded, that it was not made *bona fide*, and that the trespasses were not committed under any fair or reasonable claim of right or title in the prosecutor. It being proposed to go into affidavits showing that such title did exist, *Wynne*, for the landlord, objected that the Court could not entertain such affidavits, as the magistrates had found as above; *R.* v. *Mussett*, 26 L. T. N. S. 429; *White* v. *Feast*, 20 W.R. 382. *O'Brien*, Q.C. (with him *John Roche*), *contra*, contended that, according to the practice of the Court, ouster of jurisdiction, by reason of a question of title, could be shown by affidavit; *R.* v. *Js. of Limerick*, Notanda, 7 Ir. L. T. 55; *R.* v. *Bolton*, 8 Q.B. 66; *R.* v. *Nunneley*, E. B. & E. 852. The Court held that the

Digitized by Google

cases cited on behalf of the landlord applied to convictions under the 52nd section, and not under the 25th; and that in any case, according to the settled practice of the Court, as stated in the case cited from Notanda, 7 Ir. L. T. 55, and grounded on the cases cited for the prosecutor, among others, the affidavits should be admitted. Conviction quashed (*R.* v. *Js. of Donegal*, Q B., Hil. T., 1874).

Change of venue; laches.—This was an action for £51 demurrage, and the cause was at issue, Feb. 5. The venue was laid in the county of Antrim. On Feb. 24, notice of motion was served on behalf of defendant to change the venue to the county of Dublin. The plaintiffs resided at Cushendall, in the county of Antrim, and their attorney at Belfast stated it would be necessary to examine them. But the cause of action arose in Dublin, and all the other witnesses resided there. There was a cross-action for the non-delivery of a cargo of coals, wherein the venue was laid in Wicklow. *Hemphill*, Q.C. (with him *Teeling*), in moving, offered to have the venue changed to Wicklow, if not to Dublin; and stated that the defendant would be willing to lodge the sum claimed in Court. *Purcell*, Q.C., *contra.*—The cross-action was an after-thought. The motion is made for delay, and not *bona fide*. The record has gone down to Belfast, where the Assizes begin, March 5th, and the subpœnas to the witnesses have been issued. [Palles, C.B.—The affidavit in support of the motion does not aver that the motion is made *bona fide*, and not for delay]. *Teeling.*—That omission is removed by the offer to lodge the money in Court. Palles, C.B., refused to change the venue, on the ground that the defendant should not have delayed the motion from Feb. 5, when the case was at issue, till Feb. 24, several days after the notice of trial was served; and stated that he was prepared to lay down that such motions should, as a rule, be refused whenever there was such delay altogether unexplained (*Blayney and Another* v. *Kirwan*, Con. Ch. Feb. 27, 1874).

Appeal from Quarter Sessions; adjournment.—Appeal from a decision of the Chairman dismissing an action brought against a magistrate for maliciously refusing to admit a prisoner to bail, &c. *Rea*, attorney for the appellant, applied for an adjournment, on the ground of the absence of a material witness through illness. *Falkiner*, Q.C., opposing, submitted that the Court had no jurisdiction to adjourn an appeal. Keogh, J., granted the application at the peril of the applicant, all questions to remain open and reserved at the next Assizes (*Hughes* v. *O'Donnell*, Antrim Assizes, March 14, 1874).

Appointment of trade assignee; person resident out of the jurisdiction.—Adjourned meeting for appointment of trade assignee. The bankrupt was a jeweller, trading in Belfast. There were no Irish creditors. *Perry*, on behalf of the petitioning creditor, proposed Mr. Jacob Frangley, jeweller, of Dublin, stating that it would be advisable to apppoint him as being conversant with the business; that he had undertaken to act; that many creditors approved his appointment; that he had been appointed in previous cases, and that the official assignee reported he had given every satisfaction. *Mr. Davoren*, solicitor for creditors, objected that Frangley was not himself a creditor, and had no interest in the estate, either personally or as agent for any one; and proposed that either an English creditor should be appointed, or else that the estate should be administered by the official assignee. Miller, J.—I will not appoint an English creditor, as I would have no jurisdiction over him. He might receive debts from the other English creditors and I would have no means of reaching him, save in a roundabout way through the English Court of Bankruptcy. I have the power to appoint, as trade assignee, a person resident out of the jurisdiction. On the other hand, the objection to Mr. Frangley is that he is not a fit person to appoint, because he has no personal interest; and on that ground I consider he should not be appointed. If appointed he would not be remunerated; but although not appointed the official assignee can employ him if he chooses, and he will then be remunerated. As there is no substantial Irish creditor who can be appointed, the estate will be administered by the official assignee. This being a creditor's petition, and no trade assignee being appointed, the carriage of the proceedings will remain with the solicitor for the petitioning creditor (*Re Bromfield*; Ba. March 13, 1874).

THE BENCH AND THE BAR.

Dr. Kenealy published a letter the other day, in the *Standard*, which is intended apparently to protest against a suggestion made in these columns, and, as we believe, adopted elsewhere, that the charges made against him by the Lord Chief Justice and his colleagues and by the jury in the Tichborne case ought, in justice to himself, to the Bar, and to the public at large, to be investigated and adjudicated upon by the Benchers of the Inn of Court of which he is a member. It seemed to us when we published that article, and it seems to us now, that if such a censure as was applied to Dr. Kenealy is to pass unnoticed it will form the worst possible precedent. Men of the age and position, social and professional, of Judges and Queen's Counsel are too old and too high-placed for scolding matches. When such terms as "Scroggs and Jefferies" on the one side, and "slanderer" on the other, are exchanged between them with no result at all, the profession to which they belong, and the administration of justice itself, are disgraced. Duelling was a barbarous practice no doubt, yet it did, in a rough objectionable way, recognise the truth that a man's honour is a valuable thing, and that he ought not to sit down with an insult unless he is contented to be disgraced. This was as natural and honourable a feeling as the superstition that a man atoned for an insult by shooting the man whom he had insulted was absurd.

We are well rid of the one, but we ought carefully to preserve the other as far as possible. It would, we think, be generally understood that a man who submitted to an imputation on his character in the public press without suing his slanderer for libel or compelling him to apologise was disgraced. There are cases in which an officer in the army ought to demand a court-martial; and it seems to us that when a Queen's Counsel has heavy charges brought against him not only as a barrister, but as a man of honour and a gentleman, by three judges, one of whom is the Lord Chief Justice of England, and by a jury which by common consent showed inexhaustible patience and great intelligence in dealing with a case of unparalleled difficulty, he ought to be anxious to have those charges investigated by a court of honour to which he happens to be subject; and if that the matter does not present itself to him in that light, the Benchers of his Inn ought to take it up for the credit of the Profession, and for the security of the public.

It ought never to be forgotten, though some people are much inclined to forget it, that the public have a strong and direct interest in the good behaviour of the Bar—in the maintenance of their privileges on the one hand, and on their being kept within proper bounds on the other. It is a profession which has in most cases, and which ought to have in all cases, a sense of honour and professional morality as distinct and as strictly enforced as those of officers in the army. A barrister has, and ought to have, great privileges. It is his right and duty to say and do without fear or favour things which no other man is allowed to say or do. Private character and conduct are to a great extent at his mercy. It is in his discretion to drag to light secrets which may cover a man with shame for the rest of his days. It may be his duty to discover secret machinations for the injury of others in which persons of the highest social standing and most respectable character are concerned.

Digitized by Google

He can say what he likes without having the fear of the law of libel before his eyes. He can not only ask questions which it would be an unpardonable affront in another man to suggest, but compel the persons questioned to answer him completely and directly; and it is absolutely necessary that he should have these powers in order that justice may be duly administered between man and man. It seems to us that it is at least equally necessary that he should not abuse them; for if he does he becomes one of the vilest and most mischievous of all conceivable social pests. It is impossible to imagine a more utterly abominable character than a man who deals, to use the fine expression of Chief Justice Erle, in "words sold and delivered," or to use a well-known metaphor of Chief Justice Cockburn's, quoted in the recent trial by Dr. Kenealy, a man who, instead of being a soldier using his sword according to the laws of war, is a prowling assassin armed with a dagger. It may be impossible to draw the line between the two characters in words, and to lay down definite rules by which it may be known in all cases whether a particular act falls on one side of the line or on the other, but is very far from being even difficult for a body of honourable men, with all the facts of a particular case before them, to assign to any particular man the position which he ought to occupy. Privileges of every kind have their corresponding obligations; and a man who is intrusted by the public with the privileges of a barrister should be made to feel that he runs the risk of infamy and ruin if he abuses them. We pass no judgment at all on Dr. Kenealy's conduct. We express no opinion on what he has said or done. We merely point out the fact that three judges and the jury have accused him of grossly abusing the privileges of his position. We say that such an accusation should make it the duty of his Inn to inquire into his conduct, to set him right with the world if the accusation is false, to protect the public against him for the future if it is completely justified, and to visit him with whatever censure may be thought proper if, though exaggerated, it is not unfounded.

This was and is the view which we take of the matter. Dr. Kenealy's letter to the *Standard* (dated March 7) rather confirms than weakens it. His letter is a justification of his conduct. As regards the charge of disrespect to the Bench he says with a good deal of force: "If I was guilty of contempt of court, why was I not punished at the time, or at all events when the case was over, and when my punishment could no longer prejudice my client? This, we think, is an answer: Courts of justice are well able to protect themselves against insult, and are armed with special powers for that purpose, and it no doubt would be hard upon a man if the Benchers of his Inn were to punish him for acts of disrespect to judges which the judges had not thought it necessary to punish. That, however, is not the real charge which has been made against Dr. Kenealy. The real charge is that he attacked private character recklessly, falsely, without proper grounds, in a great number of cases, and in intemperate language. It is put shortly and plainly enough, though not quite as precise as it might have been, in the note appended by the jury to their verdict. "The jury desire to express their opinion that the charges of bribery, conspiracy, and undue influence, brought against the prosecution in this case are entirely devoid of foundation; and they regret exceedingly the violent language and demeanour of the leading counsel for the defendant in his attacks upon the conduct of the prosecution, and upon several of the witnesses produced in the case."

Dr. Kenealy's reply to this consists of two parts. First he says, "It is false, as laid at my door, that I charged the counsel, the solicitors, everybody, as being engaged in a foul conspiracy. So far from having done so, I did the very reverse, as my assailant must have known." Here is a plain issue of fact between Dr. Kenealy and the jury. Let some one decide between them. The shorthand writers' notes are in existence. Let the Benchers of Gray's Inn read them, and say whether Dr. Kenealy did or did not say what the jury say that he said and what he says he did not say.

Further, Dr. Kenealy observes: "I claim a right to say what I have said" (against the witnesses), "because in my judgment there existed grounds for my assertion as exhibited at the trial." Some of these grounds he proceeds to assign. This is an equally plain issue, and it is the really important issue in the case. Had Dr. Kenealy grounds for the imputations which he made, or did he make them at random or without grounds? In the one case let him by all means be acquitted, in the other let him be disbarred; but in any case, for the honour of the Bar, for the safety of the public, and for his own honour, let him be tried. Let us have something in the nature of a decision by a public body acting judicially on the question whether or no a great breach of public decency has been committed and great private wrongs inflicted by a man holding a conspicuous and honourable public position. Let it not be said that the Chief Justice of England publicly taxed one of her Majesty's counsel with an "unceasing torrent of invective and foul slander;" that Mr. Justice Mellor concurred in that censure, and spoke also of his "braggart demeanour;" that Mr. Justice Lush declared, in reference to the same subject, that "if advocates were at liberty to use denunciation and slander as a weapon, the so-called independence of the Bar would become a public nuisance;" and that the jury added to these declarations of the judges the note which we have just quoted; that all this passed by as so much idle wind, and that Dr. Kenealy was permitted to continue to practise his Profession without any inquiry into the subject by any body of persons competent to hear and determine the matter. If this should be the case, it will constitute one of those crying public scandals which bring about legislative changes. The Bar will be in a position as disgraceful as that of a regiment in the army in which the colonel on parade calls a subaltern a liar and a coward, the subaltern replies that the colonel is a spiteful old fool, and the parties sit down at the mess table afterwards and talk and laugh as if nothing had happened.

The rest of Dr. Kenealy's letter consists of recrimination and of fustian about "emasculating and enslaving the bar," a "reign of terror," "my profession which it is sought to awe into oriental supineness and servility," "lords, ladies, and priests, who have vast influence in the press, and who are exercising that influence for my destruction," and other matters undeserving of attention.—*Pall Mall Gazette.*

THE COMING COURT OF FINAL APPEAL FOR IRELAND.

The Irish Lord Justice (Christian) has published some observations upon the pending changes in the appellate system of the United Kingdom, and with his usual vigour he points out what he conceives to be the dangers attending the abolition of the jurisdiction of the House of Lords.

We must confess, however, that we are somewhat surprised to find the Lord Justice taking such remarkably strong views in favour of the old jurisdiction of the House of Lords. Overlooking entirely the inherent weakness of the tribunal, and its haphazard constitution, he finds in it an object not only of his veneration and respect, but of his unbounded enthusiasm. At any rate it would seem to be the opinion of the Lord Justice that an appeal to even inferior English judges sitting at Westminster would be better than an appeal to the ablest Irish Judges sitting in Dublin. He tells us, indeed, that "Her Majesty's Court of Appeal," as constituted under the Judicature Act, when extended to Ireland, may be found as satisfactory to that country as the House of Lords has been, *but more so it cannot by any possibility prove.* He adds, "The contentment of Ireland with that House as its court of last resort has, in fact, been boundless." The Lord Justice in his experience of nearly forty years, has "never heard a murmur against it." "The judges whose decisions may have been reversed, even the unsuccessful parties or their counsel, however disappointed by the result, never reclaimed against that tribunal"—which, if true, shows the Irish to be a much maligned race—"and even when, as would sometimes happen, the reasoning of the Law Lords might seem a little bald and inconclusive, it was still the same; no one cared to look beyond the mere *factum* of their conclusion. In short, the House had won for itself that fulness of acceptance which is the truest touchstone of desert for a court of last appeal, when all would be ready to say, after the decision

Digitized by Google

was made, '*Now* we know it is the law, because *they* have said it is.'"

We venture to think that no condemned tribunal—and condemned out of its own mouth—ever possessed a blinder panegyrist, and we fear that the excess of zeal of the Lord Justice must detract from the cogency of his remarks. We find it very difficult to believe that no murmur has ever arisen within the last forty years from Irish judges whose decisions have been reversed, and from unsuccessful counsel and parties. Possibly such murmurs would not reach the ears of so devoted an admirer of the tribunal as Lord Justice Christian; but if the fact be as he states it, there must have been a predisposition to consider Irish judges as likely to be in the wrong. With a strong Bench in Ireland, and a Bench in the ability of which the people believed, it seems to us impossible that the decision of two English ex-Chancellors and a Scotch Law Lord reversing a decision of that Bench should be received without discontent. The Lord Justice evidently does not desire to cast any reflection upon the Irish Bench as a body, and we must assume that it is regarded with respect. This being so, the absence of discontent is an extraordinary circumstance, and proves either that the Irish people accept the decisions of a tribunal on its reputation without regard to its constitution, or that they possess very limited power of discernment.

We cannot help thinking that the Lord Justice has been oppressed with the thought of what might happen if Irishmen were left to manage their own affairs. A passage which he puts in italics is very significant. It is this:—"The inevitable outcome of it all would be that the function of supreme appeal for Ireland would eventually fall into the hands of a little band of Irish Judges located in Dublin." From this fear oppressing the mind of the Lord Justice arises all that he imagines—first, the division of the Court of Appeal into as many departments as there are countries from which appeals come (certainly, if the Lord Justice's theory is correct as to Scotland and Ireland); and, secondly, local appellate courts—hence the degradation of the law, damage to society, and, lastly, the loosening of the bonds of union between the countries.

The answer to all this is perfectly simple. In the first place it is by no means certain that the Irish and Scotch appeals will be taken away from the House of Lords. Supposing they were, what says the Judicature Act? That in the absence of rules or orders of court the jurisdiction of the Court of Appeal shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective courts from which such jurisdiction shall have been transferred, or by any of such courts (s. 23.) No order of court could possibly be made by which particular business should be disposed of by Judges who came from the same country as the business, and the Judges could not venture to arrange matters amongst themselves so as to secure such a result. Whilst, therefore, we repeat, that the observations of Lord Justice Christian are entitled to high consideration, we are driven to the conclusion that, impelled by his dread of Irish legal business being entirely localized, he has unduly exalted the virtues of the House of Lords, and bases his regrets for the possible abolition of its Irish jurisdiction entirely upon his fears. If his fears are quieted, if it appears that the Court of Appeal for the empire will treat all business alike, the whole of his argument falls to the ground.—*The Law Times.*

The re-election of Dr. Ball by Trinity College was a matter of course; but his continued presence in the House of Commons is of interest as a proof that, whatever Mr. Disraeli's Government may choose to do, or decline to do, it will, at all events, take in hand the very urgent business of reorganizing the Irish Judicial System. It must be for this purpose that Dr. Ball's services have been retained in the House of Commons, and that the Great Seal of Ireland has, during the temporary suspension of the Chancellorship, been entrusted to a Commission consisting of Sir Joseph Napier, Mr. Justice Lawson, and Master Brooke. These three eminent lawyers will not derogate from the dignity of the high office which has for a time been placed in their charge. Sir Joseph Napier and Mr. Justice Lawson have served with credit both in Parliament and on the Bench, and the fact that the latter is a Liberal in his Party attachments reflects all the more credit on the Conservative Government which has selected him for honour. Master Brooke, the third Commissioner, is a highly-respected Equity official. It would be difficult to point out a better constituted trusteeship of the Great Seal. Nevertheless, such an arrangement can only be, and is only intended to be, provisional. The late Government announced, long before the dissolution was decreed, that the principles of the Judicature Act would be applied to Ireland in the present Session. The announcement was a challenge to the Conservative Party, against whom it had, not unfairly, been made an article of indictment that they had, in an irrational and purposeless manner, prevented the establishment of one Final Court of Appeal for the whole United Kingdom. If the Act was good for England, it would need some specially cogent reasons to prove that it would be bad for Scotland or Ireland. By placing the Great Seal of Ireland in Commission the Government have shown that, so far from desiring to evade the Liberal challenge, they are fully prepared to mete out to the Irish Courts the same measure that has been deemed wholesome and equitable in dealing with the English Judicial System.

But what form will the application of the English Act to Ireland practically take? This is the question which Irish lawyers are now considering, and which is for many reasons, political as well as professional, deserving of more general attention. The main point is the effect upon the Appellate jurisdiction. It is not likely that the fusion of Law and Equity will present anything like the same difficulties in Ireland as in England, for in the former country the two systems of jurisprudence, though theoretically distinct, have been in practice worked by the same men, and Equity Judges have usually had a large Common Law experience to draw upon. But when litigants have soared beyond the Tribunals of First Instance, where are they to carry their disputes? Is the jurisdiction of the House of Lords to be maintained for Ireland after its abandonment for England? This course is clearly impossible, and it is equally out of the question to discuss even the possibility of reversing the course of last year's legislation, and of restoring to the peers their judicial powers. But if the Scotch and Irish appeals are to be brought before the Supreme Appellate Court to be constituted in next November under the Judicature Act, what specific proportion of representation in the New Tribunal of Appeal will be assigned to the Sister Kingdoms? This is a question which must be very carefully weighed before any irrevocable changes are adopted. Lord Justice Christian, of the Irish Chancery Court of Appeal, has published a pamphlet on the subject, which, though warped by some too palpable prejudices, and written in a style somewhat disregardful of professional and social amenities, contains much suggestive matter. Nobody can be ignorant of the fact—indeed, some scandalous scenes on the Bench have left no chance to any one of ignoring it—that Lord Justice Christian's *bête noire* has been his late colleague in the Court of Appeal, Mr. Gladstone's Irish Chancellor, Lord O'Hagan; and from the person the Lord Justice seems to have transferred his animosity to the office. At all events, what is likely to be the most popular part of this pamphlet is that which treats of the modern degeneracy of the Irish Chancellorship from the dignity of a high judicial office to the condition of a second-rate political office. Lord O'Hagan's appointment was, in the Lord Justice's opinion, the consummation of a change for the worse which had been impending ever since the practice of committing the Great Seal of Ireland to English Equity lawyers of high repute was abandoned, nearly thirty years ago. If the Chancellorship is thus to be used as a mere engine of political influence, it should be wholly excluded, Lord Justice Christian argues, from real judicial work.

The plan suggested by the late Government for the constitution of the Supreme Appellate Court as a tribunal of ultimate resort for the whole of the United Kingdom included the admission of a certain number of representatives from the Irish Judiciary, as also from the Scotch; and this provision, coupled with the scheme for distributing the Appellate business among divisional Courts, gives some ground for Lord Justice Christian's apprehension that

Digitized by Google

Irish appeals may ultimately come to be, in practice, decided by one or two Irish Judges sitting in London, of whom the Irish Chancellor would, according to the suggested arrangement, be one. It is impossible not to agree with the Lord Justice that such a plan would be very far from establishing a strong Court of Appeal, unless there should suddenly grow up a Ministerial sense of responsibility such as we have rarely seen exhibited in the bestowal of this office by Governments naturally inclined to regard its political functions as the most important. Lord O'Hagan himself was a highly-respectable public servant, and, though he could not be expected to turn out an eminent Equity Judge, since he had positively no experience whatever of Chancery business till he took his place on the Bench, he committed no signal blunders. But he was assuredly not the man whom the profession would have selected to revise the Equity judgments of the Master of the Rolls or of one or two of the present Masters in Chancery in Ireland, not to speak of Lord Justice Christian himself. The Lord Justice argues that the chance that such political appointments—and Lord O'Hagan's was not the first—may contribute a disturbing element to the Supreme Court of Appeal is an overwhelming reason in favour of drawing the Irish representatives who are to sit on that great tribunal from the permanent judicial officers, and not from the political and changeable establishment. Lord Justice Christian suggests that the Chief Justice of the Queen's Bench and the Master of the Rolls should be, by virtue of their offices, and as the permanent heads, respectively, of the Common Law and Equity jurisdictions, the represeetatives of the Irish Judiciary in the Court of Appeal. If Law and Equity are to be fused, we do not see the reason for this bifurcation, but otherwise the suggestion has much force.

If an English critic were to put forward views anything like those which Lord Justice Christian promulgates with entertaining dogmatism, his audacity would provoke a unanimous protest from the whole Irish nation. He not only regrets the time when the Irish Equity Courts were presided over by imported English lawyers, but he contends vigorously that special rules should be adopted to prevent Irish Judges from supplying, in any combination of circumstances, a majority of the Division of the Supreme Appellate Court assigned for the hearing of Irish appeals. These criticisms we leave to the consideration of the Irish Bar, merely observing that there seems some grave reason to doubt the expediency of establishing hard and fast divisions in a tribunal of this character, and still more of identifying any particular division with the appellate business of any particular portion of the kingdom. The House of Lords, if deficient in every other characteristic of a high Court of Appeal, had, at all events, a certain Imperial grandeur, which impressed the popular imagination. We should be sorry if the new Supreme Court of the Empire were to fall below this level and to split up in practice into so many provincial Courts of Appeal; but it will hardly be able to maintain a reputation equal to its pretensions if its work is divided, not only in practice, but in appearance, among four or five sections of legal specialists, sheltering their individual insignificance under the great name of the highest tribunal in the land.—*Times*.

THE LIABILITY OF INFANTS TO BANKRUPTCY.

We have recently had occasion to advert to a decision of a learned County Court Judge to the effect that an infant against whom damages had been obtained in an action of tort might be adjudicated bankrupt. We expressed our doubts as to the soundness of his Honour's law, and the question raised, being undecided by any case under recent Acts of Parliament changing the operation of the law of bankruptcy, is one of some interest.

The history of the bankruptcy law with reference to infants is somewhat curious. Early authorities, notably Lord Cowper and Lord Macclesfield, decided that a commission might issue against an infant, but in *Ex parte Sidebotham* Lord Hardwicke said that since those judges had pronounced their opinions the law had been declared to be the other way. It is not quite clear to what Lord Hardwicke refers, but it is evident that in his time it was considered as absolute law that a commission against an infant was at any rate voidable, that is to say, that an infant might bring his action against his assignee, and, on proof of infancy vacate the commission. Lord Holt also decided that an infant could not be a trader subject to a commission, and he said that though the debts of an infant are only voidable at his election, yet no man can be made a bankrupt for debts which he is not obliged to pay. These early decisions would appear so thoroughly to have settled the law that, as stated in the argument in *M'Lean* v. *Dummett* (22 L. T. Rep. N. S. 710), it has ever since been considered that an infant could not be made a bankrupt unless he had induced persons dealing with him to believe him to be a *sui juris*. Had there been no reform in our bankruptcy laws concerning the class of persons to be brought within their operation, no question could have arisen with a chance of being decided otherwise than in accordance with the decision of Lord Hardwicke. The Act of 1861, however, made all debtors, whether traders or non-traders, liable to bankruptcy, and the point now to be considered is whether the fact that non-traders are liable to be made bankrupt, alters the position of infants.

It is, of course, not open to question that in respect of contracts an infant's liability is not affected by the fact of his being a trader. For any debt due by virtue of any contract save for necessaries he is not liable, and inasmuch as (to use the words of Lord Holt) he cannot be compelled to pay his debts, he cannot be made bankrupt in respect of them. The question of trader or no trader is, therefore, immaterial, and under the Act of 1861 it was decided (in the case of *Smedley* and *Prosser*), that infants might make themselves bankrupt on their own petition, whilst under a colonial Act, "for the more effectual settlement of the debts of insolvent traders," an infant trader was held not liable to be adjudicated bankrupt on the petition of a creditor: (*Maclean* v. *Dummett*). A correspondent has submitted that this last case does not affect the ruling of the learned County Court Judge, having been decided upon a statute dealing with traders. It is, however, on that score none the less of an authority upon the general question; but we notice in the judgment delivered by Lord Justice Giffard, it is said:—"Their Lordships are clearly of opinion that if any action has been brought against Maclean, a plea of infancy would have been fatal to that action; and, therefore, upon that ground that these proceedings in bankruptcy ought to have been superseded." This observation is in favour of the view that where a debt is the result of an action to which infancy could not be pleaded, it may ground bankruptcy proceedings against an infant. But does it go the length of establishing that an infant can be made a bankrupt on a judgment in an action for unliquidated damages? We shall be very glad if it can be so held, as in that event the adjudication by the County Court Judge was perfectly right. What then is the effect of the verdict and judgment? It would appear clear that the case would come within the section of the Debtor's Act, which says that "any court may direct any person in pursuance of any order or judgment of that or of any other competent court to be paid by instalments," and in default of payment to commit to prison. If then an infant under such order might be committed, why might he not be made bankrupt?

As we have stated, the old authorities proceeding on the ground that no one could be made bankrupt upon a claim which he is not bound to satisfy, decided that an infant could not be made a bankrupt. Non-traders have been liable to bankruptcy since 1861, but during the thirteen years which have elapsed it has not been held that an infant could be compulsorily made a bankrupt. Mr. Stoner is the first Judge who has so held. He has more reasons in support of his view than at the first blush we thought he had, and, whether he is right or wrong, it is difficult positively to say. The question is one which some time or other must be settled by high authority.—*The Law Times*.

An Iowa criminal lawyer is referred to by the San Francisco *Chronicle* as a man who, if he has not slain his thousands, has saved sixty-five murderers with his jaw-bone.

Digitized by Google

DEFAMATION.—II.

To attribute a slander in law requires as much accuracy as the allegations of a pleading. If a man says in one breath that I am a murderer, and killed my wife, and in the next breath says that my temper is bad enough to kill any woman who had to live with me, the law charitably gives him the benefit of his latter breath, and takes notice that I am charged with having an unpleasaut disposition, rather than with being a Blue Beard. This is a very good thing for a layman to know. If one wants to free his mind concerning a neighbour whom he dislikes, he may call him every opprobrious name in the language, and charge him with every crime in the decalogue, taking good care, however, to wind up with a peroration to some inocuous effect, like the above. Of course he must not charge him with anything that would hurt him in his trade or occupation, for that means money, and of that the law takes note. For instance: A declaration for slander stated that the plaintiff was a pork butcher, and then charged the defendant with publishing to the plaintiff, in presence of others, these words concerning the plaintiff:—"You are a bloody thief! Who stole F.'s pigs? You did, you bloody thief, and I can prove it! You poisoned them with mustard and brimstone." There was an inuendo that the plaintiff was guilty of pig-stealing. The jury found that the words were not intended to impute felony, but were spoken of the plaintiff in relation to his trade. Held, that the plaintiff was not entitled to recover, as the words used did not show that they were spoken of him in relation to his trade, and there was no charge in the declaration that they were so spoken.*

One must not hope to escape the penalties of slander by a charge conveyed through a reference to the best authors. To say that such and such a person is "a lively snake" would not excite any remark or animadversion, but to say that the same person is "a frozen snake" is a serious matter.† "We ought," says Coleridge, J., "to attribute to a jury an acquaintance with ordinary terms and allusions, whether historical or figurative, or parabolical. If an expression, originally allegorical, has passed into such common use that it ceases to be figurative, and has obtained a signification almost literal, we must understand it as it is used. The term 'frozen snake' has an application very generally known, which is calculated to bring into contempt a person against whom it is directed. If, therefore, a publication imputes to a person that his friends, who have been assisting him, have realized in him the fable of the frozen snake, it is for a jury to say whether these words do not convey an imputation of ingratitude to friends and benefactors, and if they do they are actionable." Again, one might, perhaps, in the heat of passion, safely call another "Robinson Crusoe," but I am not so certain about "man Friday." A count in an action for libel, charging that the defendant wrote of the plaintiff that he was a "man Friday" to another, was held bad for want of an averment to show that by the term "Friday," as applied to the plaintiff, degradation and subserviency were intended to be imputed to him.‡ So Æsop and De Foe are the authors of some mischief as well as a great deal of good.

A slander conveyed by reference to the animal kingdom is not always secure. "Frozen snake" will not answer, as we have seen. "Lame duck,"§ as applied to a broker; "black sheep,"‖ as applied to an attorney; "dirty slut,"¶ as applied to a schoolmistress; and "quack," as applied to a physician, are equally objectionable. Nor may an artist make a likeness of his patron so "speaking" as to convey a libel. Thus, where one refused to accept a portrait of himself, painted for him by an artist, on the ground that it was no likeness, and the artist, to revenge himself, added ass's ears to the head, and exposed the picture for sale, this was held libelous,** the plaintiff being able, it seems, to recognize the likeness after the addition. There is no law, however, against calling an innkeeper a "caterpillar,"†† and it was held not actionable to say of a justice: "He is a logger-headed, a slouch-headed, and a bursen-bellied hound." 1 Keb. 629.

* *Sibley* v. *Tomlins*, 4 Tyr. 90.
† *Hoare* v. *Silverlock*, 12 Q. B. 624.
‡ *Forbes* v. *King*, 1 Dowl. P. C. 672.
§ *Morris* v. *Langdale*, 2 B. & P. 284.
‖ *Barnet* v. *Allen*, 3 H. & N. 381.
¶ *Wilson* v. *Runyon*, Wright, 651.
** *Mezzara's Case*, N. Y. Sessions, 1817.
†† Vin. Abr. Act. for Words, U. *a.* 34.

It is not always safe to repeat what one says of himself. He may have a worse opinion of himself than his acquaintances are warranted in having of him, and must not suffer through his own sense of his demerits. It is no defence, therefore, to an action for libel, to show that a ludicrous narrative in a newspaper concerning the plaintiff, was only a repetition of a story told by the plaintiff of himself; "for there is a great difference between a man's telling a ludicrous story of himself, to a circle of his own acquaintance, and a publication of it to all the world through the medium of a newspaper."* But I suppose if the "circle" were a "sewing circle," the judge's observation would not apply.

When we come to examine the law of defamation of persons in respect to their trade, business, office, or occupation, we strike a very rich vein. Mr. Heard, in his "Curiosities of the Law Reporters," cites a few amusing cases respecting lawyers: "It is actionable to call a counsellor a daffodowndilly, if there be no averment that the words signify an ambidexter;† or to say of an attorney that he hath no more law than Master Cheyny's bull, even although Master Cheyny actually had no bull, for if that be the case, as Keeling, Chief Justice, observed, 'the scandal is the greater,'‡ And it is quite clear to say that a lawyer 'hath no more law than a goose,' is actionable;§ and the reporter adds a query, whether it be not actionable to say a lawyer 'hath no more law than the man in the moon.'" In another case, it was held actionable to say of an attorney that "he is no more a lawyer than the devil."‖ It seems quite superfluous to decide that it is not actionable to say of a lawyer that he kept back his bill fifteen years, until his client was dead.¶ Very few clients would complain of such treatment. As to physicians, the hardest case is that where it was held actionable to say, "he has killed six children in one year;"** the estimate seems to us quite reasonable. We may say of a clergyman, with impunity, that he is a remarkably bad preacher.†† But how it could be held that the charge that "he is a lewd adulterer, and hath two children by the wife of C. S.," is not actionable,‡‡ we cannot conceive. Whether it would be slanderous to say of a judge that he is long-eared, we will not undertake to determine; but to say that he is "half eared, has been held actionable.§§ It is quite satisfactory to know that one may with safety, as well as justice, say of an alderman, "when he puts on his gown, Satan enters it,"‖‖ and charge a member of Parliament with want of sincerity.¶¶

It seems that whether an oral charge is actionable or not may depend on the intelligence of the hearers. That a charge is physically or legally impossible does not always relieve it of its slanderous character. The well-known case of the woman charged with having had sexual intercourse with a dog, and having given birth to a litter of pups in consequence, is an example. Probably if uttered to a physician or to Mr. Darwin, it would not be slanderous, for even Mr. Darwin knows better. But to a promiscuous audience, the case would be different.* It is important to know, that in the present state of scientific knowledge, it is quite safe to say of an enemy, that his far-off-progenitors were apes. The famous case of Tom Fenn's beer, it seems to me, is open to criticism. The defendant said: "I will give my mare a peck of malt, and lead her to the water, and let her drink, and she shall piss as good beer as any Tom Fenn brews." This was held not to be actionable, because it is impossible that the words should be true in any man's

* *Cook* v. *Ward*, 6 Bing. 415.
† 1 Roll Abr. 55, pl. 17, *Pearce's Case*.
‡ 1 Siderfin, 327, *Baker* v. *Morfue*.
§ 1 id. 424.
‖ *Day* v. *Buller*, 3 Wils. 59.
¶ *Reeves* v. *Templar*, 2 Jur. 137, Exch.
** *Carroll* v. *White*, 33 Barb. 615.
†† *Gathercole* v. *Miall*, 15 M. & W. 344.
‡‡ *Parrett* v. *Carpenter*, Noy, 64.
§§ *Masham* v. *Bridges*, Cro. Car. 222.
‖‖ 2 Starkie on Slander, 314.
¶¶ *Onslow* v. *Horne*, 2 W. Black. 750.
*** *Kennedy* v. *Gifford*, 19 Wend. 296; *Ausman* v. *Veal*, 10 Ind. 355.

Digitized by Google

understanding.* But if to say of a lawyer that "he hath no more law than Master Cheyny's bull," and Cheyny hath no bull, is actionable, because equivalent to saying that he is no lawyer, are not the words uttered of Tom Fenn actionable, because equivalent to saying that his beer is all water? It seems to us to be the poorest compliment possible to Mr. Fenn's beer. In another case,† it was decided that to say, "Thou art as very a thief as any in Warwick gaol," no thief then being in gaol, would not be actionable, but if a thief is in the gaol at the time, the words would be actionable. But would not the hearers naturally infer that there was a thief in the gaol, and understand that an accusation of theft was intended?

Although something depends upon the intelligence of the hearer, the same does not seem to be true of the person making the charge. Thus, where one said of a jeweller, "He is a cozening knave in selling me a sapphire for a diamond," it was held actionable.‡ It would seem that one who does not know a sapphire from a diamond is indeed stone-blind.

We have seen that it is actionable to utter injurious falsehoods concerning a *person* in his trade, business, office, or occupation. But it is not actionable in good faith to speak disparagingly of an *article* that the person may manufacture or deal in. For instance, it would be slander to say of Jones, that he is a vulgar, ignorant, and scurrilous editor; but it would not be slanderous to say that Jones' newspaper is a vulgar, ignorant, and scurrilous journal. As experience shows, this may be a benefit rather than a detriment to Jones. To say that Jones' newspaper is in low circulation, however, is actionable.§ One may, without malice, securely say that Robinson's candles are short of weight, but not that Robinson makes his candles short of weight, for that would implicate him in a wicked business. The effect of both allegations may be the same so far as the sale of the candle goes, but not the same as to Robinson's character. It is valuable to know these distinctions. *Sampson*, in the play, took care to inquire the law before he committed himself:

"*Abram.* Do you bite your thumb at us, sir?

"*Sampson.* Is the law on our side if I say—ay?

"*Gregory.* No.

"*Sampson.* No, sir, I do not bite my thumb at *you*, sir, but I bite my thumb."

And so, being armed in the law, a layman may bite his own thumb or his neighbour's back with impunity.—*Albany Law Journal.*

* *Fenn* v. *Dixe*, Jo. 444, pl. 15.
† Per Fenner, J., Bu'st. 40.
‡ Vin. Abr. Ac'. for Words, I., a. 9.
§ *Heriot* v. *Stuart*, 1 Esp. Cas. 437.

THE RAILWAYS AND THEIR TIME TABLES.

There are some animals with so many foes and so few friends in Nature, that their existence is a standing puzzle and a constant uncertainty. They are inoffensive Ishmaelites, odious to the rest of creation, yet without horns to butt or teeth to bite. It is always a little wonderful that they do not die off, or that they do not become disgusted with the conditions of their life, and sicken of despair. We must own that we make these observations less with reference to the coney, or squirrel, or rabbit, than to the Railway Companies of this country, which are encompassed by enemies more in number and greater in strength than any of the most helpless creatures of the earth. They are baited and oppressed, squeezed, and spunged upon, and robbed, by all sorts of foes. Juries mulct them heavily. The Courts, more particularly the Court of Common Pleas, hold that they must watch over their passengers tenderly and motherly, as a hen over her chickens. They are pounced upon by the Railway Commissioners when they appear to exhibit partiality or make over-charges. They are made perforce the insurers of goods which they undertake to carry. They are bullied by the Board of Trade Inspectors, scolded by Secretaries of State, and denounced by the journals, as if carnage were their trade and pastime. They are taxed in spite of their protests. They make little profits; and they are insultingly told that it is a proof they do not know their business, and that they are not fit to discharge their work.

We must chronicle the appearance of a new foe, at first sight promising to be as dangerous as any of their accustomed enemies. Hitherto they have enjoyed the privilege of unpunctuality. Punctuality was not expected, and it was not often met with. The advertised times of starting and arrival were looked upon as mere conventional notices. On many lines passengers have learned always to make their arrangements on the presumption that the advertised hours will not be observed. But there is springing up, to the alarm and disgust of Railway Companies, a dangerous habit of calling them to account when a passenger is delayed. Since Mr. Forsyth successfully sued one Company that failed to convey him in due time to his destination, there have been many who have brought actions. A case of this sort came the other day before the Marylebone County Court Judge. A Mr. Turner took, at Paddington Station, a ticket to Micheldean, near Gloucester, on the day of the election. His train was advertised to arrive at 1·37 p.m., but it did not reach Gloucester until 3 p.m. He thus missed the 1·48 p.m. train to Micheldean, his destination. He could not start until 3·50, and he arrived at the polling place two minutes too late to record his vote. He sued the Company for hotel expenses, loss of time, and "loss of his franchise." The defence of the Company was that they did not guarantee his arrival at the station at the advertised time. The tickets were issued subject to the regulations in the train bills; and these regulations stated that the Company is responsible only if the delays were caused by wilful misconduct on the part of its servants. The County Court Judge reserved his decision on this point. But we observe that Mr. Lefroy, the Judge of the Salisbury County Court, showed no such hesitation in somewhat similar circumstances. The South Western Company advertised a train to start at 4·25 p.m. from Salisbury, and to reach Southampton at 5·29 p.m. As events turned out, it did not reach the latter station until 6·10 p.m., and the result was that a Mr. Taylor, a passenger from Salisbury, missed the Cowes steamer. He sued the Company for his hotel expenses incurred at Southampton. The defence set up was that the delay was due to the non-arrival at Salisbury of a Great Western train, for which the South Western train waited. But to this plea the Judge would not listen. "Two wrongs do not make a right. You are not bound to wait." On the ticket there was no relieving condition. And the Judge took it upon himself to say that the Company could not exonerate itself by a notice in its train bills to the effect that it did not guarantee accuracy.

It may be said that no English Superior Court has yet conclusively decided this point, evidently one of vast importance to the community, and we do not care to rush in where some County Court Judges fear to tread. The matter will, perhaps, be discussed next Term, and we shall authoritatively know whether the Companies are to be saddled with an obligation which will materially affect their working, and which will also deeply concern the public. But we may excuse our further remarks by saying that there is not an entire absence of authorities on the point. The Great Eastern Company, on one occasion, learned, to their cost, that a stipulation not to be liable for delays due to "accident or other cause" did not protect them from liability to pay the expenses incurred by a farmer, who had been delayed on his journey to London. A stipulation, in order to be efficacious, must be of a "reasonable" character. On another occasion the Great Northern Company were made to suffer for failing to supply such a train as the time bills represented. This, too, seems to be the rule observed in America; and without being positive about a difficult question of this sort, we may say that it is probable that Companies would be bound by their train bills unless they protected themselves by special notices, and that such notices might not be efficacious if they were obviously marked by unfairness. We may fairly assume that a Company cannot, by the use of any form of words, get rid of the duty to use common care and diligence. Where the Railways will have the advantage is probably in regard to the amount of damages awarded to successful plaintiffs. It is unlikely that the damages will be large enough to induce

Digitized by Google

many aggrieved passengers to bring actions. The Courts will not give the man who loses his market compensation for all the bargains which he may have lost. The passenger who is prevented from going to his place of business will not receive full and adequate compensation for injury to his affairs. Probably the utmost that he will be granted is the amount which he has actually been out of pocket.

If this be the small extent of the new duty which some would put on Companies, we do not care how soon they succeed. Punctuality is comfort, economy, safety—it is the sum of all things—in travelling. Accidents apart, it is not impossible of attainment. Many Companies, especially those which are not outside the range of competition, manage to be wonderfully punctual; and it seems to argue the existence of some defect in the management of those lines which are characterised by extreme unpunctuality. We certainly have no desire to multiply the duties of Railway Companies. As we stated at the outset, they are assailed on many sides. Much is, and rightly too, expected of them, and their short-comings are—as they, the possessors of a monopoly, must expect—trumpeted abroad. But to be reasonably punctual, and not to circulate delusive documents, erroneously styled train bills, is a duty surely not too heavy for their shoulders. The intelligent and prudent compilation of their time tables is really the utmost which we ask.—*The Echo.*

SINGULAR CASE OF IDENTITY.

Portland, Maine, has just witnessed one of the most singular cases on record, in which the defendant was a woman variously called Catharine Waller, alias Carrie M. Kent, alias Carrie M. Waite, and whose maiden name, it was charged, was Catharine M'Kenzie. To commence at the beginning :—In May, 1862, John Waller, at that time in Pictou, Nova Scotia, was married to Catharine M'Kenzie, of the same place. Two children, one now eleven and the other seven years old, were the fruits of this marriage. In November, 1869, Mrs. Waller came to the States to earn money enough to furnish the house. She stopped a portion of her time in Portland, and the balance of the time in Boston, and seems to have been known as Kate Waller, Kate Wallace, and Carrie M. Kent, and related various stories concerning her life. During all this absence it is reported that she corresponded with Waller. The husband, John Waller, claims that early in 1873, his wife, Catharine Waller, married a man by the name of Waite; so he had her arrested for bigamy.

The case came up for trial in Portland recently, the woman pleading mistaken identity. Mrs. Waite and her husband were in court at the appointed time. Waller was sworn, and testified that the woman in court was his wife. Waller's sister and his brother-in law also identified the woman as the wife of John Waller. The girl of eleven years stepped up close to the woman and said, "yes, sir, that is my mother." The little boy said this was the woman who visited their home in July last, and lived for a time with his father as wife, and that she bought him (the boy) a pair of boots and a jack-knife. Other witnesses were called, who knew this woman as Catharine M'Kenzie and as Mrs. Waller.

The defendant is said to be quite a handsome woman, and was unmoved during the trial. She introduced witnesses to show that she had been mistaken frequently for a woman known as Catharine Wallace, who, it was claimed, was the real wife of Waller, and of course swore positively that she knew nothing about Waller or his children. She made quite a strong defence and the jury failed to agree, nine standing for acquittal and three for conviction.

This is really a most remarkable case, and will pass into the law books to afford precedent as a most singular case of mistaken identity, or of the ability of some persons to show that they are not themselves, but somebody else.—*Cleveland Leader.*

The death is recorded of Mr. J. C. Grocott, solicitor of Liverpool, author of numerous works on legal subjects, and of the useful volume, "An Index to Quotations, Ancient and Modern."

A NEW YORK STOCK EXCHANGE FRAUD.

Some pretended news, which proved to be false, was recently sent to the New York Stock Exchange. An investigation followed, and the *New York Times* states that one Mr. M'Kay has supplied it with the following statement, which, he says, is substantially the same as he has made to the Stock Exchange Committee :—"About two months ago there came to my broker's office, at No. 8, Wall-street, an anonymous letter addressed to me. It warned me that at a certain time, in the future, an event would transpire which would seriously affect the stock-market. The writer could not give his name, nor any more definite information, but he warned me to be ready, and wanted to do a good turn for me, because, at some time or or at some time or other, I had done the same for him. The writer said no communication was possible with him, for there was a pool, and the members of it were bound by an oath not to reveal the secret. I paid no attention to this, but a day or two after, another letter came, warning me to be prepared, and repeating substantially what had been said in the first. Some time after, a third letter came, in the same way, in which the writer repeated his warning for me to have funds ready, at a moment's notice, and saying that there was money to be made, if I attended to his warnings, but he would ask nothing in return but thanks. I heard no more for several weeks, and then the anonymous correspondent wrote again, saying he had been sick for some time, but the time for the event was near, and he should want from me some manifestation that I meant to attend to his warnings. As no communication was possible with him, under the oath by which he was bound, he proposed that at 1 o'clock the next day I should be at the foot of the Sub-Treasury building, in Wall-street, and walk from one end of the steps slowly to the other. He would be at some point of observation near, and would consider if I did this, that I bound myself by the same oath as he (the writer) was bound. Thinking the whole affair rather a joke than otherwise, I went to the Sub-Treasury building and made the walk. That day a letter came, saying the writer had seen me, and that I had taken the oath. Some time after another letter came, telling me to have my funds ready for instant use—it would depend on the state of the market when the event would take place. Yesterday, a letter was sent to my broker's, and another was slipped into my desk, at my office, telling me to be at the St. Nicholas Bank at 10.30. I went, and met a young man, a perfect stranger, who said, 'I am sent to say that the event of which you have been warned will take place in an hour or two. A movement will be made which will seriously affect the values of two stocks!' I asked the young man what would be done, and he said the directors of the Western Union had decided to add 50,000,000 dols. to the stock; that there would be no dividends, and that this would send down the price 10 to 25 points; that the stock of the Toledo and Wabash would also be increased 10,000,000 dols. He refused to give any information about his informant, but said a letter would be sent to the stock board announcing these things. I refused to believe the man, and was going away, when he stopped me, and offered to bring the official letters in 15 minutes. At the end of that time he came back, saying he could not get the letters, but handed me a memorandum of their chief points, saying, within an hour or so they will be read. I was still doubtful, when he added, 'Go to the Stock Exchange and watch Mr. Wheelock; when you see a letter handed to him, and observe him rise to read it, you may know what I tell you is true. I will be near the Exchange when the letter is read; come out and you will see me at the entrance.' After this I left the man, went to the Park Bank, and drew 15,000 dols. in bills, and then went down to the Exchange again." It is added, that "Mr. M'Kay then detailed the arrangements he had made to take advantage of the fall in stocks, when the expected letter should be read; how he distributed his orders among several brokers (which he had also been warned by the young man to do), and then set to watch Mr. Wheelock. The moment he saw the letter handed to him, he gave orders to sell to some of his brokers, kept others by him for emergencies, and awaited events. The letters were read, a great excitement followed, stocks

Digitized by Google

changed hands rapidly, and his principal broker sold when the market was the lowest. In the excitement, Mr. M'Kay said he thought it necessary to go into the open air, and collect his thoughts. He went to the entrance of the Exchange, and there met the same young man he had seen in the morning, having forgotten all about him. The young man thrust a letter into his hand, and whispered hurriedly, 'Cover your shorts and go long, that's what it tells you.' 'I re-entered the Exchange,' continued Mr. M'Kay, 'and opening the letter, found it read, "Cover your shorts and go long to your bottom dollar. The whole thing is a sell." I went back, and covered everything I had sold.' In conclusion, Mr. M'Kay stated that he made about 6,000 dols. or 7,000 dols. on Western Union, not a cent on Wabash, and that he had not the faintest idea there was anything wrong in the matter until the mysterious young man put the letter in his hand."

COURT OF BANKRUPTCY (LONDON).*

(*Before Mr. Registrar* ROCHE, *sitting as Chief Judge*).

MARCH 17.

In re BARRETT.

This was an application on behalf of Mr. J. J. Barrett, surgeon, of Balham, for an injunction to restrain proceedings in an action brought by Mr. Albert Fleming, solicitor, for the recovery of a sum of £54.

Mr. Washington supported the application; Mr. Plumptre opposed it.

It would appear that in July last the debtor presented a petition to this Court under the arrangement clauses, and at the first meeting of creditors a resolution was passed, and afterwards duly confirmed, to accept a composition of 3s. 6d. in the pound. At that time Mr. Fleming was a creditor for £66 in respect of law costs; he proved his debt, opposed the registration of the resolution, but ultimately received his dividend. In opposition to the application, it was contended that, the debt having been contracted by fraud, the creditor was not bound by the resolution. With reference to the charge of fraud, the evidence showed that Mr. Fleming had been employed by the debtor as his solicitor in reference to the sale of some property of which he professed to be the owner. A purchaser having been found, the debtor admitted that the property did not belong to him at all, but explained that he had acted in the matter under the authority of his father, who was the real owner. Mr. Fleming thereupon declined to act for the debtor any further, and, having received the dividend upon the amount of his debt, sued him for the balance. The allegation of fraud was denied on the part of the debtor.

Mr. Plumptre, in the course of his argument, pointed out that, by the 15th Section of the Debtors Act, a debtor making a composition with his creditors remained liable for the unpaid balance of any debt incurred by fraud, "provided the defrauded creditor had not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends."

His Honour, in giving judgment, said the statute gave the Court power to restrain any action which might be brought against a debtor, but the jurisdiction must be exercised with discretion. Having regard to the dicided cases, he thought the creditor had a right to try the question as to the alleged fraud in a court of common law. The application would therefore be refused.

LADY-LAWYERS.

"Miss Sallie Kilgore, attorney and counsellor of law," is on a sign at Noblesville, Ind. She graduated at the Michigan Law School.

Miss Florence Cronise, sister of Miss Nettie Cronise, the female lawyer of Tiffin, Ohio, has just been admitted to the bar at Kenton, in the same state.

Miss Artie Wallace has been appointed deputy circuit clerk of Boone county, Ky.

* From the *Times*.

DR. KENEALY AND THE BENCHERS.

The *Daily News* observes that "the Benchers, no doubt, in all such cases (and happily they are very rare) would be disposed to place the widest and most liberal construction upon the duty which a counsel owes to his client. Unseemly licentiousness of advocacy is a gross public wrong. To reprobate, to check, and if need be, to punish it, is not more the interest of the public than of the Bar. On the other hand, freedom of speech in defence of clients is as much a public as a professional right, and Dr. Kenealy will be entitled to all the advantages of the principle that a "counsel is not answerable for any matter by him spoken relative to the cause in hand, *and suggested in his client's instructions*, although it should reflect upon the reputation of another, and even prove absolutely groundless." There is no allegation in the present instance of wilful collusion or deceit; but there are misdemeanours in practice, even upon instructions, which have been punished by 'perpetual silence in the Courts.' No doubt, too, every allowance will be made for words of heat, for the almost unexampled difficulties with which Dr. Kenealy had to contend in the conduct of his case, and for a perhaps overstrained sense of duty to his client, in which the tempering considerations he ought to have kept in mind were too often forgotten."

LAW AND LITERATURE.

The English Lord Chief Justice's work on *Junius* is, it is said, completed, and will be published in September.

Mr. Forsyth, Q.C., M.P., has a volume of his essays in preparation for publication.

A volume entitled "Paradoxes and Puzzles: Historical, Judicial and Literary," collected by John Paget, Barrister-at-Law, has just been published by Blackwood and Sons.

The "Tichborne number" of the *Graphic*, the letterpresses of which was written by Mr. Moy Thomas, is said to have attained a sale of over 200,000 copies

KENEALY *v.* COCKBURN.—An "Idler" sends the following letter to the *Hour*:—"I have just stumbled upon a volume of 'Poems and Translations' of various merit, which is dedicated in the following form:—'To the Right Honourable Sir Alexander Edmund Cockburn, Bart., Lord Chief Justice of England, &c., this volume is most respectfully inscribed by one who shares in the fervent admiration, honour, and regard which the whole Bar feel for the judge, the jurist, and the scholar.' One of the poems, I observe, is entitled 'The Legend of Lewie.' Will it surprise your readers to learn that the author is Edward Vaughan Kenealy, LL.D.?"

The following specimen of a Greek epigram is well worth quoting, from Mr. J. S. Phillip's Elegiac Translation:—

The Legal Hydra to the *charge*
Renascent rushes, twice as large;
A hundred heads, and all elate
With tongues exclaiming, "Six and eight;"
We cut him down—a hundred more
Rise up and cry, "Thirteen and four."

LAWYERS IN PARLIAMENT.—The representation of the Profession in England in the House of Commons has been changed by the results of the recent election. Mr. Hinde Palmer, Q.C., has lost his seat. He has been followed by Mr. Henry Matthews, Q.C., Mr. West, Q.C., and Mr. Douglas Straight. Mr. Palmer and Mr. Matthews will prove a decided loss, and perhaps Mr. Matthews could least be spared. He is a cultivated lawyer and a keen debater, and he certainly made his mark in the House. Several other lawyers failed to obtain seats—the two leaders of the Admiralty Court, Mr. Millward, Q.C. and Mr. Butt, Q.C., Mr. Swanston, Q.C. and Mr. Cohen, Q.C., and Mr. Morgan Howard and Mr. Biron. On the other hand Mr. Bulwer, Q.C., has supplanted Mr. West, Q.C., at Ipswich; Mr. Morgan Lloyd, Q.C., has obtained a seat at Beaumaris;

Digitized by Google

Mr. Huddlestone, Q.C., at Norwich; Mr. H. T. Cole, Q.C., at Penryn; Mr. Forsyth, Q.C, at Marylebone; Mr. C. Hopwood, Q.C., at Stockport; Hon. E. Stanhope at Mid Lincolnshire; Mr. Waddy, Q.C., at Barnstable; Mr. Serjeant Spinks at Oldham; Mr. A. G. Marten, Q.C., at Cambridge; and Mr. W. Grantham ejected Mr. Locke King in East Surrey. Literary barristers have lost a representative in Mr. T. Hughes, but Mr. Jenkins, the author of "Ginx's Baby," has been elected. The Conservative member for Chelsea, Mr. Gordon, is a solicitor in large practice in the City of London. We have to record a loss of five barristers, but a gain of twelve. Of these twelve, seven are on the winning side in politics. Mr. Huddlestone has been in Parliament before; the others are new men, the most promising for political purposes being, we believe, the new member for Cambridge, Mr. A. G. Marten.

Irish Lawyers in Parliament.—The list of lawyers who have been returned to the new Parliament by various constituencies in Ireland is unusually long, at all events in excess of former Parliaments. It includes not only the Attorney-General and the Solicitor-General for that country (Dr. Ball and Mr. Law, Q.C.), but 18 barristers and four solicitors, exclusive of several country gentlemen who are members of the Irish Bar, but who do not practice. The former are:—Sir Colman O'Loghlen, County Clare; the Hon. David Plunket, Q.C., Dublin University; Mr. Isaac Butt, Q.C., Limerick; Mr. William Johnston, Belfast; Mr. Keyes O'Clery, County Wexford; Mr. Richard O'Shaughnessy, Limerick; Mr. Serjeant Sherlock, Q.C., King's County; Mr. Patrick Leopold Martin, Kilkenny County; Mr. Charles Henry Meldon, County Kildare; Sir George Bowyer, County Wexford; Mr. Philip Callan, Dundalk and County Louth; Mr. Edward John Synan, County Limerick; Mr. John Dunbar, New Ross; Sir Patrick O'Brien, King's County; Mr. Denis Maurice O'Conor, County Sligo; Mr. John William Ellison Macartney, County Tyrone; Sir John Esmonde, County Waterford; and Mr. Patrick James Smyth, County Westmeath. The solicitors who sit in Parliament for Irish constituencies are:—Mr. Charles Edward Lewis, Londonderry City; Mr. M'Carthy Downing, County Cork; Mr. Charles Joseph Fay, County Cavan; and Mr. John George M'Carthy, Mallow.—*Times.*

Over-culture in the Jury Box.—In the case of the *State* v. *Patterson*, recently decided by the Supreme Court of Vermont, Judge Redfield observes:—"The demand of the Jury for further instructions by way of correspondence and the opportunity to discuss the statutes in their consultation room, is something akin to many other things which have crept into jury trials with telegraphs and high schools, and competitive examinations. It seems to be supposed by some, that those jurors who come into the seats with their kid gloves on, and who occupy themselves, during the trial, in taking notes of the testimony, have made jury trials quite another thing from what they were under the old regime; and this is, no doubt, true, but the difference is against, rather than in favour of their efficiency. The old-fashioned sturdy yeomanry of the county, who, forty years since, made up the panel of petit juries in the rural districts, and some of whom still linger, were a much better material for jurors than the modern graduates of the high schools. And these men never entered upon any new study of the law in their consultation-rooms. A jury is no more competent to fix the proper construction of statutes at their consultation-rooms, than they are to determine a nice question of constitutional law. But some of the modern jurors hold themselves entirely competent for both. If jury trials continue to be improved for a few years more, as they have been of late, by the infusion of greater intelligence, shown from the study of algebra and botany, we think it may not be difficult to find a majority in favour of abolishing them. But it will, in our judgment, be an evil day for the country, when either grand or petit juries become too far debased to be longer endured."

The Montreal Bench and Bar.—Canadian papers have for some time contained notices of a difference which has sprung up between the Bench and the Bar at Montreal. At a meeting of the Montreal Bar in December it was resolved—"That the administration of justice in the Court of Queen's Bench has been for some time past inefficient, unsatisfactory, and destructive of the confidence which should be reposed in the highest Court of the Province, and that in the interest of justice immediate inquiry by Royal Commission into such a lamentable state of affairs is imperatively required." The Bar proposed to abstain from pleading before that Court in that Term. When this was stated to the Court, Mr. Justice Badgely said that the Court would sit as usual, and, if necessary, practitioners from the Bar of other places might plead. It is now stated that Chief Justice Duval and Judge Badgely have sent in their resignations, and Judge Monk has received a year's leave of absence, and that this settles the difficulty which has existed for some time between the Bench and the Bar.

A Wisconsin correspondent of the *Albany Law Journal* sends the following: The statutes of Wisconsin provide that service of justice's summons be made, if the defendant cannot be found, "by leaving a copy thereof at his usual place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of its contents." On a summons of against two defendants, a constable of Dodge county, after certifying to personal service upon one of them, continued, "And I further certify that I could not find, within said county, the other defendant, or any place of his abode, or any member of his family, or *any person of suitable age and discretion to be informed of the contents of the within summons.*"

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

Evidence of Negligence—Crossing of Line by permitted Trespass—Whether any Warning need be given to permitted Trespassers.—The defendants drove trains over a line belonging to a dock company, and running between the dock and a public promenade. The public were allowed to cross the line at all points, but there was one regular crossing where they more usually crossed. The plaintiff crossed the line at a point some distance from the regular crossing, and was knocked down and injured by a train of the defendants, driven at four miles an hour. There was a short curve at the spot, but no whistle or other warning was given by the defendants. Held, no evidence of negligence to go to the jury, and a rule to set aside a nonsuit discharged:—(*Harrison* v. *The North Eastern Railway Company*, 29 L. T. Rep. N. S. 845. Ex.)

Articled Clerk—Computation of Service—Delay in Stamping—Emergency—6 & 7 Vict. c. 73, ss. 8 & 9.—Upon the mistaken legal advice that articles of clerkship need not be stamped for six months after execution, the applicant's articles were executed without stamp; and before the first six months elapsed, the applicant's father became unable, in consequence of unexpected losses in business, to pay the amount required. The service, however, continued under the articles, and three years afterwards the father paid the stamp and penalty. Held, upon application to compute the service from the date of the articles under 6 & 7 Vict. c. 73, ss. 8 & 9, that, although an articled clerk who has been tricked or misled should have every consideration, the Court will not accept as an excuse for the ordinary requirements of the law, upon admission to the profession of an attorney, circumstances which are loosely called an emergency, and which do not show a *bona fide* intention from the commencement to carry out the duties imposed; and that the circumstances of this case did not constitute a sufficient excuse. *Ex parte Mathew Breden* (31 L. J. 321. C. P.) disputed: (*Ex parte Morris Roth*, 29 L. T. Rep. N. S. 885. Q. B.)

Testamentary Suit—Costs not Paid—Writ of Elegit—20 & 21 Vict. c. 77, s. 25.—The power of issuing writs of elegit is of the powers transferred to the court by the 25th section of the Probate Act. In a testamentary suit the defendant, who was the unsuccessful party, was condemned in the costs, but did not obey the order. On affidavit that he was possessed of realty. but of no personal property, the court ordered a writ of elegit to issue for the

Digitized by Google

recovery of the costs : (*Heath* v. *Heath*, 29 L. T. Rep. N. S. 931. Prob.)

COURT OF COMMON PLEAS, LANCASTER—SERVICE OF WRIT OUTSIDE THE COUNTY PALATINE—JURISDICTION OF THE COURT—IRREGULARITY, HOW WAIVED—APPEARANCE BY PARTY OUT OF THE JURISDICTION.—Where plaintiff and defendant both resided out of the County Palatine of Lancashire, and the cause of action arose also wholly outside the county, and a writ of summons issued out of the Court of Common Pleas at Lancaster was sent to the defendant's attorney in Staffordshire, who gave an undertaking to appear, and afterwards did appear, it was held that the service could not be set aside, as any irregularity had been waived by the defendant's appearance. The Court of Common Pleas at Lancaster being a Superior Court has jurisdiction over the subject matter of an action arising out of the County Palatine, provided the parties come within the jurisdiction : (*Oulton* v. *Radcliffe*, 30 L. T. Rep. N. S. 22. C. P.)

MEASURE OF DAMAGES FOR BREACH OF CONTRACT.—The plaintiff having received an order from P. to supply from 150lb. to 200lb. wound cotton daily, verbally agreed with the defendant that the defendant should undertake the winding of it, informing the defendant, as was the fact, that the plaintiff had taken upon himself the consequences of late delivery, if any, to P., and obtaining from the defendant the assurance that he (the plaintiff) might rely on him. Afterwards, and on the day of the interview, the plaintiff sent the defendant a written order for the cotton, "on the express condition" that the same "should be delivered daily," but containing no notice or stipulation as to the sub-contract of the plaintiff with P. The defendant failing to deliver regularly to the plaintiff, and the plaintiff to P., the result was that P. claimed, and the plaintiff paid to P. the sum of £300 by way of reimbursing P. for his loss upon resale of the goods which P.'s customers had refused to accept, as having been delivered late. Held that the plaintiff might recover the sum of £300 from the defendant as damages for the breach of contract to deliver the cotton daily : (*Sawdon* v. *Andrew and another*, 30 L. T. Rep. N.S. 23. Ex.)

FORMA PAUPERIS—INJUNCTION—COMMITTAL FOR CONTEMPT—DISPAUPERING ORDER.—A defendant, who had been restrained by injunction from removing the crops from a farm, and who had been committed to prison for a breach of the injunction, obtained an order of course to defend in *forma pauperis*, upon an affidavit in the usual form, that he was not worth £5, save the matters in question in the suit : Held (affirming the decision of the Master of the Rolls), that he ought to be dispaupered : (*Ridgway* v. *Edwards*, 29 L. T. Rep. N. S. 906. Chan.)

COMPOSITION—APPOINTMENT OF TRUSTEE—DEFAULT OF TENDER—MISTAKE OF TRUSTEE—INJUNCTION TO STAY ACTION—BANKRUPTCY RULES, 1870, R. 279.—When creditors, on passing a resolution to accept a composition, appoint a trustee under the 279th of the Bankruptcy Rules 1870, for receipt and distribution of the composition, the court will not allow the debtor to be sued by reason of any default on the part of the trustee to tender the composition to any of the creditors : (*Ex parte Waterer; Re Taylor*, 29 L. T. Rep. N. S. 907. Chan.)

PRACTICE—SECURITY FOR COSTS—PLAINTIFF OUT OF THE JURISDICTON—OFFICER IN THE ARMY.—The bond of an officer in Her Majesty's service cannot be objected to as security for costs on the grounds that the obligor is stationed out of the jurisdiction : (*Miller* v. *Hales*, 30 L. T. Rep. N. S. 10. V.C.B.)

INTESTACY — ADMINISTRATION— OATH OF ADMINISTRATOR.—The mother of an intestate was the sole forthcoming next of kin, and as no positive intelligence had been received of the father's death, though he had been missing since 1852, the court allowed adminisrtatrix to swear that she believed herself to be the sole next of kin : (*In the goods of Reed*, 29 L. T. Rep. N. S. 932. Prob)

PRACTICE — NOTICE OF APPEAL —VACATING ENROLMENT.—A notice of an appeal motion must be signed by the intending apellant or his solicitors, and where a notice not so signed is served, and the respondent refuses to waive the irregularity, the notice is of no effect, and will not prevent the enrolment of the decree : (*Re The Limehouse Works Company*, 30 L. T. Rep. N. S. 4 Chan.)

SECURITY FOR COSTS—PLAINTIFF IN SCOTLAND—31 & 32 VICT. C. 54, SS. 2 AND 5.—The reason for the rule of practice, that a plaintiff residing in Scotland should give security for costs, having ceased in consequence of the Judgments' Extension Act 1868 (31 & 32 Vict. c. 54), s. 2, which provides that a certificate of an English Judgment shall have the same effect as a decree of the Court of Session : Held, that although security for the costs of an action is not expressly rendered unnecessary by the 5th section, yet the court will not continue the practice ; (*Raeburn* v. *Andrew*, 30 L. T. Rep. N. S. 15 Q. B.)

ADMINISTRATION WITH WILL ANNEXED—ADMINISTRATION BOND—SURETIES.—Where the administrator, who was the sole person entitled in distribution, had no friends in this country willing to become sureties, the Court, though it refused to dispense with the ordinary bonds, allowed the amount to be spread over several sureties, or to be secured by one surety alone : (*In the Goods of Col. R. Smith*, 29 L. T. Rep. N. S. 932. Prob.)

DEMURRER—CROSS BILL FOR MORE EXTENSIVE RELIEF—UNDERTAKING FOR DAMAGES.—A company who were in possession of certain coal mines after the expiration of their lease, filed a bill against the owner of the mines for specific performance of an alleged agreement for a new lease, and for an injunction to restrain the owner from taking proceedings to deprive them of possession. On motion for an injunction no order was drawn up, but the owner gave an undertaking not to sue at law, and the company had their undertaking to be answerable for damages. Subsequently the owner filed a cross bill against the company, praying for an injunction to restrain them from taking any coal from the mines, for a receiver, and for an order that the company should deliver up possession of the mines. Held (reversing the decision of Bacon, V.C.), that the undertaking given to the other suit, did not interfere with the owner's right to file a cross bill, and a demurrer by the company was accordingly overruled : (*Moon* v. *The Original Hartlepool Collieries Company*, 29 L. T. Rep. N. S. 901. Chan.)

COPYRIGHT — PIRACY — ACQUIESCENCE — INJUNCTION—COSTS.—M., the proprietor of a magazine, had for eight years regularly sent to S., the proprietor of a country newspaper, his magazine for the purpose of being reviewed. S. from time to time published reviews and extracts, and occasionally whole stories, from these magazines, always acknowledging from whence he took them, and sending M. the paper containing such review, extract or story. In Nov. 1873, S. published an entire story from the November number of the magazine. Shortly afterwards M., without giving S. any notice, filed a bill to restrain S. from pirating his works. Held, that M. was entitled to an injunction, but under the circumstances each party was ordered to pay his own costs : (*Maxwell* v. *Somerton*, 30 L. T. Rep. N. S. 11 V.C. B.)

VERBAL CHARTERING—NO BILL OF LADING—MATE'S RECEIPT NOT CONCLUSIVE EVIDENCE AGAINST MASTER OF QUANTITY SHIPPED.—The plaintiffs having verbally chartered the ship of the defendant to carry iron from Glasgow to Swansea, the ship was loaded with iron brought by the plaintiff from W. and Co. The iron was weighed by the agents of W. and Co., to whom the mate gave a receipt signed by him for 330 tons, but there was no bill of lading. On delivery at Swansea the quantity of iron was discovered to be 326¼ tons only, but the mate deposed, and was not contradicted, to the delivery of all that had been shipped. The plaintiffs have paid on the full amount of 330 tons to W. and Co., who refused to repay them the difference, sued the defendant for short delivery. Held that there was no evidence of negligence in the defendants, and that if there had been, it would not be negligence causing loss to the plaintiffs, and a County Court judgment in favour of the plaintiffs for short delivery reversed : (*Biddulph and others* v. *Bingham*, 30 L. T. Rep. N. S. 30. Ex.)

Digitized by Google

EXECUTOR DE SON TORT—ASSIGNEE OF LEASE—AGENT OF EXECUTOR DE SON TORT.—The executor of an executor *de son tort* may become himself executor *de son tort* in respect of the estate of the original intestate, and where the father was executor *de son tort* with regard to a lease, and the son upon his death acted as agent to the mother till her death, and then continued in possession of the lease for the benefit of himself and the other children, it was held that he became assignee of the lease, and liable upon the covenants therein: (*Williams and another* v. *Heales*, 30 L. T. Rep. N. S. 20. C.P.)

BILL OF LADING—DELIVERY OF LESS QUANTITY THAN THAT STATED IN BILL.—The whole freight named in the bill of lading is payable to the ship-owner carrying under it, although a less quantity of goods than the quantity named in the bill of lading be delivered, if the quantity delivered be no less than the quantity received by the ship-owner. By French law the whole freight is payable whether the whole quantity named in the bill of lading be carried or not, and therefore, in the case of a bill of lading executed in France, it is immaterial whether or not the shipowner received the whole quantity named in the bill of lading. By 18 & 19 Vict. c. 111, s. 3, "every bill of lading is conclusive evidence of the shipment as against the person signing it." *Semble* that by this statute the bill of lading is conclusive evidence as to quantity, not to weight: (*Blanchet* v. *Powell's Llantwit Collieries Company* (*Limited*), 30 L. T. Rep. N. S. 28. Ex.)

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 10th and 11th days of April, 1874, *at Eleven o'clock*.

N.B.—All Papers to be lodged on or before *25th March*, 1874.

The FINAL EXAMINATION of Candidates seeking admission as Attorneys will be held at the same place, on Monday and Tuesday, the 13th and 14th days of April, 1874, *at the same hour*.

By order of the Council,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 21st of April, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

TRINITY TERM, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers *on or before the first day of next Easter Term*.

By order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall,
Four Courts Dublin.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, March 23rd, 1874, when the following subject will be debated:—"That Service in the Army should be Compulsory."

SPEAKERS:

Affir. Mr. E. J. Cooper, Mr. G. F. Waters. | *Neg.* Mr. W. L. Bernard, Mr. J. Carew.

The Chair will be taken at Eight o'clock by Virgil Power, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

COURT PAPERS.

LANDED ESTATES' COURT.

SALES.

March 13th, before the Hon. JUDGE FLANAGAN.

COUNTY OF TIPPERARY.—Estate of Michael Cahill, owner and petitioner. Part of the lands of Rathmana, situate in the barony of Eliogarty, containing 233a. 1r. 5p., held under fee-farm grant; estimated annual profit rent, £135 15s. 11d. Sold to Mr. Patrick Mulcahy, for £3,360. Solicitor, *Edward Power*.

CITY OF DUBLIN.—Estate of William Kemmis, trustee under the will of Thomas Kemmis, deceased, owner and petitioner.

Lot 1.—Houses and premises, Nos. 21, 22, 23, 24, and 25, Great Clarence-place, and 5, and 6, Bennett's-yard, held under lease for a term of 438 years, subject, with other premises, to £27 12s. 10d., and subject, with lot 2, to an annuity of £75; net annual profit rent, £74 19s. 9d. Sold to Mr. J. Maher, for £545.

Lot 2.—Houses and premises, Nos. 38, 39, 40, 41, and 42, Upper Erne-street, and Nos. 51, 52, 53, and 54, Denzille-street, held under leases for 286 years, from 1846. Sale adjourned. Sold for £900. Solicitor, *W. J. Cooper*.

Estate of Elizabeth Anne Kemmis, owner and petitioner. Houses and premises, Nos. 4, 5, 6, 7, and 8, Great Clarence-street, held under a lease for 438 years; net annual profit rent, £40 6s. 5d. Sold to Mr. Flynn, for £340. Same Solicitor.

COUNTY OF KILDARE.—Estate of Susanna Quinn, administratrix of Michael Quinn, owner and petitioner. Part of the lands of Cholmondsey, otherwise Rathbane, in the barony of South Salts, containing 401a. 3r. 15p., held under lease for 900 years, from 1822; subject to the yearly rent of £369 4s. 7½d.; producing an annual profit rent of £173. Sold to Mr. M. Magrath, for £3,620. Solicitor, *M. Larkin*.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
Patrick Flinn	do	*Maxwell & Weldon*
Robert Midgley	do	*Neilson*
John H. Sweet	do	*Maxwell & Weldon*
John Murphy	do	*Maxwell & Weldon*
William J. Lister	Vouch account	*Molloy & Watson*

Digitized by Google

TUESDAY.

Before the COURT, at 11 o'clock.

John Nolan	1st public sitting	*Larkin & Co.*
Mercer Stevenson	do	*Stewart*
John Callaghan	Final examination	*Mathews*
Walter Fitzsimons	do	*W. V. & J. Lawler*
James Cardiff	do	*Lett*
John O'Brien	do	*Perry & Co.*
Mary Clancy	do	*White*
William Holmes	do	*Oldham & Eaton*
James Grierson	do	*Oldham & Eaton*
Martin Hickey	do	*Mathews*
George Duncan	do	*Colman*
Thomas Little	Application for certificate of conformity	*Orr*
Cochrane & Lyons	Prove charge of Bank of Ireland	*Malcomson*
Joseph Sloan	Examine witnesses	*Hamilton & Craig*
Denis Dinneen	Motion	*O'Callaghan*
Walter O'Donnell	do	*Findlater & Co.*
Denis O'Shea	Audit and dividend	*Thompson*
Michael Walsh	do	*Molloy & Watson*
John Rea Payne	do	*Molloy & Watson*
Alfred Parker	do	*Mathews*

Before the CHIEF REGISTRAR, at 12 o'clock.

Philip L. Lyster	Prove debts and vouch	*Perry & Co.*
C. and P. Maguire	do	*Perry & Co.*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

John Hosford	Vouch account	*Beauchamp*

FRIDAY.

Before the COURT, at 11 o'clock.

S. P. Armstrong	Final examination	*Mathews*
John Dillon	do	*Casey & Clay*
Peter Donnelly	do	*Mathews*
David Bromfield	do	*Rosenthal*
Samuel Doyle	do	*Meldon & Son*
William Holmes	Examine witnesses	*Mathews*
John Bennett	Take charge as proved	*O'Dowda*
Same matter	Motion	*O'Dowda*
J. F. H. Smith	Audit and dividend	*Bradley & Son*
William J. Lyster	do	*Molloy & Watson*
Terence O'Connor	do	*Oldham & Eaton*

ADJUDICATIONS IN BANKRUPTCY.

Broderick, Michael, Loughrea, Galway, grocer. Sittings, *Tuesday, March* 31, and *Friday, April* 24. *Hamilton & Craig*, solrs.

Sheridan, Anthony M., Ballyjamesduff, Cavan, draper. Sittings, *Friday, April* 10, and *Friday, April* 24. *Findlater & Co.*, solrs.

Walker, William, Muninabane, Down, spirit grocer. Sittings, *Friday, April* 10, and *Friday, April* 24. *Seeds & Lynch*, solrs.

DIVIDENDS IN BANKRUPTCY.

Carew, Patrick, Waterford. 1st dividend 7s. 2d. in the £. Deering, official assignee. *Sullivan*, solr.

M'Donagh, Mary, Limerick, widow. 1st dividend 8s. 9½d. in the £. L. H. Deering, official assignee. *Perry & Co.*, solrs.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MARCH Fri 13	Sat. 14	Mon. 16	Tues. 17	Wed. 18	Thur 19
	Government.						
—	3 p c Consols	—	—	91⅞⅝	91⅝	91⅝	91⅝
—	New 3 p c Stock ..	90⅝⅞	90⅝⅞	90⅝⅞	90⅝⅞	90⅝	90⅝⅞⅝
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	106½
—	4 p c Oct. '88 } Bk. of Irel.	101½	—	102	—	—	—
	Banks.						
100	Bank of Ireland ..	302½	302½	302⅝	302½	—	—
25	*Hibernian Banking Co.* ..	58⅝	—	—	—	58	—
20	*London and County* ..	—	—	—	—	62⅝	—
20	*London and Westminster* ..	69⅝¾⅞	69⅞70	—	—	—	70⅝
3½	*Munster Bank (Limited)*	—	8¼	—	8¼	8¼	
30	*National Bank*	58⅝	58⅝⅞	58⅞¾	58⅝	—	58⅞⅝
15	*National of Liverp'l (Ltd)*	14⅛	—	—	—	—	—
25	*Provincial Bank* ..	95–4⅞	—	—	94⅞	—	94⅞
10	*Royal Bank*	—	28⅝⅞½	28½	28½	—	—
	Steam.						
50	British & Irish	—	—	—	51	—	—
100	City of Dublin	108	—	—	—	—	108½
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	—
10	Dundalk (Limited) ..	—	—	7⅝	—	—	—
	Mines.						
1	Killaloe Slate Co. (lit'd)	—	—	—	—	18/6	—
7	*Mining Co. of Ireland (lit'd)*	—	—	5½	5	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.						
10	Gas, viz.: —A ..	—	—	—	—	—	—
10	No. 1 C ..	—	9¼	—	9¼	—	—
10	No. 2 C ..	-	9¼	—	9¼	—	—
9½	*Dublin Tramways* ..	8	8		—	—	—
25	*National Assurance* ..	—	—	-	—	—	—
9-4-7	*Patriotic Assurance* ..	—	11	10¾	—	10¾	—
	Railways.						
100	Dublin and Belfast Junct.	88½	—	—	88	88	88
100	Dublin and Drogheda	109⅝	—	—	—	109⅝	—
100	Dublin, W'klow, & W'ford	73½	—	73	—	—	74
100	Gt. Southern and Western	—	-	109½	—	109½	109–8⅞
100	Do. do. free of Stamp	109½	109½	109½	—	109½	109½
100	Midland Gt. Western ..	89½	—	89	89	89	88⅞
50	Ulster	—	-	—	—	—	68½
50	Waterford and Limerick ..	32½⅝	32½–3	32½⅝	32⅞⅝	33	33½
	Railway Preference.						
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1864)	—	53	-	-	—	53
50	Do. do. (1865)	—	—	-	—	53	—
100	Gt. South'n & West'n 4 p c	—	97	96¾	96⅝	97½	97½
10	Irish North Western A 5 p c	—	—	4½¼	—	—	—
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do, B 5 p c	—	—	—	—	-	100½
100	Do., C Guaranteed 5 p c	—	—	—	—	—	140
100	Mid. Great Western, 5 p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	-	—	—	—	—	—
—	Do., 4½ p c ..	-	—	-	—	—	96
50	Do., new redeemable 5 p c	—	—		49	49	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—March 30th, and April 14th, 1874.

Account Days—March 31st, and April 15th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

RUSSELL—March 4, at 74 Harley-street, the wife of Charles Russell, Esq., Q.C., of a daughter.

MARRIAGES.

BROWNE and LUSH—March 14, at St. Paul's Church, Avenue-road, London, by the Rev. The Master of the Temple, J. H. Balfour Browne, Esq., barrister-at-law, to Caroline Emma, fourth daughter of the Hon. Mr. Justice Lush.

HUBAND-SMITH and NUN—March 7, at Trinity Church, Killiney, by the Rev. Robert Staveley, Jephson Huband-Smith, Esq., H.M. Civil Service, to Harriet, widow of the late Richard Nun, Esq., Q.C., Chairman for the County Tyrone.

DEATHS.

WOODROOFE—March 16, at 30 Upper Mount-street, Dublin, Henry Philip Woodroofe, Esq., solicitor, aged 79 years. Mr. Woodroofe was admitted in 1817, and was the registrar of the late Judge George, and for many years returning officer for the County of Wexford.

BRADLEY—March 15, at Blackheath, Henry Bradley, Esq., solicitor, of Harcourt-buildings, Temple, in his 59th year.

CAMPBELL—March 13, at Kensington-crescent, Eliza Campbell, daughter of the late Rev. Dr. Campbell, of Cupar Fife, and last surviving sister of the late Lord Chancellor Campbell, aged 88.

TIDD—March 13, suddenly, at his residence, Erith, William Tidd, Esq., formerly of the 46th Regt., son of the late William Tidd, Esq., of the City of London, and grandnephew and godson of the late William Tidd, Esq., barrister-at-law, Inner Temple, in his 71st year.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, March* 21, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MARCH 28, 1874. No. 374.

JUDICIAL ERRORS.—II.

The old scholastic theologians would inquire if you killed your wife by strychnia—whereupon, if you answered "yes," the crime was avowed, and if "no," you were held to have indirectly admitted it, since they would contend that this was a "negative pregnant," admitting the killing by denying you did it by strychnia. The history of English criminal jurisprudence presents instances of so-called confessions hardly less inconclusive as admissions of guilt, that have, nevertheless, been put in evidence, where liberty and life itself were at stake; and fortunate indeed were the accused, in the bad old times, if in the result he were not found another victim judicially done to death, like John of Barneveld protesting, but in vain, "the Judges have put down many things which they have no right to draw from my confession." From the same period has come down to us,

"Like the taint
Of an inherited complaint,"

a principle which, however congenial to the ideas of penal jurisprudence anciently prevailing, does affect us with a sense of startling incongruity when accredited by judicial affirmance in the present day. "A man may be convicted upon his own confession without any corroboration," pronounces Fitzgerald, J., in the *Queen* v. *Unkles* (8 Ir. L. T. R. 38). On his own confession, even in a capital case. On his own confession, though no murder whatever be otherwise proved to have been committted, and the body be not found. On his own confession, proved by some one, forsooth, coming forward and asseverating that he heard the prisoner confess. On his own confession, extorted from him while in a mesmeric trance by your Dr. Frantz, the well-known *savant*, in the suit of black, his face nearly white with pallor, his eyes preternaturally brilliant—but hold! we have not yet advanced in jurisprudence to that audacity of experiment fabled by MM. Erckmann-Chatrian. Sufficient for the day is the very truth—

"The self-convicted felon dies."

"It is not even certain," observes Mr. Justice Story, "that criminals who in capital cases plead guilty, and, by confession of their guilt in open Court, submit to the sentence of the law, are always guilty of the offence. Cases have occurred in which men have been accused and tried, and convicted of murder, upon their own solemn confession in a Court of Justice, when it has been afterwards ascertained that the party could not have been guilty, for the person supposed to be murdered was found to be still living, or lost his life at another place, and at another period." From time to time may happen, no doubt, some little mistake, as in the celebrated case of the three Perrys, who were executed according to the law, which, saith Plowden, "is no other than pure and tryed reason;" while, such was the perversity of the alleged murdered man, that he actually re-appeared alive some years afterwards, notwithstanding that his murder had been duly ascertained by a deliberate confession. Cases like those of the Boorns and Adèle Bernard may, now and then, somewhat startle the law from its propriety, and seem to show that "the perfection of reason" is but fallible withal, while pronouncing the decree of death. Yet, as the law is, so must it be administered, nor rests it with the Judge to legislate. And with the utmost willingness to believe, if it were possible, that the law was inaccurately laid down by Fitzgerald, J.—opposed as is his statement of it by the best text-writers, and opposed by the judgment of the Lord Chief Justice—we, too, are yet coerced to concede that, in our belief, it is not a dogma of the law of evidence, that a man cannot be convicted merely upon his own confession satisfactorily proved. It is, indeed, a salutary rule of judicial practice to require independent proof of the *corpus delicti;* but it is no part of the law of evidence. Very eminent text-writers have, no doubt, contended that the law is otherwise. Greenleaf, the American writer on Evidence, was cited to this effect by Whiteside, C.J.; and that opinion, it is observed by Wills on Circumstantial Evidence (not referred to in the *Queen* v. *Unkles*), "is most in accordance with the general principles of reason and justice, the opinions of the best writers on criminal jurisprudence, and the practice of other enlightened nations. Nor are the cases adduced in support of the contrary doctrine very decisive, since in all of them there appears to have been some evidence, though slight, of confirmatory circumstances independently of the confession." Unfortunately, we find that the law has been otherwise laid down in various cases; and we have in vain sought for authority establishing a contrary doctrine. Nor is it accurately said that in all the cases there has been confirmatory evidence—even if that could validly determine the question. In *Stone's* case (Dyer 214) the accused had confessed the murder; the body was found, but there was no other evidence of the murder. But, it appears to us that there is no feasible ground for maintaining that the body itself should necessarily have been found; not even any text-writer, to our knowledge, has pressed the argument to that extent; and to require that the body should be found would, obviously, lead to the impunity of the worst criminals. But, if the body need not necessarily have been found, then we must concede that, even if there be corroborative evidence of the *corpus delicti*, the very danger remains to which we have adverted. It comes to this:—In the one case, you may happen to convict an innocent man because he himself states, firstly, that a crime has been committed; secondly, that he has been instrumental in its commission. In the other case, you have proof that a crime has been committed; but you may happen to convict an innocent man because he states that he has been instrumental in its commission. In either case the conviction is dependent on the confession. And whether the crime is imaginary or not matters very little as regards the scandal of the result, alike in either event, that an innocent man is convicted.

The question thus involved suggests another and serious point of view in which to regard the proposal, acceded to by Fitzgerald, J. (*Re Marshall*, 8 Ir. L. T. R. 1), that accused persons should be at liberty to tender themselves in evidence. On the one hand, that alteration in the law of evidence in criminal cases would afford the opportunity, and perhaps the only possible means of rebutting the evidence of previous admissions, of all testimony "the most easily fabricated and the most difficult to disprove" (Best Pres. Ev.). But on

Digitized by Google

the other hand, it would enable the accused though guilty, to defend himself by accusing others, and, in default of better proof, relying on alleged confessions by the persons incriminated; while, as regards innocent traversers, not only would additional facilities be afforded for direct admissions of guilt untruly made, but a thousand circumstances and expressions indicatory of indirect admission might be manifested with fatal consequences. And we should think that any advocate who has ever defended a panel, will concede that, let the prisoner have been how innocent soever, there was never yet a case in which it would have been judicious for the traverser voluntarily to have told the *whole* truth— there have been indiscretions, equivocations, facts and statements difficult to reconcile with the truth, circumstances dangerous to put forward, and witnesses even to allude to whom would have been to imperil the prisoner's case; above all, there may have been statements which the prisoner indeed explains most veraciously, yet susceptible of a wholly different interpretation, as indirectly admitting crime. But, if it be held that the accused may be convicted, merely upon his own admissions, without any independent proof of the *corpus delicti*, how incalculably greater would be the danger of permitting him to give evidence. Few are they who might be trusted to prove as cautious as the Irishman who, to the question, "Guilty or not, Pat?" replied, "Faith that is difficult for your honour to tell, let alone myself; wait till I hear the evidence."

By the civil law no man could be convicted on his bare confession not corroborated by evidence of his guilt, "because there may be circumstances which may induce an innocent man to accuse himself" (Bowyer Com. 355, n.). Our law, too, is very tender about receiving such confessions; and so, when a criminal pleads guilty, will generally advise him to retract (2 Hale P. C. 225). But, while a confession solemnly recorded in a judicial proceeding must, for obvious reasons, be held conclusive, unless manifestly incredible or false, we cannot too earnestly advocate the expediency of upholding the doctrine, as a universal rule of judicial practice, that proof of the *corpus delicti* should be required independently of mere extra-judicial confessions. The supposed confession may have been inaccurately heard and understood, or it may have been misinterpreted to apply to the particular act, or it may have left a false impression by reason of the speaker omitting some explanation through interruption, &c., or it may have been used in jest or bravado. "Hasty confessions," says Sir Michael Foster, "made to persons having no authority to examine, are the weakest and most suspicious of all evidence. Proof may be too easily procured, words are often misreported—whether through ignorance, inattention or malice, it mattereth not to the defendant, he is equally affected in either case; and they are extremely liable to misconstruction, and withal this evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence by which the proof of plain facts may be and often is confronted." And, besides all this, there is that ever-present danger of false confessions; for the presumption that no innocent man would sacrifice his life, liberty, or even his reputation, by a declaration of that which was untrue, has been over and over demonstrated to be fallacious. We do not, indeed, apprehend that the martyrology is likely to be augmented by any exhibition by holy men, in our criminal courts, of that which is said to be the very sign of a good mind, as exemplified by David. "Bonarum quippe mentum est, ibi etium aliquo modo culpas suas agnoscere, ubi culpa non est," says St. Gregory; and Macaulay, contending against those who take Bunyan's self-condemnations in a literal sense, observes that they "ought to be familiar with the bitter accusations which the most pious people are in the habit of bringing against themselves." But, any reader of the daily journals and of the annals of our criminal law can at once recal a host of notorious and recent cases in which confessions, weak, wanton, or wicked, have been made, of an absolutely groundless character, proving the fallacy of that which is popularly esteemed the highest species of judgment:—"Out of thine own mouth will I judge thee." Seeing that false confessions of capital crime are so opposed to every natural instinct, no matter what may be the reason assigned and under any guise, we should not, in weighing their intrinsic credibility or otherwise, attach conclusive importance to the absence of an assignable motive. Mr. Best, however, enumerates no less than twelve classes of motives which may lead, or actually have led to false confessions. And Mr. Wills observes:—"Judicial history presents innumerable warnings of the danger of placing implicit dependence upon this kind of self-condemnatory evidence, even when it is exempt from all suspicion of coercion, physical or moral, or other sinister influence. How greatly then must such danger be aggravated, where confession constitutes the only evidence of the fact of a *corpus delicti*; and how incalculably greater, in such cases, is the necessity for the most rigorous scrutiny of all collateral circumstances which may actuate the party to make a false confession! The agonies of torture, the dread of their infliction, the hope of escaping the rigours of slavery or the hardships of military service, a weariness of existence, self-delusion, the desire to shield a guilty relation or friend from the penalties of justice, the impulses of despair from the pressure of strong and apparently incontrovertible presumptions of guilt, the dread of unmerited punishment and disgrace, the hope of pardon—these and numerous other inducements have not unfrequently operated to produce unfounded confessions of guilt." Some danger there is that a general laxity may be introduced in carrying out the rule of judicial practice which we advocate, by not putting it into full effect in cases such as that of the Norwich case in 1869, *R.* v. *Sheward*, where the accused is obviously guilty, and yet where, though he has confessed the crime, there is but slight confirmatory evidence of the *corpus delicti*. But let it never be forgotten that, in the words of the writer (supposed to have been Mr. Phillipps) of the little treatise on "The Theory of Presumptive Proof," published in 1815, where a number of cases will be found collected of innocent persons who had been convicted and executed:— "It is an observation warranted by the history of our criminal law, that all the instances by which innocent men have lost their lives, have arisen from precedents against guilty men: omnia mala exempla, ex bonis initiis orta sunt." So, may we guard at all events against the frequency of judicial errors leading to the conviction of the innocent. But absolute assurance of justice no human tribunal can invariably attain. As Pollock, C.B., observes:—"There is a *degree* of doubt which belongs to all human affairs. You may sometimes doubt what you *see*, very often what you *hear;* our senses often deceive us. On the other hand, there is a degree of certainty with which we are compelled to be satisfied in the most serious transactions of life; and, as no higher degree of certainty is ordinarily attainable in human affairs, it is that degree of certainty with which we must be satisfied in criminal trials." For the rest, in the words of Schiller,

"Though men condemn, misjudge, mistrust,
God and His saints watch o'er the just."

Digitized by Google

LAWYERS IN PARLIAMENT.

A novel principle of disqualification, and one to which we cannot too earnestly call the attention of the profession, has been recently propounded under apparently high authority. At the late election for the University of Dublin, consequent upon the acceptance by Dr. Ball of the office of Attorney-General for Ireland, one junior fellow of Trinity College proposed, and another seconded, a third junior fellow, as a candidate for election, upon the principle of "Disestablishment of Lawyers." If the rev. medico who opened this question is to be believed, Irish lawyers live only for the purpose of feeding upon the Government of the day, and the Irish clergy have no greater happiness than to supply them with a passport to office, from which he somewhat amusingly argues that to be a fitting representative of the University it is necessary to be a Fellow and an M.D. (these classes being of course exempt from the frailties which so beset the other learned professions). With the personal questions thus introduced we have no intention to meddle, though we entirely disclaim any concurrence in the imputations so recklessly thrown out by Dr. Haughton; but the general question raised is one of public importance, and seems to us to call for some remark.

The prejudice against lawyers is nothing new, nor has it become more reasonable by lapse of time. We have all heard of the "*Parliamentum indoctum*," from which all lawyers were excluded, and which Lord Coke dismisses with the remark, "Never a good law was made thereat."

From that day to this the lawyers have been from time to time made the butts of meagre witticisms, and occasionally the victims of the same persistent prejudice. And yet upon their honesty, skill, and fidelity, all the most important interests throughout the kingdom mainly depend. The very men who chatter obscure calumnies against lawyers as a body, are compelled to confide, and do undoubtingly and safely confide, their characters, their property, the honour of their families, and, very often, secrets which they scarcely like to acknowledge to themselves, to the keeping of their legal advisers. One would imagine that those who habitually prove themselves worthy of so high a trust can hardly be so unworthy of public confidence as the college trio (emulous, apparently, of the fame of their prototypes of Tooley-street,) would have the world believe.

But, further, not only is there no case made for the "disestablishment" of lawyers, but the exigencies of the public service imperatively demand their establishment. Anyone who has taken the trouble to follow the course of legislation, particularly in the House of Commons, can hardly fail to have been struck by the manner in which the whole House, with exceptions so few as to be inconsiderable, leaves all the practical details of legislation in the hands of the lawyers. The House at large may join in a debate on a question of general interest or public policy, but when the second reading has been passed, and the Bill has to be put into a workable form in Committee, it is upon the lawyers that all the real work falls, and those few lay members who occasionally try their hand at an amendment find the House but too ready to accept the offhand statement of some practical lawyer that the clause "would'nt work" as an amply sufficient reason for refusing even to consider the question. And we must own that the constituencies at large show themselves fully alive to this consideration, and generally give a lawyer, *cæteris paribus*, the preference.

But there is a further ground on which it seems to us that lawyers are peculiarly appropriate representatives of a University. As the county members are properly chosen from the owners of property who have great local interests, and the representatives of commerce and industry are naturally found in the members for great towns, so the distinctly "educated" element in society finds its appropriate entrance into Parliament through the universities. Of this element one principal, though not by any means exclusive, test is academical distinction; and it is perhaps not too much to say that no such constituency can safely, except in the case of rare eminence in after life, dispense with this qualification in a candidate for their suffrages. But the most distinguished students of every university are found, with trifling exceptions, in the ranks of the clergy or the bar; and as the former are disqualified by law from sitting in the House of Commons, the choice of the electors is almost of necessity limited to the latter. Here and there a physician of distinction may be found who could worthily, so far as professional eminence goes, fill this post; but the training of his life, which more or less secludes him from the arena of wordy contest, is not usually of a kind to fit him to take the lead in debate which ought to be required from the representative of a University. Such cases as Mr. Gladstone and Mr. Beresford Hope are no real exceptions to this rule; brilliant scholars of the highest academical distinction, who are able *at once* to devote themselves to political life, and who, after winning their spurs as members for less important constituencies, are called upon to receive their reward at the hands of their Universities, constitute a class always rare, and whose position is entirely exceptional. And it is worthy of remark that certainly one (we believe both) of the gentlemen named had entered upon a course of training for the bar.

Lastly, in this case *res ipsa loquitur:* anyone who will look down the list of the representatives of any University in the kingdom for the last seventy years will, if he has any acquaintance with the modern history of his country, be struck by three reflections: one, how very large a proportion of these representatives have left their mark upon the legislation of the age; another, with how few exceptions they have been selected from the ranks of the lawyers; and the last, that, except in one or two remarkable instances, the undistinguished minority includes all the non-lawyers.—*Solicitors' Journal.*

RECENT DECISIONS.

(Collier and Wife *v.* D., W., & W. Ry., 8 Ir. L. T. R., 24.)

In *Collier and wife* v. *Dublin, Wicklow, and Wexford Railway Co.*, 8 Irish Law Times Reports, 24, the action was against the defendants for failure to fulfil a contract to carry the wife of plaintiff within a reasonable time, whereby the wife was obliged to remain during a whole night, at a station of defendants, without proper accommodations, by reason whereof she became ill, and the plaintiff was deprived of her services. The Court of Common Pleas held that the plaintiff could not recover more than nominal damages, he not having been at home, and, in consequence, not having been deprived of his wife's society and companionship on that occasion, and there being no evidence of an injury to his wife depriving him of her services afterwards. Actions for a breach of contract of this kind have not been numerous, especially in this country. In *Denton v. Great Northern Railway*, 5 El. & Bl. 860, the defendants had continued to advertise a train as arriving at a particular point, after the train had been withdrawn, and the plaintiff was thereby delayed and failed to arrive in season for some business transactions, and the defendant was held liable for the injury. But in *Hamlin* v. *Great Northern Railway Co.*, 1 H. & N. 408, where a train was advertised to go through the same night to the point of destination, by connecting with trains of another company, and the connecting train had left on the arrival of defendant's train containing plaintiff, by reason whereof plaintiff was compelled to remain over night, and failed to meet his customers, and was otherwise damaged in his business, the court held that plaintiff was only entitled to recover for his hotel expenses for the night, and for the fare paid the next day; but not for any damages consequent upon the detention. This case is an extreme one, and it is to be hoped will not be taken as a precedent in this country.—*Albany Law Journal.*

(*Re* Nixon's Estate, 8 Ir. L. T. R. 30.)

In the matter of *Nixon's Estate* (8 Ir. L. T. R. 30), an affidavit sworn by deponents residing in Canada was said to be informal, and the officer of the court refused to file it on the twofold ground that while it was a joint affidavit there was only a single jurat, also that the description of the commissioner before whom it was made was insufficient, on the ground that whilst he described himself as "commissioner for taking affidavits in Chancery," he omitted to add "in Canada." We are glad to notice that an order has been made that the affidavit should be received and filed. It

Digitized by Google

would, indeed, be unfortunate if, on such grounds, the proceedings should have been delayed, that the affidavit might be returned to Canada to correct the alleged irregularities. Solicitors when discharging the office of commissioner of oaths cannot, of course, be too careful in complying with every formality, and that they are so in the generality of cases is evidenced by the fact that it is only very occasionally that objection is taken to those parts of an affidavit for which they are responsible as commissioners.—*The Law Times.*

LAND TITLES AND TRANSFER.

Lord Cairns introduced his measures for reforming the law relating to land titles and tenure, in the House of Lords on Thursday. In doing so he said he should ask attention to three dates—1859, 1862, 1873. In 1859 he himself introduced two measures which proposed to establish a register of titles. Now, much confusion was shown as to the meaning of a register of titles and a register of deeds. A register of deeds contained all the deeds upon which the title was founded. Such a register would add to security, but would not expedite matters, and would add to expense; a register of titles contained simply a description of the property and the name of the owner. At present a proprietor wanting to sell has to make out his title for the purchaser, give abstracts of all deeds and documents affecting it, and to satisfy the purchaser of his right. The necessity for this would not be removed by a register of transfers; therefore, in the bill of 1859 he proposed to create a register of titles, by which a purchaser would require only to look the register to be assured of the right of the proprietor. The general election of 1859 caused a change of Government, and the bills he had proposed were dropped. In 1862 Lord Westbury dealt with the subject. He established a register of transfer, and established it in the worst possible form. He made a register of deeds, and gave power to the registrar, instead of giving the deeds in full, to state what in his opinion was the force of those deeds. It was not surprising that the measure failed. In 1867 a Royal Commission issued to inquire into the subject, the commission reported in favour of a register of titles, the principle of the bill of 1859; and upon the recommendation of the commission Lord Selborne's measure of last year was founded between the measure and the measure of 1855, introduced by himself (Lord Cairns). There were two important differences. Lord Selborne proposed to utilise Lord Westbury's registration office, not in existence when he (Lord Cairns) introduced his previous measure; the measure of 1855 proposed to establish a Landed Estates' Court similar to that at Dublin. And the second point of difference—Lord Selborne's measure was at least to be compulsory. The measure of 1859 was voluntary. After complimenting Lord Selborne upon his choice of Vice-Chancellor Hall to revise the measure, the Lord Chancellor went on to state what he proposed to do. He proposed to establish a register of titles, and to divide the titles into three classes—absolute and indefeasible titles; limited titles—that is, titles good from a certain date; and simple titles—that is, a title of ownership. He was aware that Lord Selborne proposed to merge good holding titles into absolute titles, but a good holding title had no existence before the law. To meet the case, however, he proposed that, if a good title came before the registrar defective in some formal way, the registrar should have power to ask leave of the court to register such a title as absolute. He would also propose that a title for forty years should be admitted to the register as absolute, and documents of more than twenty years old need not be produced, but simply recited. With regard to boundaries which Lord Westbury proposed that the registrar should settle, he did not propose at all to settle. The registrar could not be properly charged with the duty, and there was no need to raise questions which at present everybody was willing to have at rest. The only result of such an enactment would be to force men into litigation for the settlement of disputes they were at present allowing to sleep. Three classes of proprietorship might also be registered—fee-simple, leaseholds, and charges upon real estates. Was his bill compulsory or voluntary? For three years he did not propose to try compulsion. He was sanguine that at the end of that time the register would be found to have been largely used, for he did not believe that solicitors would oppose it; but at the expiration of the three years, by which time some idea of the working of the acts might be arrived at, he proposed that registration should be necessary to create legal title by transfer. A transfer unregistered would convey only an equitable not a legal title. With regard to the registration, he confessed that he had a partiality for his own offspring of 1859—the proposed Landed Estate Court. But as there was already an office under Lord Westbury's Act, the creation of a new court would be an interference with the Judicature Act. While still believing that such a court would be eventually established, he decided in favour of utilising the present office. The register was to act under one of the judges specially appointed by the supreme, to decide questions which arose. Where, then, should the registry be placed? In London only, or throughout the provinces? He was bound to admit the force of the argument, that an office in every district would be convenient, but did not hold himself at liberty to propose more than that the country should, for the purpose of registration, be divided into districts, and whenever a district, by the amount of its transfer business, showed itself capable of supporting a local office, there an office would be established. Other districts must register in the metropolis. These were the main provisions of his measure, relating to the establishment of a register. He would also bring two other bills under notice. The first would deal with the limitation of claims. The 3rd and 4th William IV. laid down three several periods of limitation, twenty years, ten years, and forty years. He proposed to reduce the twenty to ten, the ten to six, and the forty to thirty years. The second bill related to vendors and purchasers, and proposed the purchaser should not be entitled to ask for numerous deeds, except at his own cost, the object being to render the expense of production unnecessary. I hope, my lords (the Chancellor concluded), that these measures will answer the expectations of her Majesty's speech, and that the discredit to our law which has so long existed may thereby be removed.

The University of Michigan Law School has three hundred and fourteen students, seven of which number are ladies.

The *London Medical Record* understands that Miss Elizabeth Morgan, M.D., one of the physicians at the Hospital for Women, Marylebone, is about to follow the example of her colleague, Mrs. Anderson, M.D., by entering into the bonds of matrimony. Her future husband is a physician, by name Dr. Hoggan.

THE JURY ON THE TICHBORNE TRIAL.—When the late trial of the claimant had concluded, the jurors addressed a letter to the Commissioners of the Treasury, reminding their Lordships that at an early stage of the case the jury applied to the court for a remuneration of two guineas per day. That application was, they understood, favourably received by the Lords Commissioners of the late Government. The case, however, had continued much longer than was expected, and they submit that such a sum "is by no means adequate to meet the losses incurred," inasmuch as the jury was composed—with one exception— of men engaged in commercial pursuits, "to whom the continual absence from their respective businesses has been most disastrous." In reply to this request Mr. W. Law was instructed to state that the subject in question had never been formally submitted to the Treasury until a few days before the conclusion of the trial, and their Lordships then instructed their solicitor to pay each juryman three hundred guineas. On receipt of this communication the foreman wrote, in the name of the jury, to express their disappointment, and to request the commissioners to reconsider their decision. To this letter their lordships reply that they should not feel justified in sanctioning any larger payment than the sum which has already been authorized, and that, looking at the sacrifices persons similarly situated are often called upon to make in the interests of justice, they do not regard the remuneration allowed as an illiberal compensation for the time and labour bestowed.

Digitized by Google

LEGAL ASPECTS OF THE TICHBORNE CASE.

The literature of the *Tichborne* case has already been sufficiently voluminous, and what possible object is to be attained by publishing contradictory correspondence of the relations of a convicted felon, about whose crime no fragment of doubt now remains, it is hard to understand. When, however, commentators like Mr. Joseph Brown, Q.C., and Mr. Fitzjames Stephen, Q.C., deal with the subject, the sentamentalism which has surrounded it wholly disappears, and we find ourselves in the cool atmosphere of judicial contemplation. Mr. Brown has taken the trouble to compare Orton's impostures with other great impostures of a similar kind, and he finds the main features identical. "So far," he says, "from the *Tichborne* case being a novelty, to those who are well acquainted with history and jurisprudence, it was but a repetition of a play acted many times before, with the same catastrophe, and generally presenting the same features of romantic interest and plausibility to the multitude, and the same indubitable marks of fraud and imposture to the jurist." And he adds: "I will only ask the reader to bear in mind the most prominent circumstances which appear to have held the juries so long in suspense. They seem to have been the following: the recognition of the Claimant by his supposed mother; the number of acquaintances of the real Tichborne who swore to his identity with the Claimant, many of them being above suspicion of collusion; the number of circumstances related by him which had unquestionably occurred to the real Tichborne, and which were supposed to be known only to him, and the coolness with which he bore a long and trying cross-examination. To this should be added an argument urged by many, that an ignorant butcher would not have wit enough to invent or sustain the part of Roger Tichborne with such cleverness and vraisemblance. These were the features of the case which seemed to stick in the minds of the jury, and cause them to hesitate so long. I shall now show that every one of them occurred before in reported cases of the same kind, which yet proved to be gross impostures, and bore the same marks of fraud as this case." This he proceeds to do by relating the incidents of several familiar cases, beginning with that of Martin Guerre, and ending with the attempted personations of Louis XVII. Mr. Brown closes his pamphlet with some practical suggestions. He writes: "Our statute law has provided for the crime of false personation of stockholders in the public funds, with the view of fraudulently getting possession of their dividends, and of officers and soldiers in order to get their pay and pension, or of voters at elections, in order to exercise the franchise. But there is no such crime known to our law as false personation of the lost heir to an estate, with a view to get possession of his property. The villain who attempts this part can only be reached if he commits perjury or conspiracy to promote his claims, and consequently he can neither be arrested at the outset of his career, nor punished to the full measure of his deserts when he is convicted. He may act the part of the impostor for months or years, during which he is daily acquiring fresh knowledge of the history and habits of the missing heir, and thereby daily making fresh dupes; he may even get into possession of the property with impunity; it is only when he comes into a court of justice and swears falsely in support of his claim that the criminal law can reach him, and even then it can only punish him for perjury. Now, when it is considered that impostures of this kind are generally attempts at robbery on a gigantic scale, and attempts to make the very courts and officers of justice the instruments of fraud and plunder, that they tend to involve innocent families in enormous expense and ruin, and even to get up a popular outcry against the ministers of justice, it may seem that perjury is the least part of such an offence. If a man falsely and wilfully swore that he saw another commit a murder, and thereby caused an innocent man to be hung, the public would think such a crime involved murder as well as perjury. Surely there ought to be a statute that if any man falsely personates another, with intent to defraud any person of any property or title, or to claim a false relationship to any family, he should be guilty of felony, and punishable as such. This would enable the aggrieved family to make an effort to arrest and convict him at the outset of his career, before he had got a crowd of dupes to follow him. The antiquated forms and precedents of our courts are also wholly inadequate to deal with such cases in their full length and breadth, and ought to be reformed, so as to do full and vigorous justice. The court ought to have power at any time to order the body of the claimant to be examined by impartial surgeons, and himself to be examined as a witness first and foremost; to order any witness to be called who could give important evidence, and to prohibit the impudent assumption of the name and title by the claimant until after the trial. And when judgment is given, it is clear that the court ought to have power to declare finally who and what the impostor is; to prohibit him from using or claiming the name to which he has no title, and not only to punish him, but to compel him to make amends, so far as possible to the injured family." Mr. Fitzjames Stephen is equally instructive, and even more practical. His letter, addressed to the *Pall Mall Gazette*, is too lengthy for reproduction. In it he goes through the history of the legal proceedings, and whilst admitting that the process in Chancery facilitated Orton's design, it nevertheless was a material step towards his detection. "The cross-examination which Orton underwent at the Law Institution was the first step towards his detection. It left much undiscovered, but it showed the other side that if they wanted to detect the fraud they must inquire in Australia and Chili. The Tichborne family might have been placed in very great difficulties if they had never been able to cross-examine Orton at all, or to learn what his case was till he came into the witness-box on the trial of an action of ejectment; and this must not be forgotten if the proceedings in Chancery are complained of. The question how far a defendant ought to have a right to know the plaintiff's case before it is brought forward in court is a most important one, and the course taken by the *Tichborne* case ought to be carefully considered in reference to it by those who are now engaged in remodelling civil procedure and fusing law and equity." Mr. Stephen then proceeds to show that in this case the interrogation of the defendant, which Mr. Brown, as appears by the quotation which we have made, thinks ought to have taken place, would have been a mistake. "I have always," says Mr. Stephen, "been in favour of the interrogation of accused persons, and I have advocated the introduction of the practice on a variety of occasions for many years; but surely if there ever was a case in which an 'interrogation by a public prosecutor' would have been simply a useless prolongation of a trial it was the *Tichborne* case. Orton actually had been 'subject to an interrogatory' for many days by Lord Coleridge and every word of it was read over to the jury on the trial for perjury. What conceivable advantage could have been gained by asking him any more questions?" Mr. Stephen also differs from Mr. Brown as to the advisability of giving the Judges the power to call and examine witnesses. "If the Judges could call witnesses," he says, "I am much mistaken if they would often think it wise to use their power. I doubt, indeed, whether they would have done wisely to use it in the *Tichborne* case. When a witness is called by a party he is carefully examined in private before he is put forward in court, and his evidence, if necessary, is test d by collateral inquiry. Are the Judges to be at liberty to employ an attorney to take the proofs of a witness whom they think of calling or not? If yes, they are at once mixed up in the detail of the case in a manner not easily reconcilable with the general character of their duties. If no, they expose themselves by calling an unknown witness to being the instruments of fraud. Suppose that the Judges had called Charles Orton and his sisters, and that they had contradicted each other in the witness box as they have in the columns of the *Daily Telegraph*, would that have been of much use? Suppose, again, that Charles Orton, being called, had shuffled and equivocated, and said in substance that he could not say whether the defendant was his brother or not, and suppose that he had been forced to admit in cross-examination on the one side that he had signed statements that the defendant was not his brother, or at all like him, and on the other that he had been receiving £5 a month from the defendant, and that he had given information to the other side when money failed, would matters have been much advanced? Or suppose, again, he had said simply, 'Of course it is only

my opinion, but as far as I can judge that man is not my brother Arthur.' Practically he would have risked nothing by saying so. No jury would ever have convicted him of perjury for what might have been a mistake; but, being called as the witness of the Judges, his testimony would have had almost decisive weight." It must be admitted that there is very great force in this reasoning. It is satisfactory to find so great a master of procedure and evidence as Mr. Stephen coming to the conclusion that the great length of time during which the *Tichborne* case lasted does not bring to light any special defect in our procedure, "except, indeed, the defect which is now universally admitted of the intricacy of real property law, and the distinction between law and equity." "The two trials, especially the trial for perjury," he adds, "might have been shortened to some extent if the rules of evidence had been more strictly enforced, and if the prisoner's counsel and the Judge had taken a different view of their duty; but the only alteration in the substance of the procedure which would have saved much time would have amounted to a revolution in the administration of justice. A practical suggestion which Mr. Stephen makes is this—"Would it not be possible," he asks, "in cases in which it is obvious that there is perjury and fraud on one side or the other to empower the Judges to order that the plaintiff or any particular witness or witnesses should not be called unless before they were called they made an affidavit as to the truth of the principal matters to which they were about to depose, and that when the trial took place the jury should not only try the question whether the plaintiff or defendant was entitled to the verdict, but the question whether perjury had been committed by swearing the affidavit; and that if they found it had the Court should pronounce sentence on the offender? This would be a very strong check upon a crime which is constantly committed, and which is very seldom punished." Finally, Mr. Stephen agrees with everybody else that the punishment of perjury is not severe enough, "and that the whole law on that subject is in a very bad state;" but he does not consider that the case is a disgrace to our system, pointing out that old Lady Tichborne was the real *causa mali*. "The law," he remarks, "cannot protect people against the consequences of the fancies of a person incurably wrongheaded on particular points, but not mad enough to be locked up."—*The Law Times*.

CONVERSION—ESSENTIAL ELEMENTS.

The singular case of *Hiort* v. *Bott* (30 L. T. Rep. N. S. 25), in which Bramwell, Pigott, and Cleasby, BB., have recently delivered a considered judgment, deserves notice, as well illustrating the law of conversion, and especially as laying down decisively that the *animus convertendi* is not necessary to constitute it. Very shortly stated, the facts were that the plaintiffs and defendant were both the victims of a fraud, whereby the broker of the plaintiff had caused goods of the plaintiff to be sent to the defendant which had never been ordered by him; and the defendant endorsed a delivery order for them to the broker, with the intention, as the jury found, to get the goods back to the plaintiff, but with the result of depriving the plaintiff of them, though the broker obtaining the goods by means of the delivery order and making away with them. The defendant, therefore, not only did not intend either to convert the plaintiff's goods to his own use or to deprive the plaintiff of them, but intended to get the goods back to the plaintiff in what he conceived to be the quickest way, and for this, for doing in complete innocence what turned out not to be the wisest thing under the circumstances, the court has held him liable in conversion. Nor is there any reason to question the correctness of the decision, but it is said in Addison on Torts, p. 320, that a man is not guilty of a conversion of goods "unless he removes the goods for the purpose of taking the goods away from the plaintiff, or of exercising some dominion or control over them for the benefit of himself or of some other person," and the intention of the defendant has been laid such stress on in so many of the leading cases on conversion, that it is no wonder that Mr. Justice Archibald had directed a verdict for the defendant at the trial. The facts of the case are not at first sight distinguishable from those of *Heugh* v. *London and North Western Railway Company* (L. Rep. 5 Ex. 51; 21 L. T. Rep. N. S. 676) which was pressed upon and distinguished by the court. In that case the plaintiffs, acting upon an order supposed to be sent by one of their former customers, but in reality sent by a fraudulent traveller of their own, consigned certain goods to their customer by the defendant's railway. The defendants essayed to deliver the goods according to the address, but the person in charge of the premises refusing to take them in, the defendants took them back to the station and advised the consignees that the goods were held by them not as common carriers, but as warehousemen. Shortly afterward, upon the traveller bringing the advice note, and also a letter signed by him for the consignees, requesting the defendants to deliver the goods to bearer, the defendants delivered them to him, whereby they became lost to the plaintiffs. It was sought to charge the defendants for a mis-delivery on the grounds (1) that they had acted voluntarily in the matter; (2) that they had claimed warehouse rent; but the Court of Exchequer held that the jury had been rightly asked whether the defendants had acted reasonably under the circumstances, and, the jury having answered in the affirmative, upheld a verdict for the defendants. "Their position," said Kelly, C. B., "was that of involuntary bailees; they found these goods in their hands without any default of their own, under circumstances in which the character of carriers under which they received them had ceased." The defendant in *Hiort* v. *Bott* may, perhaps, also be best described as an involuntary bailee, and had become so by means of fraudulent orders very similar to those in *Heugh's* case. What then is the distinction between the two cases? The distinction is that whereas in *Heugh's* case the defendants were acting in the course of their business, and it became a question for the jury whether they acted reasonably, in *Hiort's* case the defendant went out of his way to do the act which caused the plaintiff to lose his goods. The defendant had only either to do nothing, or else send the delivery order back to the plaintiff himself, and no harm would have been done. Moreover, in *Heugh's* case it was the plaintiff's act in giving credit to his traveller that the whole difficulty arose, whereas in *Hiort's* case it was the endorsing of the delivery order to the broker which caused the loss; and the rule is plain, that where of two innocent parties one must suffer by the wrong of a third he who has enabled the third party to occasion the loss must sustain it, (per Ashhurst, J., in *Lickbarrow* v. *Mason*, 1 Sm. L. C. 690).

The case of *Hiort* v. *Bott* is also noticeable for having produced a new definition of conversion issuing from a court which may be said to have a hereditary right to deal with the subject of conversion. The frequently cited case of *Fouldes* v. *Willoughby* (8 M. & W. 540); the case of *Burroughes* v. *Bayne* (5 H. & N. 296), where the whole history of trover may be found in the judgment of Martin, B.; and, lastly, the case of *England* v. *Cowley* (L. Rep. 8 Ex. 126; 28 L. T. Rep. N. S. 68) where Martin, B. dissented from the opinion of the rest of the court that the "wrongful deprivation" must be a total and entire deprivation, all proceeded from the Court of Exchequer. And we have it now laid down by that court that conversion "is where a man does an act unauthorized which deprives me of my property for an indefinite time." This is a definition which is perhaps legally rather than verbally correct, extending as it does the meaning of conversion so as to include wrongful deprivation. It is always well to bear in mind the mistake which occurs in the statutory form of declaration under the Common Law Procedure Act. "That the defendant converted to his own use, or wrongfully deprived the plaintiff of the possession of," are the words in the schedule. The mistake, which has no doubt caused much confusion, arose in this way. In the original Bill the words "or wrongfully deprived," &c., did not appear. Lord Denman inserted them, but within brackets, and when the Act came to be printed the brackets were left out: (see *London and Westminster Discount Company* v. *Drake*, 28 L. J., 297 C. P., per Willes, J.; Day's Common Law Procedure Act, p. 239.)

It is somewhat singular that there should be but little, if any, authority on the liability of a person who finds himself in possession of an article left at his house by

Digitized by Google

mistake, or by some would-be seller with whom he has had no communication respecting it. Is there any legal obligation, for instance, to keep a sample sent by post which one has not ordered, and if there be, how long does it exist, and could anything be recovered for the expense of keeping it? Advertisements constantly appear to the effect that if A. B. do not fetch away the property which he left behind at C. D.'s house, the same will be sold to pay expenses. It would seem to follow from Baron Bramwell's remarks that there is an authority in these cases to deal reasonably with the articles, and that it would be for a jury to say whether there had been a reasonable dealing or not. It was, however, decided in the old case of *Lethbridge* v. *Phillips* (2 Starkie, 544), that there is no obligation in these cases to keep safely. In that case a picture had been damaged which had been borrowed of the plaintiff by a third person in order to show to the defendant, who had not asked to see the picture, nor had had any communication with the borrower on the subject, and it was held that no action would lie upon an implied contract to keep the picture safely, Chief Justice Abbott observing "it often happened that articles of great value were left at gentlemen's houses by mistake, and that in such cases parties could not be considered as bailess of the property without their consent." And Story's comment on the case is that where there is a substantial mistake, or fraud, or imposition, practised by one party on the other, the common law would deem the "contract of mandate," properly so called, void: (Story on Bailments, p. 146).—*The Law Times.*

THE LAW OF PARLIAMENT.

The Law of Parliament is not a department of jurisprudence which usually comes under the notice of the country at large. Its technicalities are rather abstruse and difficult, nor do they repay the toil of study by any practical utility in the general business of life. On the whole, therefore, we are content to leave the settlement of the usages and traditions which govern the practice of the House of Commons to a few well-known experts. But now and then, it must be confessed, we are tempted to chafe at the provoking mysteries of a science which seems to have neither intelligible origin nor present and practical object. Of course, it is desirable to preserve the historical continuity of our institutions; but the argument on this head may be pushed too far, and may be used to defend trivialities of practice which originated either in mistaken conceptions of political expediency or in real problems of statesmanship which have long since been practically solved and got out of the way. The interference of the Law of Parliament with the validity of Elections is an instance of a popular suspicion which had once a real root in reason surviving by at least half a century the conditions of things which justified it and gave it vitality. The business of the present Session has been retarded for two most precious weeks by the necessity which Parliamentary Law imposes upon Ministers accepting office "under the Crown" of going to their constituents to obtain their consent to the honour done by the State to their representatives. In very rare instances—and these, in truth, might well be overlooked without outraging the principles of representative government—have the electors of this County or that Borough ventured to contest the choice which the House of Commons as a body has substantially made. But the same obsolete suspicion which animates the Parliamentary rule insisting on the vacation of their seats by Ministers accepting office carries its influence much further. This jealousy of the power of the Crown was for half a century a tradition of Toryism and for half a century more a tradition of Whiggism; yet, after two large measures of Parliamentary Reform and a long slumber of the Royal Prerogative, it is, apparently, as vigilant and anxious as ever. Almost the first business which had to be brought under the notice of the House of Commons on Thusday last by the Speaker, was the announcement that Mr. John Ramsay, who had been elected by the Falkirk Burghs, had intimated that his election was void because at the time when the return was made to the writ he was beneficially interested in a Government contract. A new writ was immediately moved for by Mr. Adam, and the electors of Falkirk and their chosen representative will have to submit to the inconvenience of another election.

If we put out of consideration the individual hardship on Mr. Ramsay and his constituents, we may feel a certain satisfaction that a policy which was always open to question is thus reduced to an absurdity, for Mr. Ramsay's case is more strikingly unreasonable than any parallel case previously recorded. Mr. Forsyth's rejection from his seat for Cambridge in 1866, on the ground that he held the office of Standing Counsel to the Department of the Secretary of State for India, was inconsistent enough, for the same post had been filled by a member of Parliament, as long as the Secretary for India was called the Secretary of the Board of Control, without any possibility of cavil. When Sir Sydney Waterlow was returned for Dumfriesshire in 1868, and it was discovered that, though he had endeavoured to do so, he had not sufficiently got rid of his interest in the contracts of his firm with Her Majesty's Stationery Office, the vacation of the seat was generally considered an extreme consequence of the rigid application of Parliamentry Law; the more so because when Sir Sydney Waterlow had purified himself from the taint of pecuniary connexion with Government, and the new writ for Dumfriesshire was issued, the original state of the poll was reversed, and the member at first elected was thrown out by a narrow majority. The case of the recent Falkirk Election is, however, a still more extravagant example of the operation of an obsolete law. Mr. Ramsay was unquestionably the chosen representative of the Falkirk Burghs; but it appears that after his election he was made aware of the important fact that, as he owned a share in a steamer which carries the mails by contract for the Post Office between the Island of Islay and the mainland—the pecuniary interest represented by the said share being valued at the magnificent sum of £9 7s. 6d.—he was disqualified from taking his seat and voting as a member of the House. If he had not happened to find out that he held the share in question before he had taken his seat and voted, an Indemnity Bill, to save him from the penalties of his unconscious offence, must have been carried through both Houses. This had actually to be done in Mr. Forsyth's case; and Mr. Ramsay has not saved his seat, nor, if he had acted in the capacity of a member of Parliament, would he have exempted himself from the penalties of Parliamentary Law, by the steps which he has taken to get rid of his unlucky responsibility as part-owner in the Islay Mail Packet.

The absurdity of avoiding a perfectly valid election because the member returned by the constituency happened to be interested to the extent of something less than ten pounds in a mercantile concern which had in the aggregate some interest in a Government contract is beyond, or below, the reach of argument. The amount of advantage which Mr. Ramsay could by any possibility derive in the shape of profits on his share in the Islay steamer from the most complaisant action on the part of the Government would probably have to be computed in pence. In these days, when floating and divided interests in trading speculations are owned, more or less, by almost all persons who have any income beyond that which gives them daily bread, it would not, perhaps, be easy for any man to affirm off-hand that he is not, in the same sense as Mr. Ramsay, a Government contractor; if it were not that a special clause in the disqualifying Act exempts "incorporated trading Companies," a large proportion of the House of Commons would probably discover that they held their seats by a precarious tenure. The distinction thus created makes the Falkirk case all the harder, for it certainly seems iniquitous that a large shareholder in the Peninsular and Oriental Company, for instance, should be allowed to sit and vote, while the owner of a petty interest in the Islay Packet would become liable to a fine of £500 a day. Yet a candidate for Parliament ought to be professionally warned against the pitfalls of Parliamentary Law, and Mr. Ramsay's mishap is one of those accidents against which prudent men provide. It is needless to say that the power of the Crown in modern times means neither more nor less than the power of a Committee of persons practically chosen by the two Houses of Parliament out of their own members to administer the executive business of the country. Parliament, therefore, has now little reason to fear that power; but, if it had, it would assuredly be absurd to suppose that the influence of

Ministers upon pliant representatives could be neutralized by provisions like that which has disqualified the member for the Falkirk Burghs. It is time, indeed, to bring the technicalities of Parliamentary Law into accord with the facts of modern politics and the growing necessities of public business. The task is one that may well be taken in hand by a Conservative Administration, which will not be suspected of rashly meddling with traditions and customs; and it is one in which men of Parliamentary eminence, without distinction of Party, may usefully join. Of course it is not without difficulties; but it promises an abundant harvest of national utility, especially in the expedition of Parliamentary business and the conomy of public time.—*Times.*

COURT OF COMMON PLEAS (LONDON).*

LEE AND OTHERS (pets.) v. GREEN (resp);

WAKEFIELD ELECTION PETITION.

Summons for particulars under the Parliamentary Elections Act, 1868.

A petition against the respondent, the sitting member for the borough of Wakefield, alleged bribery by the respondent and his agents, also general bribery.

The election took place on the 3rd Feb., 1874, and the petition was duly presented against the return of the respondent, within twenty-one days after the return.

On the 4th of March a summons was taken out for the delivery by the petitioners of full particulars of the allegations contained in the petition within ten days from the date of the order (if any) to be made thereon, and was heard before Lord Chief Justice Cockburn at chambers.

Chandos Leigh for the petitioners.

Forbes, for the respondent.

LORD COLERIDGE, C.J., intimated that the time heretofore allowed for particulars to be given was too short to enable the respondent fairly to meet the case against him, and made an order that the particulars asked for by the summons should be delivered eight days, including Sunday, before the day fixed for the hearing of the petition, but that the petitioners should have leave to add any fresh particulars of cases coming to their knowledge after the commencement of the eight days, and up to three clear days of the day appointed for hearing the petition.

Agents for petitioners, *Van Sandau* and *Cumming.*

Agents for respondents, *Singleton* and *Tattershall.*

COURT OF BANKRUPTCY (LONDON).†

(*Before the* CHIEF JUDGE.)

Ex parte JACOBS; *Re* CARTER.

March 2.—*Practice—Bills of Exchange—Production of Security on Proof of Debts—Bankruptcy Act,* 1869, *s.* 16, *subs.* 2—*Bankruptcy Rules,* 1870, *rr.* 67, 134.

This was an appeal from a decision of the judge of the Birmingham County Court.

The first meeting of the bankrupt's creditors was held on January 19, 1874, when a proof was tendered on behalf of the Worcester City and County Bank for £2,031, for money lent and advanced by the bank and other charges; and the bank stated they had no security other than a mortgage for £750, and certain bills of exchange and promissory notes. Particulars of the bills were set forth in the form provided by the Act, but the bills were not produced. On behalf of some of the creditors, it was objected that the proof could not be admitted because of the non-production of the bills; but this objection was over-ruled by the registrar, who was chairman of the meeting.

On January 27, the County Court Judge affirmed the decision of the registrar, and ordered the proof of the debt by the bank to stand admitted. From this order the present appeal was brought.

It was admitted that the debt was owing to the bank; and the only practical question was whether the bank had a right to vote at the first meeting of creditors so as to influence the appointment of the trustee.

Mr. De Gex and *Mr. Finlay Knight* for the appellants.

Mr. Roxburgh and *Mr. Horton Smith* for the bank.

The CHIEF JUDGE held that the bills of exchange ought to have been produced, and discharged the order admitting the proof.

Ex parte SOUTHAM; *Re* SOUTHAM.

(*Before the same.*)

March 2.—*Bills of Sale Act,* 1854, *s.* 2—*Condition to be written on same Instrument—Payment by Instalments.*

This was an appeal from the Manchester County Court.

By a bill of sale, dated August 14, 1869, Thomas William Southam assigned his furniture to Edward Southam, to secure £250 and interest. The bill of sale was duly registered. On April 3, 1873, Edward Southam took possession of the furniture, which was afterwards sold and produced £106. On April 4, 1873, T. W. Southam was adjudicated bankrupt. An issue was directed to try whether the £106 belonged to Edward Southam or to the trustee in the bankruptcy. In cross-examination Edward Southam admitted that, about the time the bill of sale was given, the bankrupt had told him that he could not pay the £250 at once, and offered to pay by instalments of £1 or 30s. a week; that he (Edward Southam) had consented to accept this; and that in this way the debt had, previously to the seizure, been reduced to £170. The County Court judge considered that this arrangement amounted to a "condition" within the meaning of the Bills of Sale Act, 1854, s. 2; and that, as this condition did not appear upon the bill at the time of registration, it was void against the trustee, and he ordered the £106 to be paid to the trustee.

From this order Edward Southam appealed.

Mr. De Gex and *Mr. D. Griffiths*, for the appellant, contended that this arrangement or consent on the part of Edward Southam was not such a condition as was contemplated by the Bills of Sale Act.

Mr. Little and *Mr. Humphries*, for the trustee, were not called upon.

The CHIEF JUDGE held that the condition came clearly within the meaning and the words of the Act, and dismissed the appeal, with costs.

NORTHERN CIRCUIT—(MANCHESTER).*

(Before Mr. Justice DENMAN and Special Jury.)

March 19.—CLEMENTSON *v.* MASON.

Mr. Charles Russell, Q.C., and *Mr. Leresche* were the counsel for the plaintiff; *Mr. Pope,* Q.C., and *Mr. Edwards* were for the defendant.

This was an action for an alleged assault by the Returning Officer upon the plaintiff, one of the candidates at the last municipal election for the Portland-place Ward, Ashton-under-Lyne. It appeared that there were two polling booths in one school-room, and, owing to one pair of the plaintiff's personating agents having by mistake been nominated for both booths, there was a difficulty about the admission of the other pair. The plaintiff, hearing of the difficulty, went to the presiding officer of one of the booths to which, it appeared, his agents had been admitted, and inquired who was the Returning Officer. While he was addressing him, the Returning Officer entered the booth and asked the plaintiff if he was a voter, and on his replying he was not, told him he had no right to be there. The plaintiff insisted he had a right to be present, and produced the Ballot Act; but the defendant refused to hear him, and ordered a policeman to remove him. The plaintiff left the booth with the policeman, but when in the school-room again insisted he was entitled to be present, whereupon he was removed by an inspector, with the injunction that he was not to be allowed to come in again under any pretence whatever. By Rule 51 in the Appendix to the Ballot Act "a candidate may himself undertake the duties which an agent of his, if appointed, might have undertaken, or may

* From the *Law Times.*
† From the *Law Journal.*

* From the *Times.*

Digitized by Google

assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of the Act attend," and the plaintiff contended that he was entitled to be present under this rule, and that his removal by the Returning Officer was unjustifiable.

The defendant relied upon Rule 47, which provides that a Returning Officer may preside at any polling station, and Rule 9, which gives the presiding officer power to remove any one who misconducts himself in the polling station or fails to obey his lawful orders

In the end there was a verdict by consent for the defendant, with leave to the plaintiff to move, the learned Judge expressing his opinion that the order was a lawful order, which the plaintiff was bound to obey, and that he was not entitled to be present.

Covenants in Marriage Settlements as to Future Acquired Property.

Re Edwards, L.JJ., 22 W. R. 144, L. R. 9 Ch. 97.
Alleyne v. *Hussey*, V.C.H., 22 W. R. 203.

The principal object of the ordinary covenant in marriage settlements relating to the settlement of property subsequently coming to the wife, or the husband in her right, is to exclude the marital right, and it therefore seems reasonable to presume that where the words "during the coverture" are omittted, it is intended to operate only upon property coming to the wife during the marriage. But in *Stevens* v. *Van Voorst* (17 Beav. 305, 308), the late Master of the Rolls, reversing this presumption, seems to have thought that it needed some express words to restrict the covenant to property acquired during the coverture. In *Re Edwards*, however, the Lords Justices (having consulted the Lord Chancellor) held that in the absence of any expressions showing that a covenant of this nature was intended to have a more extended operation, it is to be construed as if the usual words "during the said intended coverture" had been inserted. It may be noticed that in *Carter* v. *Carter* (L. R. 8 Eq. 551) Malins, V.C., held that words in the covenant directing that it should take effect if the wife, her *executors or administrators*, or the husband, his *executors or administrators*, in right of his wife, became at any time after marriage entitled to any real or personal estate, would not carry the operation of the covenant beyond the coverture. In *Alleyne* v. *Hussey* the words in the covenant, "at any time hereafter," were held to be equally ineffectual for this purpose.—*Solicitors' Journal.*

LIABILITY OF MASTER
For Injuries Inflicted upon One Servant through the Negligence of Another Servant.

Union Pacific Railroad Company v. *Jesse L. Fort.*

Supreme Court of the United States, No. 99; October Term, 1873.

Negligence—Servants in Common Employment.—A railroad Company is liable for the negligent act of a foreman having charge of dangerous machinery, who, in the course and within the scope of his duties, orders an infant employee under him, upon a service hazardous to life or limb, and which was not within the scope of the ordinary or proper duties of the servant thus commanded to perform it. In such a case, the rule which exempts the employee from liability to one servant for the negligence of a fellow-servant in the same common service, has no application.

Error to the circuit court of the United States for the district of Minnesota. The facts of the case and the special verdict will be found in 2 Dillon, C. C. R. 259.

Redick & Briggs, for the plaintiff (Fort); *Poppleton & Wakely*, for the railroad company.

Mr. Justice Davis delivered the opinion of the court.

It was assumed on behalf of the plaintiff in error, on the argument of this cause, that the master is not liable to one of his servants for injuries resulting from the carelessness of another, when both are engaged in a common service, although the injured person was under the control and direction of the servant who caused the injury. Whether this proposition, as stated, be true or not, we do not propose to consider, because, if true, it has no application to this case.

The action was brought by the defendant in error to recover damages for an injury to his minor son, resulting in the loss of an arm, while in the employment of the railroad company. The boy was employed in the machine shop of the company as a workman or helper, under the superintendence and control of one Collett, and had been chiefly engaged in receiving and putting away mouldings as they came from a moulding machine. After the service had been continued for a few months, the boy, by the orders of Collett, ascended a ladder to a great height from the floor, among rapidly revolving and dangerous machinery, for the purpose of adjusting a belt by which a portion of the machinery was moved, and while engaged in the endeavour to execute the order the accident happened. The jury, by a special verdict, find that the boy was engaged to serve under Collett, as a workman or helper, and was required to obey his orders; that the order by Collet to the boy (in carrying out which he lost his arm) was not within the scope of his duty and employment, but was within that of Collett's; that the order was not a reasonable one; that its execution was attended with hazard to life or limb, and that a prudent man would not have ordered the boy to execute it.

It is apparent, from these findings, if the rule of the master's exemption from liability for the negligent conduct of a co-employee in the same service be as broad as is contended for by the plaintiff in error, that it does not apply to such a case as this. This rule proceeds on the theory that the employee in entering the service of the principal, is presumed to take upon himself the risks incident to the undertaking, among which are to be counted the negligence of fellow-servants in the same employment, and that considerations of public policy require the enforcement of the rule. But this presumption cannot arise where the risk is not within the contract of service, and the servant had no reason to believe he would have to encounter it. If it were otherwise, principals would be released from all obligations to make reparation to an employee in a subordinate position for any injury caused by the wrongful conduct of the person placed over him, whether they were fellow servants in the same common service or not Such a doctrine would be subversive of all just ideas of the obligations arising out of the contract of service, and withdraw all protection from the subordinate employees of railroad corporations. These corporations, instead of being required to conduct their business so as not to endanger life, would, so far as this class of persons were concerned, be relieved of all pecuniary responsibility in case they failed to do it. A doctrine that leads to such results is unsupported by reason and cannot receive our sanction.

The injury in this case did not occur while the boy was doing what his father engaged he should do. On the contrary, he was at the time employed in a service outside the contract, and wholly disconnected with it. To work as a helper at a moulding machine, or a common work-hand on the floor of the shop, is a very different thing from ascending a ladder resting on a shaft, to adjust displaced machinery, when the shaft was revolving at the rate of 170 to 200 revolutions per minute. The father had the right to presume, when he made the contract of service, that the company would not expose his son to such a peril. Indeed, it is not not possible to conceive that the contract would have been made at all if the father had supposed that his son would have been ordered to do so hazardous a thing. If the order had been given to a person of mature years, who had not engaged to do such work, although enjoined to obey the directions of his superior, it might with some plausibility be argued that he should have disobeyed it, as he must have known that its execution was attended with danger; or, at any rate if he choose to obey, that he took upon himself the risks incident to the service. But this boy occupied a very different position. How could he be expected to know the peril of the undertaking? He was a mere youth, without experience, and not familiar with machinery. Not being able to judge for himself he had a right to rely on the judgment of Collett, and doubtless entered upon the execution of the order without apprehension of danger. Be this as it

Digitized by Google

may, it was a wrongful act on the part of Collett to order a boy of his age and inexperience, to do a thing which in its very nature was perilous, and which any man of ordinary sagacity would know to be so. Indeed, it is very difficult to reconcile the conduct of Collett with that of a prudent man, having proper regard to the responsibilities of his own position and the rights of others. It is charitable to suppose that he did not appreciate the danger, and acted without due deliberation and caution. For the consequences of this hasty action the company are liable, either upon the maxim of *respondeat superior*, or upon the obligations arising out of the contract of service. The order of Collett was their order. They cannot escape responsibility on the plea that he should not have given it. Having entrusted to him the care and management of the machinery, and in so doing made it his rightful duty to adjust it when displaced, and having placed the boy under him with directions to obey him, they must pay the penalty for the tortious act he committed in the course of the employment. If they are not insurers of the lives and limbs of their employees, they do impliedly engage that they will not expose them to the hazard of losing their lives, or suffering great bodily harm, when it is neither reasonable nor necessary to do so. The very able judge who tried the case instructed the jury on the point at issue in conformity with these views, and we see no error in the record. (2 Dillon, C. C. R. 259.)

The judgment is affirmed.

Mr. Justice BRADLEY, dissented.

NOTE.—The Supreme Court recently decided another case upon the same general subject, which we print herewith in the form of a note. We refer to the case of the N. W. Union Packet Co., plaintiff in error, *v.* Mary McCue, Administratrix of Patrick McCue, deceased—from the eastern district of Wisconsin. The following is the opinion of Mr. Justice Davis :—"This was a suit brought by Mary McCue, administratrix of her husband, Patrick McCue, deceased, to recover damages for injuries sustained by him on the 11th of July, 1868, through the negligence of the servants of the plaintiff in error, and which resulted in his death a few days thereafter. There can be no doubt from the evidence that McCue was without fault, and that the injuries which caused his death were owing to the improper conduct and reckless carelessness of the employees of the packet company ; and the only question for determination is, whether the compnay is, under the circumstances of the case, responsible for the acts of its servants. The case is substantially this : Patrick McCue was a common labouring man, living in Prarie du Chien, Wisconsin, and employed in the railroad warehouse in that place. On the evening of 11th July, 1868, the steamer War Eagle, owned by the plaintiff in error, arrived at the landing in Prarie du Chien for the purpose of taking freight from the warehouse. Being short of hands, the officers of the boat employed McCue and four or five other persons to assist in carrying freight from the warehouse and putting it on board the boat. This employment continued about two hours and a-half, at the end of which time McCue and the rest were requested to go to the office of the boat and receive their pay. They proceeded there accordingly, were paid, and then started to go ashore. The men on Board the boat pulled in the gang-plank while McCue was on it, who was thus thrown down and injured, from which injuries he died. "It is insisted on the part of the plaintiff in error that a master is not responsible to a servant for injuries caused by the negligence or misconduct of a fellow-servant engaged in the same general business. Whether this generel proposition be true or not, it is not necessary to determine in the state of this record. It is conceded if the employment of McCue by the company terminated before the injury complained of was suffered, that the company is liable, and this the jury have found to be the fact. But it is said it was the province of the court, and not the jury, to determine the point of time at which the service was ended ; that as the facts were undisputed, it was a question of law, and the court should have told the jury the relation of master and servant subsisted when the accident happened. We do not think so. One of the theories on which the suit was prosecuted was that McCue's special employment had ceased when he was injured. This theory was resisted by the defence, and the court, not taking upon itself to determine as an absolute proposition when the employment terminated, left it to the jury to find how the fact was. This ruling, in our opinion, was correct. It was for the jury to say, from the nature of the employment, the manner of engaging the hands, the usual mode of transacting such a business, and the other circumstances of the case, whether the service had or had not ceased at the time of the accident. The point was submitted fairly to the jury, with no more comments than the evidence justified. It was argued by the plaintiff in error that the employment of necessity terminated on the land, because it was there McCue was engaged to do the work, and he had the right to be provided with the proper means of reaching it from the boat. On the contrary, the defendant in error contended the special service ceased when McCue had finished his work and was paid off ; that after this he was not subject to the control or direction of the officers of the boat, but at liberty to stay on the boat or go off as he pleased. The jury took this latter view of the relation of the parties, and we cannot say that they did not decide correctly. At any rate, their decision on a question of fact is not subject to review in this court. The defence, at the best, was a narrow one, and, in our opinion, more technical than just. The judgment is affirmed."—*Central Law Journal.*

THE JUDICIAL BUSINESS OF THE HOUSE OF LORDS.

The first list of appeals to the House of Lords set down for hearing contains 34 causes of which three were set down for hearing in the Session of 1872, and the remainder in the course of the last Session. Of the total number 19 are from the English courts—namely, eight from the court of Chancery, ten from the Exchequer Chamber, and one from the Court of Probate, 11 are from the Court of Session in Scotland, and only four from the Irish Courts—namely, three from the Court of Chancery, and one from the Exchequer Chamber. The following are the names of the Irish cases :—

From the Court of Chancery, Ireland.—Hilliard *v.* Eiffe, the Agra Bank (limited) and the Agra and Masterman's Bank (limited) *v.* Barry and another, and O'Mahony *et al.* *v.* Burdett.

From the Exchequer Chamber, Ireland.—The Cork Distilleries Company (limited) *v.* the Great Southern and Western of Ireland Railway Company (in error).

In addition to the above list of causes there are 21 English, 10 Scotch, and one Irish appeals presented, but not yet set down for hearing.

NEW EVIDENCE IN BREACH OF PROMISE CASES.—Mystery is, no doubt, the soul of romance, hence romance is doomed, for so rapid are the strides now made by science in every direction, that there will shortly be no mystery left. No sooner has Dr. Broca invented an instrument for measuring the inside of the skull, thus literally "taking the measure" of any individual's mental capacity, than Dr. Ozanam, of Paris, originates a device, by means of which "the beating of our own heart" may be photographed. The apparatus consists of a bag of india-rubber, to which a glass tube is fastened ; this, being filled with quicksilver, is placed on the heart of the subject of the experiment, the movements of which are communicated to the quicksilver and indicated on the glass tube, while the results thus obtained are recorded by photographic appliances attached to the apparatus. It will greatly add to the interest of actions for breach of promise, if besides the writing of imprudent letters, fickle suitors take to proving the strength of their emotions by forwarding photographs of the state of their hearts, and the *pieces de conviction* at such trials consist, besides, locks of hair, flowers, and other antiquated tokens of affection, of a correct register of the deceptive pulsations of those "fond, foolish, fluttering things."—*Echo.*

Digitized by Google

PROBATE OF WILLS.

In the House of Commons on March, 24th, Mr. Gregory gave notice that on the 21st April he shall call attention to the expense, delay, and inconvenience occasioned by the necessity of obtaining separate probate of wills and letters of administration of wills in England, Scotland, and Ireland, and that he should move that it is desirable that one probate and administration should confer a title to all personal property within the United Kingdom.

LEGAL ITEMS.

Lord St. Leonards, who is the only living ex-Lord Chancellor who has ever held the Great Seal successively in Ireland and England, attained his ninety-fourth birthday last month, and is in the full enjoyment of his faculties.

Sir William Bodkin, who lately resigned the office of Assistant-Judge of the Middlesex Sessions, is lying dangerously ill at his residence at Highgate.

Mr. Justice Honyman is suffering from a paralytic seizure, but is making satisfactory progress towards recovery, and will, we hope, in no long time be enabled to resume his judicial duties.

The honour of knighthood has been conferred upon Mr. John Smale, Chief Justice of the Colony of Hongkong.

PROSECUTION OF BANKRUPTS.—The sum of £1,880 is required to be voted for the year ending the 31st of March, 1874, to defray the cost of prosecuting bankrupts in England.

In addition to the impeachment cases of Judges Durell, of Louisiana, Busteed of Alabama, and Story of Arkansas; the house committee on judiciary have before them the impeachment case of Judge Duvall of Texas.—*Albany Law Journal.*

In an article entitled "The Great Trial at Bar," Mr. Moy Thomas has worked up for the April number of the *Gentleman's Magazine* certain new aspects and incidents of the 188 days' trial of Arthur Orton for perjury.

Of the twenty-seven Barons created under Mr. Gladstone's administration, six were conferred on lawyers, viz., on Barons Hatherley, O'Hagan, Selborne, Penzance, Moncrieff, and Coleridge.

DELIGHTS OF BEING A TRUSTEE.—The risks run by trustees were once more illustrated by a case heard in the Rolls Court on Saturday. A testator, Mr. Rayon, gave a legacy of £1,000 to the "Small-pox and Vaccination Hospital, Highgate," but in reality the hospital, though correctly described as to name, was situated at Highgate-hill, Upper Holloway. Under these circumstances the trustees of the will offered to pay the money if the hospital board would pass a resolution indemnifying them against possible claims by other hospitals. The board refused to give the trustees any such indemnity, and thereupon the trustees paid the £1,000 into court, so that they might be protected by acting under judicial direction. The effect of this step was that the board could only obtain possession of the legacy by petitioning the Court of Chancery. Accordingly in their petition they asked that the trustees might be made to defray the costs of the application, on the ground that the description in the will was sufficiently accurate and that the money had been unnecessarily paid into court. The Master of the Rolls acceded to this view, though it appeared that the trustees had acted throughout upon the advice of counsel and had incurred as little expense as possible. Here was a case in which there being a possibility, though perhaps a remote one, that some other hospital would claim the fund, a layman might well suppose that the trustees would have been held justified in protecting themselves by requiring an indemnity. It seems they were wrong in this belief, and their over caution is visited upon them personally. It follows that whether a trustee is too cautious or whether he is negligent; whether he takes professional advice or trusts to his own unassisted opinion; whether he acts in good faith or in bad faith; whether he is guilty of gross misconduct or merely commits an error in judgment, the result may be the same. Judges in equity will pity him, will say his case is a hard one, but will mulct him in costs and sometimes more. Sir George Jessel pleasantly said on Saturday that this was "one of the delights of being a trustee;" and for the comfort of the gentlemen concerned in this case he mentioned another in which Lord Cottenham made trustees pay all the costs of a suit which had been instituted against them, though they had acted on the advice of three most eminent counsel.—*Pall Mall Gazette.*

WOMEN'S DISABILITIES REMOVAL BILL.—The following very short Bill to remove the electoral disabilities of women has been brought in by Mr. Forsyth, Sir R. Anstruther, Mr. Russell Gurney, and Mr. Stansfeld:—"Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same as follows:—1. That in all Acts relating to the qualification and registration of voters or persons entitled or claiming to be registered and to vote in the election of Members of Parliament, wherever words occur which import the masculine gender, the same shall be held to include females for all purposes connected with and having reference to the right to be registered as voters and to vote in such election, any law or usage to the contrary notwithstanding. Provided that no married woman shall be entitled to vote in such election."

APPOINTMENTS.

Mr. William Sullivan, brother of the Right Hon. Edward Sullivan, Master of the Rolls in Ireland, has been appointed to the office of Second Assistant in the Record and Writ Office, Dublin, at a salary of £800 per annum.

The Queen has been graciously pleased to appoint William Wellington Cairns, Esq., C.M.G., to be governor and Commander-in-Chief of the Island of Trinidad and its Dependencies; Francis Snowdon, Esq., to be Puisne Judge of the Supreme Court of the Colony of Hongkong; George Phillippo, Esq., to be senior Puisne Judge, and Theodore Thomas Ford, Esq., to be junior Puisne Judge of the Supreme Court of the Straits Settlements; and George Hurley Barne, Esq., to be Attorney-General for the Island of Jamaica.

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, March 30th, 1874, when the following subject will be debated:—"That the Divorce Law of Ireland should be assimilated to that of England."

SPEAKERS:

Affir.	*Neg.*
Mr. R. Andrews,	Mr. M. Bodkin,
Mr. L. S. Eiffe.	Mr. J. S. M'Neill.

The Chair will be taken at Eight o'clock by John Frazer, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

COURT PAPERS.

The County of Dublin Sessions commence on Tuesday, the 31st inst. The Right Hon. Mr. Justice Lawson will sit on Tuesday 31st inst., to hear such application as may be made under the Parliamentary Elections Act.

A Judge will also sit on the same day to hear motions for the three law courts.

Digitized by Google

LANDED ESTATES' COURT.

PETITIONS FILED *from 27th January to 19th February*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Jan. 27	Thomas Henry Davies and John F. Davies, owners; *Samuel Murphy, petitioner*	Sale	Galway	341 5 7	*Robert Mecredy*
,, ,,	Anna Eyre Powell, Hilda Hinton, and Archibald Hinton, owners and petitioners	Sale	Kildare	2,257 5 7	*J. P. Hartford*
,, 28	Mervyn Stewart, owner and petitioner	Sale	Tyrone	136 6 11	*Edward Hudson*
,, 29	R. W. Montgomery and Philips Montgomery, owners, and Edward Rooney, a tenant	Sale under the Land Act	Dublin	—	*Holmes & Kelsall*
,, ,,	Lucinda Hull, owner; *Rev. Charles James Lambert and others, petitioners*	Sale	Cork	1,860 7 7	*W. C. Cornwall*
,, 30	William Lawder, owner; *Stewart Blacker, and another, petitioners*	Sale	Leitrim and Roscommon	652 19 0	*Hallowes & Hamilton*
,, ,,	Frederick John Sandys Lindesay, owner and petitioner	Declaration of title	Tyrone	2,038 12 0	*William Lewis*
,, 31	Robert Stannard or Bridget Holohan, owner; *James Carroll, petitioner*	Sale	Kilkenny	76 16 2	*Michael Shortall*
,, ,,	Nicholas Ogle M. Vize, Owner and petitioner	Sale	Westmeath and Dublin	226 8 8	*Thomas Walsh*
Feb. 2	Ellen Hogan and John James Hogan, owners; *Alfred Seymour, petitioner*	Sale and partition	Limerick	220 6 11	*French & Argles*
,, ,,	John Copeland Jones, owner and petitioner	Sale	Meath, Cavan, and Fermanagh	2,888 8 11	*W. H. Brownrigg*
,, 5	William Jones, owner; *J. H. M'Ilwaine and another, petitioners*	Sale	Antrim	188 2 6	*Robert H. Orr*
,, ,,	Samuel F. Dickson, the Rev. E. C. Orpen, and Thomas J. G. Chatterton, owners; *Samuel F. Dickson, petitioner*	Sale and partition	Cork	2,104 7 1	*Alma & Hackett*
,, 9	Frederick Richard Thomas, owner and petitioner	Sale and partition	Cork	2,104 7 1	*Orpen, Sons, & Sweeny*
,, ,,	Patrick Keane or William Keane, owner; *Thomas Hodgins and another, petitioners*	Sale	Kerry	In owner's occupation	*John Sandes*
,, ,,	Stewart R. Tresilian, owner and petitioner	For appointment of trustees	—	—	*Thomas K. Sullivan*
,, 10	John M'Kinney, owner; *Christopher Irvine, petitioner*	Sale	Londonderry	36 0 0 Estimated value	*James Hayden*
,, 11	Frances Deborah Scott, owner; *Deborah Crawford, petitioner*	Sale	Down	123 2 9	*Frederick A. Barlow*
,, ,,	Bryan O'Loghlen, owner; *Denis Freeman, petitioner*	Sale	Clare	391 16 6	*J. H. Doran & Son*
,, 12	James H. C. Alley and James H. C. Alley, and the Rev. John P. Alley, and Louisa E. Barker, owners; *J. H. C. Alley, petitioner, and Partition Act,* 1868	Sale and partition	Dublin	189 8 1	*William Sullivan*
,, 13	John Barber, Eliza Barber, and Caroline Barber, owners and petitioners	Sale	Dublin	565 6 5	*John D. Rosenthal*
,, 16	Executors and trustees for sale under will of Rev. Edward Hatch Hoare, deceased, owners and petitioners	Sale	Clare	115 7 8	*Robert Mecredy*
,, 17	Mary Honohan, administratrix of John Honohan, owner; *De O'Mullane, petitioner*	Sale	Cork	45 1 0	*E. O'Connor & Son*
,, ,,	Alexander Johnston Phillips, Maria Mary Phillips, Margaret S. G. Phillips, Letitia E. M. Phillips, John W. Phillips, Adolphus F. Bleathman, and Elizabeth A. Bleathman, owners and petitioners	Sale	Sligo	168 18 1	*Charles Sedley*
,, 18	Deborah Crawford, owner and petitioner	Sale and partition	Down	60 16 9	*F. A. Barlow*
,, ,,	Hugh M'Ternan, owner; *Edward Blacker and George Cree, petitioners*	Sale	Leitrim and Sligo	285 15 0	*William White*
,, 19	Joseph Radcliff, owner and petitioner	Sale	King's Co.	876 5 7	*G. Fetherston H. & Son*
,, ,,	James Lynam, owner; *John Cowen, petitioner*	Sale	Roscommon	56 8 4	*A. M'Cully*
,, ,,	Samuel F. Dickson, the Rev. Edward C. Orpen, and Thomas J. Green Chatterton, and Frederick Richard Thomas, or either of the last two, owners; *Frances Higginson, petitioner*	Sale	Cork	1,552 5 8	*Alma & Hackett*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Peter Johnston	Prove debts and vouch	*Scallan*
Daniel Cullen, jun.	Costs	*Mathews*
C. and P. Maguire	Prove debts and vouch	*Larkin & Co.*
Jane Young	Costs	*Merrick*
James Logan	Report	*Scallan*
William J. Lister	Vouch account	*Molloy & Watson*
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
Robert Midgley	do	*Neilson*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Hacket	1st composition sitting	*Barlow*
Same matter	Final examination	*Perry & Co.*
William O'Dwyer	1st public sitting	*Molloy & Watson*
H. M. Thompson	do	*Stewart & Cochrane*
Patrick Byrne	do	*Leachman*
James Coady	do	*Hunter*
Michael Broderick	do	*Hamilton & Craig*
Wm. F. Phillipson	Final examination	*Oldham & Eaton*
Joseph Sloan	do	*Hamilton & Craig*
Francis Pigott	do	*Molloy & Watson*
Michael Crowley	do	*Perry & Co.*
G. & R. Ferguson	do	*Perry & Co.*
Daniel Cullen, jun.	do	*Larkin & Co.*
James M'Kenna	do	*MacEvoy*
Michael Hickey	do	*Mathews*
Anthony M'Nulty	do	*Hamilton & Craig*
Brittain & O'Toole	do	*Molloy & Watson*
———	Show cause against adjudication	*Larkin & Co.*
Alfred Parker	Application for certificate of conformity	*Lett*
Cochrane & Lyons	Audit and dividend	*Perry & Co.*
Philip L. Lyster	Audit mortgagee's act.	*Molloy & Watson*
S. P. Armstrong	Motion	*Larkin & Co.*
———	Application to dismiss debtor summons	*Perry & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Coll	Prove debts and vouch	*Findlater & Co.*
Wm. F. Phillipson	do	*Oldham & Eaton*
Robert Grogan	do	*Perry & Co.*
Bernard Cummings	Costs	*Bradley & Son*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Annie Stirling	Prove debts and vouch	*Cronhelm & Co.*

Friday, 3rd April, Easter Monday, 6th April, and Easter Tuesday, 7th April, being statutable holidays, the Court and Offices will be closed.

ADJUDICATIONS IN BANKRUPTCY.

Burns, John Delins, 72, Talbot-street, Dublin, draper. Sittings, *Friday, April* 10, and *Tuesday, April* 28. *Molloy and Watson*, solrs.

Griffin, Michael, Lismore, Waterford, shopkeeper. Sittings, *Tuesday, April* 14, and *Friday, May* 1. *Lawler*, solr.

Holland, Catherine, Togher, Louth, widow, baker, and grocer. Sittings, *Friday, April* 17, and *Tuesday, May* 5. *Neilson*, solr.

O'Connor, Richard, 45, Queen-street, Dublin, grocer and spirit dealer. Sittings, *Tuesday, April* 14, and *Tuesday, April* 28. *Hamilton & Craig*, solrs.

Walker, William, Muninabane, Down, spirit grocer. Sittings, *Tuesday, April* 14, and *Tuesday, April* 28. *Seeds and Lynch*, solrs.

Walsh, Bridget, Dungarvan, Waterford, spinster, grocer, baker, and licensed publican. Sittings, *Tuesday, April* 14, and *Friday, May* 1. *Smith*, solr.

Wright, Peter, Capel-street, Dublin, boot and shoe-maker. Sittings, *Tuesday, April* 14, and *Friday, May* 1. *Oldham and Eaton*, solrs.

DIVIDENDS IN BANKRUPTCY.

O'Sullivan, Jeremiah D'Organ, the World's End, Kinsale, Cork, Shipowner. 1st and final dividend 7s. 8d. in the £. L. H. Deering, official assignee. *Scallan*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MARCH Fri. 20	Sat. 21	Mon. 23	Tues. 24	Wed. 25	Thur 26
	Government.						
—	3 p c Consols	91⅛	91⅜	—	91⅛	91⅛	91⅛
—	New 3 p c Stock	90⅞	90⅞	90⅝⅞	90⅝⅞⅞	90⅝	90⅝⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	106⅛
—	4 p c Oct. '88 } Bk. of Irel.	101⅛	101⅝⅛	—	—	—	101⅛
	Banks.						
100	Bank of Ireland	302⅞⅞	—	303	303⅛⅞	304	304⅞
25	*Hibernian Banking Co.*	—	—	58	57⅞	—	57⅞
15	*London Joint Stock*	—	—	47 ⅛	—	—	—
20	*London and Westminster*	—	70⅛⅞	—	70⅛70	—	—
3½	*Munster Bank (Limited)*	8⅞	—	—		—	8⅝
30	*National Bank*	58⅝⅞⅛	58⅝⅞	58⅞	58⅞⅛	—	58⅞
15	*National of Liverp'l (Litd)*	14⅞⅛	14⅞	14⅞	—	—	—
25	*Provincial Bank*	—	—	—	—	—	94⅝⅞
10	Do. New	—	—	—	38	38	—
10	*Royal Bank*	28⅞	—	—	—	—	—
15	*Union of London*	—	44⅞	—	—	—	—
	Steam.						
100	City of Dublin	—	—	108	108¼	108¼	108
50	Dublin & Liverpool Steam Ship Building. Co.	56	—	56	—	—	56
10	Dundalk (Limited)	—	7⅛⅞	—	7⅝⅛	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	3/ 2/6	—	—	—
1	Killaloe Slate Co. (lit'd)	—	—	15/6	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	4⅞	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.						
10	Gas, viz.: —A	—	—	9	—	—	—
10	No. 1 C	9⅝	—	—	—	—	—
10	No. 2 C	9⅝	-	—	—	—	—
9½	*Dublin Tramways*	—	—	7⅞ 8	—	—	—
100	Grand Canal	51⅞	51⅞	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	66⅝	—	—	—	66¼	—
100	Dublin and Belfast Junct.	—	—	87⅝	87⅝	—	87⅝
100	Dublin, W'klow, & W'ford	73⅞	—	73	73	—	-
100	Gt. Southern and Western	—	108⅞	—	108½	108⅞	108⅝
100	Do. do. free of Stamp	109⅞		109⅞	109⅞	109⅞	—
100	Midland Gt. Western	88	87⅞	—	86¼	86¼	86⅝⅞
25	Portdn. Dun. & Omh. Jun.	13⅞	—	—	—	—	—
100	Waterford & Cent. Ireland	—	—	—	14⅞	—	—
50	Waterford and Limerick	33⅛⅞	33⅞	33⅞–4	34	34 ⅛	34⅛
	Railway Preference.						
100	Belfast & Nth'n Cos. 4 p c	—	93	93	—	92⅞	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4 per cent., 15th January, 1874
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—March 30th, and April 14th, 1874.

Account Days—March 31st, and April 15th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers Offices close at 1 p.m.

SALE:

COUNTY OF MEATH.

TO BE SOLD BY AUCTION,
In the Public Sale-rooms,
9 UPPER ORMOND-QUAY,
On MONDAY, the 20th of APRIL, 1874,
At the hour of One o'clock p.m.

THE LANDS OF POSSEXTOWN, in the County of Meath, containing 222a 2r 0p, Irish plantation measure, being a most valuable Fee-farm Estate.

The rent reserved by the Fee-farm Grant is £360 0s 8d; but during the life of one of the Grantors, the Lands are only subject to the reduced yearly rent of £329 8s 6d.

The lands are of prime quality, well watered, and fenced, all in Grass, and in the occupation of the owner, save about 14 or 15 acres, held by a tenant at will, and adjoin the M. G. W. Railway at Enfield.

The purchaser can get immediate possession.

There is a good slated dwelling-house on the lands.

The herd at Possextown will show the lands.

For Statement of Title and Conditions of Sale apply to
EDWARD CARAHER, Solicitor, 62 Lower Gardiner-street
or to
JOHN LITTLEDALE & CO., Auctioneers, 9 Upper Ormond-quay.

Digitized by Google

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

COUNTY OF CORK.

In the Matter of the Estate of Bryan Sheehy, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, By order of the Honourable Judge Flanagan, AT MARSH'S SALE ROOMS, SOUTH MALL, CORK, In Two Lots,

On THURSDAY, the 30th day of APRIL, 1874, At the Hour of One o'clock in the afternoon,

The Lands of North and South Corbally, containing 224a 1r 18p, statute measure, situate in the barony of Ballymore, and county of Cork, held under lease for residue of a term of 999 years from 1st May, 1783, subject to the yearly head rent, and receiver's fees amounting to £75 13s 10d sterling, and tithe rent charge amounting to £14 7s 8d per annum.

LOT 1,

Consists of the Mansion House and Demesne Lands of Corbally, containing 68a 0r 33p, statute measure, with the out-offices, fruit and vegetable gardens now in the owner's possession, estimated value (being the rent payable by the late tenant) £220 per annum; will be Sold indemnified by Lot 2 from £37 16s 11d per annum, being one moiety of the head rent payable out of the entire lands.

LOT 2,

Consists of two holdings, one containing 149a 3r 33p, statute measure, and the other 1a 1r 31p, like measure, both let to one solvent tenant under lease at rents amounting to £174 2s 5d per annum, and also of the plantation marked on the map, containing 4a 0r 13p, like measure, in the owner's possession; estimated annual value of the land, exclusive of timber, £5 6s 0d per annum; the timber is valued at £120. This Lot will be Sold indemnified by Lot 1 from £37 16s 11d per annum, being a moiety of the head rent payable out of the entire lands.

The biddings will be submitted to the Honourable Judge Flanagan, at his Court, Inn's-quay, Dublin, on Monday, the 4th day of May, without further notice.

Dated this 7th day of March, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The above Lands are situate near Glanmire, about 5 miles from the City of Cork, on the line of road from Cork to Middleton and Fermoy.

For Rentals, Maps, and further particulars, apply at the Landed Estates' Court, Inn's-quay, Dublin; to

WILLIAM WHITE, Solicitor, 25 Westland-row, Dublin; or to

BRYAN GALLWEY, Solicitor having carriage of proceedings, No. 23 South Mall, Cork, and 25 Westland-row, Dublin.

N.B.—Proposals for the purchase by private contract of the foregoing Lots will be received by the Solicitor having carriage of the Sale on or before the 18th day of April next, and if approved of will be submitted to the Judge for his approval.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MEATH.

SALE,

On FRIDAY, the 15th day of MAY, 1874.

In the Matter of the Estate of Drake Christopher O'Reilly, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 15th day of MAY, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, Dublin, In One Lot,

Part of the Town and Lands of Drinadaly, situate in the Barony of Moyfenrath, and County of Meath, containing 128a 2r 36p, statute measure, held in fee-farm, and producing a net profit rent of £184 2s 2d.

Dated this 16th day of March, 1874.

HENRY R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This Estate consists of a portion of the Townland of Drinadaly, known as Boyne Lodge, containing 128a 2r 36p, statute measure.

The House is handsome and commodious, with first-class Stabling, Coach-house, and Farm Offices.

The Lands are all in grass, and are of superior quality, and situate on the Banks of the River Boyne, a short distance from the Town of Trim, and in the centre of a hunting district.

The entire Estate is in possession of the owner, and the purchaser can have immediate possession.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inn's-quay, Dublin, &c.,

CHRISTOPHER P. DUIGENAN, Trim; or to

JOHN THOMAS HINDS, Solicitor having carriage of the Sale, No. 37 Westmoreland-street, Dublin.

LANDED ESTATES' COURT, IRELAND.

COUNTY OF THE TOWN OF GALWAY.

In the Matter of the Estate of Michael Dooley, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 8th day of MAY, 1874, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, In the City of Dublin, In Seven Lots,

(The particulars of which are more fully set out in the Rental),

The Plot of Ground, Part of Sherwood's Fields, with the Dwelling-houses and Premises thereon, known as Nos. 1 and 2 Palmyra-terrace, and 1, 2, 3, and 4 Palmyra-crescent, containing 3a 1r ¼p, statute measure, situate in the West Liberties of the County of the Town of Galway, held under Lease, dated the 20th day of May, 1853, for 999 years, subject to the Yearly Rent of £22, and producing a net Annual Profit Rent of £218 13s 4d.

H. R. GREENE.

Dated this 21st day of February, 1874.

Proposals for the purchase of the above property, by private contract, will be received by the Solicitor having the carriage of the Sale, up to the 10th day of April, 1874, and if approved of, submitted to the Court without further notice.

DESCRIPTIVE PARTICULARS.

Palmyra-terrace and Palmyra-crescent are beautifully situated, overlooking Galway Bay, with a view of the Clare Mountains. They consist of well-built dwelling-houses with stables and coach-houses, and gardens in front and rere. They are on the direct road to Salt-hill, and within ten minutes' walk of all the places of public worship in Galway. The houses are let to solvent and respectable tenants, who pay their rents punctually.

For Rentals and further particulars apply at the Landed Estates Court, Inns'-quay, Dublin; to

Mr. MICHAEL DOOLEY, Williamsgate-street, Galway; or to

PATRICK JOSEPH KELLY, Solicitor for the Owner and Petitioner, having carriage of Sale, 46 Mountjoy-square, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

BRIDGET WALSH, of Dungarvan, in the County of Waterford, Spinster, Grocer, Baker, and Licensed Publican, was on the 17th day of March, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 14th day of APRIL, 1874, and on FRIDAY, the 1st day of MAY, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS HENRY DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

JOHN HUNT, Esq., Solicitor, Dungarvan.

EDWARD F. SMITH, Solicitor, 13 North Great George's-street.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

JOHN M'HUGH, of Rathfarnham, in the County of Dublin, Grocer and Spirit Dealer, a bankrupt

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on FRIDAY, the 10th day of APRIL, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 23rd day of March, 1874.

WM. PERRIN, Chief Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

PERRY and CROSKERRY, Solicitor for the Assignees, 32 Lower Ormond-quay, Dublin.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, March* 28, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, APRIL 4, 1874. No. 375.

THE AMENDMENT OF THE LAW RELATING TO INFANTICIDE.

WE rejoice to see that one of the first bills which has been brought before the new Parliament is one which, if carried, will effect an important reform in a portion of our criminal law which has for a considerable time past been the subject of complaint to all those jurists who, like Mr. Fitzjames Stephen, have laboured to reduce that undigested mass of feudal customs patched by statute legislation, which is known by the name of the criminal law of England, into something like conformity with the requirements of modern science and practical common sense. The records of every assize bring prominently before us the painful fact, that the crime of destroying the life of infants at their birth is most common throughout the length and breadth of the land. Two cases which came for trial on the last Home Circuit must have brought prominently before the notice of the Irish public the unsatisfactory state of the law upon the subject. There are, at present, three courses which offer themselves to the law officers for the Crown in cases of infanticide, against every one of which weighty objections can be advanced. The first is that which should, as a logical sequence from the law, be adopted in almost every case—that is, to prosecute the guilty party for murder. The drawbacks to this course are well known to persons practically acquainted with the working of the criminal law. As a matter of fact, the jury will not convict. Dr. Lankester, in his report as coroner for the year 1865, states that he held inquests in 69 cases of new-born children, and in 56 of these cases, the coroner's juries having only to decide on a question of fact, and not having the responsibility of sending to the gallows an unfortunate being in whose favour humanity could advance so many pleas, returned a verdict of wilful murder. But yet, in every one of these cases with which Dr. Lankester was acquainted the persons charged had been acquitted of the crime, against evidence of the most obvious and convincing character. The reason for this is well stated by Dr. Lankester:—"The prosecutor, judge, and jury are all anxious to avoid a verdict which consigns to death a woman who, in nine cases out of ten, has been more sinned against than sinning." A perusal of the cases and the facts, stated in the admirable work of Dr. Taylor on Medical Jurisprudence, will give an adequate idea of the difficulty which lies in the way of the Crown to obtain a verdict of guilty of murder in a case of infanticide. Every flaw, every technicality, every slip in the chain of medical evidence are seized at eagerly by the jury, to enable them to return a verdict which in their hearts they well know is not a true one. By the theory of the law, it is clearly established that, to constitute murder, the person killed must be a reasonable creature in being, and in the Queen's peace; therefore, to kill a child before birth has actually taken place, or during birth, is not murder. It is stated in 1 Russell on Crimes 672, that what constitutes actual birth for this purpose has not *perhaps* been clearly settled. It certainly seems to us, after a careful perusal of the cases, that this proposition might have been broadly stated, without any qualification. The question is one which belongs rather to the province of medicine than of law, but on this point we are fortified by the great authority of Dr. Alfred Taylor, in asserting that legal proof on this subject is next to impossible. "On most charges of infanticide, if the counsel for the defence insisted upon distinct medical proof of the child having been entirely born alive when the violence was offered to it; or that respiration, if clearly established by evidence, took place, not during labour, but after complete birth, or after the child had acquired an independent circulation; neither of these proofs could be offered, and the case, so far as medical evidence was concerned, would fall to the ground."—Taylor 2 Med. Jur. 432. This opinion is illustrated by the case of *Reg.* v. *Hacking* (*Med. Gaz.*, vol. 37, p. 382), where, the counsel for the prisoner insisting on proofs of the child being fully born alive, the jury acquitted the prisoner, in spite of damning evidence of a murder. When to these difficulties which exist in all these cases, from the very nature of the requisite evidence, are added the difficulties we have before alluded to, arising from the unwillingness of juries to convict at all in a charge of murder for infanticide, it may well be conceived that it requires great boldness on the part of the Crown to press a charge for murder; and that the fact of such a charge being pressed by the Crown is frequently the best chance of escape afforded to a prisoner. Another course open to the Crown is to press the charge of manslaughter, and although in many cases such charges are successfully brought home to the prisoner, and sentences are passed which fairly meet the justice of the case, it must be confessed that the theory of manslaughter in these cases rests upon what is, in one of the worst senses of the term, a legal fiction. If there has existed in the mind of the prisoner an intention by any means to destroy the life of the infant she is about to bring into the world, and she subsequently carries this design into effect after the birth of the infant, without the smallest doubt the crime is that which corresponds to the definition, given in all the authorities, of murder. If, on the other hand, the death of the infant results, not from any deliberate design, but from negligence in taking proper precautions to guard against danger at the time of the expected confinement, or similar circumstances, the offence, no doubt, is recognized and punished by the law, but it bears a character far less heinous, and differs both morally and legally from the crime of murder. Any person of ordinary intelligence who reads the cases where juries have returned verdicts of manslaughter in case of infanticide, must clearly see that the real facts come under the definition of murder, and it is a perversion either of facts or of law to say that it is manslaughter. That many such cases exist in the English law—in which the law says one thing and means another—is unfortunately true: for example, the absurd theory of loss of service in case of seduction; but surely, it cannot be denied that in criminal cases the real crime should be set out in the indictment, and not an imaginary one. In the language of Festus—"It seemeth to me unreasonable to send a prisoner, and not withal to signify the crimes laid against him." The other course which juries sometimes adopt as a salve to their consciences, is to find the prisoner guilty of concealment of birth. Against this precisely the same arguments might be advanced as against the verdicts for manslaughter, while there is an additional and very weighty

Digitized by Google

reason against it, that the maximum punishment, which can in this case be inflicted, of two years imprisonment and hard labour, is totally inadequate to the crime. Such being the state of the law, a short Bill has been introduced by Mr. Charley and some other private members, to amend the law on the subject. We regret that this Bill should not have been brought in supported by the full weight of the Government. The Bill proposes to repeal 24 & 25 Vic., c. 100, sec. 60, which provides for the offence of concealment of birth. It proceeds to enact—"That if the mother of any child shall unlawfully and maliciously wound or inflict any grievous bodily harm upon such child during or immediately after its birth, and shall thereby cause its death, she shall be guilty of felony, and on conviction thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years, or to be imprisoned for any term not exceeding two years, with or without hard labour." The Bill then provides that, in an indictment under this Act, it shall not be necessary to prove that the child was completely born alive. The bill contains a provision that indictments for murder or manslaughter are not precluded in case the Crown should see fit to proceed in such a manner. It will be seen that this Bill not only removes the almost insuperable difficulty of proof of complete birth, but, what is more important, by inflicting a moderate penalty for the crime, will render juries willing to convict. We wish Mr. Charley and his colleagues every success in carrying their well-meant and carefully-prepared measure. Should it succeed in obtaining a place on the statute-book, it will be a recognition of the propriety of the maxim laid down by Dr. Alfred Taylor (2 Med. Jur. 348)—"It is undoubtedly proper that the lives of children *during the act of birth* should be protected—at any rate, that their destruction should not be treated, as it now appears to be, with perfect impunity."

THE LAND TRANSFER BILLS.

Lord Cairns has taken up the measures which Lord Selborne introduced last year for the simplification of the transfer of land. They really owe their origin to Lord Cairns himself, being mainly based on proposals which he made as long ago as 1859, when he was Solicitor-General under Lord Derby's Government. They then dropped, and the subject of Land Transfer passed into Lord Westbury's hands. He adopted a completely different system, and his system proved a total failure. He set up an expensive office for registration, and this was all. It turned out that there was nothing for the office to do. Lord Westbury's scheme was a scheme, not for registering titles, but for registering statements about title. It provided a registry, not of the fact of ownership, but of deeds; and, as Lord Cairns said on Thursday night, it provided a registry of deeds of the worst kind, because under it the person registering had the power of placing on the register not the deeds themselves, but a statement of what he conceived to be the effect of each particular deed. The Act was a dead failure, and, as the Chancellor stated, the cause of this failure lay entirely in the Act itself, and not in any indisposition of solicitors to take advantage of its provisions. Every set of persons in turn gets a good word said for it, if it waits long enough; and Lord Cairns took occasion in his speech to say a good word for solicitors. The more eminent members of that profession are, according to his experience, most anxious for every legal improvement, and never let any consideration of their own interests stand in the way if a useful reform is proposed. They did not abandon attempts to make Lord Westbury's Act a working reality until they had satisfied themselves that it entailed greater expense and more trouble than had been necessary under the state of things it was intended to amend. When Lord Cairns became Chancellor in 1867, he appointed a Royal Commission to inquire into the working of Lord Westbury's Act, and that Commission strongly recommended that all attempts to work on the basis provided by Lord Westbury should be abandoned, and that there should be a recurrence to the principles on which the Bill of Lord Cairns in 1859 had been framed.

What Lord Cairns proposes is that there shall be a registry, not of deeds, but of title. He formerly wished that the whole system of registration should be under the control, not of a Registrar, but of a body having a constitution and powers similar to those of the Irish Landed Estates Court; and last year, when Lord Selborne proposed to use the services and staff of the Registrar under Lord Westbury's Act, Lord Cairns repeated his opinion that something in the way of a Landed Estates Court would work better. He has now, however, adopted Lord Selborne's suggestion, partly because, having the responsibility of office, he is not quite happy at the thought of having two establishments, one to do nothing, and the other to do everything, and partly because he thinks that it might not be easy to define the relations of the Judges of the Landed Estates Court to the Supreme Tribunal of Judicature which will soon come into play. The new system is to be worked through a Registrar, and is at first to be worked only in London, power being reserved to set up district branches of registration in any place where business is found to be so extensive that there is a prospect of the cost of such establishments being met by the receipts. There are three main questions as to such a scheme as Lord Cairns proposes. The first is, What is to be registered? the second is, What shall be the effect of registration? and the third is, Whether the adoption of the system shall be compulsory? Lord Cairns proposes to register fee simple estates, leaseholds of a certain length, and charges where mortgages are on the estate. The effect of registration will be of three kinds, the Bill permitting the registration of three sorts of titles—a title absolute and indefeasible; a title limited that is certified to be good from a particular date, but not beyond it; and a simple title of the proprietor in possession, asserting himself to be the owner. The attainment of an absolute title is also to be aided by three changes. If persons come before the Registrar with a good marketable title, but in which there is accidentally some theoretical imperfection, the Registrar may, under the sanction of the Court, register such a title as indefeasible. In the next place, instead of going back sixty years to get at an indefeasible title, the Registrar may satisfy himself with forty years, unless there is anything to lead him to suspect that there are imperfections in the earlier period of the title. Lastly, the Registrar will be at liberty to receive as facts recitals in deeds twenty years old. On the other hand, Lord Cairns does not propose that the registration of an indefeasible title shall settle anything as to boundaries. The owner of the estate will not be certified to be the owner of every inch of ground included by reputation in the estate. His neighbours will be as much able to dispute a boundary question with him as ever. The reasons given by Lord Cairns for leaving the question of boundaries still open seem conclusive. If the registration of a title fixed boundaries, no title could be registered until every adjacent landowner had been called on to make and sustain any claims to boundaries he might think proper. At present, although boundaries are very often uncertain, there is very little contention, and still less litigation, about them. But if every adjacent landowner had to assert or abandon his possible claims whenever a plot of land was sold, there would be an amount of squabbling and delay which would render registration almost impracticable. Thirdly, is the adoption of the system to be compulsory? Lord Cairns proposes that for three years there shall be no compulsion at all; and that after the expiration of three years there shall be compulsion in a very gentle, but, as the Chancellor believes, perfectly effectual, shape. The purchaser will be then so far under an obligation to register, that, until he does register, he will obtain, not a legal but only an equitable title. The inconveniences to which he would be thus subjected are of a kind too technical to dwell on, but they are sufficient to make every prudent solicitor advise his client in ordinary cases to register; and every one knows that, in land purchases, what the solicitor advises is, in ninety-nine cases out of a hundred, practically done.

Lord Cairns, like Lord Selborne, adds to his main

Digitized by Google

measure a subsidiary Bill for shortening the periods of limitation in respect of suits relating to real property. The periods of forty years, twenty years, and ten years, fixed by the Act of William IV. are to be cut down to thirty years, twelve years, and six years respectively. Lord Cairns has, indeed, done little else than make Lord Selborne's Bill slightly milder. The period after which some sort of compulsion was to be introduced was fixed by Lord Selborne at two years, while the conservative Chancellor tries to make his landed friends slightly more comfortable by substituting a period of three years. Where Lord Selborne, in altering the Act of William IV., chose ten years and five, Lord Cairns gives a little longer grace, and chooses twelve years and six. The recognition of absence beyond the seas as a ground for the extension of the time during which suits relating to real property may be brought was abolished by Lord Selborne in his Bill of last year, on the ground that in these times of locomotion and newspapers a man beyond the seas is practically as likely to be aware of his rights as a man staying in the United Kingdom. Lord Cairns last year objected to the innovation, and, as he was silent on the subject on Thursday, it may be presumed that he still retains his opinion. The Chancellor has a third measure of his own, which is beyond the scope of Lord Selborne's Bills of last year. This measure proposes to remedy some technical faults in the existing law of vendors and purchasers, which Lord Cairns thinks give rise to needless inconvenience. On the whole, the Chancellor's scheme, or rather the scheme of the two Chancellors and Vice-Chancellor Hall, will probably be found a safe and simple one, although its operation must necessarily be slow, and must always be limited. It is, as it purports to be, merely a scheme for simplifying the transfer of land. With interests in land apart from transfers it makes no pretensions to deal. Land that is not sold or meant to be sold will be unaffected by it, and it will be only gradually that any great part of the land of England will get on the register. But the saleable value of land that is once on the register will be so much increased that landowners will be inclined more and more to take advantage of the Act, and will like to think that they have augmented the market value of land with which they have no intention of parting. At first the Act would make little practical difference, but time would extend the sphere of its beneficial effects, and it may be confidently expected that before a quarter of a century has elapsed a very considerable portion of English land would be so held that it could be transferred to a purchaser quickly and at a very moderate cost.—*Saturday Review.*

The *Vicksburg Herald* gives the following account of a little judicial unpleasantness which recently occurred in the Court House at Vicksburg, Mississippi:—"It is no secret, we believe, that Chief Justice Peyton and Justice Simrall have not maintained the most pleasant relations with Justice Tarbell, and it has been rumoured that the two former have been in the habit of indulging in language highly derogatory to the latter. Last Monday, as the members of the court were about leaving the consultation chamber for the court-room, Chief Justice Peyton suggested a delay, in order that he might proceed to designate a reporter of the decisions of the Supreme Court, a position recently made vacant. To this proposition, the report that reaches us goes on to say, Justice Tarbell responded by saying, 'I see no necessity for my remaining, as I understand the person who is to be made reporter has already been determined on, and my vote, no matter how cast, cannot change the result.' Chief Justice Peyton took umbrage at this remark, and proceeded to manifest his indignation in language much more forcible than polite. We are ignorant of the precise words used by Chief Justice Peyton, but it is understood that some of the terms applied by him to Justice Tarbell induced that functionary to make a step forward. Mistaking this for a hostile movement, our Chief Justice at once prepared for 'action.' With a promptness and celerity that would do no discredit to a much younger man, he drew his knife and 'presented arms' to Justice Tarbell, and but for the prompt interference of Justice Simrall, it is believed that the floor of the temple of justice would have been stained with the blood of one of its own ministers."

QUARTERLY INDEX TO SUBJECTS OF CASES.*

Administration summons; real estate; creditor obtaining, not joining the other creditors. *Re M'Keown, deceased.*—R. 18.

Administratrix; judgment against, *de bonis propriis*; non-liability of assets to seizure. *Williams* v. *Hepenstall.*—R. 6.

Affidavit; death of deponent; omission to state, in notice of filing. *Evans* v. *Cooke.*—R. 17.
- defective jurat; joint affidavit with single jurat; taken before Commissioner in Canada, description of Commissioner. *Re Nixon's Estate.*—R. 30.
- supplemental, in support of conditional order. *Re Kearse.*—Mis. 54.

Appeal from Quarter Sessions; power to adjourn to next Assizes. *Hughes* v. *O'Donnell.*—Mis. 137. (Note—The liberty given was "to appeal at the next Assizes," and it was argued that the appeal should be heard at the Assizes next following the Q.S. See per O'Brien, J., *Re Kearse*, 8 Ir. L. T. R. 16; *Re Byrne, minors*, 7 ib. 197).

Arrangement; judgment against arranging debtor; payment of costs in full. *Re Anon.*—R. 8, 27.
- advertisement of sale of premises. *Re J. N.*—Mis. 64.
- debts barred by statute of limitations; proof. *Re J. F. B.*—Mis. 109.

Attorney; articled clerk of, holding office while serving. *Re Anon.*—Mis. 54.
- striking off the roll for misappropriation. *Re Anon.*—Mis. 93.
- liability of, to make good worthless security. *Mackett* v. *Baylis.*—Mis. 125.
- privilege of; production of documents. *Sankey* v. *Alexander.*—Mis. 136.
- attachment against (see Debtors Act).

Bankruptcy: (see *Arrangement.*)
- act of; imprisonment for non-payment of money; arrest under Debtors Act, sec. 7. *Re B. ex p. Hester.*—Mis. 109.
- act of; trust assignment of all property for all creditors; estoppel of creditor from relying on. *Re S.*—R. 43.
- certificate of conformity; failure to pay 10s. in £1; audit meeting not held. *Re Parker.*—Mis. 109.
- debt of petitioning creditor; judgment-debt, costs, and interest. *Re T. Irwin.*—Mis. 54.
- debt of petitioning creditor; non-trader; rent accruing after, on lease executed before the passing of the B. A. Act, 1872. *In Re M.*—R. 84.
- debts, proof for; bill of costs, not taxed. *Ex p. Nicholl.*—Mis. 93.
- debts, proof for; bills of exchange; production of, on proof. *Ex p. Jacobs.*—Mis. 156.
- debtor's summons; claim arising out of partnership disputes; staying proceedings without security. *Ex p. Bowers.*—Mis. 71.
- disclaimer of lease by assignee in bankruptcy; time for, extended. *Re Boyle.*—Mis. 88.
- infant; liability of, to be made bankrupt. *Re Landon.*—Mis. 115.
- married woman; liability of, to be made bankrupt. *Ex p. Holland.*—Mis. 124.
- reputed ownership; goods bought when purchaser insolvent. *Re T. O'Connor.*—Mis. 64.
- restraining action; debt incurred by fraud. *Re Barrett.*—Mis. 144.
- trade assignee, appointment of; nominee having no personal interest; creditor out of the jurisdiction. *Re Bromfield.*—Mis. 137.

Bills of Exchange Act; leave to defend; affidavit in reply showing matter of replication. *Rowan* v. *White.*—Mis. 54.

---

* The numerals with R. prefixed refer to the pages of the IRISH LAW TIMES REPORTS. The numerals with Mis. prefixed refer to the pages of the miscellaneous portion of the Journal.

Digitized by Google

Bills of Sale Act; conditions to be written on bill; payment by instalments. *Ex p. Southam.*—Mis. 156.
Building society; reasonable fines. *Re Tierney's Estate.*—R. 29.

Carrier; breach of contract to carry in reasonable time; damages. *Collier & Wife* v. *D. W. & W. Ry.*—R. 24.
condition exempting from liability for loss of goods. *Ranahan* v. *M. G. W. Ry.*—R. 34.
value of goods, what constitutes within Carriers' Act. *Moscrop* v. *L. & Y. Ry.*—Mis. 33.
Consent for judgment; blank date; contracting out of 177 & 178 G. O. 1854. *Arkins* v. *Magrath.*—R. 21.
Coroner; bringing prisoners before. *Re Marshall*—R. 1; *Re Maginnis and Campbell*—R. 20; *Re Claffey*—R. 20.

Debtors Act: (see Bankruptcy.)
order for payment by instalments; proof of means. *Sturgeon* v. *Robinson*—R. 13; *Sommet* v. *Dormoy, ib.* n.; *Moore* v. *Gaussen.*—Mis. 108.
order for payment by instalments; jurisdiction of judge in Consolidated Chamber. *O'Donnell* v. *Smith.*—R. 32.
arrest of absconding defendant; prejudice to plaintiff in prosecution of action. *M'Blain* v. *Weir.*—R. 31.
arrest of absconding defendant; delay in marking judgment; discharge. *Hester* v. *Byrne.*—Mis. 88.
attachment of solicitor, for non-payment of money ordered to be paid in his capacity of solicitor. *In re W.*—R. 51.
arrest on civil-bill decree for debt contracted after the Act; *habeas corpus.* *Re Kearse.*—R. 14.
substituted debt; new security; interest after, on debt contracted before the Act.—*Arkins* v. *Magrath.*—R. 21.
judgment for debts before and after Act; amendment. *Shaw* v. *Dunlop.*—Mis. 88.

Ejectment on title; defence, after time for expired; affidavit of merits. *Galvan* v. *Nunan.*—Mis. 109.
Election (Parl.); violation of secrecy of ballot. *Queen* v. *Unkles.*—R. 38.
stating case; jurisdiction of judge on the rota. *O'Donel* v. *Tighe; Shiel* v. *Ennis.*—R. 42.
inspection of ballot papers. *Re Athlone Petition.*—Mis. 88.
abatement of petition on dissolution of Parliament. *Re Exeter Petition.*—Mis. 81.
agents, unlawful acts of; liability of candidate for. *Taunton Petition.*—Mis. 79.
particulars; time when to be furnished. *Wakefield Petition.*—Mis. 156.
polling booth; right of returning officer to exclude candidate from. *Clementson* v. *Mason.*—Mis. 156.

Fee-farm grant; execution of, by the master. *Ex parte Walsh.*—R. 37.

General orders; power to contract out of operation of. *Arkins* v. *Magrath*—R. 21.

Interest; charging interest upon. *Arkins* v. *Magrath.*—R. 21.

Judgment, setting aside; writ served on agent, but not forwarded. *Pim* v. *Sheehan.*—Mis. 108.
final, marked for unliquidated demand; interest. *Minors* v. *Purvis.*—Mis. 108.

Land Act, 1870; lease for lives renewable; compensation for improvements; head landlord liable for; measure of compensation. *Comerford* v. *Sawrey.*—R. 25.
lease executed after the passing of the Act; covenant to pay rent "over and above all taxes, charges, and impositions;" effect of, as to county cess. *Hely* v. *Kennedy.*—R. 26.
agricultural or pastoral tenancy; notice to quit; stamp. *Spunham* v. *Walsh.*—R. 27.
administration limited to purposes of the Act; appointment of administratrix. *Kavanagh* v. *Power.*—R. 33.
stranger treated as tenant; compensation for disturbance; amount lodged in Court; estoppel. *Cheevers* v. *Morgan.*—R. 33.
town-parks; notice to quit; stamp. *Trustees of Lord Kilmorey* v. *Anderson.*—Mis. 109.
Licensing Act; bona fide travellers. *Anon.*—Mis. 81.

Magistrates; jurisdiction ousted by question of title. *R.* v. *Js. of Donegal.*—Mis. 136.
dismiss by, without prejudice; summons under the Ballot Act. *Queen* v. *Unkles.*—R. 38.
Married woman; examination of, by Commissioner. *Re Crawford and Blakely Estate.*—R. 17.
Married Women's Prop. Act; husband tenant of, and resident in house where wife carries on business. *Cosstick* v. *Laporte.*—Mis. 23.
non-liability of married woman to be sued; carrying on business apart from husband. *M'Govern* v. *Hinkey.*—Mis. 41.
legacy bequeathed to wife before marriage; separate use.—*Lane* v. *Oakes.*—Mis. 115.
Master and servant; injury to servant by negligence of fellow-servant. *U. P. Ry.* v. *Fort*—Mis. 157; *V. W. U. P. Co.* v. *M'Cue.*—Mis. 158.

Negligence: (see Carrier; Master and Servant.)
Notice (see Specific Performance.)

Production of documents; privilege; solicitor. *Sankey* v. *Alexander.*—Mis. 136.

Railway Company: (see Carrier).
Remitting action to inferior court; plaintiff resident abroad. *Clarke* v. *Pelling.*—Mis. 54.
scandalous matter in affidavits. *O'Driscoll* v. *Blackwell.*—Mis. 54.
visible means. *Ennis* v. *Murphy.*—Mis. 89.
unliquidated damages; power of appeal. *Walsh* v. *M'Manus.*—Mis. 109.
breach of promise of marriage. *Cudden* v. *O'Brien.*—Mis. 89.
where question of forgery raised. *Hacket* v. *M'Neill.*—Mis. 89.
where question of forgery raised; no means of recovering under decree against defendant. *Flanagan* v. *Watson.*—Mis. 54. (Note.—There was a question of forgery raised in this case, an l it was *chiefly* on that ground the motion was refused.)

Security for costs; defendant in interpleader. *Greham* v. *Kavanagh.*—R. 8.
notwithstanding Judgments Extension Act. *Thomas* v. *Cox*—R. 52; *Raeburn* v. *Andrews.*—Mis. 81.
after defence filed; special circumstances. *Oates* v. *Caraher.*—Mis. 64.
after extension of time to plead. *Oates* v. *Culleen.*—Mis. 64.
by married woman, suing by next friend. *Savage* v. *James.*—Mis. 88.
Specific performance; parol agreement; part performance. *Paul and Stoker* v. *Gillman and Potter.*—R. 9.
constructive notice to purchaser of tenancy. *Carroll* v. *Keays.*—R. 47.
Subpœna to witness out of jurisdiction; power of Courts of Equity to issue. *Underwood* v. *Darracott.*—Mis. 64.
Substitution of service; serving defendant in person out of the jurisdiction. *Reede and Goodman* v. *Pipon.*—R. 18.
by registered letter. *Barrett* v. *M'Neight.*—Mis. 64.
where part of cause of action arises in jurisdiction. *Macken* v. *Ellis.*—Mis. 88.
Surrender by operation of law; acceptance of reduced rent by landlord. *Roche* v. *Roche.*—R. 7.

Venue, change of; delay in applying for. *Blayney* v. *Kirwan.*—Mis. 137.

Digitized by Google

DUBLIN METROPOLITAN POLICE COURT.

(Before Mr. Woodlock.)

March 27, 1874.—*The Licensing Act—Bona fide Travellers—Onus of proof.*

In this case Mr. Cantwell, proprietor of the Star and Garter Hotel and Restaurant, 16, D'Olier-street, was summoned for having, as alleged, violated the provisions of section 78 of the Licensing Act, 35 & 36 Vict., c. 94, by keeping his premises open for the sale of liquor at prohibited hours on Sunday, the 22nd of February.

Monroe appeared for the defence. Judgment was postponed, and now Mr. Woodlock gave his decision as follows:—

In this case the evidence given, on the part of the prosecution, was to the effect that, at a quarter to 12 o'clock at night, Police-sergeant 14 B observed two persons enter the defendant's place, and he (the constable) having gained admittance, found seated at several tables in a room about twenty six persons, with drink before them. The defendant told him that the persons were all travellers or lodgers. The sergeant then left the house, but watched it until near 1 o'clock; during that time he saw sixteen people leave the house. The defence was that there were thirteen beds in the house that night, eleven of which were occupied by some of the persons whom the sergeant had seen in the house, and that the others were believed by the defendant to be *bona fide* travellers, inasmuch as the house was always closed on week days at a quarter to 11 o'clock, and on Sundays before 9 o'clock, and from that time the porter was stationed at the door, and no person who knocked was admitted unless he was a lodger or declared himself a *bona fide* traveller. Many persons had been refused admittance when they had not given a proper account of themselves, showing that they were travellers. From the evidence it appeared that six of the persons, who on the night in question were in defendant's establishment, were persons who might fairly be deemed travellers within the meaning of the decisions upon that subject; eleven were lodgers in the house; but as to the remainder of the twenty-six, there was not any evidence to show what they actually were. As to those the case stands in this way:—Mr. Cantwell swore that he took every precaution to prevent the admission of any but *bona fide* travellers, and he believed that these nine persons were travellers; and I rely on every word that Mr. Cantwell has stated. Mr. Cantwell's conduct was undoubtedly *bona fide*, and the point simply comes to this—whether these precautions and the *bona fide* belief entertained by Mr. Cantwell constitute sufficient defence for him. Now, I was referred, in the first place, to a number of cases establishing that the *onus* of proving that persons found drinking were not travellers lies upon the prosecutor; but, as to those cases it is sufficient to say that they were decided, not upon the Licensing Act of 1872, but upon an earlier statute; and with respect to the Licensing Act of 1872, the Court of Queen's Bench in England, in *Roberts*, appellant, *Humphreys*, respondent (Law Rep. 8, Q.B. 483), has decided expressly that the burden of proof in these cases lies upon the defendant. The offence under the present Act consists in the being at all open for sale at the prohibited hour. It is for the defendant to bring himself within the provision in the statute by showing that his customers belonged to one of the two classes of lodgers or travellers. In the same case of *Roberts* v. *Humphreys* the point was raised, also, which has been raised here, as to the effect of the defendant's *bona fide* belief that the persons to whom he supplied drink were travellers. The Court there did not decide that point, because in the case stated there was no express finding by the magistrates as to the defendant's belief, and the case was remitted to the magistrates for a finding on that point. And the question being thus, to some extent, open, it devolves upon me to give a decision upon it. I feel myself bound to decide it against the defendant. The Act of Parliament makes an exception in favour of lodgers and of *bona fide* travellers—not of those whom the innkeeper believes to be *bona fide* travellers. The case of *Roberts* v. *Humphreys* establishes that the burden of proof that the parties *are* travellers (not that the innkeeper believes them to be so) lies upon the defendant. In addition to the plain words of the statute, I cannot shut my eyes to this, that though the point was not expressly decided in *Roberts* v. *Humphreys*, still two out of the three Judges in that case, Blackburn, J., and Archibald, J., expressed their opinion strongly that nothing but positive proof that the parties *actually were* travellers would exonerate the defendant. In fact, the matter stands shortly thus. It lay upon Mr. Cantwell to prove—which he had not proved—that the eight or nine persons alluded to were *bona fide* travellers. The Court knows nothing of them, and I cannot take upon myself to decide upon simply the belief of the defendant, and must, accordingly, rule against him. It has been submitted that in England, under the Licensing Act, any person who falsely represents himself to be a traveller is liable to a penalty of £5, and that this did not apply to Ireland, whilst the licensed person lies under the hardship of a prospective indictment if he refuses refreshments to one calling himself a traveller. No doubt, that is an anomaly in the law which it would be desirable to have considered in any amendment which may be hereafter made. At present I must act on the law as I find it, but I shall only impose the mitigated penalty of 20s., because I think the defendant acted in good faith, and with a desire of keeping within the law; I will direct the conviction not to be endorsed upon the licence; and, if the defendant desires, I shall willingly state a case for a Superior Court, in which I will find expressly that he *bona fide* believed the nine parties in question to be travellers, though there was no evidence of their being so in fact.

THE LATE SIR W. H. BODKIN.

Our readers will learn with regret the death of Sir W. H. Bodkin, which occurred on March 26. The late Sir William, who was descended from an ancient Irish family of the County Galway, was born in the year 1791, was called to the bar by the Honourable Society of Gray's Inn in 1826, and for several years went the Home Circuit, practising largely in criminal matters at the Middlesex, Westminster, and Kentish Sessions, and also at the Central Criminal Court. He also held for several years the Recordership of Dover. In 1841 he was returned to Parliament in the Conservative interest, as the colleague of Mr. J. Stoddart Douglas, in the representation of Rochester, defeating Lord Melgund (now Earl of Minto) by the narrow majority of two votes.

The deceased gentleman was a bencher of Gray's Inn, and a Deputy Lieutenant of Middlesex, and received the honour of knighthood in 1867.

His colleague, Mr. Serjeant Cox, in the Second Court of the Middlesex Sessions, said, in reference to the death of Sir William Bodkin:—It is my painful duty to announce to you the death of Sir William Bodkin. I cannot do so without expressing what, I am sure, will be the feeling of all who are connected with this Court, that an admirable judge and a most excellent man has departed from among us. Sir William Bodkin was unrivalled in all that is required by a criminal judge. He had almost by intuition the faculty of seeing at a glance into the heart of a case—discerning the very point at issue, estimating the various degrees of guilt, and properly apportioning punishment to crime. He tempered justice with mercy, and combined kindness with firmness. During the five years that I was so intimately associated with him in the duties of this Court, I found him always ready and pleased to give me the help of his long experience, and I am indebted to him for whatever knowledge I may have acquired of the duties of a judge. I witnessed the first approach of his terrible malady; he knew from the beginning the fatal end, but he spoke of it with resignation, and it scarcely seemed to affect his usual cheerfulness. I am informed that to the last he endured his fearful sufferings with the patience and resignation of a Christian as the will of God, and that he died, as he had lived, without an enemy and at peace with all the world. He was ever to me a kind and faithful friend, and I could not make the sad announcement of his death without giving this expression to the emotions that fill my mind.

Mr. Montagu Williams, the senior member of the bar who was present in this Court, in a few well-chosen phrases,

Digitized by Google

expressed the respect and admiration which the deceased assistant-judge had inspired in the minds of those who, like himself, had known him long both as a judge and as a private friend.

CHARGE OF LIBEL AGAINST MR. PLIMSOLL.

The action brought by Messrs. Haughton and Smith, of Liverpool, against Mr. Plimsoll, M.P., for libel, was tried on Tuesday at the Liverpool Assizes, before Mr. Baron Amphlett. The case for the plaintiffs was stated by Mr. Russell, Q.C. The alleged libel was contained in an appendix to "Ship Ahoy," the Christmas number of *Once a Week*, the matter published purporting to be extracts from Mr. Robins's evidence before the Royal Commission as to the loss of the *Satellite*, a vessel owned by the plaintiffs. The contention now was that the version of Mr. Robins's evidence given in this appendix was grossly garbled, and that the effect was highly injurious to the plaintiffs, inasmuch as the extracts given conveyed the idea that the vessel had been sent to sea in an unseaworthy condition wilfully, and in order to secure a profit to the plaintiffs. Counsel for the plaintiffs argued that, however excellent might be the general or special objects of Mr. Plimsoll, he was not justified in using means to promote them which tended to injure men quite as honourable and pure as himself.

After hearing evidence the Judge said that the question whether the publication was *bona fide* and without malice was one for the jury. The evidence having shown that the vessel was practically seaworthy, and the loss unpreventible by human foresight, he suggested that it would be handsome and proper on the part of Mr. Plimsoll to express regret that he had formed a wrong impression on the subject. Mr. Holker said he did not dispute that the vessel was seaworthy, after the evidence adduced. The result of an apology, however, would be that Mr. Plimsoll would be required to pay all the costs of the litigation. Mr. Russell then reviewed the evidence for the plaintiffs. Mr. Holker, in addressing the jury for the defence, protested against Mr. Plimsoll being expected to fall down on his knees and apologise. The learned Counsel warmly vindicated the purity and sincerity of the hon. gentleman's motives and action. The Judge, in summing up, said that the report of the Royal Commissioners was, in his opinion, a Parliamentary paper within the meaning of the Act, and on that point the jury could not find for the plaintiffs without being satisfied that the publication by the defendant was not *bona fide* and without malice. The jury found for the defendant, coupled with an expression of regret that plaintiffs should have been compelled to bring the action.

We are very glad to learn that Mr. Plimsoll has been acquitted by a Liverpool jury. His offence, if offence it was, was of the most venial kind. In the Christmas number of *Once a Week*, he made some remarks on his own subject of Unseaworthy Ships, and he mentioned the case of the *Satellite*, a vessel which he alleged was sent to sea by the owners, Messrs. Houghton and Smith, in an unseaworthy condition. His authority for the statement was the evidence given by Mr. Robins before the Royal Commission. There can be no doubt that Mr. Robins was misinformed. The surveyors of the American Lloyd's gave the ship a good character, and we may assume that Mr. Robins spoke from hearsay. Still, in citing him, Mr. Plimsoll was merely retailing the contents of a document which had been printed by order of the House of Commons, and which was, therefore, privileged. Students of constitutional history will remember the famous battle between the Court of Queen's Bench, in Lord Denman's time, and the House of Commons, and will recollect that to put an end to the difficulties which arose out of *Stockdale* v. *Hansard*, there was passed, at the instance of Earl Russell, an Act making privileged what was printed by the orders of the House. It is under cover and by virtue of this Act that Mr. Plimsoll escapes. We must own that in the course of this agitation he has been not too careful about the accuracy of his statements. But it is right to add that he, more than any reformer, has been the victim of actions, most of which have luckily failed. We have yet hopes, for the credit of the English people, that their enthusiasm in the cause will not pass away without leaving upon the Statute-book some measure adequate to prevent the waste of human life, the fact of which Mr. Plimsoll has established.

PROPOSED IRISH LEGISLATION.

In the House of Commons thirteen bills have been introduced relating exclusively to Irish matters:—1, by Mr. Nolan, to amend the Landlord and Tenant (Ireland) Act, 1870; 2, by Sir John Gray, to amend the same Act with a view to facilitate the acquisition of property in land, in fee and in fee farm, by tenants in Ireland; 3, by Mr. P. J. Smyth, to assimilate the law of Ireland respecting public meetings to that of England; 4, by Mr. Sullivan, to relieve traders in intoxicating Liquors in Ireland from certain restrictions in carrying on their trade; 5, by Mr. Butt, to extend to municipal corporations in Ireland certain privileges now exercised and enjoyed by municipal corporations in England; 6, by Mr. Bryan, to assimilate the borough franchise in Ireland to that in England; 7, by Mr. Butt, to assimilate the law regulating the municipal franchise in Ireland to that regulating it in England; 8, by Viscount Crichton, to alter the shooting season for grouse and certain other game birds in Ireland; 9, by Mr. R. Smyth, to prevent the sale of spirituous liquors in public-houses on Sunday in Ireland; 10, by Mr. Vance, to amend the laws relating to the appointment, duties, and payment of county coroners and expenses of inquests in Ireland; 11, by Sir Michael Hicks Beach, to amend the Acts relating to cattle disease in Ireland; 12, to amend the law relating to public health in Ireland; and 13, by Mr. O'Shaughnessy, to assimilate the law for the relief of the poor in Ireland to that of England by substituting union rating for the present system of rating by electoral divisions. Two of the foregoing measures are introduced by the Government. These thirteen bills form about one-fifth of the whole number of measures laid before the House of Commons during the present session. We ought not to omit mention of the Select Committee appointed on the motion of Mr. Bruen, to inquire and report on the working of the Irish jury system.

THE LORD CHIEF JUSTICE OF ENGLAND AND MR. WHALLEY.

The following is the text of the Report from the Select Committee on Privilege, to whom was referred the letter of the Lord Chief Justice of England to Mr. Speaker, informing the House of Commons of the commitment of Mr. Whalley for contempt of Court:—

"1. Your Committee have had before them two orders made by the Court of Queen's Bench in the Queen *versus* Castro, with the affidavits and exhibits upon which such orders were founded, the first dated the 21st of January, 1874, and the second dated the 23rd of January, in the same year.

"2. By the first of these orders Mr. George Hammond Whalley, then and now one of the Members for Peterborough was ordered to attend the Court of Queen's Bench to answer for his contempt in writing a certain letter and statement, which was printed and published in the newspaper called the *Daily News* of the 21st of January, 1874.

"3. By the second of these orders Mr. George Hammond Whalley was adjudged to be guilty of contempt in having written such letter and statement, and it was thereupon ordered that he should for such contempt pay a fine to the Queen of £250, and be imprisoned in Her Majesty's gaol at Holloway until such fine be paid. These orders, and the affidavits and exhibits upon which they are founded, are printed in the Appendix.

"4. Your Committee, having had such orders and affidavits proved before them, proceeded to afford to Mr. George Hammond Whalley an opportunity of making such observations on the matters referred to them as he might desire to offer.

"5. Mr. George Hammond Whalley has put in a written statement, parts of which appear to your Committee to be irrelevant to the specific object of the present inquiry; but

Digitized by Google

your Committee consider that it would not be expedient to omit any portion of what he deemed essential to lay before them.

"6. Under all the circumstances of the case, your Committee are of opinion that the matters referred to them do not demand the further attention of the House.

"7. And your Committee also desire to express their opinion that the Lord Chief Justice fulfilled his duty in informing the House of the fact that a member of the House of Commons had been imprisoned by the Court of Queen's Bench."

The Report, with minutes of evidence, was ordered to lie upon the table, and to be printed.

THE COURT OF BANKRUPTCY, IRELAND.

Order Regulating Fees to be taken under the Bankruptcy, Ireland, Amendment Act, 1872.

We, the Right Honorable Sir JOSEPH NAPIER, Baronet, the Right Honorable JAMES A. LAWSON, and WILLIAM BROOKE, Master in Chancery, the Lords Commissioners for the custody of the Great Seal of Ireland, do, by virtue of the powers vested in us by the "Bankruptcy (Ireland) Amendment Act, 1872," prescribe that the Scale of Fees hereto annexed shall be the Scale of Fees to be charged for any business done by the Court of Bankruptcy in Ireland, or by any Officer thereof, or by any Chairman of Quarter Sessions, or any Clerk of the Peace in Ireland, under the "Irish Bankrupt and Insolvent Act, 1857," as amended by the "Bankruptcy (Ireland) Amendment Act, 1872," or under the said "Bankruptcy (Ireland) Amendment Act, 1872;" and that such Scale of Fees shall be substituted for the Stamp Duties in lieu of Fees mentioned and enumerated in the Schedule Z, annexed to the said "Irish Bankrupt and Insolvent Act, 1857," which are hereby abolished as to all proceedings in any matter of Bankruptcy or Arrangement commenced on or after the 1st day of April, 1874.

Provided that the Fee of 1½d. for each folio of every Office copy shall be taken in respect of all copies of all proceedings of Record, whether in Bankruptcy, Arrangement, or Insolvency, in the Court of Bankruptcy, which shall be made on and after the said 1st day of April, 1874.

TABLE A.	£	s.	d.
1. Every Petition of Bankruptcy, - -	2	0	0
2. Every Petition of Arrangement, - -	2	0	0
3. Every Debtor's Summons, - -	1	0	0
4. Every Bond, with or without Sureties, -	0	5	0
5. Every Subpœna or Summons other than a Debtor's Summons, - - - -	0	1	0
6. Every Requisition for Search by any person other than the Bankrupt, Arranging Debtor, Assignee, or Trustee in the matter, - - - - - -	0	1	0

7. On every Account of the Assignees, and on every certified Statement of Accounts by a Trustee, Stamps denoting a Duty of 10s. on each £25, or fractional part of £25 of the gross amount of assets (other than the proceeds of the sale of any part of the Estate the subject of any Mortgage, Charge, or Lien, sold at the instance of the Mortgagee) realized or brought to credit up to £500, and Stamps denoting a Duty of 5s. on each £100, or fractional part of £100 of the gross amount of such assets realized or brought to credit over and above the sum of £500.

8. On the Account of the Assignees in every Arrangement by a Debtor with his Creditors, and in every composition after Bankruptcy, Stamps denoting a Duty of 10s. on each £25, or fractional part of £25 of the gross amount of assets (other than the proceeds of the sale of any part of the Estate the subject of any Mortgage, Charge, or Lien, sold at the instance of the Mortgagee) realized or brought to credit, or the gross amount of the composition whether in Arrangement or after Bankruptcy up to £500, and Stamps denoting a Duty of 5s. on each £100, or fractional part of £100, of the gross amount of assets, realized or brought to credit, or the amount of such composition over and above the sum of £500.

9. On the certified Statement of Accounts by a Trustee, or on the Instrument containing the terms of a Composition, or General Scheme of Settlement of the affairs of a Bankrupt, submitted for the approval of the Court pursuant to the 102nd Section of the Act of 1872, Stamps denoting a Duty of 10s. on each £25, or fractional part of £25 of the gross amount of assets realized or brought to credit, or of the amount of such composition up to £500, and Stamps denoting a Duty of 5s. on each £100, or fractional part of £100 of the gross amount of such assets, or of such composition over and above the sum of £500.

10. On the Account of the Official Assignee, or of the Trustee, for the proceeds of the sale of any part of the Estate or Effects of the Bankrupt or Arranging Debtor, the subject of any Mortgage, Charge, or Lien, sold under the directions of the Court at the instance of the Mortgagee, Stamps denoting a Duty of 5s. on each £100, or fractional part of £100 of the gross amount produced by such sale.

The duty in any of the foregoing cases shall be the first charge upon any amount realized or brought to credit, but shall not in any case exceed the sum of £50; and the proper Duty shall in the case of a composition, whether in Arrangement or after Bankruptcy, be payable and paid by the person making the composition, over and above the same.

TABLE B.	£	s.	d.
11. Every office copy, each folio of 72 words, or fractional part of a folio, -	0	0	1½
12. To the Clerk of the Peace on every Order referring all or any part of the proceedings in a Bankruptcy to the Chairman of Quarter Sessions, under the 81st section of the Act of 1872, - -	0	10	0

Dated this 20th day of March, 1874.

JOSEPH NAPIER, *C.S.*
JAMES A. LAWSON, *C.S.*
WILLIAM BROOKE, *C.S.*

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby sanction the foregoing Scale of Fees, and do direct that the Fees to be taken by Stamps shall be those in Table A, and that the Fees mentioned in Table B shall be taken in money; the Fee No. 11 to be collected and accounted for in such manner as the Treasury shall direct, and the Fee No. 12 to be received by the Clerk of the Peace and retained by him for his own use.

We further direct that the Fees Nos. 1, 2, 3, 4, 5, and 6, in Table A, shall be taken by impressed stamps, and the Fees Nos. 7, 8, 9, and 10, shall be taken by adhesive stamps.

And we further direct that the Stamps shall be impressed or affixed or the money paid in respect of every Fee before the proceeding is had in respect of which the fee is payable, and that the charge to be made by the *Dublin Gazette* for the insertion of each Notice directed by the Acts of 1857 or 1872, or by the General Orders, shall be Seven Shillings and Sixpence.

Dated the 23rd day of March, 1874.

J. D. H. ELPHINSTONE.
MAHON.

Digitized by Google

DEBTS PROVABLE IN BANKRUPTCY.

A very important question in bankruptcy with reference to what are "debts due in the course of his trade or business" (sub-sect. 5, sect. 15 Bankruptcy Act, 1869), is reported as having been decided by the Lords Justices: (*Ex parte Kemp; re Fastnedge*). The debts in question were based upon certain marginal notes given by bankers when discounting bills deposited with shipping documents. Such bills are usually discounted to the extent of 70 per cent. and upwards, "marginal notes" being given as to the balance on the bills remaining due to the pledgors. The question was whether the sums held back by the banks were in the ownership and disposition of the persons entitled to receive them on the bills being honoured at maturity, and so passed to the trustee on the bankruptcy of such persons. Lord Justice James, on the 20th inst., read the written judgment of Lord Justice Mellish, who came to the conclusion that the word "due," as used in the Bankruptcy Act, means "payable," but that a debt is due although not immediately payable. It is clear that it would be absurd to hold that a debt which by its nature is payable at a future time is excluded from the list of debts due by or to a debtor. But where, as in the case of these marginal notes for balances, it is dependent on a contingency whether anything will ever be payable by the bankers there is no debt due, and it has therefore been held that such debts are not within sect. 15, sub-sect. 5, and do not pass to the trustee under the bankruptcy of the pledgors.—*Law Times*.

THE NEWSPAPERS AND THE LEGAL PROFESSION.

A certain American newspaper—the *Troy Times*—having published some animadversions on a case which has been several times litigated, the *Albany Law Journal* makes the following remarks on the tendency of editors to criticise legal proceedings and attribute the worst motives to our profession:—

"A man who publishes or writes for a daily newspaper has a decided advantage over ordinary mortals. In the first place he forms the opinions of half his readers. Many men have no opinions except such as they derive from their daily newspaper, and if they ever change their minds it is only when, for some occult reason, their newspaper changes, or they change their newspaper. Then again, the frequency with which a man may reiterate his opinions gives the newspaper writer an advantage. It is of little use to enter into a controversy with a newspaper. It always has the last word, and the luckless individual who assumes the task of correcting it stands as little chance of success as he would of smashing any particular mosquito of a cloud of such insects which beset him on a north woods lake. 'Damnable iteration' is too much for him. But most especially, the impersonality of the newspaper writer confers an advantage on him. To most readers he possesses respectability, wisdom, even venerableness. Most readers, if they stop to think about him, imagine him as a man past middle-age, deeply read in human lore, of a scholarly and recluse disposition, little interested in worldly matters except as a critic, who sits in his secluded *sanctum* and passes candid, unbiassed, severe, intelligent, and highly-moral judgments upon the actions of the busy outer world. Now, what is the fact? Who are these accusers who thus arraign the great body of a learned and respected profession? If we should trace this awful oracle to his hiding-place what should we find? A smooth-faced boy just out of school; a long-haired Bohemian, who goes to bed when his shirt is being washed; a thirsty quill-driver, who derives the inspiration for his terrible attacks on governments and peoples, professions and individuals, from a beer shop just round the corner, and his learning from guide-books and dictionaries; an unhappy and sour person, who, having tried his hand unsuccessfully at a variety of occupations, now settles down to editorial labour, and vents his spleen with safety to his person, and gets pay for it besides. Not that this is always, or even generally so, but it is frequently the case. So that in perusing the newspapers we ought to judge of their opinions, not from any presumed experience, wisdom, or morality in the writers, but from the intrinsic merits of the sentiments advanced. We are willing to learn wisdom and get understanding even from any of the classes of writers whom we have described, if by chance they seem to utter it; but if the utterances seem foolish we do not propose to adopt them because of any imaginary virtues in the writer.

"Now, there is no subject of newspaper comment that receives more editorial attention and less editorial justice than the legal profession. We may do these gentlemen of the press injustice, but when we read such stuff from an influential and intelligent newspaper like the *Troy Times*, we instantly fall to speculating as to the probable antecedents and qualifications of the writer; and we generally attribute such sentiments to some person who once studied for our profession, but who, finding the acquirements necessary to pass the examination for admission to practice so ridiculously small, declined to pass; or who, having condescended to be admitted, discovered that his morality was too severe for 'human nature's daily food,' and left the wickedness of our profession with loathing, and sought relief in the pure and unpurchasable occupation of his sublime talents in writing upon a daily newspaper. We know nothing of the particular individual who wrote the particular article quoted as the text for these remarks. We have no guess or suspicion as to his personality. But we do know that the article quoted is but a fair specimen of the frequent utterances of the *Troy Daily Times* in regard to our profession, and we reiterate that we always suspect the authorship of such articles to be attributable to disappointed lawyers, or to those who have at some time deservedly suffered at the hands of lawyers."

EXTRADITION TREATY WITH AUSTRO-HUNGARY.

The Extradition Treaty between Her Majesty and the Emperor of Austria, further described in it as King of Bohemia and Apostolic King of Hungary, to which we referred on Saturday, is published in full in Friday's *Gazette*. The Treaty is remarkable as the first convention published which has been concluded since the passing of the Extradition Act Amendment, Act, 1870, which enlarged the area of extradition offences, and added to them, among other things, perjury and the subornation of perjury. The Treaty is in three languages—English, German, and Maygar—and it provides that each Sovereign shall, without expense to the other, arrest, detain, and convey to the frontier the persons to be surrendered. A fugitive criminal shall be set at liberty unless sufficient evidence for extradition be produced within two months from the date of apprehension; and extradition shall not be granted if the offence is of a political character, or if the refugee prove that the demand for his surrender is, in fact, made in order to try and punish him for a political offence. Nor shall it be granted without preliminary investigation before a competent magistrate. Extradition will be granted for murder or the attempt; manslaughter; counterfeiting, altering, and uttering coin; and forgery or falsification of securities—in the latter case, if the extradition is granted from Austria, the Austrian penal laws shall be taken to supply the definition of the offence; if from Hungary the offence shall be determined by Hungarian laws and customs—obtaining money or goods by false pretences, crimes against bankruptcy law, statutory frauds by bailees bankers, agents, trustees, directors, members, or public officers of companies; rape, abduction, child stealing, kidnapping, and false imprisonment; burglary, arson, robbery with violence, threats with intent to extort, sinking or destroying a vessel at sea or the attempt, aggravated assaults on shipboard on the high seas, revolt or conspiracy to revolt, under the same circumstances, perjury or subornation of perjury, and malicious injury to property if the offence is indictable. It will be observed that "piracy by the law of nations" does not occur in this list, although it is found in the schedule to the Act of 1870, and in the Treaties with Belgium and Brazil. On the other hand the limitation of offences under bankruptcy laws to crimes of which bankrupts themselves are guilty, which occurs in the Treaties with Germany, Belgium, Brazil, Italy, Sweden, is no longer preserved. This extension, together with the addition of kid-

Digitized by Google

napping, false imprisonment, perjury, and malicious injury to property, may be traced to the Act of 1873. Accessaries are by general words included, provided that participation is punishable by the laws of both countries. Notice is given that extradition will not be granted unless the crime amount to what in Austria would be a "verbrechen," in Hungary a "buntett," in England an extradition crime under the Acts of 1870 and 1873. The provisions as to procedure follow the list of crimes. Ordinarily requisition must be made by diplomatic agents, but in urgent cases a warrant may be issued by a magistrate before such requisition, the formal demand been then made within fourteen days. Neither party undertakes to give up its own subjects, or persons against whom criminal proceedings are being taken, or punishment enforced in its own empire. The claim shall be barred by what in the country of refuge is held sufficient lapse of time, and if a criminal has offended several external Governments, the country most aggrieved shall have the right to vengeance. If all his crimes are equally grave the country first applying has priority. The Treaty applies to the Colonies, where, however, Her Majesty reserves the right to make special arrangements on the basis, as nearly as may be, of the Treaty. The Treaty was signed at Vienna on the 3rd of December, 1873 by Sir Andrew Buchanan, G.C.B., and by Count Julius Andrassy, Grand Cross of the Order of St. Stephen. Ratifications were exchanged on the 10th inst., the order in Council under the Act of 1870 was made on the 17th, and the provisions of Treaty, so far as they are consistent in the statutes, will be law of the land on and after the 30th of this month.

RECENT DECISIONS.

(Carroll v. Keays; Keays v. Carroll, 8 *Ir. L. T. R.* 47.)

Knowledge by a Purchaser of Tenancies or Charges as affecting his Right to Compensation.

The judgments delivered by the Lords Justices in a case of *Caballero* v. *Henty*, heard on the 11th inst., will, it is to be hoped, prevent any further development of the pernicious and, as we believe, unfounded doctrine propounded by Lord Romilly in *James* v. *Lichfield* (21 L. T. Rep. N. S. 521; L. Rep. 9 Eq. 51). That doctrine, we may remind our readers, is that a purchaser who contracts to buy land which he knows to be in the occupation of a tenant cannot succeed in a suit against the vendor for specific performance, with compensation, although it should turn out that the tenant had a lease. In his judgment Lord Romilly is reported to have said: "The case of *Daniels* v. *Davison* (16 Ves. 249) determines that as between the tenant himself and the purchaser, the purchaser was bound to inquire, and cannot dispute the tenant's rights. Does that duty apply to the case between vendor and purchaser as well as between purchaser and tenant? I have found no case exactly in point, but the principle appears to me to be the same, and to be applicable to both cases. Why is the purchaser bound to inquire as regards the tenant, and yet not bound to inquire as regards his rights against the vendor? The principle is thus stated in argument in that case: 'Whatever puts a purchaser upon inquiry shall be held notice, and if, therefore, he knows that a tenant is in possession he is considered as having notice of the whole extent of his interest,' . . . if the purchaser choose to bind himself by agreement with the vendor, knowing of the tenancy, but without having accurately ascertained what was the extent and character of it, and what the results of such inquiry would have led to, he must, as it appears to me, be bound in the same manner as all other persons. I think also that no distinction can properly be drawn in a court of equity because the matter rests in contract, and the conveyance of the legal estate has not been made to him."

The whole of this ruling is, as it seems to us, utterly unsound. The analogy is faint indeed between the case of a tenant in possession at the time of a legal conveyance to a purchaser for value, asserting as against such purchaser equities of which the fact of possession is held to be sufficient notice, and the case of a vendor who, while contracting to sell in terms which imply that the subject of sale is an estate in possession free from any lease, tenancy, or charge, afterwards turns round and, while admitting the existence of these or similar incumbrances, nevertheless insists that the contract must proceed as if they did not exist, and contends that from the fact of the land being in occupation the purchaser ought to have inquired, and as a consequence of inquiry might have ascertained the real nature of the occupiers' holdings and interest. Such an analogy can only be looked upon as the doctrine of constructive notice run mad. We observe, however, that even in *James* v. *Lichfield*, the case was not decided on the mere fact of the tenant's possession (which would have been sufficient to protect the tenant's own equities, whether the purchaser were actually aware of such possession or not), but on evidence that the purchaser did actually know that there was a tenant in possession. A similar remark applies to the cases of *Carroll* v. *Keays* and *Keays* v. *Carroll* (8 Ir. L. T. R. 47), in which we see, with some degree of amazement, that the Court of Appeal in Ireland, consisting of two judges so experienced as Lord O'Hagan and Lord Justice Christian, thought it incumbent on them to follow *James* v. *Lichfield* as an authority, although Lord Justice Christian said that that case was "actually startling from the length to which it goes." In *Caballero* v. *Henty* the Lords Justices very clearly pointed out the absurdity of expecting that a person contracting to purchase should make preliminary inquiries on the land as to the fact or nature of occupancy, and that the interval between the contract and the time of completion was the proper period for such investigations. The facts of the case of *Caballero* v. *Henty* did not call for any decision on the question as to the effect on a purchaser of actual previous knowledge on his part of the existence of a tenancy, lease, or charge not disclosed by the contract for sale.

The suit was one by a vendor for specific performance without compensation, under circumstances rendering success hopeless, and was unhesitatingly, and without a reply being called for, dismissed with costs by the Lords Justices in affirmance of the decision of the Master of the Rolls. The value of the case consists in the opinions elicited from the court by the line of argument adopted by the plaintiff's counsel. From those opinions it seems tolerably clear that the question as between vendor and purchaser is really one of description, and not of notice or knowledge—as to what, on the fair meaning of the contract, was the subject of it—as to whether the contract was for an estate in possession, or reversion, free from or subject to tenancies, leases, or other charges.

It appears, also, that the Lords Justices were dissatisfied with the propositions of the late Master of the Rolls in *James* v. *Lichfield*.

We absolutely fail to see why a purchaser, as between himself and his vendor, is to be affected by the fact of his knowledge that there are tenants in possession; it is no business of his to make inquiries as to the nature of their holdings previously to entering into the contract. The vendor may be supposed to know his own business, and the nature of his own interest in his own estate, and if he undertakes to sell in words which imply that he is selling an estate in possession or free from charges, we think it clear that the purchaser is *primâ facie* entitled to insist on specific performance with compensation. If the purchaser knows no more than the fact of the estate being in the occupation of tenants, he is surely entitled to assume, as against the vendor, either that they are tenants at will, or that their tenancies will expire by effluxion of time before the day fixed for completion of the purchase, or that by some arrangement between them and the vendor he will be enabled to give possession at the appointed day. Taking the case most unfavourable for the purchaser, viz., that of his having actual and precise knowledge not merely of the fact of the land being in the occupation of tenants, but of the precise nature of their holdings and equities, and that those holdings and equities are of such a nature that it is improbable or impossible that a vendor could have intended to sell otherwise than subject to them—still we say that, even in such a case, although a suit by a purchaser for specific performance with compensation would fail on the ground of mistake (and mistake of which the purchaser was aware) on the part of the vendor, it would not, generally speaking, where the contract was, or was required to be in writing, be competent for the vendor to maintain any suit

Digitized by Google

for specific performance against the purchaser, and certainly not, except on the condition of granting compensation, in respect of the charges or tenancies.

On an assumption of the authority, or more properly of the value and correctness of *James* v. *Lichfield*, the Appeal Court of Ireland thought themselves bound to overrule the decision of Vice-Chancellor Chatterton, and to decree specific performance without compensation in respect of yearly tenancies at the suit of a vendor who had contracted to convey an estate in possession. It was there argued that notice of a lease was notice of all its contents, or at least of such as are fairly incidental, even as between vendor and purchaser, and that no doubt is so where there has been no misrepresentation or improper concealment, and where the existence of the lease appears expressly or impliedly on the face of the contract; beyond this we do not think the doctrine can be carried. Lord St. Leonards has intimated an opinion that it has already been carried too far.

The courts, and especially those of appellate jurisdiction, have repeatedly declared that the doctrine of constructive notice is not to be extended, and we have on several occasions thought it our duty to remark upon decisions of courts of first instance in which this rule of non-extension has, as we conceived, been too much lost sight of. Thus in an article *Law Times*, vol. xlv., 157, we endeavoured to show, in opposition to a decision of Vice-Chancellor Malins in *Hunt* v. *White* (37 L. J., N.S., 326, Ch.), that clear and unambiguous covenants for title contained in a purchase deed ought not to be controlled by the fact that a particular incumbrance or defect was actually or constructively known to the parties.

So again, in articles *Law Times*, vol. l., pp. 154, 492, we pointed out instances in which, as it appeared to us, the doctrine of constructive notice has been unfairly and improperly strained to invalidate the title of a purchaser. There is, happily, now no reason to fear that the English Court of Chancery Appeal will countenance any attempt to extend the doctrine of notice beyond its existing limits.—*The Law Times.*

(COLLIER AND WIFE *v.* DUBLIN, WICKLOW AND WEXFORD RAILWAY COMPANY—8 IR. L. T. R., 24.)

Liability of Railway Company for Breach of Contract to Carry a Passenger who is a Married Woman—Measure of Damage.

We find in 8 IRISH LAW TIMES REPORTS, 24, an interesting case determined in the Irish Common Pleas—Collier *et ux* *v.* Dublin, Wicklow and Wexford Railway Co.—on the measure of damages to which a husband is entitled in case of the breach of a contract by a railway company to carry his wife from one station to another within a reasonable time; or rather, the damages to which a railway company is liable at the suit of the husband joined with the wife, where it sells a ticket to a married woman, and then does not delay its next train long enough to allow her to get aboard.

The plaintiffs, William H. Collier, and Mary Collier his wife, complained, in the first count, that the defendants, the Dublin, Wicklow and Wexford Railway Company, being carriers of passengers, contracted with the plaintiff, William Collier, to carry his wife, the plaintiff, Mary Collier, from Booterstown to Lansdowne Road Station, within a reasonable time, but that they did not do so, whereby the plaintiff, Mary Collier, was obliged to remain during a whole night in a certain station of the defendants, without proper accommodation, and that by reason thereof she became seriously ill, and the plaintiff, William Collier, was deprived of her services. There were four other counts for assaulting and imprisoning the plaintiff, Mary Collier. The defendants pleaded, in addition to ordinary traverses, a special plea that the female plaintiff would not enter the carriage, whereby the defendants were unable to perform their part of the contract. The case came on for trial before Monahan, C.J., and a special jury, on the 19th of July. The facts appearing on his lordship's report were as follows:—The plaintiff, Mary Collier, took a second-class return-ticket from Dublin to Booterstown; she spent the day at her father's house at Booterstown; she returned to the station at Booterstown, with her daughter, about 11 30 p.m., in time to catch the last train. She and her daughter got into a carriage, but when they had done so they found it was a smoking compartment, and got out in order to enter another compartment. The porter opened the door for them to get in; the daughter got in, but the train went off before Mrs. Collier could get in. After the departure of the train she entered the station-house, and complained to Mahony, the deputy station-master, and asked to have a cab sent for. This was refused. She then sat down in the station. When Mahony was about to lock up the place for the night and go home, he informed her of it. She nevertheless remained sitting. He turned out the lights, locked the door, and went away, leaving Mrs. Collier inside, where she was found next morning, when the station was again opened for the day. It was not alleged that she contracted any illness, or sustained any personal injury from what had happened, beyond the fact that she had to lie in bed for a time, in consequence of having sat so long upon a hard seat. No medical advice was applied for. The plaintiff, William Collier, was absent from home on the night in question, on his business as a commercial traveller, and did not know of what had happened till afterwards. The defendants contended that they were not liable for the acts of Mahony. In this view his lordship concurred, and directed the jury to find for the defendants on all the counts, except the first. In charging the jury his lordship said that it appeared to him that the guard should not have signalled for starting the train till the lady was provided with a seat, and that, therefore, some damages for a breach of contract should be given. His lordship declined to direct nominal damages, but directed the jury only to give such damages as were sustained by the husband in his own capacity. The jury found for the plaintiff on the first count £50 damages.

A conditional order for a new trial having been obtained on the ground of misdirection, and also that the verdict was against the weight of evidence, and that the damages were excessive, Purcell, Q.C., for the plaintiff, showed cause, and cited on the question of the measure of damages, Smeed *v.* Foord, 1 El. & El. 602, and Hamlin *v.* Great Northern Railway Company, 1 Hurl. & N. 408. Piers White, Q.C. (with whom was Gibson, Q.C., and Seeds), for defendants, *contra*, cited, on the same question, Hadley *v.* Baxendale, 9 Exch. 341, and Hamlin *v.* Great Northern Railway Company, *supra.*

Keogh, J., thought that the jury should have given nominal damages only. The plaintiff did not take a cab or get a doctor; and no injury had been sustained on the first count. Lawson, J., said, when he looked at the only allegation of damages to the plaintiff, William, he could not see that a deprivation of services had taken place. He not having been at home that night, was not entitled to damages for his wife being kept out of her house. Monahan, C.J., was of opinion that the damages were excessive, but thought that the jury should have considered the circumstances attending the whole case; and that if the plaintiff was kept out of the train, she was entitled to more than nominal damages. A new trial was granted.

It has been held in the United States, in an action against a railway company for an injury to a married woman, that the husband and wife can only be joined where the object of the suit is to recover for the personal injury of the wife alone. If the suit is brought for the expenses of curing the wife, and for damages for the loss of her society and service, the husband must sue separately. Nor can an action for damages for personal injuries to the wife, and also for loss of her service, society, &c., be maintained jointly by the husband and wife, because these two grounds of action arise in different rights and are incompatible with each other. Fuller *v.* Naugatuck Railroad Co., 21 Conn. 557, 571. So it has been held in a case where a married woman sued separately for damages in consequence of a personal injury, that she could not recover the physician's and nurse's bills as items of damage, without proof of a separate estate that would be chargeable with such expenses. Moody *v.* Osgood, 50 Barb. 628.

In the case of Hamlin *v.* The Great Northern Railway, *supra*, a tradesman took a ticket to go from London to Hull. On arriving at Grimsby, he found no train ready, to take him to Hull the same night, as it should have been, according to

Digitized by Google

the published time-table. He slept at Grimsby, and in the morning paid 1*s.* 4*d.* fare to Hull. In consequence of his delay. he failed to keep appointments with his customers and was detained for many days. It was held that, although he would have been entitled to perform the contract at the expense of the railway company, yet, not having done so, he could not recover more than nominal damages in addition to the 1*s.* 4*d.*, and perhaps the cost of his bed, &c., at Grimsby. See also, upon the general subject of the liability of carriers for unreasonable delays in delivering goods or carrying passengers, the authorities collected in 1 Redf. on Rail., 5th ed., p. 199, note 4, and p. 200, note 7.—*Central Law Journal.*

VICE-CHANCELLOR'S COURT (LONDON).*

(Before Bacon, V.C.)

Feb. 26.—Phospho Guano Company (Limited) *v.* Guild.

Practice—Service out of the Jurisdiction—Forum.

Motion to discharge an *ex-parte* order for service out of the jurisdiction.

The plaintiff company was registered under the Companies' Act, 1862, and its registered office was at Seacombe, in Cheshire.

In December, 1873, the company filed a bill against the defendant, praying that he might be declared a trustee of certain shares which he held in the company for the benefit of the company, and for other relief.

An affidavit was filed on behalf of the company, stating that the defendant resided in Glasgow, and an order was made *ex-parte* in chambers for service of a copy of the bill and interrogatories on the defendant "in Scotland or elsewhere out of the jurisdiction of this Court." The defendant now moved to discharge his order on the grounds:—(1.) That the order was irregular, and ought to have been for service only in Glasgow. (2.) That as the defendant was a Scotchman, and resided in Scotland, the matter ought to be determined in the Scotch Courts.

Mr. Kay and *Mr. Everitt* for the motion.

Mr. H. M. Jackson and *Mr. Bedwell* for the company.

Bacon, V.C.—The order is no doubt irregular in form, and the words "or elsewhere out of the jurisdiction" ought not to have been inserted, but the service was in fact effected in Glasgow, and I shall not discharge the order on this ground. The suit relates to shares in a joint-stock company registered in England; and the relief asked by the bill is in respect of property within the jurisdiction, and not mere personal relief against the defendant. This Court is, therefore, the proper forum to try the matter, and the motion must be dismissed.

Solicitors and the Land Transfer Bill.—Lord Cairns, in moving these measures said, in reference to the probable opposition of the profession:—"I know it has been stated, and stated very strongly sometimes, that the solicitors will oppose a measure of this kind and prevent it from succeeding. I do not think so. I have had some experience of solicitors; and without adverting to what is obvious, that even in a matter of self-interest whatever improves the law and gives greater facilities for dealing with land must be a benefit and not an evil to the profession, I speak from my own experience of solicitors when I say of the great mass of them that I believe there is not in the kingdom a body of men more intelligent, more liberal in their views, more desirous of improvement in law, and more anxious to avail themselves of such improvement when made. But that does not depend upon my testimony, because if your Lordships refer to the evidence given before the Royal Commission, you will find a great deal of testimony on this point; and the Commissioners say that there is evidence to show that after the passing of the Act of 1862 there was the greatest anxiety among the most eminent solicitors to take advantage of that enactment and that they did not abandon it until experience had shown them that it was unsatisfactory and more expensive than the old system. Your Lordships will find it was no opposition of the solicitors that caused the failure of the Act of 1862."

* From the *Law Journal.*

REVIEWS.

Court of Queen's Bench (Ireland). Report of the Action for Libel brought by the Rev. Robert O'Keeffe, P.P., against His Eminence Cardinal Cullen; with an Introduction. By Henry Clare Kirkpatrick, Barrister-at-law. London: Longmans, Green, and Co. 1874.

The case of *O'Keeffe* v. *Cullen* is, perhaps, the most important case decided in Ireland since the Union, for many reasons entirely beyond its legal significance, and we believe that Mr. Kirkpatrick was fully justified in the pains he has taken to produce a full account of it. Our readers, of course, are perfectly aware of the circumstances which gave rise to the action, and of the legal points argued and decided on demurrer before the Court of Queen's Bench, as the arguments of counsel and the decisions of the judges have been already published in the Irish Law Times Reports (vol. 7), as well as a series of articles criticising the results and the *ratio decidendi.* But Mr. Kirkpatrick has directed his work to a larger world than that of mere lawyers, and while he subordinates the legal points of the case, he most fully and completely sets forth the proceedings at Nisi Prius, including the examination and cross-examination of the witnesses and the charge of the Lord Chief Justice; and in the appendix he has also reprinted at length the documents on which the alleged libel depended, and extracts from the various Bulls, and the excommunications and interdicts on which so much of the trial hinged, and which so fixed public attention at the time. The original matter of Mr. Kirkpatrick is included in an introduction of thirty-eight pages, and three or four pages of preface to the law argument, intended to explain the legal phraseology to laymen. In his introduction, Mr. Kirkpatrick gives a full and complete history of the origin of the case, and several philosophical remarks on its bearings upon law, society, and the *status* of voluntary societies. This work he has done most admirably, stating facts as they appeared in the evidence, and registering the whole of the proceedings with the utmost impartiality. To most men the evidence is of the most interesting and novel kind, and we believe that this volume will be read with pleasure, for the sake of the matters of historical information therein contained, by many who have not the least idea of, or concern for, the legal effect of a rescript or plea of privilege, or the Statute of 2 Eliz., c. 1 (Irish). As we said, the work is intended more for laymen than lawyers, and it fully answers the intention, as lawyers who regard the case strictly from a professional point of view, will consult the reports of the case containing the pleadings at length on which the points of the case depend. There is, however, an ample index to the matters mentioned in the evidence, arranged somewhat after the manner of a Parliamentary Blue Book. Although no complete analysis of the judgments *in banc* is here attempted, we feel disposed, in reference to the alleged contract not to implead ecclesiastics, and the consequences attached thereto, to point to the distinction between contracts illegal in themselves and contracts which are merely void—the law objects to and stigmatizes the former, while it passes the latter by without notice. And we would suggest that the agreement in question is thus merely *void* at law, and not *illegal.*

Select Titles from the Digest of Justinian. Edited by Thomas Erskine Holland, B.C.L., and Charles Lancelot Shadwell, B.C.L. Part I. Oxford: at the Clarendon Press. 1874.

As the editors of this work remark, a revival of the study of Roman Law has taken place in England within the last few years; and students who might a short time ago have been satisfied with a knowledge of the Institutional writers and their Commentators are now expected to have some familiarity with that great storehouse of legal wisdom—the Digest itself. It is to assist in the effort to extend a knowledge of the Roman Law that this work has been begun, and the editors' plan, so far as it can be judged from

Digitized by Google

the one-fourth part now published, is very good. There are 432 Titles in the Digest, and it is thus apparent that students could no more master all the heads of that work than they could profitably undertake to "make up" Comyn's "Digest," or the volumes of "Coke upon Littleton;" but the plan the present editors have adopted is to make a selection of the more important Titles, and to publish them successively in parts. The selected Titles have been grouped under heads which are familiar to readers of the Institutes; viz., Introductory or General matter, the Law of Family, the Law of Property, and the Law of Obligations; and under each of these heads the order in which the several Titles follow one another is made to correspond as nearly as may be with that observed in the Institutes. The Titles thus brought into juxtaposition have, indeed, in many cases been sought for in widely distant portions of the Digest. We would suggest to the learned editors, however, that it would be a great improvement in their present method if they were to give an English translation, interpaged or in parallel columns with the Latin text. Most law students and barristers, it is true, have learnt more or less of classical Latin, but we imagine very few are scholars enough to be able to read the language used by the law writers of the later period of the Empire with that ease and precision necessary to enable them duly to appreciate the value of their works. The difficulty is greater in the present case than in the Institutes of Justinian or Gaius, inasmuch as in the Digest we have several writers, each of whom uses a peculiar style, and sometimes, also, affects Græcisms. A translation of the pages, *De Verborum Significatione*, is especially desirable, because the definitions involve so many delicate shades of meaning as to be almost inappreciable to any but a very finished and critical Latinist. We must also record our objection to the latest novelty in printing Latin, which induces editors to use the letters *i* and *u* indiscriminately for those sounds and for *j* and *v*. Germans and Italians may fairly do so, for their tongue does not distinguish between the sounds as does English. Nevertheless, this is a most useful publication, and we feel great interest in the future parts relating to the acquisition of property and the law of obligations.

THE LAW CLERKS ASSOCIATION.

A meeting of the Central Committee was held on Monday evening last, at 212, Great Brunswick-street. The Vice-President in the Chair. Messrs. Malony, Clarke, Dillon, Power, Flanagan, Wheatley, M'Padden, and the Secretary, and Assistant-Secretary, attended. The minutes of the last meeting having been read and confirmed, the Secretary announced that he had received from the Chief Baron the following reply to the recent vote of the Association congratulating him on his elevation to the Judicial Bench:—

"59, Mountjoy-square,
"*29th March, 1874.*

"Dear Sir,

"I have received your note of the 27th, and request you will convey to the Associated Law Clerks of Ireland my best thanks for the resolution which you have been kind enough to enclose to me.

"I very highly value the good opinion of your Association as well as the kindness which prompted them to give expression to it.

"I have read with much interest the Report of the Committee.

"Dear Sir,
"Very truly yours,
"C. Palles."

"A. Jervies, Esq."

The letter was directed to be inserted on the minutes, and the Committee having disposed of the detail business, adjourned to the second Monday in April.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Easter and Trinity Session, 1874.

LEGAL EDUCATION.

NOTICE.

William Hickson, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Easter and Trinity Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Monday*, the 20th of April, 1874.

The Course will consist of *Eighteen* Lectures, *Thirteen* of which *must* be attended so as to entitle Candidates to Professor's certificate.

By Order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts,
Dublin, *April, 1874.*

The Professor of Law has fixed upon the following Book for Lectures, viz:—"Broom's Commentaries on the Common Law." Last Edition.

A Reminiscence of Balzac.—The Correctional Tribunal of Bourges has just tried and condemned one of the strangest criminals ever placed at the bar—a modern Tartuffe of an exaggerated description. This man, who gave his name as Jean Baptiste Lafosse, was born in 1815 at Villebandon, and as a lad showed a remarkable power of oratory, preaching sermons to his schoolfellows. Yet at the age of 15 he was convicted of swindling, and was sent to prison for two months. At the age of 22 he was condemned for a similar crime, and had to pass five years at Mont St. Michel. On leaving prison he assumed the garb of a priest, but two years later he was found guilty of forgery, and was sentenced to hard labour for ten years. When he left Brest, being aware that he enjoyed a bad reputation, he changed his name from Lafosse to Raynal-Duplessis, became a domestic, and afterwards an attendant in an hospital. He was driven from this last situation for immorality. He once more adopted the surplice, bought a ring and a cross, and laboured in the dioceses of Rheims, Meaux, and Rennes, where he passed himself off as belonging to the Order of St. Louis of Gonzaga. In the diocese of Clermont, in 1863, he pronounced a remarkable sermon from the text, "Come unto Me all ye that labour and are heavy laden, and I will give you rest." He was holding forth at Toulouse, when he got into fresh trouble, and was detained in prison for 11 months without the authorities being able to find out who he was. He was then condemned to five years' imprisonment. In 1869 he was released, and it appears that he went into Italy to found a convent of the Order of St. Francis of Assisi, and he was preaching on behalf of this work at Bourges when he was arrested. He had been received by the Archbishop de la Tour d'Auvergne and by the clergy of the diocese with the greatest respect, and it seems that Jean Baptiste Lafosse has the most venerable and prophet-like appearance. When arrested he protested with great dignity against the odious error of which he was the victim. We are told that underneath the gown of the priest was discovered the shirt of the galley slave, and the mark of the chain was found on the man who had sat at table with bishops. He confessed his guilt, and was condemned to 10 years' imprisonment.—*Pall Mall Gazette.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

FRIDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
A. M. Sheridan	1st public sitting	*Findlater & Co.*
John Delius Barnes	do	*Molloy & Watson*
James M'Kenna	2nd composition sitting	*Kennedy & Nagle*
John Dillon	do	*Casey & Clay*
Same matter	Final examination	*Casey & Clay*
John Nolan	do	*Larkin & Co.*
Mercer Stevenson	do	*Stewart & Cochrane*
Charles Dowler	do	*Browning*
Patrick Hanlon	do	*Sullivan*
Margaret Bradshaw	do	*Larkin & Co.*
C. Fitzgerald	do	*Scallan*
Daniel Cullen, jun.	do	*Larkin & Co.*
———	Show cause against adjudication	*Larkin & Co.*
Eugene Sheehan	Application for certificate of conformity	*Scallan*
William Darragh	Motion	*Lawler*
Richard Boyle	do	*MacSheehy*
Bernard Cummings	Audit and dividend	*Bradley & Son*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Arthur Noble	Prove debts	*Rosenthal*
John M'Hugh	Prove debts and vouch	*Perry & Co.*
George Craig	do	*Cronhelm & Co.*
John O'Brien	do	*Perry & Co.*
James Logan	do	*Scallan*

ADJUDICATIONS IN BANKRUPTCY.

Abbott, Henry Railgard, Castlecomer, Kilkenny, baker, grocer, and spirit merchant. Sittings, *Friday, April* 24, and *Tuesday, May* 12. *Larkin and Co.*, solrs.

Deegan, John, Ballinakill, Queen's County, farmer and grocer. Sittings, *Tuesday, April* 21, and *Friday, May* 8. *Roe,* solr.

Kirwan, John, Clonroch, Enniscorthy, Wexford, cattle dealer. Sittings, *Friday, April* 24, and *Tuesday, May* 12. *E. & G. Stapleton,* solrs.

Rickard, Stephen, Howth, Dublin, baker, grocer, and farmer. Sittings, *Friday, April* 17, and *Tuesday, May* 5. *Findlater and Co.*, solrs.

DIVIDENDS IN BANKRUPTCY.

Cochrane and Lyons, Fleet-street, Dublin, tea and wine merchants. 1st dividend 4s. 2d. in the £, and 1st dividend 8s. in the £, on separate estate of Lyons. C. H. James, official assignee. *Perry and Co.*, solrs.

Fleming, Patrick, Tramore, Waterford. 1st and final dividend 8¼d. in the £. L. H. Deering, official assignee. *Maxwell and Weldon,* solrs.

Parker, Alfred, Waterford, jeweller. 1st and final dividend 1s. 4d. in the £. L. H. Deering, official assignee. *Mathews,* solr.

Payne, John Rea, Talbot-street, Dublin, grocer. 1st dividend 8s. 11½d. in the £. C. H. James, official assignee. *Molloy and Watson,* solrs.

Smith, John F. H., Great Brunswick-street, Dublin, ironmonger. 1st dividend 5s. in the £. L. H. Deering, official assignee. *Bradley and Son,* solrs.

Walsh, Michael, Waterford, grocer. 1st and final dividend 1¼d. in the £. L. H. Deering, official assignee. *Molloy and Watson,* solrs.

Judge Hoffman, of the United States District Court for the District of California, has recently decided that a married woman living apart from her husband may, if she has committed an act of bankruptcy, be adjudged a bankrupt. The statute of California provides that the earnings of a wife, living separate from her husband, shall be her separate property, and that she shall have the sole and exclusive control of her separate property, and that she may sue and be sued, and that she shall be subject to all legal process in all actions. Judge Hoffman's opinion is based upon this statute.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MARCH Fri. 27	Sat. 28	Mon. 30	Tues. 31	APRIL Wed. 1	Thur 2
	Government.						
—	3 p c Consols	91⅛	—	91⅛	—	—	91⅛
—	3 p c Reduced	90⅝¾	—	—	—	—	—
—	New 3 p c Stock	90⅝¾⅞	90 ⅞	90 ⅞	90	90 ⅞	90⅝¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsf'ble. at	—	106⅛	106⅛	—	—	—
—	4 p c Oct. '88 { Bk. of Irel.	—	101⅛	101⅛¼	—	—	101⅛
	Banks.						
100	Bank of Ireland	304¾–5	—	—	305	305	--
25	*Hibernian Banking Co.*	—	57⅛	57⅛	57¼	57⅛	57⅛
15	*London Joint Stock*	47⅝¾	48	48	—	48	48⅛
20	*London and Westminster*	—	69⅞	69⅞	70	—	—
3½	*Munster Bank (Limited)*	—	—	—	8⅛¼	—	—
30	*National Bank*	58⅛	58⅛¼	58⅛¼	58⅛¼	58⅛¼	58⅛
15	*National of Liverp'l (Ltd)*	14⅛	14⅛	—	—	14 ⅛	14⅛
25	*Provincial Bank*	—	94¼	—	—	—	94⅛
10	*Royal Bank*	28⅞¾	29	29	29⅛	29	—
	Steam.						
50	British & Irish	—	—	51½	—	52	—
100	City of Dublin	108⅞	—	108⅛	—	—	—
10	Dundalk (Limited)	—	—	x d	—	—	—
50	Peninsular and Oriental	—	—	—	—	—	57 ⅛
	Mines.						
3½	*Berehaven (Limited)*	—	—	1/9	—	1/9	3/
7	*Cape Copper M. Co. (lit'd)*	—	—	x d	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	4¾	—	4¾	4⅛
2½	Wicklow Copper	—	—	—	—	2⅛⅝⅛	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A	—	—	—	8⅞	—	8⅞
10	B	—	—	-	8⅞	—	—
10	No. 1 C	—	—	—	8⅞	—	—
10	No. 2 C	—	-	—	8⅞	—	—
9½	*Dublin Tramways*	—	—	—	7½	7½	—
	Railways.						
100	Dublin and Drogheda	—	—	—	—	109⅞	—
100	Dublin and Kingstown	—	—	x d	—	—	—
100	Dublin, W'klow, & W'ford	72¾	72¾	72¾	—	72½	73 ⅛⅛
100	Gt. Southern and Western	108⅞	108⅞	108⅛	108	108 ⅛	—
100	Do. do. free of Stamp	109⅞	-	109⅛	—	—	109⅛
100	Midland Gt. Western	86⅛	86⅛	86⅛¼⅛	35⅛	86 ⅛	86⅞–6
50	Waterford and Limerick	—	—	34⅝⅞	34⅞–5	34⅞	34⅞
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	x d	--	—	—
100	Do. do. 4½ p c	—	—	x d	—	—	—
100	Dublin & Meath – 1st, 5 p c	—	—	-	x d	—	—
100	D., W., & W., 6 per cent	—	—	128	—	—	—
50	D., W., & W., 5 p c (1860)	—	53⅛	—	—	—	53⅛
100	Gt. South'n & West'n 4 p c	97⅞	97⅛	-	97⅛	—	—
10	Irish North Western A 5 p c	—	—	x d	—	—	—
100	Do., Divd Com A 5 p c	—	—	x d	—	—	—
100	Do., Deb Com A 5 p c	—	—	x d	—	—	—
10	Do., B 5 p c	—	—	x d	—	—	—
50	Watfd. & Limerick, 5 p c rd	50	—	—	—	—	—
50	Do., new redeemable 5 p c	—	49⅞	—	—	49⅝⅞	49⅞
	Railway Debentures.						
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	96⅛	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	99⅛
—	Gt. South'n & West'n, 4 p c	—	—	—	—	98⅛ f	—
.	Midland Gt. West'n, 4½ p c	—	—	—	—	—	99
—	Do., 4½ p c	—	—	—	—	101⅞	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.
Name Days—April 14th and 28th, 1874.
Account Days—April 15th and 29th, 1874.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

MATHEWS—March 27, at 9 Lower Dominick-street, Dublin, the wife of John Matthews, Esq., solicitor, of a daughter.

MARRIAGE.

ORR and DAVISON—March 11, at St. Thomas's Church, Belfast by Rev. Thomas Welland, M.A., assisted by Rev. John Grainger D.D., James Orr, Esq., barrister-at-law, 26 Upper Gardiner-street, Dublin, to Annie Disney, eldest daughter of the late Alex. Davison Esq., Hampden-terrace, Belfast.

DEATHS.

BARLOW—March 2, at Gya, Bengal, John Barlow, Esq., Bengal Civil Service, third surviving son of Peter Barlow, Esq., Q.C., aged twenty-seven years.

MACCARTHY—March 19, St. Joseph's Day, aged eighteen years, Josephine Elizabeth, the dearly beloved daughter of Denis Florence MacCarthy, Esq., M.R.I.A., barrister-at-law, 8 Eglinton-park, Kingstown, Co. Dublin.

MARTIN—March 21, at 23 Upper Fitzwilliam-street, Margaret Magan, aged twenty-three years, the beloved wife of Patrick Martin, Esq., M.P.

WHITMORE—March 26, at 2 Highfield-terrace, Rathgar, William Whitmore, Esq., solicitor, in his thirty-sixth year.

Digitized by Google

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

KING'S COUNTY.

SALE,

On FRIDAY, the 8th day of MAY, 1874.

In the Matter of the Estate of Anthony Molloy Fawcett, Owner; Caroline Rebecca Frizell, Petitioner.

TO BE SOLD, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, In the City of Dublin,

On FRIDAY, the 8th day of MAY, 1874,

In One Lot,

Part of the Lands of Enaghan, containing 1,069a 2r 8p, statute measure, situate in the Barony of Philipstown, and King's County, held under lease for ever, dated 19th day of June, 1786, at the yearly rent of £202 19s 8d, and producing an annual profit rent of £136 0s 4d.

Dated this 3rd day of March, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This very desirable estate is situate within four miles of Portarlington, five miles of Geashill, and eight miles of the Assize Town of Tullamore. all Stations on the Great Southern and Western Railway; also within seven miles of Philipstown, seven miles of Edenderry, and nine miles of Rathangan.

That portion of the estate called the House Division, in possession of Peter Manghan, Esq., is beautifully situated. The mansion cost over £2,000. The out-offices, walled-in garden, are all that can be desired.

The bog on this estate affords unlimited fowling, the game being grouse, widgeon, teal, geese, and hare.

The river mearing this estate on the south and west sides give abundant supply of trout and other fish. The estate is most conveniently situated in the centre of a sporting district.

For Rentals and particulars apply at the Registrar's Office, Landed Estates' Court, Four Courts, Dublin; to

JOSHUA BRERETON, Solicitor having carriage of Sale, 13 Harcourt-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF TYRONE AND DONEGAL.

In the Estate of The Rev. John Hutton O'Connor and Edward Carolin, Trustees for Sale under the Settlement of Rebecca Jones Pratt, with Joseph Bryan Hynes, since deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 15th day of MAY, 1874, At the Hour of Twelve o'clock noon, At the Landed Estates' Court, Inns'-quay, In the City of Dublin,

The following Lots, as described in the printed Rental, viz.:—

LOT 1.

The Lands of Garvaghullion, otherwise Garvachullen, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 640a 0r 12p, statute measure, and producing a net profit rent of £140 11s 11d.

LOT 2.

The Lands of Leaght, otherwise Laght, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 462a 2r 18p, statute measure, and producing a net profit rent of £149 6s 9d.

LOT 3.

The Lands of Meencargagh, otherwise Meencarriga, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 334a 3r 29p, statute measure, and producing a net profit rent of £49 17s 6d.

LOT 4.

The Lands of Drummaghon, otherwise Drummahon, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 510a 0r 5p, statute measure, and producing a net profit rent of £45 9s 0d.

LOT 5.

The Lands of Aghamore, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 330a 2r 6p, statute measure, and producing a net profit rent of £44 0s 2d.

LOT 6.

Fee-farm Rent of £34 6s 9d, issuing and payable out of the Lands of Kilmore Upper and Lower, and one-third of Coolnacrunaght, situate in the Barony of West Omagh, and County Tyrone, containing 754a 0r 6p. The Poor Law Valuation of said Lands being £396 2s 0d.

LOT 7.

The Lands of Knockagarron, situate in the Barony of Raphoe, and County of Donegal, held in fee-farm, containing 331a 0r 27p, and producing a net profit rent of £126 13s 5d.

Dated this 20th day of March, 1874.

R. DENNY URLIN, Examiner.

The Quit Rents will be redeemed out of the Fund, and the only annual out-going to which the estate will be liable is Tithe Rent-charge.

The Lands are near to Strabane and Newtownstewart, excepting Lot 7, which is near Raphoe, County Donegal.

There is excellent Shooting on the estate.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, in the City of Dublin; or to

GEORGE BERNARD, Solicitor having carriage of the Proceedings, 12 Upper Ormond-quay, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

SALE,

On FRIDAY, the 1st day of MAY, 1874.

In the Matter of the Estate of Richarda Usher, Owner and Petitioner.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin,

On FRIDAY, the 1st day of MAY, 1874,

At the hour of Twelve o'clock noon,

The following Houses and Premises, situate in the County of Dublin, In One Lot, viz.:—

The Houses and Premises known as Nos. 1, 1A, 2, and 3 M'Gowan-terrace, Ranelagh-road, in the Parish of St. Peter, Barony of Upp r-cross, and County of Dublin, held under lease for the term of 99 years, at the yearly rent of £6, and producing a profit rent of £57 per annum.

Dated this 18th day of March, 1874.

H. R. GREENE, Chief Clerk.

For Rentals and further information apply at the Registrar's Office, Landed Estates' Court, Inn's-quay; or to

THOMAS J. WHITE, Solicitor having carriage of the Sale, 20 Usher's-quay, Dublin.

Offers for purchase may be sent to the above-named Solicitor, on or before the 15th day of April, 1874, when same will be submitted to the Judge for approval.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

PETER JOHNSON, of 100 West-street, Drogheda, Grocer and Spirit Dealer, a Bankrupt.

A Public Sitting will be held before the Court, at the Four Courts. Dublin, on FRIDAY, the 17th day of APRIL, 1874, at the hour of Eleven o'clock in the forenoon, to Audit the Assignee's Account, and make a First Dividend in this Matter.

Dated this 31st day of March, 1874.

WM. PERRIN, Chief Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

JOHN LOUIS SCALLAN, Solicitor for the Assignees, No. 29 Bachelors'-walk, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

LEWIS R. WEST and WILLIAM TISDALL, of No. 49 Middle Abbey-street, in the City of Dublin, Wine Merchants, trading as L. R. West and Company, were on the 27th day of March, 1874, adjudged Bankrupts.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 24th day of APRIL, 1874, and on TUESDAY, the 12th day of MAY, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupts are to attend, and to make a full disclosure and discovery of their Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupts are required to finish their Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

OLDHAM & EATON, Solicitors, 42 Fleet-street.

SALE:

COUNTY OF MEATH.

TO BE SOLD BY AUCTION,

In the Public Sale-rooms,

9 UPPER ORMOND-QUAY,

On MONDAY, the 20th of APRIL, 1874,

At the hour of One o'clock p.m.

THE LANDS OF POSSEXTOWN, in the County of Meath, containing 222a 2r 0p, Irish plantation measure, being a most valuable Fee-farm Estate.

The rent reserved by the Fee-farm Grant is £360 0s 8d; but during the life of one of the Grantors, the Lands are only subject to the reduced yearly rent of £329 8s 6d.

The lands are of prime quality, well watered, and fenced, all in Grass, and in the occupation of the owner, save about 14 or 15 acres, held by a tenant at will, and adjoin the M. G. W. Railway at Enfield.

The purchaser can get immediate possession.

There is a good slated dwelling-house on the lands.

The herd at Possextown will show the lands.

For Statement of Title and Conditions of Sale apply to

EDWARD CARAHER, Solicitor, 62 Lower Gardiner-street or to

JOHN LITTLEDALE & CO., Auctioneers, 9 Upper Ormond-quay.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, April 4*, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, APRIL 11, 1874. No. 376.

LEGAL LITERATURE.

ALTHOUGH lawyers, individually, are perhaps the most highly educated and intellectual members of society, still, in these countries, they are not, as a rule, addicted to legal literature, by which we mean that they do not produce works bearing on legal topics which shall be of interest to the public and the profession, and still shall not be law books properly so called. The reason for this state of things is probably due to the extremely technical nature of English law, and the difficulty of generalizing that which is so much a matter of practical routine, as to be necessarily picked up by practice only, and bit by bit, so to say, and partly also to the matter-of-fact and practical characters of the profession, which induces them to look almost with repugnance upon any thing about law which is not law. So we have not those inquiries into the sciences of jurisprudence, legislation, and evidence, which are frequently given to the world by Continental and American lawyers.

Another great remarkable feature of lawyer development in these countries is, that lawyers seldom become statesmen, although the profession is sufficiently well represented in both Houses of Parliament. Parliamentary lawyers seem to be more anxious to become Judges than Prime Ministers, Attorney-Generals than Secretaries for State, in which possibly they are wise, but wherein also they form a great contrast to most other civilized countries, at least those which have free institutions, where the leaders of men are almost invariably lawyers. Spain, at the present moment, is an exception, but *inter arma silent leges*. The indifference to legal literature of the profession is shown by the fewness of the journals and magazines devoted to their purposes, and to the extreme technicality of the contents of those which exist. The Americans are more fortunate in this respect, and in England the *Law Magazine and Review*, under its new editor, Mr. Finlason, seems determined to set an excellent example in the matter by publishing a paper by Mr. Forsyth, Q.C., on the Rules of Evidence as Applicable to the Credibility of History. In this production Mr. Forsyth happily shows us an example of a lawyer who can apply the scientific method of his professional practice to historical matters, and well vindicate the claim of lawyers to intellectual activity and supremacy. The learned writer says:—

"Upon evidence depends all our knowledge of past events; and it is astonishing how little is often sufficient to satisfy us. The mere fact of its being written in a book is enough to make no inconsiderable number of readers believe in the truth of a statement, without reflecting whether the author had or had not the means of ascertaining the truth; for if he had, we may be justified in putting faith in his honesty; but if he had not, his own assertion is worth nothing.

"One of the most common, and, at the same time, most satisfactory modes of proof as to things which do not fall within the experience of the senses, is Induction, by which is meant the inference drawn from proved or admitted facts. It is, for instance, by induction that the general facts of Natural History are proved. When we say that all ruminant animals are cloven-footed, we cannot show any necessary connexion between these physical phenomena, but having ascertained by a very large number of instances that they co-exist, and that in no single case that has come under the observation of naturalists they fail, we are led irresistibly to the conclusion that the proposition is universally true, and we should predicate with confidence, if a new race of animals were discovered in some hitherto unknown region, that if they are ruminants they are also cloven-footed. The underlying ground of belief in this case is our innate conviction of the prevalence of uniformity in Nature in things of the same kind. This uniformity we call a law.

"In one of his essays Lord Macaulay says of history:—'Perfectly and absolutely true it cannot be: for to be perfectly and absolutely true, it ought to record *all* the slightest particulars of the slightest transactions—all the things done, and all the words uttered during the time of which it treats. The omission of any circumstance, however insignificant, would be a defect. If history were written thus, the Bodleian library would not contain the occurrences of a week.' And Lord Macaulay might have added that no one would care to have such a mass of useless verbiage in existence. He is surely wrong in saying that history is not absolutely true simply because it does not give us *all* the particulars of the slightest transactions. Even in a court of justice we do not think that a witness is not telling the absolute truth because he does not relate every particular, however insignificant, of the fact or conversation to which he deposes. The late Sir George Cornewall Lewis says, in that most valuable and learned work, *The Credibility of the Early Roman History* (preface, p. 16):—'Historical evidence, like judicial evidence, is founded on the testimony of credible witnesses. Unless those witnesses had personal and immediate perception of the facts which they report, unless they said and heard what they undertake to relate, as having happened, their evidence is not entitled to credit. As all original witnesses must be contemporary with the events which they attest, it is a necessary condition for the credibility of a witness that he be a contemporary, though a contemporary is not necessarily a credible witness. Unless, therefore, a historical account can be traced by probable proof to the testimony of the contemporaries, the first condition of credibility fails.' If, however, it is meant to be asserted that the same degree of certainty ought to be required in historical that is required in judicial evidence, it would be exacting too much, and carrying scepticism too far. In the first place, the thing is an impossibility, and the consequence would be, that we should be logically compelled to withhold our belief from nine-tenths of the so-called historical facts about which we have really no doubt at all. But, secondly, the circumstances are wholly different. Judicial inquiries relate to minute and special facts in dispute, where two parties are opposed to each other, and it is the duty and interest of both to adduce the best evidence of which the thing to be proved is susceptible. And in all civilized communities, their systems of jurisprudence lay down technical rules of evidence—in some countries much more strict than in others—which circumscribe the range of proofs. For instance, in France, hearsay evidence is always admitted; in England it is always excluded. In some parts of Germany a sort of arithmetical scale is applied to the testimony of witnesses. Different countries apply different rules of legal presump-

Digitized by Google

tion, which are really not instruments of truth, but technical and positive modes of quieting controversy, But, to quote the words of an eminent writer on the law of evidence, "However widely different codes may vary from each other in matters of arbitrary positive institution, and of mere artificial creation, the general means of investigating the truth of contested facts must be common to all. Every rational system which provides the means of proof must be founded on experience and reason, on a well-grounded knowledge of human nature and conduct, on a consideration of the value of testimony, and on the weight due to coincident circumstances.*

DR. KENEALY, Q.C.

The members of the Oxford Circuit, of which Dr. Kenealy is or was a member, have taken rather quick action in the matter of examining into the conduct of the learned Queen's Counsel at the late Tichborne trial. After a correspondence between Dr. Kenealy and the Junior of the Circuit, the former declined to appear in person, and make defence to a formulated series of charges, presented against him by Mr. Lawrence and Mr. Dowdeswell; and at a meeting of the Circuit Bar, held at Gloucester during the present assizes, it was resolved that Dr. Kenealy should be no onger a member of the Circuit mess. This entails, as our readers are aware, a severe social and professional punishment, as no member of the Circuit will feel himself justified in holding a brief in a case with a man so marked out; and as the learned Doctor is a Queen's Counsel, he will, we expect, be at a loss for Juniors to open cases, and appear in such matters as professional practice has decided cannot be transacted by a senior alone. It is necessary to observe, however, that there have been instances of individuals who, without belonging to any Circuit mess, have made considerable reputations, and reaped the consequent harvest of practice both in England and Ireland. It is understood that Dr. Kenealy has received an intimation from the Committee appointed by the Benchers of Gray's-Inn, that they will, on the 16th proximo, investigate the circumstances connected with his conduct of the defence in the Tichborne trial. He will be examined *in extenso*, and the inquiry is likely to prove one of considerable length, as the Benchers contemplate going through all the stages of the late long and protracted investigation. The investigation will be conducted with closed doors; and the Bar look forward with great interest to the decision, as it will, whichever way it be given, be fraught with important results to the status and freedom of the profession. We believe the appeal is to the Common Law Judges as visitors of the Inns.

NOTANDA.

Apportionment Act, 1870; *specific bequest of shares in banking company; dividends accruing after death of testator.*—Shares in banking companies were specifically bequeathed by a testator, after whose death dividends accrued due. Held, that the dividends should be apportioned, and that the portion accruing up to the death of the testator should fall into the testator's residuary personal estate (*Daly* v. *The Attorney-General*, before Chatterton, V.C., Feb. 28, 1874.)

Record of Title Act; equitable mortgage of lease; subsequent acquisition by lessee of lessor's interest, and title recorded.—Application, on behalf of the Bank of Ireland, for liberty to record in the Record of Title office an equitable mortgage of September 21, 1864, from Mrs. Daniel O'Keeffe to the Bank. On the 1st February, 1846, Mr. O'Keeffe got from the Duke of Devonshire a lease for 99 years. On 21st September, 1864, Mr. O'Keeffe, being indebted to the Bank of Ireland in £5,000, deposited with the bank, by way of equitable mortgage, this particular lease, with other documents. Mr. O'Keeffe purchased in the Landed Estates' Court, on 31st June, 1868, the Duke of Devonshire's interest in the premises comprised in the lease, and recorded his title in the Record of Title Office. That conveyance was made subject to the lease of 1st February, 1846, from the Duke of Devonshire to Mr. O'Keeffe. On 29th September, 1868, on the marriage of one of his daughters, Mr. O'Keeffe charged the premises which he purchased in the Landed Estates' Court with £1,000, and in November, 1868, on the marriage of another daughter, Anne, he charged the premises with £2,000 for the benefit of another daughter, Emily, and assigned to Elizabeth one undivided moiety to which he was entitled under the grant of 1868; and by a deed of a similar date Elizabeth reassigned the undivided moiety to Anne O'Keeffe. None of these instruments were recorded. On 2nd November, 1870, Mr. O'Keeffe made his will, devising his estates to his wife, and the result was that she became the owner of one undivided moiety. In June, 1871, Ellen O'Keeffe appeared to have assigned to Elizabeth the moiety which she took under the will of her husband, and Elizabeth thus became entitled to all the premises, subject to £1,000 and £2,000. The Bank of Ireland being entitled, under the equitable mortgage of 1864, to the charge upon the lease of February, 1846, presented a petition for the sale of the fee-simple of the premises that Mr. O'Keeffe acquired under the deed of June, 1868. The contention of the Bank was that by virtue of the equitable deposit of the lease they had acquired a charge upon the fee-simple of the premises conveyed to Mr. O'Keeffe by the deed of 1868, and under the provisions of the Record of Title Act they called on the Court to record their claim, under the equitable mortgage, as against the fee-simple. Flanagan, J., said that the present case illustrated the necessity of making some amendment in the Record of Title Act, providing that if a person recorded his title, he could not deal with it in any other way, and then the Act would be consistent. In his opinion, the merger of the legal estate, supposing it to merge, did not affect the equitable estate which remained in the Bank for the purpose of feeding the mortgage of 1864. The demand of the Bank was untouched by the recording of Mr. O'Keeffe's reversionary interest in the premises, and the Bank was entitled, on presenting a proper petition, to sell, not the fee, but the estate under the lease of 1846, for the residue of the term of 99 years, at the rent reserved by the lease (*Re D. O'Keeffe*, L. E. Court, Jan. 15, 1874.)

Arrangement; creditor withdrawing proof of debt; costs of proof.—By a consent order, the arranging trader was to be at liberty to lodge with the assignees cash and bills for £370, admitted to be due to T, Bowen Abbey, M. Bowen, and J. Murphy, their trustee, and that it be referred to the Chief Registrar to take an account, the trader undertaking to lodge bills and costs for any additional sum ascertained. Murphy, as such trustee, lodged a proof for £1,216 16s. 1d., as due; and among the items of credit claimed was £45, one year's profit rent of premises in Abbey-street, to be paid in full. The composition offered being under a petition for arrangement, the Chief Registrar declined to allow any other proof to be made, in respect of that item, than such as would carry the composition offered upon it, and, accordingly, the parties elected to strike that sum

* Preface to Starkie, On the Law of Evidence.

Digitized by Google

out of the account. This being done, the balance due was brought out £741 19s. 2d., in addition to the £370 admitted. A motion was then made to confirm the report, and a cross motion, on behalf of the trader, to vary the report as to said £45. *Per* MILLER, J.—The Chief Registrar was right in allowing the claim to be abandoned. He is bound to allow any party, pending the reference before him, at his option, to abate or lessen his claim for credits to that extent, or as he might think fit. There may be an ulterior question, as to how far the parties abandoning the claim may be bound by the arrangement proceedings as regards any remedies they might assert for the recovery of it, irrespectively of the arrangement. As to the costs, in an ordinary case a party making a proof is not entitled to any costs of making such proof. But where a third party resists that proof, and contends that only a portion of it is due, and the creditor so proving in substance sustains his claim, the party so resisting should pay the extra expenses (*Re E. R., an arranging debtor;* Ba. March 17, 1874).

B. A. Act, 1872, *sec.* 16; *scale of fees.*—At the sitting of the Court, March 31, 1874, MILLER, J., said:—A A memorandum, accompanying the order (published, 8 IR. L. T., 169), prescribing a new scale of duties in these Courts, has been furnished to me by one of the principal officers upon whose accuracy I can place entire reliance, as to the effect of the order, which memorandum I will take this opportunity of reading. The new scale of duties had been well considered by my colleague and myself, before being forwarded for adoption, having secured our information from the very able and experienced officers whose assistance we at present fortunately command, and whose untiring exertions in carrying into effect, in an advantageous and practical form, the Bankruptcy Amendment Act, 1872 (which was in many respects a mere foundation upon which the rules and forms should rest), we, as judges of this Court, cannot too frequently or too fully acknowledge. The memorandum is as to the effect of the new scale of duties, and is as follows:—On the 1st April an altered system of stamp duties on the proceedings in this Court, which commence on and after that date, will come into operation. The duties hitherto levied are those imposed by schedule Z of the Irish Bankrupt and Insolvent Act, 1857, and such duties, so far as applicable to, or required by the procedure, will continue to be levied in all matters of bankruptcy, and arrangements now pending until the conclusion of each case. Under that scale, after a stamp of £1 on the petition, the bulk of the duty has been levied by the imposition of a duty of £1 on each sitting of the Court in the case for purposes which the procedure required, irrespective of the importance or the amount of assets belonging to it. Duties, though of trifling amount, have also been levied on several of the forms used, with no great profit to the revenue, while productive of some trouble to the solicitors for the suitors. The duties which will be levied in cases commenced on and after the 1st of April have been greatly simplified, and, it is believed, will relieve cases with small assets without imposing any undue burthen upon large estates. A stamp of £2 will be levied on the petition, and then a moderate duty of £2 per cent. on assets realized or composition up to £500, and of 5s. on each £100 of assets realized or composition over that amount, in substitution for the somewhat unequal system hitherto in use. Thus, the duty on assets or composition of £500 will be £10, while on £1,000 it will only be 25s. more In no case, no matter how large the assets, or prolonged the procedure, is the duty to exceed £50. A duty of £1 will be imposed on each debtor's summons and every search. While it is expected that this change will produce a somewhat larger revenue, yet it will be levied where it is rightfully incident, and the procedure of the Court will be relieved from those duties which have often been felt to be obstructive.

Security for costs; affidavit of merits.—Motion on behalf of defendant, that the plaintiffs, who resided in France, should give security for costs. The action was for goods bargained and sold, and sold and delivered; and for money paid for defendant's use. The defendant deposed "that he has a good defence upon the merits to this action, said goods having been injured, and not to order." *Monroe*, for the plaintiffs, opposed the motion, on the ground that the affidavit did not sufficiently disclose a defence on the merits, according to the practice of the Court of Exchequer. *D. Sherlock*, for the defendant, submitted that the averment that the goods were not to order was sufficient. Motion granted (*Chaigneau and Another* v. *O'Gorman*, Con. Ch., March 27, 1874, before KEOGH, J.)

Ejectment on title; waiver of temporary bars; jurisdiction in Consolidated Chamber.—*Ryan*, Q.C., moving for an order to restrain the defendant, in an action of ejectment on the title, from setting up temporary bars, *Lyster*, *contra*, objected that a judge in Consolidated Chamber had not jurisdiction in the matter. PALLES, C.B.—I have previously considered this question, with a view to determining as to what course I should adopt, if occasion arose. In my opinion, the order ought to be made in all proper cases, and the objection can then be raised in a proper form for decision, by the defendant, at the trial, refusing to waive his right to rely on the outstanding estates; and then the question of jurisdiction will arise, and be afterwards solemnly decided. Motion granted (*Lord Castletown* v. *Wingate*, Con. Ch., Feb. 27, 1874. Note, in *Clifford and Another* v. *Brooks and Another*, Con. Ch., Feb. 20, 1874, before MORRIS, J., a like motion was granted, without objection to the jurisdiction).

KEEPING GREYHOUNDS WITHOUT PROPER QUALIFICATION.—At the Ennis Petty Sessions, a man named Kilmartin has been fined for keeping greyhounds without the qualification of a freehold estate of the value of £1,000. Five magistrates adjudicated, but two—Dr. Cullinan and Mr. Keene—dissented.

IMPRISONMENT FOR DEBT.—A large majority of the Associated Chambers of commerce has resolved that the abolition of imprisonment for debt is not desirable. A motion was also adopted for calling on the Government to institute an inquiry into railway management, with reference to a diminution of accidents both to passengers and railway servants. The Associated Chambers will meet next year at Newcastle.

A bill has passed the House of Representatives providing that no person shall be prosecuted, tried, or punished in any United States court for any offence not capital, or for any fine or forfeiture under a penal statute, unless indicted, or information shall be found or instituted within five years from the date of the crime or act, except in the case of persons fleeing from justice.—*Central Law Journal (St. Louis).*

NEGLIGENCE OF FELLOW-SERVANTS.—In *Packet Co.* v. *McCue*, the United States Supreme Court recently held that, where a man standing on a wharf was hired by the officers of a boat to do a couple of hours' work on the boat, and, having received his pay for the work when completed, was returning to land, and while on the gang-plank was fatally injured by the employes of the boat, who carelessly pulled the plank from under him, it was a question for the jury to determine whether the employment had terminated, the action being against the owners of the boat, and the defence being that he was injured by fellow-servants during the course of employment. The jury, it seems, decided that the relation of master and servant did not exist at the time of the injury.—*Albany Law Journal.*

Digitized by Google

LIABILITY OF MARRIED WOMEN TO BE MADE BANKRUPT.

District Court of the United States, District of California, January 29, 1874.

In re JULIA LYONS.

(Before Hon. OGDEN HOFFMAN, District Judge.)

1. Bankruptcy — Married Women.—In a state whose statute law makes a married woman living apart from her husband liable to be sued in all actions as if sole, *she may be proceeded against under the bankrupt law.*

W. H. Fifield for petitioning creditors. *Whiting* and *Napthaly* for respondent.

HOFFMAN, J.—The question raised by the demurrer in this case is whether the respondent, being a married woman, is liable on a contract to pay rent, and if she has committed an act of bankruptcy, can be adjudged bankrupt. It appears that the husband of the respondent has long since renounced and abandoned all his marital rights and duties. For twelve years Mrs. Lyons has lived separate and apart from him, supporting herself and her minor children by her own exertions. In the course of her business as keeper of a lodging-house, she has contracted an indebtedness for rent, and being so indebted, and in contemplation of bankruptcy and insolvency, has made, as is alleged, an assignment of her property in fraud of the bankrupt act.

It is urged by the respondent's counsel that the contract of a married woman for the payment of money is void, and that the petitioning creditor has no debt which the court can recognize. On this point numerous authorities are cited; but as they, for the most part, are decisions under the act of April 17, 1850, and the amended act of May 12, 1862, no examination of them is necessary. The decision of the question before us turns upon the force and effect to be given to the act of March 9, 1870. (Laws of 1870, p. 226.)

The first three sections of that act are as follows: Section 1. "The earnings of the wife shall not be liable for the debts of the husband." Section 2. "The earnings and accumulations of the wife and her minor children living with her, or being in her custody, while the wife is living separate and apart from her husband, shall be the separate property of the wife." Section 3. "The wife, while living separate and apart from her husband, shall have the sole and exclusive control of her separate property, and may sue and be sued without joining her husband, and may avail herself of, and be subject to, all legal process in all actions, including actions concerning her real estate." The fourth section prescribes the mode in which she may convey her real estate.

The object of these enactments is apparent. It was to secure to the wife, when abandoned by her husband, the fruits of her own industry, and to enable her to support herself and her children out of her earnings and accumulations, free from his interference or molestation. For this purpose her earnings and accumulations, which at common law belonged to her husband, are declared her separate property, and her rights in respect of such property are carefully defined. She is to have the sole and exclusive control of it; she may separately sue or be sued, and may avail herself of and be *subject to all legal process in all actions.* That the principal intention of the Legislature was to protect deserted wives in their just rights, and not to impose upon them additional liabilities, is admitted. For this purpose they were placed in the position of *quasi femes sole,* and were granted all the powers necessary to enable them to earn their own livelihood, and to retain and enjoy the fruits of their industry. But to accomplish this object, it was evidently necessary to create new liabilities as well as to confer new rights. The ability to sue for moneys earned by or due to her was clearly indispensable to enable the wife to attain the object contemplated by the law.

Justice and reason, and even her own interests, demanded that she should herself be liable for all debts contracted by her. For without such liability how could she obtain the credits, usually necessary in the conduct of any business; and what could be said of the morality of a law which should announce to a woman that for all debts and demands due her she shall have the right to sue and enforce payment, but as to debts due by her she may plead her coverture as a conclusive bar to the action?

The separate property of a married woman has, on general principles of equity, been held liable for debts contracted in respect to it or in and about its management and improvement. The act of 1870 created a new species of separate property in the earnings and accumulations of the wife while separated from her husband.

The equitable principles already adopted by the courts, and usually enforced by statute, required this new species of separate property should be liable for debts incurred in its creation or management, and in the course of the business, the proceeds of which the statute enables the wife exclusively to enjoy. Further discussion, however, is needless, as the language of the act is too explicit to be mistaken. It enacts that the wife separated from the husband "may sue and *be sued,* and that *she* shall be subject to all *legal process in all actions.*" This language is obviously inconsistent with any exemption from liability to suit for a just debt on the pretext that, being a married woman, her contracts for the payment of money are void.

The respondent being thus found to have incurred a valid indebtedness and a liability to be sued therefor as if a *feme sole,* she may, if she has committed an act of bankruptcy, be adjudged a bankrupt. Hilliard on Bankruptcy, p. 49; Avery and Hobbs on Bankruptcy, pp. 33–4; *in re* Kinkead, 7 N. B. R. p. 439.

The demurrer is overruled, and the respondent allowed ten days to answer the petition.—*Pacific Law Reporter.*

NOTE.—Whether a married woman may be proceeded against under the bankrupt act, would seem to depend, in each particular case, upon her power of making contracts, or of engaging in trade or other business independently of her husband. The general rule of the common law is that a married woman possesses no such power; but that if she enters into contracts or engages in trade or other business with her husband's consent or ratification, she acts simply as his agent; and hence that the fruits of such contracts, or the accumulations of such trade or business, belong to him and not to her. Bish. Mar. Wom., § 733; Switzer v. Valentine, 4 Duer, 96; Jenkins v. Flinn, 37 Ind. 349. Wherever this rule of the common law obtains in full force, it is clear that she cannot be adjudged a bankrupt. *In re* Goodman, 8 N. B. R. 380.

But this rule admits of exceptions, and these may be arranged into two classes: 1. Exceptions created by local custom or by local law. 2. Exceptions growing out of a temporary cessation of the coverture.

Under the first of these exceptions is the case of frequent occurrence in the English books, where a married woman acts as a *sole trader* according to the custom of London. *Ex parte* Carrington, 1 Atk. 206; Lavie v. Philips, 3 Burr. 1776; S. C. 1 W. Black. Rep. 570. See also in Pennsylvania, Burke v. Winkle, 2 Sergt. & Rawle, 189; in South Carolina, Newbiggin v. Pillans, 2 Bay, 162; in Louisiana, Christensen v. Stumpf, 16 La. An. 50; Spalding v. Godard, 15 La. An. 277; Bowles v. Turner, 352 ib.; in California, Melcher v. Cuhland, 22 Cal. 522; Abrams v. Howard, 23 Cal. 388. Under the same head would fall those cases like *re* Lyons, *supra,* where, by statute in particular states, a married woman may, under certain circumstances, contract liabilities, carry on business, and sue and be sued independently of her husband, and as a *feme sole.* In these cases there would seem to be no doubt that she is amenable to the bankrupt law. As in New York: *In re* O'Brien, N. B. R. Sup. 38; Graham v. Starks, 3 N. B. R. 92. Or in Illinois: *In re* Kinkead, 7 N. B. R. 439. Thus it was held in the last case in the United States District Court at Chicago, by Blodgett, J., that where a husband and wife carried on a business in partnership, their status was such, under the statutes of Illinois relating to married women, that the *firm* might be proceeded against in bankruptcy; and hence that the partnership creditors were entitled to a preference in the distribution of the assets, over a creditor of the husband, whose demand had accrued prior to the organization of the firm. And it was intimated that the wife would be separately adjudicated a bankrupt if it should be found necessary in the course of the proceeding to do

Digitized by Google

so, in order to reach any individual property she might have. In the case of *Re* Rachel Goodman, 8 N. B. R. 380, determined in the United States District Court for Indiana, before Grisham, J., the principle above stated is fully recognized; but when applied with reference to the statutes of Indiana relating to married women, as interpreted by the supreme court of that state, the case resulted in a dismissal of the petition. It was found under the Indiana statutes, as expounded by the state supreme court, (1) that a married woman cannot engage in any kind of trade or business on her own account unless she have separate property; (2) that if a married woman, not having separate property or means of her own, engage in and carry on business, the profits, if any there be, belong to the husband as the earnings of the wife; and (3) that a married woman in Indiana, possessed of no separate estate, is relieved of none of the disabilities imposed upon her by the common law. The petition failed to show that Mrs. Goodman was possessed of any separate property or means with which she was carrying on her business, and it was held to follow that she could not be adjudged a bankrupt. So in the case of *Re* Slichter, 2 N. B. R. 107, in Minnesota, where the statute allows a married woman, under certain circumstances, to engage in trade in her own name, upon obtaining a license from a probate justice, in which case the business and profits become her separate property, and she is bound by her contracts as a *feme sole*, Nelson, district judge, held that a married woman who had been engaged in business as a member of a partnership firm, but without complying with the statute, could avail herself of the plea of coverture to defeat the bankruptcy proceedings against her.

Under the second head, which embraces the question whether a married woman may be adjudged a bankrupt where the marriage relation has been temporarily interrupted, the books furnish many instructive decisions defining the circumstances under which, independently of local custom or statute, a married woman may be separately sued. These decisions embrace cases where a married woman lives apart from her husband on a separate maintenance, in which case it has been held and afterwards denied, in England, that the wife may be sued at law as a *feme sole*. Corbet v. Poelnitz, 1 Term R. 5. *Contra*, Compton v. Collinson, 1 H. Blacks. 350; Clayton v. Adams, 6 Term R. 604; Marshall v. Ratton, 8 Term R. 545. And Chancellor Kent states (2 Com. 161) that the rule of Corbet v. Poelnitz has never been adopted in this country. It has also been held in England that a wife may be sued at law whose husband is an absent alien enemy, and is under an absolute disability of returning. Derry v. Duchess of Mazarine, 1 Ld. Raym. 147. Or where he had been transported; Sparrow v. Caruthers, 2 W. Black. 1197. Or had been banished or had abjured the realm, Lady Belknap & Wayland, 1 Co. Lit. 132 b, 133 a. So it has been held in Massachusetts that a married woman who had been divorced *a mensa et thoro* might sue and be sued as a *feme sole* in respect of property acquired or debts contracted by her subsequently to the divorce. Dean v. Richmond, 5 Pick.461; Pierce v. Burnham, 4 Metcf. 303. And it has been held in the same state that a *feme covert*, whose husband had deserted her in a foreign country, and who had thereafter maintained herself as a single woman, and for five years had lived in that commonwealth, the husband being a foreigner and having never been within the United States, was competent to sue and be sued as a *feme sol*. Gregory v. Paul, 15 Mass. 31. And the question is now said to be settled in Massachusetts, as a necessary exception to the rule of the common law, placing a married woman under a disability to contract or maintain a suit, that where the husband was never within the commonwealth, or has gone beyond its jurisdiction, has wholly renounced his marital rights and duties, and deserted his wife, she may make and take contracts, and sue and be sued in her own name as a *feme sol*. "It is," said, Shaw, C.J., "an application of an old rule of the common law, which took away the disability of coverture where the husband was exiled or had abjured the realm." Gregory v. Pierce, 4 Metcf. 478. And within the meaning of this principle, the residence of the husband within another of the United States is held to be equivalent to his residence in a foreign state. Abbot v. Bayley, 6 Peck, 89. "But," said Shaw, C.J., in Gregory v. Pierce, *supra*, "to accomplish this change in the civil relations of the wife, the desertion by the husband must be absolute and complete; it must be a voluntary separation from and abandonment of the wife, embracing both the fact and intent of the husband to renounce *de facto*, as far as he can do it, the marital relation, and leave his wife to act as a *feme sol*. Such is the renunciation, coupled with a continued absence in a foreign state or country, which is held to operate like an abjuration of the realm." In Love v. Moynehan, 16 Ill. 277, 282, the supreme court of Illinois, after reviewing many modern cases, hold the law to be "that where the husband compels the wife to live separate from him, either by abandoning her, or by forcing her, by whatever means, to leave him, and such separation is not merely temporary and capricious, but permanent and without expectation of again living together, and the wife is unprovided for by the husband in such a manner as is suited to their circumstances and condition in life, she may acquire property, control her person and acquisitions, and contract, sue and be sued in relation to them, as a *feme sol*, during the continuance of such condition."

So it has been held in a recent case in Georgia, that, on general principles, a married woman whose husband has deserted her and resided in another state, has the right to contract and be contracted with, to sue and be sued, as if *sole*. Clark v. Valentino, 41 Ga. 143. See also as supporting the same view, the following cases: Rhea v. Rhermer, 1 Peters, 105; Cornwall v. Hoyt, 7 Conn. 427; Arthur v. Broadnax, 3 Ala. 557; Jones v. Stewart, 9 Ala. 855; Roland v. Logan, 18 Ala. 307; Rose v. Bates, 12 Mo. 47; Starrett v. Wynn, 17 Serg. & Rawle, 130; Bean v. Morgan, 4 McCord, 148; Valentine v. Ford, 2 P. A. Brown, 193.

It would seem to follow, by reasonable analogy, that where a married woman is, for any such reason, liable to be sued as if *sole*, at least in an action at law, she may, if otherwise amenable to the provisions of the bankrupt act, be proceeded against thereunder. Accordingly it was held in England in *ex parte* Franks, 7 Bing. 762, that the wife of a convict sentenced to transportation was liable to be made a bankrupt, she having become a trader, although her husband had not been sent out of England. The sentence of transportation against her husband rendered her liable to suit generally; and the fact that she had become a trader brought her within the provisions of the English bankrupt law.—*Central Law Journal.*

HUMOROUS PHASES OF THE LAW.

Trade-marks.

One of the most fertile subjects of conversation in the commercial world is the rascality of lawyers. To hear the unanimous opinion of tradesmen one would infer that, among the latter, at least, there was no such thing as cheating one another; that such is the purity of the atmosphere of trade, that no merchant ever contrives to filch away another's customers, and that one's ownership of his own is universally respected. In spite of the bad odor in which we are held by the mercantile world, we do not remember of ever hearing ourselves accused of stealing one another's signs, or forging one another's handwriting, or resorting to any other mean device to get business that does not belong to us. We fear that so much cannot be said of our critics. Here is an entire branch of the law devoted to the subject of the protection of merchants against the piracy of their fellows. One merchant imitates the peculiar commodity or invention of another; the law says he must not do this, and gives the latter the privilege of affixing a peculiar mark upon it to denote his proprietorship; the other then steals the mark, too, and the law then punishes the latter infraction. All this not only furnishes inevitable employment to those unprincipled lawyers, of whom we started out to speak, but gives rise to a vast amount of metaphysical and abstruse law-learning. Out of this we propose to extract any alleviating phases of humor that may not be altogether patent, although the subject of investigation may be.

The poets have differed in their estimates of the importance of a name. One asks, "What's in a name? that

Digitized by Google

which we call a rose by any other name would smell as sweet;" and another talks about "the magic of a name." But the experience of practical men has demonstrated that Campbell is right. The success of a book, a play, a commodity, is very dependent upon its name, and the success of men themselves is frequently hindered by a ridiculous or common-place name. The only man with a common name who achieved fame, according to our recollection, was John Brown, and even he would not, had it not been for the fortunate circumstances of his failing in his enterprise and being hanged. The modern novelists have recognized "the magic of a name," and have named their offspring in a way to excite curiosity and surmise. Frequently their productions are named without any regard to appropriateness. Thus, "Cometh up as a Flower," so suggestive of the frailty of human existence, and which has accordingly been bought by all the pious persons in the land, turns out to be a very nasty tale of attempted seduction. "Ruskin on Types," it is said, was once inquired for by a printer, and John Hill Burton tells a story of a sheep-breeder who went to a hardware store to buy a "hydraulic ram" for the improvement of his flock. But we are straying from our subject.

It was formerly said that a trade-mark, to be entitled to judicial protection, must in itself indicate the origin or ownership of the article to which it belongs. This idea has been very materially modified by modern decisions. The rule is well stated by Lord Langdale in *Perry* v. *Truefitt*, 6 Beav. 56: "A man may mark his own manufacture, either by his name or by using for the purpose any symbol or emblem, however unmeaning in itself; and if such symbol or emblem comes by use to be recognized in trade as the mark of the goods of a peculiar person, no other trader has a right to stamp it upon his goods of a similar description." As an illustration, the words "Congress water" do not indicate either origin or ownership, for the water is a natural product, and no one would, for a moment, conceive our members of Congress as having any interest in such a subject; and yet the phrase has been held a valid trade-mark. So much the law concedes to a natural beverage described by a "fancy name." But artificial beverages are viewed with less complacency, and "Schiedam Schnapps" may be made and sold by any one. So it was held in *Wolfe* v. *Burke*, 7 Lans. 151, and although Mr. Wolfe was the first to introduce this delicate article of alcoholic stimulant to the American palate, yet any one may keep the wolf from his door by manufacturing and vending it.

It is a well-settled principle that a *colorable* imitation of one's trade-mark or designation will be restrained by a court of equity. This received exemplification in the case of *Christy* v. *Murphy*, 12 How. 77. The plaintiff organized and established, in 1842, a band of performers of negro minstrelsy, and named it after himself, "Christy's Minstrels." He was the first who established this species of entertainments. When he commenced it he incurred some expenditure of time, labor and money, and continued it successfully until 1854, when he suspended it and went to California. In his absence the defendants, most of whom had been employed by him in his band as performers for hire, assumed the style and name of "Christy's Minstrels." The plaintiff, desiring to reinstate his own band under that name, prayed an injunction against this conduct of the defendants, and it was granted. Judge Clerke, who gave the opinion of the court, and who seems a wise and merry Clerke, such as would have rejoiced the heart of Chaucer, utters some very sensible legal, hygienic and ethical observations. He says: "'Man does not live by bread alone;' the complete enjoyment, even of his physical existence, does not depend upon mere food or raiment or other material substances, but upon the exercise of the various and numerous moral and mental faculties with which God has endowed us. It may be as necessary to laugh as to eat; and I am persuaded, if people *would eat less and laugh more*, that their moral as well as physical well-being would be materially improved. The gravest of poets sings:—

> 'The love of pleasure is man's eldest born;
> Wisdom, her younger sister, though more grave,
> Was meant to minister, and not to mar
> Imperial pleasure, queen of human hearts.'"

And the judge concludes that the entertainment afforded by Mr. Christy deserves the protection of the court against fraudulent imitations, and that, in the use of his name, the defendants must "keep dark."

It would doubtless be conceded that an artist's or engraver's device placed upon a picture by way of trade mark, would be protected against imitation. Thus, the letters A.D., in the form of a monogram, the well-known device of Albert Durer, could not lawfully be adopted by another engraver of a different name, although he should place after the letters the year of grace in which the work was produced, thus giving to the letters, when accurately viewed, the force simply of "*Anno Domini*." And this is the extent to which a man can make a trade mark of his own name. Those of a different name may be restrained from assuming his name and mark, and others of the same name from imitating his peculiar device.

One accurate observer has seemed to think that trade-marks on pictures to denote their subjects are very useful. Mark Twain, in "Innocents Abroad," after explaining how he is able to recognize pictures of St. Mark, St. Matthew, and St. Sebastian, by the presence of the lion, the book and the pen, and the arrows, respectively, goes on to remark:—"When we see other monks looking tranquilly up to heaven, but having no trade-mark, we always ask who those parties are."

It is also a familiar principle that equity will not lend its aid to restrain imitations of articles which are themselves deceptive and false in their appellations. Thus in *Fetridge* v. *Wells*, 13 How. 385, where the plaintiff made a liquid soap, composed of palm oil, pot-ash, alcohol, and sugar, and called it "Balm of Thousand Flowers," he was denied an injunction to restrain the defendant from doing the same thing. In other words, although the plaintiff came into court with so much soap, he did not come with "clean hands." We have seldom seen a case exhibiting a Judge in such a prosaic and unimaginative light as this. Judge Duer actually denied an injunction, on the ground that the title of the plaintiff's soap was false and fraudulent, and induced the public to believe that it was concocted of many flowers! He satirically calls the article a "precious compound," and spends several pages in the severest judicial denunciation of its inventor. He quotes Webster and Johnston to show that "balm" means "an aromatic vegetable juice, whether extracted from trees, shrubs, or flowers." What he would do to one who should call a soap "Balm of Gilead," does not appear. But, however matter of fact the Judge was as to the title, he was sound when he came to criticise the paper of directions, which promised that the preparation would cure nearly every ill that flesh is heir to; and not even the "ingenious pleasantry" of "the able counsel for the plaintiff, to whom he always listened with pleasure, and not unfrequently with instruction;" nor his own concession that it would be difficult for a judge of the most approved and habitual gravity to read this paper of directions without a smile;" nor his own pleasantry, that "it would seem that so long as the 'Balm of Thousand Flowers' may be procured, it will be a folly to grow old and a mistake to die," could cause him to forget his duty to refuse to aid the plaintiff in obtaining a monopoly to deceive the public.

Mr. Brown, in his treatise on trade-marks, says: "We are not deceived into thinking that there is any 'gold dust' in the whiskey that bears that name; or that an illuminating oil is verily 'Mineral Sperm Oil;' or that pills are really 'Everlasting.'" We are quite inclined to agree with the latter authorities, and to believe that the public are not quite so credulous as Judge Duer seems to think. At all events, we think that Judge Sutherland lays down the true doctrine in *Comstock* v. *White*, 18 How. Pr. 421. "As to the public," he says, "if these pills are an innocent humbug, by which the parties are trying to make money, I doubt whether it is my duty, on these questions of property, of right and wrong between the parties, to step outside of the case, and to abridge the innocent individual liberty which all persons must be presumed to have in common, of suffering themselves to be humbugged." A doctrine previously enunciated in substance by Butler:

> "Doubtless the pleasure is as great
> Of being cheated, as to cheat."

And by *The Spectator:* "There is hardly a man in the

Digitized by Google

world, one would think, so ignorant, as not to know that the ordinary quack doctors, who publish their great abilities in little brown billets, distributed to all who pass by, are, to a man, imposters and murderers; yet such is the credulity of the vulgar, and the impudence of those professors, that the affair still goes on, and new promises of what was never done before are made every day."

The principle of *Fetridge* v. *Wells* was less dubiously illustrated in *Hobbs* v. *Francais*, 19 How. 567. The plaintiff manufactured a cosmetic powder called "Meen Fun," and represented on his labels that it was "patronized by Her Majesty the Queen," and that the plaintiff's place of business was in London. It appearing that the article was really manufactured in New York, a motion for an injunction against the defendant's manufacture of a similar article, by the same name, was refused, the court remarking: "Her Majesty the Queen is probably ignorant of its virtues or even of its existence." And again, in *Fowle* v. *Spear*, 7 Penn. L. J. 176, the complainant applied for an injunction to restrain the defendant from using wrappers, labels and bottles resembling those used by him in his business of selling "Wistar's Balsam of Wild Cherry." It was claimed, by the complainant's wrappers, that his preparation was a specific for nearly every imaginable disease. This was too much for the court, who observed: "It is not the office of chancery to intervene, by its summary process, in controversies like this; '*non nostrum tantas componere*,'" which, being translated, we suppose must mean "it is not ours to decide about a nostrum."

Curtis v. *Bryan*, 36 How. 33, is an entertaining case in several particulars. Previous to 1844, Mrs. Charlotte N. Winslow prepared a composition for children teething, which she used with success. In that year she gave the receipt to her son-in-law, the plaintiff, who commenced its manufacture and sale under the name of "Mrs. Winslow's Soothing Syrup," and, with the approval of Mrs. W., he made that his trade mark, and the article has achieved an extensive and valuable reputation under that appellation. In 1867 the defendant commenced the manufacture and sale of a preparation of similar appearance, put up in similar form, and denominated "Mrs. H. M. Winslow's Soothing Syrup for children teething." On the petition of the plaintiff, the defendant's conduct was enjoined, it appearing that his claim to any use of the name of "Winslow" was false and fraudulent. Long before the defendant commenced his manufacture, the original mother Winslow had passed to the silent tomb, but whether her passage thither had been, or might have been, in any degree soothed by the administration of her own charmed mixture, the report does not show. The case is worthy of remark in several particulars. To begin, it shows the tender interest that the law takes in infants. The chancellor and courts of equity are the guardians of infants, and the jealous protectors of their rights. In this case, the court declared that its wards should not be imposed on by pseudo-Mrs. Winslows; that their slumbers should not be broken by any such fraudulent devices, and that the court, having cut its own eye-teeth, would not allow the normal development of the infantile teeth to be interfered with by Mr. Bryan and his pretended Mrs. Winslow. Again, the case discloses the unexampled spectacle of a mother-in-law doing something handsome for her son-in-law, and finally, we should note that, although Mother Winslow had gone, as is confidently hoped, where there is no "wailing or gnashing of teeth," yet the plaintiff continued to advertise that "Mrs. Winslow, an experienced nurse and female physician, presents to the attention of mothers her soothing syrup;" that the defendant claimed that this was a false representation, and that the court would not protect the plaintiff in a fraudulent monopoly of the name of the departed nurse; but that the court held that the objection was technical, that they would not look too intensely into tenses, and, the defendant being guilty of fraud, it did not lie in his mouth to make the objection. So Mother Winslow can rest in peace; her son-in-law can go on selling the mixture undisturbed, and thousands of young mothers, when they feel, like Hamlet, that the "heir bites shrewdly," will bless good Mother Winslow and good Judge Van Vorst. As for this wretched designing Bryan, he ought to be sentenced to read Judge Van Vorst's opinion of him. We would not like to be in his place for a considerable consideration. If he has any conscience at all, the feelings of the ruffians who smothered the babes in the tower, and of Macbeth, who "murdered sleep," must have been as nothing to his. The poet sweetly sings:

> "Heaven lies about us in our infancy;"

but, when we read this report, we must conclude that it is Bryan who *lies* about us in our infancy. Let the wretched man go. Not even the original and genuine Mother Winslow can purchase slumber for his guilty eyelids.

> "Not poppy, nor mandragora,
> Nor all the drowsy syrups of the world,
> Shall ever medicine thee to that sweet sleep
> Which thou owds't yesterday."

So much as to the action of courts in assisting poor human nature to get its teeth *in* without pain. Now, let us see how it will aid us in getting our teeth *out* without pain. *Colton* v. *Thomas*, 2 Brewster, 308, tells us how. The plaintiff alleged that he had purchased from Dr. G. Q. Colton the right to use the name "Colton Dental Association," in connexion with the use of nitrous-oxide gas to alleviate pain in the extraction of teeth, and that he used the same in advertisements, and prominently displayed it on signs; that the defendant, who had been in his employment, left him, opened dental rooms in the same street, issued cards, announcing that he was "formerly operator at the Colton Dental Rooms," and extracted teeth without pain by the use of nitrous-oxide gas, and put a sign to the same purport over his door, but that the words "formerly operator at the," upon cards and sign, were in small and almost illegible letters, while the words "Colton Dental Rooms" were very conspicuous; the signs were very similar in shape, size, etc., and were hung on the same side of the street, in the same manner, and might readily be mistaken the one for the other, "especially by suffering patients impatient for relief." An injunction against the defendant's cards and signs was granted.

As we have seen, the imitation need not be literal to sustain an injunction. Thus, in *Burnett* v. *Phalon*, 9 Bosw. 192, the plaintiff's "Cocoine" was held to be infringed by the defendant's Cocoine;" and, in a French case, "Eau de la Floride" was held to be infringed by "Eau de la Fluoride." Here was a difference of only a single letter, but the court thought "the letter killeth."

But it is time to draw the moral from our subject. In the first place, we see that man is an imitative animal. Doubtless Mr. Darwin would derive comfort from the perusal of this paper, as affording evidence that we are all descended from Mr. Darwin's avowed ancestry. Be that as it may, the fact remains, man apes his fellow. Secondly: in the matter of trade-marks, in nine cases out of ten, the protection of the mark is sought for something not worth protecting or not needing protection. Nostrums form a large class, and things without which mankind would be as well off as with, or the thing infringed is no better than the spurious article; or the genuine is so much superior to the spurious, that nobody will be deceived. So it is apparent that the protection extended is not for the public, but simply for individual benefit. Third: it is quite possible that if trade-marks were abolished all commodities would be improved, and less liable to adulteration or depreciation in manufacture. Mr. Wedgwood never patented his exquisite wares; he knew they could not be successfully imitated. Ulysses felt no uneasiness lest any one else should bend his bow. Wordsworth said to Lamb that Shakespeare was greatly overrated; "why," said he, "I could write just like him if I had a mind to." "Yes," replied Lamb, "if you only had the mind." There is quite a tempest in the literary tea-pot, about the authorship of "Beautiful Snow" and "Betsy and I are out," but "Paradise Lost" and "Hamlet" have had no imitators and need no trade-mark.—*Albany Law Journal.*

TRANSFER OF SHARES TO PAUPERS.

It is a question of very general interest whether, when a company is *in extremis*, a shareholder is entitled to transfer his shares to a pauper, and thereby avoid his liability. There have been differences of opinion among lawyers on the subject, but it was, until recently, the generally received opinion that this might be done. Lord Westbury,

Digitized by Google

however, gave a sudden shock to this doctrine in the European Assurance Arbitration, and Lord Romilly is now following up Lord Westbury's lead with vigour. During the past week our columns have shown an unbroken series of successes on the part of the official liquidator of the European Assurance Society in impeaching transfers to men of straw. The effect of this is that, with respect to a very large number of shares, instead of nothing whatever being recovered, the contributories will be found to be solvent men, and the calls will be paid in full. This will not only give the policy-holders a larger dividend, but will to a certain extent relieve the other shareholders in paying the expenses of the winding-up. The question, therefore, affects very considerably those who are interested in this arbitration. But it is of wider interest, for it concerns all shareholders to know whether, under certain circumstances, they may not find themselves caught in a trap without any possibility of escape.

The real history of the European Assurance Society would, no doubt, reveal many useful facts; and it may, perhaps, be lamented that it was not deemed advisable to appoint a commission of inquiry into the downfall of the European and Albert Insurance Companies. However, something may be learnt from the disclosures which are being made in the arbitration which is now proceeding, more especially with regard to the transfer of shares. For some time before 1869 it was generally rumoured that the European Assurance Society was in a bad way. The manager of the office in Melbourne says he knew of its insolvency before he left Australia in 1867. In September, 1869, petitions to wind up the society were presented to the Court of Chancery, but for some reason they failed. The petition of 1870 was equally unsuccessful. But in June, 1871, a petition was presented, on which a winding-up order was made in January, 1872. Thus for three years the society continued to exist, while the shareholders were well aware that the crash must come at some time or other. During this period the ingenuity of many persons was exercised in devising schemes for getting rid of their shares. Some transferred their shares to their servants; others instructed their brokers to pay any price to persons who would undertake the liability; and there seem to have been certain centres in London, Edinburgh, Manchester, and elsewhere with special facilities for passing the transfers. Numbers of these transfer cases have been brought before the Arbitrator, and in all cases but two the pauper transferee's name has been taken off the list of contributories and the solvent transferor's name substituted. Sometimes the transferee's calling was misdescribed, as, for example, a shepherd was called a sheep farmer, a poor working man an esquire, or a poor collier a superintendent of a colliery. Sometimes the consideration was wrongly stated; it was alleged that a price had been given by the transferee, when, in reality, perhaps, nothing whatever was given, or he was even paid for taking the liability. Sometimes there was some other misrepresentation or suppression.

With respect to all these devices Lord Romilly lays down the principle thus:—

"Without meaning to assert that, when a company is failing, one of the shareholders may get rid of his shares by disposing of them to a pauper, and thereby throw his portion of the debts upon the other shareholders, still I am of opinion that, if such a transfer of shares can ever be supported, it is incumbent on the transferor to supply the company with all the materials and means in his power to enable them to form a just and accurate conclusion as to the fitness of the transferee to be supplied in the place of the transferor. Unless this is done, it appears to me that the transferor is conniving at a fraud against the society, and cannot gain any advantage from the transaction in which he is so implicated."

Lord Westbury went even further, and said:—

"I do not care a rush whether the directors inquired or not, or whether there was misrepresentation or not; but if I find the man who desires to dispose of his shares in favour of A. B. knows very well in his own mind at that time that A. B. was an insolvent man or a most improper man, for some reason or other, to be introduced into the partnership, I shall hold that that personal knowledge on the part of the individual disposing of his shares forbade him to do what he desired to do, and that his persisting in doing it, relying upon the ignorance of the directors and concealing what he knew, was a fraud upon the directors."

This seems scarcely to accord with the principles of the Court of Chancery as acknowledged by Lord Campbell when he said:—

"According to the decision of this Court, to which I respectfully bow, if it had been proved that they had parted with all interest in these shares, although for the express purpose of getting rid of the liability, and although they knew they were of no value, and that the transferee was a man of straw, they would have been absolved from liability, and ought to be removed from the list of contributories."

Such conflicting statements as these give a spur to litigation. And not only so, but they cause a sense of uneasiness to arise in the minds of all shareholders when they reflect that, although they may appear to have an unfettered right of transfer, some method of entangling them in the mesh of a winding up may possibly be discovered. Much, no doubt, may be said in favour of the expediency of either view of a shareholder's rights, and possibly both views may be reconciled by a consideration of the peculiar constitution of the different companies; but at present it is clear that whenever shares are taken the question should be considered whether, after they have been effectually disposed of, there is any longer any liability. It would be to the interest of the community that the uncertainty which now surrounds this question should be dispersed by legislation. Otherwise we shall have to look forward to further experiments being made on the *vile corpus* of many an unfortunate shareholder.—*The Times.*

RECENT DECISIONS.*

(THOMAS AND ANOTHER, *v.* COX, 8 *Ir. L. T. R.* 52.)

Baron Fitzgerald sitting in the Irish Consolidated Chamber has refused to follow our Court of Queen's Bench in its decision in *Raeburn* v. *Andrew* (20 L. T. Rep. N. S. 15), as to the alteration of the rule of practice which entitled a defendant to security for costs from a plaintiff resident out of the jurisdiction. There Mr. Justice Blackburn considered that the Judgments Extension Acts, 1868, removed the reason of the rule, inasmuch as a judgment obtained in England can now be entered up in the Courts of Scotland and Ireland, and execution issued upon it. Baron Fitzgerald gave no reason for adhering to the old rule, and in another case Chief Baron Palles declined to decide in chambers whether the Court would depart from it. The great absurdity is that Scotland and Ireland should be out of the jurisdiction, and it would be a step in advance if there could be but one jurisdiction throughout the British Isles. That a different practice as to security should exist in the three countries is decidedly objectionable.

(*In re* W., A SOLICITOR, 8 *Ir. L. T. R.* 51.)

In the above case an application for an attachment against a solicitor for non-payment of moneys due to a client was made to the Irish Master of the Rolls on the 4th ult. The solicitor acted under a power of attorney to draw an annuity, to which a lady client was entitled, and received a portion of the annuity, which, however, he did not pay over. A petition was then filed against him. The amount he retained was £60, and he claimed credits which, on examination, proved to amount only to £1 13s. 4d. The court, in the first instance, ordered him to pay £58 6s. 8d. within one month. He failed to do so, and the application was made for an attachment. The master of the Rolls, on this application, gave the solicitor a month to pay half the amount and two months for payment of the residue. "There is," he said, "no excuse for a solicitor who applies to another purpose money which belongs to his client. It should be a golden rule to all solicitors, that the money of a client should be regarded as sacred." And, further, "If he has received money of his client he is guilty of a breach of duty, unless he has it ready when it is called for, and if he makes default the court always considers him liable to punishment."

* From the *Law Times.*

Digitized by Google

THE LIABILITY OF TRUSTEES TO COSTS.

A few days ago the Master of the Rolls, in giving judgment in a case where trustees, under the advice of counsel, had paid a legacy into court, made some rather cynical remarks on the numerous advantages afforded by the position of trustee. One of the delights of being a trustee, he said, was that without gross misconduct (he might with strict accuracy have said without any intentional misconduct), and even though you acted under the advice of counsel, you might be ordered to pay costs. He recalled a case in which Lord Cottenham had made trustees pay all the costs of a suit which had been occasioned by their acting on the advice of three most eminent counsel. And in the matter before him he "felt himself obliged to hold" that the trustees must pay the costs of the petition which they had rendered necessary. He could not, he said, see his way to visiting the consequences of their error upon other persons. His Honour's conclusion, so far as regards the effect of taking the opinion of counsel, was doubtless in accordance with the decision of his predecessor in *Re Knight's Trusts* (27 Beav., at p. 49), which on this point was founded on *Doyle* v. *Blake* (2 Sch. & Lef. 343), in which case Lord Redesdale remarked that if a trustee under the best advice he can procure acts wrongly, it is his misfortune, but public policy requires that he should be the person to suffer. But may it not be doubted whether that mysterious standard known as public policy does demand that the harsh rule of making trustees pay all the costs of proceedings occasioned by their acts should be adopted in the case of trustees who in perfect integrity have sought and acted on advice of counsel? The interest of the public appears to be that trusts should be well administered, and therefore that substantial and intelligent persons should be willing to undertake the office of trustee. Is that end likely to be promoted by holding that a trustee who acts as any man of business would act in his own concerns—that is, upon the advice of counsel—may render himself liable to exactly the same penalty as if he had acted from the worst or most vexatious motives? This was not always the view of public policy taken by the Court of Chancery. In *Angier* v. *Stannard* (3 My. & K. 566) that distinguished judge, Sir J. Leach, said (p. 592)—"I am not willing to charge the defendant (the trustee) with the costs of the suit which he has thus occasioned. He has acted *bonâ fide* under advice which misled him, but upon which he had reason to rely, from the experience and character of the adviser. It is for the interest of society that a trustee under such circumstances should not be fixed with the costs of the suit." And in *Devey* v. *Thornton* (9 Hare, 232) the late learned Lord Justice Turner (then Vice-Chancellor), while stating that he could not venture to hold that the opinion of counsel would, in all cases, entitle trustees to their costs, nevertheless gave weight to it by giving no costs against them. In *Ex parte Ogle, In re Pilling* (21 W.R. 938, L.R. 8 Ch. 711), James, L.J., referring to the cases in which the court had felt itself bound to make trustees liable for money which they had honestly paid under a misapprehension of the law, said he was not disposed to extend those decisions. This is encouragingly like common sense, and it leads us to hope that in course of time public policy (or judicial opinion) will require that some distinction should be made between the dishonest or malicious trustee and the trustee who honestly, but erroneously, acts upon the best advice he can get.—*Solicitors' Journal.*

RECENT CASES AFFECTING SOLICITORS.

Our reports for the current month of April contain three cases affecting solicitors, and worthy of their note. The case of *Beall* v. *Smith*, 43 L. J. Rep. (N.S.), Chanc. 245, in which the defendants were condemned in the payment of heavy costs by the Lords Justices for instituting a suit in Chancery by a next friend on behalf of a person of unsound mind, not found so on inquisition, and taking proceedings in the suit after inquisition, was fully explained in our columns at the time of the decision being given, but the judgment of Lord Justice James will repay perusal.

In *Belaney* v *French*, solicitors who had been employed in an administration suit and been discharged from acting claimed a lien on certain plans and documents relating to the estate. Lord Justice James said that a solicitor could not embarrass a suit by keeping papers belonging to an estate which was being administered by the Court, and could not be allowed to enforce payment by those means (43 L. J. Rep. (N.S.) Chanc. 312).

In *The Queen* v. *The Local Government Board*, the trustees of St. Mary, Islington, had, in 1857, by resolution appointed Mr. Sparling to the office of solicitor to the Board at a salary. After the passing of the Metropolitan Poor Act, 1867, the relief of the Poor of St. Mary, Islington, came under the management of a Board of Guardians elected under the Poor Law Acts. This Board resolved to continue Mr. Sparling in office, but the Poor Law Board refused to sanction the resolution. Mr. Sparling applied for compensation, and was refused. After the passing of the Local Government Act, 1871, he renewed his application, and on refusal obtained a rule *nisi* for a *mandamus*, which the Court afterwards made absolute (43 L. J. Rep. (N.S.) Q. B., 49). The judgment of Mr. Justice Blackburn contains an able disquisition on the meaning of the words "office" and "officer" in their strict legal sense, and as used in the statutes applicable to the particular case.—*Law Journal.*

SPOILT STAMPS.

A correspondent of the *Times* writes:—"In the month of December, 1871, I prepared and engrossed a mortgage deed, which, for reasons unnecessary to detail, became of no use. The engrossment being upon a stamped parchment, I sent it to London to have the duty allowed. For this privilege, in addition to agency charges, I had to pay a stamp duty of 2s. 6d. upon the affidavit verifying the facts that the stamp had become inadvertently spoilt and that it was my property. On the 19th of February, 1872, the deed was presented and left at Somerset House, and the duty was allowed and returned to me. I heard nothing more of the matter till one day last week, when the proposed mortgagor and mortgagee—both gentlemen well known in the town of Cardiff—made an indignant and most proper complaint that the deed in question formed the head of a drum, which had been paraded for sale at a toy shop within 20 yards of my office! My unhappy client, the mortgagor, who had heard of the circumstance from numerous friends, had bought the drum in self-defence, and to veil, as far as he could, his pecuniary exigencies from the gaze of a prurient public. Unable to account for this extraordinary exposure—which, in the absence of explanation, would have reflected upon me no small discredit—I made enquiries both of the seller of the drum and of the law stationer who recovered the duty. From the former I learned the drum had been purchased of a London manufacturer, and from the latter that the parchment, as usual in country cases, had been retained by the authorities at Somerset House. The question then arose, how came it to get into the possession of the drum manufacturer? To this I can only suggest one answer, for, acting on the good old legal maxim, "*Omnia præsumuntur rite et solenniter esse acta,*" I will not assume the commission of a larceny, but rather suppose that the parchment—for which, be it observed, I had paid the Government 2s. 9d., and which, therefore, to all intents and purposes was my property—had been inconsiderately sold by the authorities in order to swell the surplus of Mr. Lowe's too redundant Exchequer."

CONTRIBUTORY NEGLIGENCE BY INFANTS.

In *Philadelphia & Reading R. R. Co.*, v. *Long*, 31 Leg. Intel. 78, the Supreme Court of Pennsylvania decided an interesting point relative to the relation of infants *non sui juris* with respect to railroad companies. In this case a child two years and two months old was killed by a locomotive of the railroad company, and it was held that the question as to the position of the child on the railway track, and as to whether the engineer could see it, and as to the rate of speed, was properly left to the jury. It was also held that the fact that the child was found in the street was strong presumption of negligence; but that the jury were to consider whether the mother of the child took *reasonable*

Digitized by Google

care of it, and if she did there was no negligence on her part. In *Crissey* v. *Railway Co.*, 31 Leg. Intel. 78, a similar question was decided, although in the latter case the child injured was thirteen years of age, and was, of course, *sui juris*. In *Crissey* v. *Railway Co.*, the plaintiff, a boy, was injured in getting off a car while in motion. The Court held that it was the duty of a railway company to cause its cars to come to a full stop to permit a passenger to get off. The railway was a street railway, and the speed of the car was slackened when plaintiff attempted to get off. The court held that a child will not be held to the same degree of care and discretion as an adult, and that the jury should determine whether the plaintiff had been guilty of negligence. —*Albany Law Journal.*

Marriage by Proxy.—The *Kansas City* (Missouri) *Times* makes the following statement :—"The Court of Law and Equity was the scene of a rather extraordinary matrimonial transaction yesterday. A man, evidently past his fiftieth year, called upon the clerk of the court for assistance in marrying a wife. Mr. Noland, who is considered an adept in matrimonial transactions, undertook the job, which was rather more difficult and complicated than he at first anticipated. It was a marriage between two persons separated by 6,000 miles of land and water. The man informed the clerk of the court that he wanted to get married to a woman now living in Holland; that he would perform such ceremonies as were necessary here, and she would be married to her brother in Holland as a proxy for him. Then the brother was to ship him his wife, with her baggage, direct to Kansas City. It appears that the lady has an objection to leaving her home in Holland before she had been married in some manner; and as the bridegroom cannot afford to leave his business here to go after his wife, he decided to apply to the courts for act of procuration. Mr. Noland, as soon as he understood the case, proceeded to prepare the necessary papers, and the old man went away delighted."

Ashantee Laws of Husband and Wife.—The women have much better treatment than in other nations, and the laws affecting them are far more just and reasonable. Indecency is punished by stringent enactments, and incontinence is a heinous crime. A chief or captain generally pays a large price for his wife, and the poor man has also to purchase his helpmate. The chief can sell his wife if he pleases, but not until her family have refused to redeem her; and in the same way he may put her to death for infidelity if her family refuse to pay a certain sum in gold. If anybody carries on a "flirtation" with one of the King's 3,333 wives the result is death, but the King himself is very willing to bestow a dozen or two of these ladies upon a warrior who has distinguished himself in battle. Should a woman dislike her husband, her family may release her by paying him back the purchase money, but the wife thus divorced must not marry again. The law about missing husbands is very ingenious. If a wife has not heard of her husband for three years she may take another, and if the first afterwards returns, the claim of the second is superior, although the children of the second marriage belong to the first husband, and may be pawned by him if he so pleases. It is forbidden to praise the beauty of another man's wife—a law which has its significance, and shows that jealousy is the chief passion of savage natures. Should a man marry a woman whose family are very powerful he does not kill her if she proves unfaithful, but contents himself with cutting off her nose and compelling her to marry the most degraded of his slaves. There seems to be but little regard paid to the female weaknesses which are overlooked in more polished nations, for, if a woman is found listening to conversations between her husband and his male guests, one of her ears is cut off, and if she betrays any of his secrets she is denuded of her lips. Of all the women of that curious capital (Coomassie) those who have the most liberty are the King's sisters. Not only are they free to choose their lovers for themselves, but if they observe any unusually handsome warriors in the street, and are tenderly affected by their appearance, they have but to express such a desire, and the men are obliged to become their husbands. Often infants are married to infants, in order to combine two great families, and it is said that the contracts thus made are religiously ratified when the interesting couple reach the age when they are capable of feeling *la grande passion*.

NOTES OF ENGLISH DECISIONS.

Slander—Words not Defamatory—Special Damage.—An action for slander cannot be maintained for words which are not necessarily of a defamatory nature, even although special damage may have resulted to the person of whom they were spoken. Therefore a declaration alleging, with proper inducement and inuendoes, that the defendant falsely and maliciously said of the plaintiff, "He was the ringleader of the nine hours' system," and "He has ruined the town by bringing about the nine hours' system, and he has stopped several good jobs from being carried out by being the ringleader of the system at Llanelly," laying special damage, was held bad on demurrer: (*Miller* v. *David*, 30 L. T. Rep. N. S. 58. C.P.)

Conversion—Goods invoiced to Defendant by Fraud of Broker—Endorsement of Delivery Order to Broker.—The defendant received from the plaintiff two invoices in respect of a quantity of barley, which G., the broker of the plaintiffs, had falsely represented to have been ordered by the defendant. G. afterwards procured the defendant to endorse over to him a delivery order for the barley to a railway company, on the strength of which he obtained the barley and then absconded, whereby the barley was lost to the plaintiffs. The jury found that the defendant had acted *bona fide* in endorsing the delivery order to G. Held, that the defendant was guilty of a conversion of the barley. Per Bramwell B.—Conversion is best defined as doing an act unauthorized which deprives another of his property for an indefinite time. Per Cleasby B.—It was not necessary to ask the jury whether the defendant did what was reasonable under the circumstances or not: (*Heugh* v. *London and North Western Railway Company*, 21 L. T. Rep. N. S. 676, distinguished): (*Hiort and another* v. *Bott*, 30 L. T. Rep. N. S. 25. Ex.)

Breach of Trust—New Trustees—Appointment of Sole Trustee—Loss of Trust Fund—Liability of Solicitor—Constructive Trusts.—Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing upon him a corresponding responsibility, which responsibility may be extended in equity to others who are not properly trustees if they are found either making themselves trustees *de son tort*, or actively participating in any fraudulent conduct of the trustee to the injury of the *cestuis que trust*. But strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, even transactions of which a court of equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in what they know to be a dishonest and fraudulent design on the part of the trustees. The court does not approve of solicitors or others, who are properly witnesses, and who are not primarily chargeable with any part of the relief prayed, being made parties to suits with a view of charging them with costs alone. A testator bequeathed his residuary estate to three trustees, upon trust as to one-fourth part thereof, for the separate inalienable use for his daughter A. for life, with remainder to her children. Two of the trustees died, and the surviving trustee appointed A.'s husband sole trustee of his wife's share of the trust fund, and that share was transferred into the sole name of the husband, who employed it in his business and became bankrupt. A solicitor who had previously acted in the affairs of the trust, prepared the deed of appointment, but only after strong protestations against the transaction, and another solicitor, after informing A. of the danger of the proposed appointment, approved of the deed on behalf of A. and her husband. Held (affirming the decision of Wickens, V.C) that the solicitors were not liable to make good the loss of the trust fund, and that a bill seeking to make them liable had properly been dismissed with costs: (*Barnes* v. *Addey*, 30 L. T. Rep. N. S. 4. Chan.)

Digitized by Google

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, April 13th, 1874, when the following subject will be debated:—"That the Divorce Law of Ireland should be assimilated to that of England."

SPEAKERS:

Affir. Mr. R. Andrews, Mr. J. A. Rynd. | *Neg.* Mr. M. Bodkin, Mr. J. S. MacNeill.

The Chair will be taken at Eight o'clock by John Frazer, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

EASTER AND TRINITY SESSION, 1874.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Easter and Trinity Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Monday*, the 20th of April, 1874.

The Course will consist of *Eighteen* Lectures, *Thirteen* of which *must* be attended so as to entitle Candidates to Professor's certificate.

By Order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts,
Dublin, *April, 1874.*

The Professor of Law has fixed upon the following Book for Lectures, viz.:—"BROOM'S COMMENTARIES ON THE COMMON LAW." Last Edition.

COURT PAPERS.

PROBATE CAUSES FIXED FOR TRIAL.

Eggless *v.* Purcell, city special, April 16; O'Malley *v.* M'Manus, court itself, April 18; Dolan *v.* Molony, court itself, April 20; Holmes *v.* Cooney, city special, April 21; Staunton *v.* M'Neill, city special, April 23; Bagot *v* Seaver, city special, April 28.

CONSOLIDATED NISI PRIUS COURT.

EASTER TERM, 1874.

This court will commence its sittings on Thursday, the 16th of April. The Right Hon. Mr. Justice Barry will preside.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

Judge Flanagan will sit at 12 o'clock, to hear Motions of course.

WEDNESDAY.

IN CHAMBER.—M. Madden, allocation.

IN COURT.—T. S. Hagerty, final schedule. — Anne Bergin, do.—C. Toole, do.—G. H. Pentland, do.—J. Rowan, do.—E. O. Lloyd, ditto.

Before EXAMINER (Mr. M'Donnell).

B. W. Falkiner, vouch.—E. H. Judge, rental.—Jane Bellingham, do.—R. N. Parker, do.—Trustee Hill, do.—Sir C. O'Loghlin, ditto.

Before EXAMINER (Mr. Dobbs).

F. A. Wintin, rental.—James Merrick and another, do.

THURSDAY.

IN CHAMBER.—J. Keays, confirm sale.—G. Bennett, ditto.

IN COURT.—W. H. Slater, final schedule.—Trustee De Bazancourt, ditto.

Before EXAMINER (Mr. Dobbs).

M. B. Mullens, rental.—Earl Dartry, do.—J. Jackson, do.—J. A. Bailey, ditto.

FRIDAY.

SALES AT 12 O'CLOCK.

JOHN H. HALL.—1 lot.
W. KEMMIS.—1 lot.
F. D. BUTLER.—1 lot.
TRUSTEE EARL DESART.—3 lots.

Before EXAMINER (Mr. M'Donnell).

J. Bateman, rental.—E. U. Greene, do.—D. Darcy, do.—Marquis Waterford, re-settlement of rental.—T. N. Underwood, vouch.—Assignees Bayley, to proceed on charge.

Before EXAMINER (Mr. Dobbs).

John Phelin, rental.—W. Acton, do.—Assignees Leadbetter, do.

SATURDAY.

Before EXAMINER (Mr. M'Donnell).

Denis Bingham, rental.—John Fawcett, do.—Administrator Howard, for deeds.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Grierson	Prove debts and vouch	*Oldham & Eaton*
William Holmes	Vouch account	*Oldham & Eaton*
Wm. F. Philipson	Prove debts and vouch	*Oldham & Eaton*
Peter Johnson	Costs	*Scallan*
Samuel Hawkins	Settle report	*M'Govern*

Digitized by Google

TUESDAY.

Before the Court, at 11 o'clock.

Richard O'Connor	1st composition sitting	*Lett*
William Walker	1st public sitting	*Lynch*
Bridget Walsh	do	*Smith*
Richard O'Connor	do	*Hamilton & Craig*
Peter Wright	do	*Oldham & Eaton*
Michael Griffin	do	*Lawler*
John Bennett	Take charge as proved	*O'Dowda*
Simon Mahony	Audit and dividend	*MacEvoy*
Alfred Parker	Motion	*Lett*

Before the Chief Registrar, at 12 o'clock.

John Neil	Costs	*Casey & Clay*
Francis Pigott	Reference	*Toomey*
William Anderson	Costs	*Fay & M'Gough*
Owen Byrne	do	*Perry & Co.*
James Keegan	Title and posting	*White*
Wm. F. Philipson	Costs	*Mathews*
John Forde	do	*Mathews*

WEDNESDAY.

Before the Chief Registrar, at 12 o'clock.

James Coll	Prove debts and vouch	*Findlater & Co.*

THURSDAY.

Before the Chief Registrar, at 12 o'clock.

Henry L. Dymoke	Prove debts and vouch	*Molloy & Watson*
Philip L. Lyster	do	*Perry & Co.*

FRIDAY.

Before the Court, at 11 o'clock.

Stephen Rickard	1st public sitting	*Findlater & Co.*
Catherine Holland	do	*Neilson*
G. & R. Ferguson	Final examination	*Larkin & Co.*
James Logan	do	*Lynch*
Patrick Monaghan	do	*Perry & Co.*
H. M. Thompson	do	*Stewart*
Patrick Byrne	do	*Leachman*
Michael Cullinan	do	*Colman*
S. P. Armstrong	do	*Mathews*
Samuel Doyle	do	*Meldon & Sons*
John Callaghan	do	*Mathews*
Walter Fitzsimons	do	*Lawler*
James Cardiff	do	*Lett*
Walter O'Donnell	do	*Oldham & Eaton*
Anthony M'Nulty	do	*Hamilton & Craig*
Joseph Sloan	do	*Hamilton & Craig*
Andrew Kehoe	do	*Hamilton & Craig*
William O'Dwyer	do	*Molloy & Watson*
William Holmes	Prove charge	*Hartigan*
John M'Gowan	do	*Scallan*
Thomas F. O'Neill	Examine witnesses	*Maxwell & Weldon*
Same matter	Audit and dividend	*Maxwell & Weldon*
Alexander Nicholls	Confirm sale	*Larkin & Co.*
Jane Young	Audit and dividend	*Merrick*
John Murphy	do	*Maxwell & Weldon*
Peter Johnson	do	*Scallan*

Before the Chief Registrar, at 12 o'clock.

Annie Stirling	Prove debts and vouch	*Cronhelm & Co.*
James Smyth	do	*Browning*
Same matter	Costs	*Browning*

ADJUDICATIONS IN BANKRUPTCY.

Blunt, George, Belfast, hotel-keeper. Sittings, *Friday, April* 24, and *Tuesday, May* 12. *Lynch*, solr.

Coyne, William J., Lower Gardiner-street, Dublin, wine merchant. Sittings, *Friday, April* 24, and *Tuesday, May* 12. *Leachman*, solr.

West, Lewis R., and Tisdall, William, tradings as L. R. West and Co., 49, Middle Abbey-street, Dublin, wine merchants. Sittings, *Friday, April* 24, and *Tuesday, May* 12. *Oldham and Eaton*, solrs.

DIVIDENDS IN BANKRUPTCY.

Keane, John, Thomas-street, Dublin, chandler. 1st and final dividend 8s. in the £. C. H. James, official assignee. *Fay and M'Gough*, solrs.

O'Connor, Terence, trading as Terence O'Connor and Co., Listowel, Kerry, grocer. 1st dividend 2s. in the £. L. H. Deering, official assignee. *Oldham & Eaton*, solrs.

Young, William John, Limerick, wine merchant and commission agent. 2nd and final dividend 4½d., making, with 1st dividend, 11½d. in £. L. H. Deering, official assignee. *Perry and Co.*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	APRIL Fri. 3	Sat. 4	Mon. 6	Tues. 7	Wed. 8	Thur 9
	Government.						
—	3 p c Consols	—	—	—	91⅛¼	—	91⅛
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock	—	—	—	90⅝¾	—	90⅝
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	—	101⅛
	Banks.						
100	Bank of Ireland	—	—	—	306	—	307
25	*Hibernian Banking Co.*	—	—	—	57⅞	—	57⅝⅞
15	*London Joint Stock*	—	—	—	—	—	—
20	*London and Westminster*	—	—	—	—	—	—
3½	*Munster Bank (Limited)*	—	—	—	—	—	—
30	*National Bank*	—	—	—	58⅛¼	—	58⅛
15	*National of Liverp'l (Litd)*	—	—	—	—	—	—
25	*Provincial Bank*	—	—	—	94⅝	—	94⅝⅞
10	*Royal Bank*	—	—	—	29	—	28⅝
	Steam.					—	
50	British & Irish	—	—	—	52		—
100	City of Dublin	—	—	—	108	—	108
50	Dublin and Glasgow	—	—	—	63	—	—
50	Peninsular and Oriental	—	—	—	—	—	—
	Mines.					—	
3½	*Berehaven (Limited)*	—	—	—	—		—
7	*Cape Copper M. Co. (lit'd)*	—	—	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	—	—
2½	Wicklow Copper	—	—	—	—	—	—
	Miscellaneous.						
	Alliance & Dublin Cons.'						
10	Gas, viz.:—A	HOLIDAY	HOLIDAY	HOLIDAY	—	HOLIDAY	—
10	B				—		—
10	No. 2 C				—		—
9½	*Dublin Tramways*				7⅛		—
9-4-7	*Patriotic Assurance*				10⅝		—
	Railways.						
100	Dublin and Drogheda	—	—	—	—	—	—
100	Dublin and Kingstown	—	—	—	—	—	210
100	Dublin, W'klow, & W'ford	—	—	—	—	—	—
100	Gt. Southern and Western	—	—	—	108⅝	—	108⅝¾
100	Do. do. free of Stamp	—	—	—	—	—	—
100	Midland Gt. Western	—	—	—	86¼⅛	—	85⅛
25	Portdn. Dun. & Omh. Jun.	—	—	—	13	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	—	—
100	Dublin & Meath - 1st, 5 p c	—	—	—	—	—	—
100	D., W., & W., 6 per cent	—	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	53½
100	Gt. South'n & West'n 4 p c	—	—	—	—	—	97⅝
10	Irish North Western A 5 p c	—	—	—	—	—	—
100	Do., Divd Com A 5 p c	—	—	—	—	—	—
100	Do., Deb Com A 5 p c	—	—	—	—	—	—
10	Do., B 5 p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	50½	—	—
50	Do., new redeemable 5 p c	—	—	—	49⅝	—	49⅝
	Railway Debentures.					—	
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	D., W., & W., 4½ p c	—	—	—	—	—	99
—	Gt. South'n & West'n, 4 p c	—	—	—	—	—	98½ f
—	Irish Nth Westn 1st C 5 p c	—	—	—	100	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	99⅝

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.
Name Days—April 14th and 28th, 1874.
Account Days—April 15th and 29th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF MAYO AND DUBLIN.

SALE,
On FRIDAY, the 24th day of APRIL, 1874.

In the Matter of the Estate of William McCormick, Owner; The Honourable and Rev. Alwyne Compton and William Dickins, Petitioners.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Dublin, On FRIDAY, The 24th day of APRIL, 1874, At Twelve o'clock noon, In Five Lots, The following Valuable Property:—

LOT 1.

The Lands of Tonregee East and Tonregee West, containing 1,377a 2r 11p, statute measure, situate in the Barony of Burrishoole, and County of Mayo, held under fee-farm grant dated 11th June, 1850, from the Rev. Peter Browne to John McLoughlin.

LOT 2.

Bolinglanna, with its sub-denominations, Knocknacassa, Bunanior, otherwise Bunanioo, with its subdenominations, Knocknamona, and Glossilan, otherwise Glossilaun, Meewillin, Belfarsad, and Gubnahardia, situate in the Barony of Burrishoole, and County of Mayo, held under fee-farm grant dated 11th June, 1850, from Rev. Peter Browne to John McLoughlin.

LOT 3.

Six separate Plots of Ground, with the Houses and Premises thereon, One Plot or Parcel of Ground situate in Market-street, Two Plots or Parcels of Ground situate in Weavers'-row, Four Acres of Land adjoining Moses Evans and William Harding's former holdings at the back of the Barracks, with Nine Acres of Cottings-row, together with the Houses, Buildings, and Appurtenances thereunto belonging, in and adjoining the Town of Newport, situate in the Townlands of Knocknageeha, Barrackhill and Newport, Barony of Burrishoole, and County of Mayo, held with other Premises under fee-farm grant dated 11th June, 1850, from Rev. Peter Browne to John McLoughlin.

LOT 4.

Three Dwelling-houses in Park-place, Conyngham-road, being part of Long Meadows, situate in the Barony of Castlenock, and County of Dublin, held under fee-farm grant dated 19th April, 1851.

LOT 5.

Other part of Long Meadows, with the Cottages and Premises thereon, known as Sarah-place, situate in said Barony of Castleknock, and County of Dublin, held, together with lot 4, under fee-farm grant.

Dated 16th day of February, 1874.

C. E. DOBBS, Examiner.

BYRNE, KENNEDY, & CO., Solicitors.

Private proposals will be received by the Solicitors having the carriage of the Proceedings, up to the 11th day of April, 1874, and submitted to the Judge for his approval without further notice.

DESCRIPTIVE PARTICULARS.

Lots 1 and 2 are situate adjacent to Clew Bay and the Sonnd of Achill. They contain over 8,000 acres of land, the greater part of it a table-land, profitable, or capable of being made so.

There are about 1,800 acres at present let, and nearly 3,000 in addition could readily be made profitable land, and let at fair rents, so as considerably to increase the present rental.

There is also a grant or licence from the Fishery Commissioners for the establishment of oyster beds in the sound of Achill. Oysters can be procured from public beds adjoining another portion of the Estate, and could be planted at a very moderate cost; and if planted, would, in a few years, produce a very large revenue.

This property is about twenty-five miles from Westport, by a good road, and four miles south of the ferryboat station at the Achill Sound, in the direction of Clew Bay, with Achill Bay and Achill Island to the West. It commands a magnificent view of Clew Bay, with its numerous Islands.

There is Railway communication from Dublin to Westport.

The roads through the Estate, especially in the neighbourhood of the mines are skilfully constructed, and with little additional outlay, would form excellent communication through the various parts of the property, which embraces about ten miles of sea coast.

The communication between Westport and the Island of Achill is by a daily mail car.

The mineral indications are great, and promise to be a source of much wealth, as it has been ascertained beyond doubt that there are extensive deposits of sulphur ore (iron pyrites), copper, and hematitic iron, of the very best quality.

Lot 3—This lot consists of lands and premises situate in and adjoining Newport, a rising and flourishing Town, five and a-half miles from Westport, situate at the extremity of Clew Bay, the original port for discharge for the County of Mayo. The River Burrishoole flows through these lands, and abounds with salmon. Newport is a market town, and four fairs are held there yearly.

THE DUBLIN PROPERTY.

Lot 4 comprises three Dwelling-houses, known as Park-place, Conyngham-road, with a small Field, situate on the banks of the River Liffey, just outside the City Boundary, and adjoining Islandbridge, they are held by respectable tenants who pay their rents punctually.

Lot 5 consists of two rows of Cottages, and Premises adjoining Lot No 4, and known as Sarah-place; the tenants pay their rents weekly.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin;

Messrs. CLARKE & HOWLETT, Solicitors, 8 Ship-street, Brighton, England; or to

BYRNE, KENNEDY, & CO., Solicitors having carriage of the Sale, No. 4 Lower Ormond-quay, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MEATH.

SALE,
On FRIDAY, the 15th day of MAY, 1874.

In the Matter of the Estate of Drake Christopher O'Reilly, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 15th day of MAY, 1874, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, Dublin, In One Lot,

Part of the Town and Lands of Drinadaly, situate in the Barony of Moyfenrath, and County of Meath, containing 128a 2r 36p, statute measure, held in fee-farm, and producing a net profit rent of £184 2s 2d.

Dated this 16th day of March, 1874.

HENRY R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This Estate consists of a portion of the Townland of Drinadaly, known as Boyne Lodge, containing 128a 2r 36p, statute measure.

The House is handsome and commodious, with first-class Stabling, Coach-house, and Farm Offices.

The Lands are all in grass, and are of superior quality, and situate on the Banks of the River Boyne, a short distance from the Town of Trim, and in the centre of a hunting district.

The entire Estate is in possession of the owner, and the purchaser can have immediate possession.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inn's-quay, Dublin, &c.,

CHRISTOPHER P. DUIGENAN, Trim; or to

JOHN THOMAS HINDS, Solicitor having carriage of the Sale, No. 37 Westmoreland-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

In the Matter of George Kidd, Owner; Thomas M'Nally, Petitioner.

TO BE SOLD, On FRIDAY, The 15th day of MAY, 1874, At the Hour of Twelve o'clock noon, Before the Honourable Judge Flanagan, In his Court, Inns'-quay, in the City of Dublin, In One Lot,

One undivided fourth part of the Houses and Premises, Nos. 17, 18, 19, 20, and 21 Great Charles-street, No. 1 North Summer-street, and 29, 30, 31, and 35 Upper Rutland-street, and House in the lane in the rear of said last-mentioned Houses, situate in the Parish of St. George, and City of Dublin, held under lease dated the 10th March, 1804, from Viscount Mountjoy to George Kidd, for 9,999 years, producing a profit rent of £307 8s 0d, one-fourth of which amounts to £76 17s 0d.

Dated 28th February, 1874.

C. E. DOBBS, Examiner.

THOMAS M'NALLY, Solicitor having carriage of Sale, 77 Lower Gardiner-street, Dublin.

DESCRIPTIVE PARTICULARS.

The Houses Nos. 20 and 21 Great Charles-street, and No. 1 North Summer-street, and Nos. 29, 30, 31, and 35 Upper Rutland-street, are held by tenants for long terms of years, at rents considerably below their letting value.

The Houses are in excellent repair.

N.B.—Another one-fourth share of this property will be sold in this Court, in the Matter of the Estate of John Kidd, Owner and Petitioner, at the time of the Sale in this Matter. The estate produces a profit rent of £76 17s 0d.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates Court, Inns'-quay, Dublin; or to

THOMAS M'NALLY, Solicitor having carriage of the Sale, 77 Lower Gardiner-street, Dublin,

By whom proposals to purchase by Private Contract will be received up to the 13th day of April, 1874, and submitted to the Honourable Judge Flanagan for approval, on the 15th April, 1874.

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF ARMAGH.

SALE,
IN PORTADOWN,
On SATURDAY, the 25th APRIL, 1874.

In the Matter of the Estate of Henry Stevenson and Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, or some or one of them, Owners; *Ex-parte* Anthony Cowdy, Petitioner.

And in the Matter of the Estate of Henry Stevenson, and of Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, Owners; *Ex-parte* John Handcock, Petitioner.

TO BE SOLD BY PUBLIC AUCTION, By the direction of the Honourable Judge Flanagan, At the COURT HOUSE, PORTADOWN, In the COUNTY OF ARMAGH, By MR. WILLIAM CHERRY, OF LURGAN, In the said County, AUCTIONEER, On SATURDAY, The 25th of APRIL, 1874, At the Hour of One o'clock in the Afternoon, In Six Lots, The following Premises, viz.:—

LOT No. 1.

Consisting of Part of the Lands of Clencarrish, containing 8a 2r 26p, statute measure, and Parts of the Lands of Ballinary, containing 8a 2r, statute measure, held under lease dated the 7th of April, 1839, for three lives, at the yearly rent of £15 16s 4½d; also another Part of said Lands of Ballinary, containing 2a 1r 26p, statute measure, or thereabouts, held under lease dated the 6th of May, 1842, for three lives, subject to the yearly rent of £1 10s; another Part of said Lands of Ballinary, containing 2a 0r 39p, or thereabouts, statute measure, held under lease dated 22nd July, 1839, for three lives, subject to the yearly rent of £3 10s; all situate in the Barony of Oneiland West, and County of Armagh.

LOT No. 2.

Consisting of Part of the said Lands of Clencarrish, containing 4a 2r 17½p, or thereabouts, statute measure, held under lease dated the 7th day of April, 1839, for three lives, and subject to the yearly rent of £4 4s 0½d.

LOT No. 3.

Consisting of another Part of the said Lands of Clencarrish, containing 4a 2r 33p, or thereabouts, statute measure, held under lease dated the 3rd of June, 1841, for three lives, and subject to the annual head rent of £6 6s 9d.

LOT No. 4.

Consisting of Part of the said Lands of Clencarrish containing 29a 1r 23p, or thereabouts, statute measure, and held under lease dated the 16th day of October, 1866, for the unexpired term of 21 years, from the 1st of November then last, and subject to the yearly rent of £39 7s 9d.

LOT No. 5.

Consisting of Part of the Lands of Clantilieu, in the Barony of Oneiland West, and County of Armagh, containing 4a 0r 2p, statute measure, held under lease bearing date the 9th day of November, 1842, for three lives, and subject to the annual head rent of £6.

LOT No. 6.

Consisting of Part of the Lands of Breagh, in the Barony of Oneiland West, and County of Armagh, containing 31a 2r 38p, or thereabouts, statute measure, and held from year to year, at the annual head rent of £41 sterling.

Dated this 2nd day of April, 1874.

J. E. MADDEN, for Chief Clerk.

ATKINSON and FROSTE, Solicitors.

GENERAL DESCRIPTIVE PARTICULARS.

The Lands are all situate about four to five miles from Portadown, in a peaceable and thriving district of the County of Armagh, where good feeling has long existed between landlord and tenant.

The Biddings will be taken by the Auctioneer on the 25th day of April, 1874, at Portadown, aforesaid, commencing at One o'clock, and they will be submitted to the Honourable Judge Flanagan, at his Chambers, on Thursday, the 30th day of April, 1874, at Eleven o'clock in the forenoon, without further notice to any person.

Private Offers will be received by the Solicitors for the Petitioner, having the carriage of Proceedings, for the entire, or for any of the Lots separately, up to the 15th day of April, 1874, and submitted to the Judge for his approval, without further notice to any person; and notice shall be published in the event of any such offer being accepted.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, Dublin; or to

Messrs. ATKINSON & FROSTE, the Solicitors having carriage of the Sale, 50 Lower Sackville-street, Dublin, and Tandragee; or to

CHARLES H. WARD, Esq., Solicitor for the Owner;

HENRY STEVENSON, North Great George's-street, Dublin; or to

Mr. ANDREW CHERRY, The Auctioneer, Lurgan.

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF TYRONE AND DONEGAL.

In the Estate of The Rev. John Hutton O'Connor and Edward Carolin, Trustees for Sale under the Settlement of Rebecca Jones Pratt, with Joseph Bryan Hynes, since deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 15th day of MAY, 1874, At the Hour of Twelve o'clock noon, At the Landed Estates' Court, Inns'-quay, In the City of Dublin,

The following Lots, as described in the printed Rental, viz.:—

LOT 1.

The Lands of Garvaghullion, otherwise Garvachullen, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 640a 0r 12p, statute measure, and producing a net profit rent of £140 11s 11d.

LOT 2.

The Lands of Leaght, otherwise Laght, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 462a 2r 18p, statute measure, and producing a net profit rent of £149 6s 9d.

LOT 3.

The Lands of Meencargagh, otherwise Meencarriga, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 334a 3r 29p, statute measure, and producing a net profit rent of £49 17s 6d.

LOT 4.

The Lands of Drummaghon, otherwise Drummahon, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 510a 0r 5p, statute measure, and producing a net profit rent of £45 9s 0d.

LOT 5.

The Lands of Aghamore, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 330a 2r 6p, statute measure, and producing a net profit rent of £44 0s 2d.

LOT 6.

Fee-farm Rent of £34 6s 9d, issuing and payable out of the Lands of Kilmore Upper and Lower, and one-third of Coolnacrunaght, situate in the Barony of West Omagh, and County Tyrone, containing 754a 0r 6p. The Poor Law Valuation of said Lands being £396 2s 0d.

LOT 7.

The Lands of Knockagarron, situate in the Barony of Raphoe, and County of Donegal, held in fee-farm, containing 331a 0r 27p, and producing a net profit rent of £126 13s 5d.

Dated this 20th day of March, 1874.

R. DENNY URLIN, Examiner.

The Quit Rents will be redeemed out of the Fund, and the only annual out-going to which the estate will be liable is Tithe Rent-charge.

The Lands are near to Strabane and Newtownstewart, excepting Lot 7, which is near Raphoe, County Donegal.

There is excellent Shooting on the estate.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, in the City of Dublin; or to

GEORGE BERNARD, Solicitor having carriage of the Proceedings, 12 Upper Ormond-quay, Dublin.

SALE:

COUNTY OF MEATH.

TO BE SOLD BY AUCTION, In the Public Sale-rooms, 9 UPPER ORMOND-QUAY, *On MONDAY, the 20th of APRIL,* 1874, At the hour of One o'clock p.m.

THE LANDS OF POSSEXTOWN, in the County of Meath, containing 222a 2r 0p, Irish plantation measure, being a most valuable Fee-farm Estate.

The rent reserved by the Fee-farm Grant is £360 0s 8d; but during the life of one of the Grantors, the Lands are only subject to the reduced yearly rent of £329 8s 6d.

The lands are of prime quality, well watered, and fenced, all in Grass, and in the occupation of the owner, save about 14 or 15 acres, held by a tenant at will, and adjoin the M. G. W. Railway at Enfield.

The purchaser can get immediate possession.

There is a good slated dwelling-house on the lands.

The herd at Possextown will show the lands.

For Statement of Title and Conditions of Sale apply to

EDWARD CARAHER, Solicitor, 62 Lower Gardiner-street or to

JOHN LITTLEDALE & CO., Auctioneers, 9 Upper Ormond-quay.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price - whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, April* 11, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, APRIL 18, 1874. No. 377.

THE OBLIGATION OF A BAILEE FOR HIRE.

AN interesting and important judgment has been delivered in the Court of Queen's Bench in England, by Blackburn, J., in *Searle* v. *Laverick*, L. R. 9 Q. B. 122, which throws a considerable amount of light on the celebrated judgment of Chief Justice Holt in the leading case of *Coggs* v. *Bernard*. In that case bailments are divided into classes, in each of which different degrees of liability are attached to the bailee. The fifth of these classes, *locatio operis faciendi*, or where there is "a delivery to carry or otherwise manage for a reward to be paid by the bailee," is again subdivided into two divisions—the first, where there is a delivery to one who exercises a public employment, in which case the bailee is bound to answer for the goods at all events; and, the second, where the delivery is to a private person, who is only bound to take reasonable care. A question arose in *Searle* v. *Laverick*, as to under which of the sub-divisions of the class of bailment, *locatio operis faciendi*, the case fell. The defendant was a livery stable-keeper; he entered into a contract with a builder, who was not his servant, to erect, in his yard, a building, of which the lower part was to be a shed for the reception of carriages, and the upper part was to be used for other purposes. Before the upper portion of the building was completed, the plaintiff brought to the defendant two carriages to keep for him, a charge being made for so keeping the carriages. While the contractor's workmen were still in the upper portion of the building, it was blown down by a high wind, and the carriages were damaged. The contractor employed for the purpose of building was not denied to be one whom a careful and prudent person might trust, and there was nothing to show that the defendant had any knowledge of negligence on his part. The plaintiff, at the trial, offered evidence that, owing to the neglect of the contractor and his workmen, the fall of the building took place; but this was refused by the learned Judge who tried the case, on the ground that the defendant's liability was that of an ordinary bailee for hire, and that he was only bound to use ordinary care in keeping the carriages, and if in employing the builder he made use of such care as an ordinary careful man would use, he was protected. The plaintiff was, in consequence, non-suited on a motion for a new trial; the full Court, after a careful review of the authorities, upheld this decision. The Court held it to be established law, by the custom of England, that the extreme liability making the bailee an insurer, is confined to carriers and inn-keepers. It would seem, by analogy to the Roman law, from which the English law on the subject is avowedly taken, that the case of stable-keepers should be placed on a footing with inn-keepers and carriers. The language of Lord Holt is general, and applies to all who exercise a public employment. The Prœtor's Edict (Dig. lib. iv. tit. ix.), *nautæ caupones stabularii ut recepta restituant*, expressly mentions stablemen. The reason given by Lord Holt for the division, tells, in our opinion, rather against the interpretation now put on it by the Court:—"The true reason of the case is, it would be unreasonable to charge him with a trust further than the nature of the thing puts it in his power to perform it. But it is allowed in the other cases (*i.e.* the carrier and inn-keeper, but *not* the livery stable-keeper, according to the present decision), by reason of the necessity of the thing." We confess we are at a loss to perceive the necessity existing in the case of the carrier and inn-keeper, which does not exist with equal force in the case of the livery stable-keeper. At any rate there did not appear to exist any distinction between the cases, in the opinion of Ulpian, who, in the clearest and most express manner, mentions livery stablemen. The Prœtor's Edict declared that if shipmasters, inn-keepers, and stable-keepers did not restore what they had received to keep safe, he would give judgment against them. The reason assigned for this by Ulpian, is that "it is necessary to place confidence in such persons, and to commit the custody of things to them; that no person ought to complain of the severity of the rule, for it is in his own choice to receive the goods of other persons or not, and unless the rule was thus established, an opportunity would be afforded them to combine with thieves against those who trusted them; whereas they have now an inducement to abstain from such combinations." These reasons, if read in connexion with the general principle on which warranties are to be assumed, laid down in *Redhead* v. *Midland Railway Co.*, L. R., 4 Q. B. 392, "that they are, for the most part, founded on the presumed intention of the parties, and ought certainly to be founded on reason, and with a just regard to the interests of the party who is supposed to give the warranty, as of the party to whom it is supposed to be given," would strongly point to the conclusion that stable-keepers should be classed in the same category with inn-keepers and carriers.

We presume there could be no doubt of this extreme liability being applicable, in the case of an inn-keeper, who also kept a stable, and took charge of the animals and vehicles of those who frequented his house. This is distinctly stated to be the law by Pothier (*Du Contrat de Dépôt* 80), where he states "that stable servants must be judged to be appointed by inn-keepers to take charge of horses and vehicles of travellers," by which the inn keeper is rendered liable. What difference can there be between such a case and a case where the stable-keeper does not provide lodgment for "man and beast," but for "beast" alone. All the cases quoted—both those decided in this country and the dicta of foreign jurists—would seem to indicate that a tolerably wide margin should be allowed by a Judge in deciding in the case of what trades a warranty is to be presumed. The case quoted in the judgment from Pothier (*Du Contrat de Louage*, Nos. 118, 119, 120) is a strong authority on this point. After laying down that where a person who lets a thing for hire knows of a defect in the thing which makes it unfit for the purpose for which it is let, he is responsible for damages. And although he does not actually know it, that if the circumstances are such that he ought to have had a suspicion of it, and make an inquiry about it, and he does not either inquire, or inform the hirer, so that he may inquire for himself, he is liable; but if the letter follows a trade which makes it his duty to know whether the thing has faults or not, he is liable, without proof that he did not know. He puts as an example the case of a cooper who supplies wine casks made of bad wood, so that they leak. Surely, if "the profession of the cooper binds him to know the quality of the goods he used, and to supply none but of a good quality," it cannot be con-

Digitized by Google

tended that the profession of a livery stable-keeper, where a person holds himself out to the public as willing to undertake the charge of property of a nature requiring the utmost care, does not bind the bailee to know of the quality of shelter which he is bound to provide to this property. The plaintiffs' counsel relied mainly on *Redhead* v. *Midland Railway Co.*, L. R. 4, Q. B. 392, and *Francis* v. *Cockrell*, L. R. 5, Q. B. 184, which establishes that a person who lets sittings in a temporary stand, built for the reception of spectators at a race, is under an obligation as to the sufficiency of the stand. But the Court, while intimating a desire not to draw fine distinctions between the cases, held that that case was clearly distinguishable from the present, and that there was no authority to establish that a warranty must be implied in the present case. It seems to us that the Court being, in its own language, at liberty, so far as authority goes, to apply the principles to the case, and see if any warranty, or obligation, should be implied, in deciding as it did, rather overlooked the true principles, as laid down by the most eminent of foreign jurists, fortified by the direct dictum of so great an authority as Ulpian.

SOLICITOR-GENERALSHIP OF ENGLAND.

THE apparent consequences of the late change in the mode of paying the Law Officers of England is that the post of Solicitor-General has actually been refused by Mr. Huddlestone, Q.C., on the plea that he prefers his private practice and the position in Parliament of an independent supporter of the Government; while Sir James Karslake is reported to have refused the Attorney-Generalship, on the grounds of ill health. The result is, that the former Solicitor, Sir Richard Baggallay, is made Attorney-General, and Mr. Holker, Q.C., of the Northern Circuit, M.P. for Preston, has been offered, and has accepted, the appointment of Solicitor-General. It may be that Mr. Huddlestone was not sure of re-election for Norwich, in the event of a vacancy being created by his promotion; but we apprehend that this double refusal may be fairly attributed to the fact that the leaders of the Bar consider their practice, as independent lawyers, more advantageous to themselves than the official leadership and almost inevitable transition to the Bench which attend the appointment as Law Officer. If this be so, some other means must be devised of securing to the Government the services of the leading members of the Bar belonging to whichever political party may be in power.

HACKNEY ELECTION PETITION.

As was expected, Mr. Justice Grove, on Thursday last, decided that the late election for the borough of Hackney is void. The grounds of his decision seems to have been, that the Hackney voters had not been able to exercise their franchise, and that the regulations prescribed by the Statute had not been complied with, in consequence of two of the polling booths not having been open during the entire time of the election, whereby almost five thousand electors, whose votes should have been given at these booths, were prevented from registering their votes.

We shall go fully into the circumstances of the case next week.

ELECTION OF A BENCHER.

At a meeting of the Benchers on Wednesday, Mr. Ormsby, Solicitor-General, was elected a Bencher in the room of the late Lord Chief Baron Pigot.

THE IRISH JUDICATURE BILL.

Among the few measures promised in the Queen's Speech was one for enlarging the scope of the Judicature Act passed last Session so that Scotch and Irish appeals might be transferred from the House of Lords to the new Court of Appeal. It may be presumed that soon after the present recess the Lord Chancellor will introduce a bill in fulfilment of this promise. Something more than this may, however, be expected. It is conceded that so far as Scotland is concerned legislation will be limited to the transfer of appeals of which we have spoken, but the opportunity can scarcely be lost for re-organizing the judicial machinery of Ireland. The fusion of Law and Equity which has been decreed here must be extended to Dublin, and the jurisdiction of the Courts of Common Law and of Chancery will thus become co-extensive. Unity of organization will naturally follow unity of law. Just as our Courts will at the end of this year lose their independent existence and become divisions of one Supreme Court, so the Four Courts at Dublin will become so many divisions of an Irish Supreme Court, but it will be impossible to take this step without revising the amount and the distribution of judicial force now found on the Irish Bench. It is notorious that the Irish Courts are largely overmanned, and the late Government had all but resolved on reducing the number of their members when the certainty of defeat at the hustings led them to fill up vacancies the suppression of which had been contemplated. It is, indeed, very difficult to cut down any Irish Establishment, whether it be judicial, civil, or that of a semi-military constabulary; but Mr. Disraeli is strong enough to disregard the disaffection of disappointed place-seekers, especially as he would most probably increase his strength out of Ireland by doing what is obviously right. We hope it will be found that Lord Cairns does not shrink from the odium of economy in a field where economy would add to efficiency of service. The ability and energy of a Judicial Bench are sure to be greatest when the numbers of the Bench are in proportion to the work to be done.

The Supplementary Judicature Bill of this Session will doubtless deal with the re-organization of the Irish Bench, but it is to the question of the transfer of Appeals that attention may at present be most usefully directed. In what manner are appeals from the Irish and Scotch Courts to be brought under the jurisdiction of the new Court of Appeal? It will be remembered that the Bill of last year was hurriedly enlarged when it had reached an advanced stage in the House of Commons, and that the clauses introduced into it so as to extend its operation to Ireland and Scotland were as hurriedly dropped in deference to the question of privilege raised by the present Lord Chancellor. It may be admitted that this postponement was useful. If any one doubts this a perusal of the pamphlet on *The Coming Court of Final Appeal for Ireland*, published by Lord Justice Christain a month since, must convince him that the method of providing for Irish Appeals so hastily incorporated in the Judicature Bill was radically unsound. Its tendency would have been to bring Appeals from Ireland to an Irish section of the Appeal Court, and so destroy the unity of jurisprudence which has been hitherto maintained through there being one single Final Court of Appeal for the three divisions of the United Kingdom. If, instead of one Court as the tribunal of ultimate resort, we have a Court of many members divided into sections, so that English Appeals are carried to a section controlled by English-trained Judges, Scotch Appeals to a Scotch section, Irish Appeals to an Irish section, and Colonial and Indian Appeals to Colonial and Indian sections, unity of method in interpreting different laws, and the same laws as applied to the different divisions of the United Kingdom, would be lost. Lord Justice Christian's pamphlet contains much to which we need not at present advert, but his argument on this, its main proposition, deserves the closest attention. Speaking as an Irishman, the Lord Justice appears to lament the abdication of its appellate jurisdiction by the House of Lords. We cannot acquiesce in this sentiment, but we must concur in many of his strictures on the machinery adopted to replace the House as the Ultimate Court of Appeal. The essential faults of the House of Lords as a tribunal of appeal are two—the limited time it sits and the

Digitized by Google

accidental character of its composition. A court that sits only when Parliament is sitting, and is subjected to all the changes and chances of Parliamentary life, must fail to give suitors what they have a right to expect; but if there had been substituted for the House of Lords a Court of not more than five members sitting *en permanence* and made up of fixed and not fluctuating units—if, in a word, we had instituted a similar tribunal to that which now exists, only dissociated from Parliamentary ties and limitations, we should have set up a Court that would have satisfied the strongest Law reformer. The Court projected by the Act of last year will on the other hand, consist of twenty or more members, sitting in divisions, according to an order no one can foresee. What is the reason for so numerous an assembly? It is to be found in the destruction of the intermediate appeal. It was laid down by the late Lord Chancellor, rather as an axiom than as the result of argumentative examination, that there ought to be one appeal only, and to this principle everything was made to bend. The policy of this change was strongly questioned by ourselves and others, and in the House of Commons the weight of argument on both sides of the House was against it. But, as was bitterly said at the time by a Liberal member, the reasoning was on one side, and when the division bell rang, there flocked in, from smoking-room, tea-room, and library, men who knew nothing about the subject, and had heard not a word of the debate, to give the force of numbers to the other. The judicial machinery of Chancery ought to have been the model of our new legislation. After a Judge of the First Instance—the Master of the Rolls or a Vice-Chancellor—has pronounced his decision, the cause can be carried by way of appeal to the Court of the Lords Justices, and from them to the Final Court of the House of Lords; but as the Appeal Court of the Lords Justices has always been kept strong, the Appeals from them have been proportionally fewer than from any other tribunal. No complaint was ever raised against this organization; but if we turn to the Common Law side of Westminster Hall, and inquire into the character of the Exchequer Chamber, we find complaints in abundance. The reasons are plain. The Exchequer Chamber is composed of primary Judges brought together very much at hazard to hear Appeals from Judges of co-ordinate authority; it sits at irregular intervals; its numbers are variable; and it is rare to find the same set of men together for more than two or three sittings. To have substituted for the Exchequer Chamber, as Court of Appeal from the Common Law Courts or divisions, a permanent Court of a couple of members analagous to the Lords Justices in Chancery, with an ultimate appeal to the one Supreme Tribunal, would have been in accordance with the lessons of experience. Intermediate Appeals being, however, about to be abolished, we shall have one multifarious Court of Appeal, absorbing into itself the business of the Lords Justices, of the Exchequer Chamber, and of the Privy Council, and the Court having all this work to do will be divided into sections, each dealing with some branch of Appeals. What, then, shall be done with the Scotch and Irish Appeals when they are added to the work of the Court? The plan as contained in the clauses that were introduced and then withdrawn from the House of Commons last Session was to add still more members to the already over-numerous Appeal Court, and so to permit the creation of two other divisions that should be charged with the Appeals from Ireland and Scotland. The additional members would have been certain Scotch and Irish Judges sitting *ex officio*, and certain paid members brought, as a rule, if not necessarily, from Scotland and Ireland. But the Supreme Courts of Appeal for these two divisions of the kingdom would have been practically Scotch and Irish Courts, and, as the Lord Justice Christian observes, no clear reason could be given why they should not sit at Edinburgh and Dublin respectively. It is true that it was not proposed, and it could not be proposed, to abolish the Intermediate Appeals in Scotland and Ireland; but this is either a condemnation of their abolition in London or an admission that the final appeal to London is unnecessary, and therefore an invitation to the disintegration of the judicial unity of the kingdom.

What shall be done with the Irish and Scotch Appeals? It may be answered at once that they should not on any account be allowed to be carried to Irish and Scotch divisions, or to what may degenerate into Irish and Scotch divisions, of the Court of Appeal. They must in some way or other be reserved for a tribunal above the suspicion of provincialism. It is well known that Scotch advocates and Scotch Judges have been jealous of being separated from the House of Lords, lest they should lose a sheet-anchor of authority, and we now learn that the same uneasy suspicion is widely felt by the Irish Bar and the Irish Bench. The first condition of security from the danger that is apprehended lies in a steady refusal to augment the Appeal Court by the addition of *ex officio* members, or of any other members to be necessarily added from Edinburgh or Dublin. No objection can be raised to the elevation of an Irish or Scotch Judge to the Appeal Bench, as Lord Colonsay was elevated to the House of Lords; but such promotion should be the recognition of extraordinary merit, and not granted by way of fulfilling a statutory requirement or in virtue of any understanding that there should be a certain proportion of Scotchmen or Irishmen among the Appeal Judges. The next best thing would be to split up the unwieldy Appeal Court, which might be done under the 53rd section of last year's statute, so as to restore in practice that possibility of an intermediate Appeal which was too hastily neglected last Session. The 53rd section provides that Appeals shall be heard by Divisions of not less than three members, but that any appeal which may be deemed fit to be re-argued or re-heard before a greater number may be submitted to such a second process. It was intended to use this proviso so that Chancery Appeals should go to the Lord Chancellor and the Lords Justices, Common Law Appeals to the Lord Chief Justice and two others, and other Appeals to other Divisions of three. Why should not the Divisions thus contemplated be definitely regulated, and at the same time a Division for re-heard cases be appointed to which, and to which alone, Scotch and Irish Appeals should be carried? In this way all causes, whether originating in Ireland or Scotland, Lincoln's Inn or Westminster, would go through the same stages. Irish and Scotch cases would be passed through their first appeal at Dublin and Edinburgh respectively, and would then be taken before the Division for rehearing of the Supreme Court, while English causes, having been heard on appeal before the primary Divisions, would, if necessary, also pass before the Division for re-hearing. This Division would then maintain the unity of Imperial jurisprudence, which will otherwise be in imminent danger. It may be objected that this is rather a roundabout way of securing the desired end, and the objection is sound; but those who know the Judicature Act of last year best are most deeply conscious that it is only the first sketch of what must be permanently accepted hereafter. The necessity of consulting existing interests and prejudices resulted in something that would simply restore what was apparently abolished if it were to remain as it is. It is therefore a slight objection that a proposal may alter the symmetry of a statute already destitute of symmetry and shape, if it promises to smooth the way to a better ultimate form of our judicial system. It is because it appears to afford a hope of this result that we submit it now for consideration.—*The Times.*

THE COMING COURT OF APPEAL FOR IRELAND.

The difficulties which beset the establishment of a satisfactory Court of Final Appeal, great as they are in this country, are aggravated in the case of Ireland by two distinct, and, in some degree, conflicting, causes.

First, the jealousy of "English domination" which pervades even the best informed and least prejudiced classes in the sister isle, and which would render it impossible to gain acceptance for any authority which would be looked upon as a "purely English court." Of course, such a court might be imposed upon the country by Parliament, and if this were done it would necessarily be submitted to, at least for the time, but it would never be otherwise than grudgingly tolerated, as a grievance, and therefore could never be a satisfactory solution of the question. The authority of the House of Lords was accepted. partly because, though the actual composition of the tribunal was generally purely

Digitized by Google

English, it was always, in theory, an Imperial court; but more because the stipulation in its favour contained in the Act of Union was the work of the Irish Parliament, and was looked upon as crowning and perpetuating the declaration of 1782, which negatived the right, claimed up to that time by the English House of Lords, of hearing appeals from Ireland. The right of final appeal was successfully claimed for the *Irish* House of Lords by the Declaration of Independence, and it was felt at the Union, and ever since, that submission to the jurisdiction of the United House of Lords was the natural consequence of that Declaration. It will therefore be essential that the new Court of Appeal should contain a distinctly Irish element if it is to be accepted as a satisfactory substitute for the House of Lords.

The second difficulty in dealing with Ireland in this respect arises out of the abolition, by the Act of last year, of the intermediate Courts of Appeal in England. We have never concealed our conviction that this was a most ill-judged act, even as regards this country alone; but however that may be there can be no question that it greatly complicates the difficulty of dealing with Ireland and Scotland. For, as we showed in a late article on this subject (*ante* p. 374), the Court of Final Appeal, if it is to possess that quality of unity which is essential to its success, must sit in London, the only place to which the conflicting claims of all others can be expected to yield; and we are thus reduced in dealing with the cases of Ireland and Scotland, to the adoption of one of three courses, of which it is not easy to determine which is the most objectionable. Either (1) we must leave these countries without any local check on the courts of first instance, which would amount, in many cases, to a denial of justice; or (2) we must continue the intermediate appellate courts there though they have been abolished here, thus introducing divergence instead of unity in our institutions, with the additional anomaly that the poorer countries are provided with the more elaborate and expensive procedure; or (3) the Court of Appeal must detach from itself Divisional Courts, either permanent or "In Eyre," to undertake the hearing of appeals in Dublin and Edinburgh. This last is the view which seems to obtain most countenance with the profession in Ireland; but it is, in our opinion, worse, if possible, than either of the others. For it is not to be supposed that an occasional visit to either of these cities would be sufficient to keep down the supply of appeals there; it would be necessary that the courts should sit as continuously in both places as the respective courts of intermediate appeal (Court of Appeal in Chancery, Exchequer Chamber, and Inner Houses of Session) now do. If these courts then consisted always, or for long periods together, of the same judges, these being separated from the central body of the court in London, and yet not in any manner subject to its control, would almost *ex necessitate rei* run in lines of decision of their own; and thus the unity of our jurisprudence, which is so greatly due to the unity of our Court of Final Appeal, would be endangered. And this danger would become yet more imminent if, as would almost certainly happen, the Irish element in the court were detached for duty in Ireland, and the Scotch element for duty in Scotland; and yet there would be a manifest absurdity in introducing these elements into the central court in order that it might fully represent all three countries, and then confining the services of each such member to the countries which he did *not* represent. If, on the other hand, the members of the court appointed to sit in Ireland (and the same holds good, though in less degree, of Scotland) were altered, by any system of rotation, at short intervals, the extra burden thus inflicted upon the judges would be so intolerable that it would be found impracticable to induce such men as alone ought to form a Court of Final Appeal to accept a position so onerous. To expect the judges of the highest court in the land, men of the calibre of Chancellors and ex-Chancellors, to consent to live "perpetually on circuit" is an absurdity which only requires to be expressed to be refuted.

To say that the true remedy for all these difficulties involves the restoration of a court of intermediate appeal for England may perhaps be tantamount to saying that it will not be adopted; and yet there is no impracticability or even serious difficulty in its adoption, nor would it render it requisite to retrace, in any other respect, the legislation of last year. The new Court of Appeal is to consist (besides the Chancellors and ex-Chancellors, &c.) of nine ordinary members, who are empowered to sit in divisions of not less than three members each. These divisions would then (with the addition of one or more of the *ex-officio* members if and when required) form three very good working courts of first appeal; and if the practical result of this were that appeals involving matters of Equity were heard by one division, Common Law cases by another, and Probate and Admiralty by the third, this—which would be fatal to the efficacy of a *finale* appellate court—would probably much facilitate the transaction of the ordinary appeal business. The appeals from these divisions (and also from the local appellate courts in Ireland and Scotland) should be heard before a court of not less than five nor more than seven, which should always contain the Lord Chancellor (or in his unavoidable absence an ex-Chancellor) and at least one ordinary member for England, Ireland, and Scotland respectively (utterly irrespective of the court or country from which the appeal may come), and the fifth member ought to be, when practicable, an ecclesiastical or international lawyer, whether the case, on the face of it, involved any question of such law or not. We shall not, we hope, be misunderstood to suggest that all the members of this court are to be different from and in addition to the nine ordinary members of the Court of Appeal above mentioned: if once that court were fully constituted as a representative court (which it cannot be just yet), it would, we think, be able to furnish all the requisite judicial strength, not only for hearing the intermediate appeals from England, but also for the Court of Final Appeal; and we are not aware of any ground of law, reason, or expediency, which should tend to prevent the judges from discharging both functions.

Such a court as we desire to see would consist, when finally constituted, of nine ordinary judges, besides the Lord Chancellor and ex-Chancellors, and such Privy Councillors as had filled such high judicial offices as might be determined upon. The nine ordidary judges (on whom the representative character of the court would depend) should be qualified as follows:—Not less than two nor more than four of them should have been judges of the High Court of Judicature in England for not less than years (this last provision being intended to prevent any repetition of the "Collier Trick") not less than one nor more than two of them should have been for a similar period judges of the High Court of Judicature about to be constituted for Ireland; not less than one nor more than two of them should have been for a similar period Lords of Session in Scotland; not less than one nor more than two of them should have been for a similar period Chief Justice of the Supreme Court in one of the Indian Presidencies or of Ceylon; and one of them should have been specially selected as an eminent ecclesiastical or international lawyer. The ordinary members of the Court of Appeal, as established by the Act of last year, would thus be able at once to supply six out of the nine requisite members, and it might be provided that such extra judges of appeal (not exceeding three in all) as might be found desirable, might be appointed to act in the courts of intermediate appeal, but without any right to take part in the proceedings of the final court itself. If this plan, or anything like it were adopted, the question of the courts of intermediate appeal in Ireland and Scotland would, we may say, "settle itself." For there would be no reason then for interfering with the existing court in Scotland, while in Ireland an appellate court on the principle of that for England, consisting of the Lord Chancellor (if that office be continued) and the Lord Chief Justice *ex officio*, and one or two ordinary Judges of Appeal, though most objectionable as a final court, would, we think, be both suitable and sufficient as a court of first appeal. To such an arrangement none of the objections above mentioned would fairly apply: nor could it open the way to any of the serious evils so ably pointed out by Lord Justice Christian in the remarkable pamphlet to which we have already (*ante* p. 335) had occasion to refer, and from which we have derived no small assistance in considering this important question.—*Solicitors' Journal.*

Digitized by Google

DUBLIN METROPOLITAN POLICE COURT.

(Before Messrs. Dix and Woodlock.)

Alma v. Corporation of Dublin.

April 1, 10, 1874.—*County Cess—Waterworks—Evidence of liability—Mode of raising question of exemption.*

This was a summons brought to recover a sum of £302 5s. 7d., amount of county rates claimed as being due by the Corporation in respect of property in the county of Dublin, consisting of a house, offices, and reservoir at Stillorgan, and the grounds through which the water mains pass.

Monroe, for the complainant, stated that, in pursuance of the powers vested in them by the General Valuation Act for Ireland, the 15 & 16 Vict., chap. 63, the Commissioners of Valuation had valued the tenements, &c., in the Barony of Rathdown, and no appeal in respect of the waterworks and premises in question had been lodged by the Corporation. The Grand Juries (Ireland) Act, 19 & 20 Vict., chap. 63, provided, by section 2, that all railways, canals, waterworks, &c., which were liable to poor rate should be also liable to county cess. Section 3 declared that the applotment should be made by the treasurer of the county, and section 19 declared that the term "treasurer" was to comprehend the Finance Committee and Secretary of the Grand Jury of the County of Dublin. The 7th & 8th Vict., chap. 106, provided, by section 99, that the Grand Jury, having ascertained the proportion of county charges to be raised in each barony, should issue warrants for the collection of same to the several collectors. The 4th section of 19 & 20 Vict., chap. 63, provided that the applotment book, as delivered by the treasurer to the collectors, should be taken as *primâ facie* evidence that the applotment had been duly made. The present summons was issued under 7 & 8 Vict., chap. 106, the 101st section of which declared that the collector might either distrain the goods of the party charged with the rate, or cause to be left at his dwelling-house a notice requiring payment of it; and, if payment was not made within six days from the date of the notice, the collector was to summon the party before any justice of the county in which he resided for the recovery of the amount. As the residence of the Lord Mayor and Corporation was the City Hall, the summons had been issued out of that Police Court.

Byrne, contra, contended that the residence of the Lord Mayor and Corporation for the purposes of this proceeding was not the City Hall, but the house and offices connected with the reservoirs at Shankhill. Therefore, they ought to have been summoned before a county justice.

The objection was overruled.

Mr. James Keegan proved that he served a notice, requiring payment of the amount of rates claimed within six days, upon one of the assistants of the Town Clerk, at the City Hall.

Mr. Edward Alma, the complainant, deposed that he was collector for the barony of Rathdown, and produced the original warrant and applotment of rates claimed for the premises in question, signed by Mr. T. E. Roche, chairman of the Finance Committee, and Mr. Henry Baker, secretary to the grand jury for the county of Dublin.

Byrne submitted that the waterworks premises now sought to be charged with county rate were not liable to same. The 17th section of the Valuation Act provided that after the valuation of the tenements of the barony had been completed, a list of the premises so valued should be sent to the boards of guardians, the Town Council, and the other parties interested therein. No proof had been given that any such statement had ever been furnished to the Corporation. The object of that was to afford the party an opportunity of appealing. In the present case the Corporation had good grounds for appealing. The 2nd section of 19 & 20 Vic. declared that only waterworks, &c., liable to poor rate should be chargeable with county cess. The waterworks in question were not liable to be rated for the relief of the poor. He contended that it was now open to him to show that the premises in question were not liable to poor rate.

Monroe stated that question was not now open; it should have been made the subject matter of an appeal against the valuation at quarter sessions.

Judgment deferred.

April 10th.—Mr. Dix.—This was a summons brought by Mr. Edward Love Alma, Collector of County Cess for the Barony of Rathdown, in the County of Dublin, against the Corporation of Dublin (the Mayor, Aldermen, and Burgesses), seeking an order from this Court against the defendants for payment of a sum of £302 5s. 7d. for county cess applotted by the Grand Jury on them for certain hereditaments and premises in their possession in said barony. The case was heard by Mr. Woodlock and myself on the 1st of this month, and was very ably argued by counsel on each side, who certainly gave us every assistance in enabling us to understand the case; but as this was the first time a summons of the kind had been brought before either Mr. Woodlock or myself, and as a large sum was claimed, and a great many statutes referred to, we thought it right to look into the statutes, and consider the case before giving any judgment in it; and all parties agreed that this would be the most convenient day to fix for doing so.

Now, I have carefully gone through all these statutes and the law as applicable to the case, and I have arrived at the conclusion (and that without a doubt) that the plaintiff is entitled to the order which he asks for, and I am happy to be able to say that Mr. Woodlock agrees with me. It will not be necessary now for me to refer to the several statutes and portions of statutes to which Mr. Monroe so clearly directed our attention in opening the case of the plaintiff, as I take it to be admitted that if the premises and hereditaments in question are really, by law, liable to be assessed for county rates, that the plaintiff has given all the evidence and proofs required to entitle him to the order which he seeks. 19 & 20 Vic., c. 63, s. 4, enacts that the copy of so much of the applotment book as shall be delivered to the Collector of Grand Jury or County Cess, shall be received and taken, *without further proof* or oath, as *prima facie* evidence of the due making of the assessment and applotment therein mentioned, *and of the several other matters and statements therein contained and set forth.* The service of the six-day notice, as required by 7 & 8 Vic. c. 106, sec. 101, in the Town Clerk's office, City Hall, on 26th Feb., was duly proved. The plaintiff, Mr. Alma, was examined, and produced his warrant as Collector of County Cess for the Barony of Rathdown, and the applotment signed by the Chairman and Secretary of the Finance Committee of the Grand Jury of the County of Dublin, whose signatures he deposed to, and its delivery to him as Collector for the Barony of Rathdown, and the reference to the several sums applotted therein on the defendants for county cess.

	£	s.	d.
1st, - - - - -	£90	18	8
2nd, - - - - -	16	14	8
3rd, - - - - -	2	4	3
4th, - - - - -	192	8	0
Amounting together to -	£302	5	7

And that these sums had frequently been demanded, but no payment had been made on foot of them—that was plaintiff's case; but Mr. Byrne, counsel for the defendants, relied on the 2nd section of the 19th and 20th Vic., cap. 63, which enacts as follows:—"All tolls of roads, bridges, railways, canals, gas and water works, and all other hereditaments, tenements, premises, and half-rents, *which are liable to rates for the relief of the destitute poor in Ireland*, shall be liable to the payments of Grand Jury Rates and County Cess, according to the annual value thereof, or the amount of half-rent payable in respect thereof, as the case may be, *as contained in the final lists of valuation;*" and Mr. Byrne contended that inasmuch as under that section only such premises as were liable to Poor Rates were to be chargeable with County Cess, that in the present proceeding he had a right to go behind the valuation book, and to give evidence to show that the premises in question were exempt from payment of Poor Rates, and so not liable to County Cess; but I am very clearly of opinion that on this summons we have no right or power to allow such evidence to be given. The Valua-

Digitized by Google

tion Act was passed, I should say, solely (but certainly mainly) for the purpose of the levying of *Poor's Rate and County Cess*, and ascertaining the value of the premises and hereditaments to be charged with these taxes. It is impossible to read the act without arriving at that conclusion; and then the most ample means of appeal from the valuation are given to all parties affected by it. It is admitted that no appeal was ever brought by the defendants from this valuation; and I am clearly of opinion that in the proceedings now before us we must hold them bound by it, and that any question of *exemption* from liability to Poor's Rate should have been raised by appeal. That question was fully argued and considered by the Court of Queen's Bench in a case in which I was counsel when at the bar. It is the case of *Murphy* v. *Lyons*, which is fully reported in 17 Ir. C. L. R. 9. It was a case of replevin, where goods had been seized for rates under the Belfast Borough Act. The present Vice-Chancellor (Mr. Chatterton) and I were counsel for the plaintiff, and Mr. Macdonogh and the present Law Adviser (Mr. May) were counsel for the defendant; and all the authorities will, I think, be found referred to in that case. On the main question raised in the case the Judges were divided in opinion, three being for the plaintiff and one for the defendant; but on the second question raised in that case, and which is the one applicable to the case now before us, as to the proper way of raising the question of exemption from rates, the Court was unanimous in holding, that where an appeal was given, the question of exemption should be raised by appeal; and on the whole of this case my opinion is entirely with the plaintiff, and I must accordingly make an order for the payment of the sum claimed, and with a small sum for costs—say £5 5s.

Attorney for complainant, *J. W. Williams*.
Attorneys for the defendants, *Smith & Barry*.

TRIBUNALS OF COMMERCE.

THIRD REPORT OF THE JUDICATURE COMMISSIONERS.

The Judicature Commissioners have issued the following report:—

To the Queen's most excellent Majesty.

We, your Majesty's Commissioners, whose hands and seals are hereunto set, appointed by your Majesty, under the Royal Warrants annexed, to inquire (*inter alia*) whether it would be for the public advantage to establish Tribunals of Commerce for the cognizance of disputes relating to commercial transactions, or to any and what classes of such tranactions, and if so, in what manner, and with what jurisdiction, such Tribunals ought to be constituted, and in what relation, if any, they ought to stand to the courts of ordinary civil jurisdiction, or any of them, do most humbly submit for your Majesty's most gracious consideration this our report upon the matter thus referred to us, which being connected with the subject of our second report already presented, we have thought it expedient to take into consideration before proceeding further with the other matters therein reserved.

Immediately on receiving your Majesty's commands, we proceeded to consider the best mode of obtaining information respecting the constitution and working of Tribunals of Commerce on the Continent, where such Tribunals are established, and for this purpose we issued a series of questions addressed, through your Majesty's Principal Secretary of State for Foreign Affairs, to consuls, bankers, merchants, and members of the legal profession, and we also circulated extensively another series of questions among leading mercantile firms and associations in this country in order to ascertain their views upon the expediency of establishing these Tribunals in England. Having obtained a considerable number of answers to these questions, we communicated with the gentlemen promoting legislation on the subject, and afterwards examined several of them, as well as other witnesses. We have had laid before us the respective reports of the select committees of the House of Commons of the 12th July, 1858, and of the 3rd of August, 1871, on Tribunals of Commerce, together with the evidence taken before those committees, and also two Parliamentary Bills, the one entituled "A Bill for establishing a Tribunal of Commerce for the City of London," and the other, "A Bill to provide for the constitution of Tribunals of Commerce," which were introduced into the House of Commons during the last session of Parliament. The questions were issued, the most important of the answers we have received, and the evidence we have taken, are contained in the appendix which accompanies our report.

Having carefully considered the subject, together with the evidence and papers previously mentioned, we have come to the following conclusions:—

We find that those by whom legislation on this subject has been promoted (although generally desiring that some provision should be made for more summary proceedings in many commercial cases) are not agreed as to the character of the Tribunals which they wish to establish, or the class of cases that should come within their cognizance. Indeed there is no unanimity of opinion as to whether the judges should be wholly commercial and partly legal; whether the commercial members of the Tribunals should be judges having an equal voice in the decision, or assessors or advisers only to a legal judge, who would in that case be the President of the Court; whether the commercial members should be paid or not paid for their services; whether the Tribunals should observe the ordinary rules of evidence, or be at liberty to admit anything as evidence which they may consider material to the point in issue; whether they should be guided by the principles laid down by the superior courts of law, or decide irrespectively of precedent and according to their own views of what is just or proper in each particular case; whether the parties should be allowed to be represented by counsel or solicitors; whether there should be any appeal, and in what cases, and to what courts. Upon all these points there appears to be the greatest diversity of opinion.

We find moreover that, even in the countries in which Tribunals of Commerce are established, great diversity exists with regard to the constitution of these courts. Thus, in France, in Belgium, and in some other countries, all the members of the court are merchants, except the greffier or registrar, and he has technically no voice in the decision. On the other hand, in many of the German States, the court is presided over by a lawyer. In Dantzic the Tribunal consists of a legal president, four other legal judges, and four merchants, but the merchant judges do not attend unless required. In Königsberg the commercial members have no vote, only a deliberative voice, the decision resting entirely with the legal members of the court. In Prussia, generally, it is in contemplation to substitute a paid lawyer for an unpaid merchant as president. There is in fact no uniformity in the constitution of these Tribunals; in some countries the mercantile, in others the legal element prevails, sometimes in the latter case to the exclusion of the commercial altogether.

We also find that, where the Tribunal is composed entirely of mercantile judges, assisted by a greffier who is a lawyer, the latter, although he has no vote, becomes of necessity the most important member of the court; and thence arises this anomaly, that the person who virtually decides the case is not clothed with the responsibilities of a judge.

Now, we think that it is of the utmost importance to the commercial community that the decisions of the courts of law should on all questions of principle be, as far as possible, uniform, thus affording precedents for the conduct of those engaged in the ordinary transactions of trade. With this view it is essential that the judges by whom commercial cases are determined should be guided by the recognized rules of law and by the decisions of the superior courts in analogous cases; and only judges who have been trained in the principles and practice of law can be expected to be so guided. We fear that merchants would be too apt to decide questions that might come before them (as some of the witnesses we examined have suggested that they should do) according to their own views of what was just and proper in the particular case, a course which, from the uncertainty attending their decisions would inevitably multiply litigation, and with the vast and intricate commercial business of this country would sooner or later lead to great confusion. Commercial questions, we think, ought not to be determined

Digitized by Google

without law, or by men without special legal training. For these reasons, we are of opinion that it is not expedient to establish in this country Tribunals of Commerce, in which commercial men are to be the judges.

But while we are quite agreed that a court presided over by mercantile men, or in which mercantile men have a deciding vote, would lead to confusion and uncertainty in the administration of the law, we are fully alive to the inconveniences that do undoubtedly arise from the want of adequate technical knowledge in the court which has to adjudicate upon cases of a commercial character. We think there is ground for the complaint that cases are sometimes tried at Nisi Prius before a judge and jury who have not the practical knowledge of the trade or business which is necessary for their proper determination. We are of opinion that many cases involving for their comprehension a technical or special knowledge cannot be satisfactorily disposed of by the ordinary tribunal of a judge and jury, and that the proper tribunal for such cases would be a court presided over by a legal judge, assisted by two skilled assessors, who could advise the judge as to any techincal or practical matters arising in the course of the inquiry, and who by their mere presence would frequently deter skilled witnesses from giving such professional evidence as is often a scandal to the administration of justice. This is the kind of assistance which we, in our first report to your Majesty, contemplated should be given to the superior judges on the trial of cases of a scientific or techinical character; and which has been provided for by the Supreme Court of Judicature Act. If the recommendations for the enlargement of the jurisdiction of the county courts contained in our second report should be adopted by the Legislature, we think it would be expedient that similar assistance should be afforded in mercantile cases to the judges of those courts, and in this manner the principal advantages anticipated by the advocates of Tribunals of commerce might, we think, be attained.

We are of opinion that there would be no practical difficulty in carrying such an arrangement into effect. We think that there might be for every place of sufficient importance a rota or a panel to be formed from time to time, composed of merchants, shipowners, or others conversant with the trade and business of the district, or other competent persons, from which rota the judge might, at the request of the parties, or, if he thought the circumstances of the case required it, at his discretion, select two persons who should sit with him, and advise him during the progress of the case on any point upon which their special knowledge would be of use. In special cases it might also be competent for the judge to call in the assistance of assessors who are not upon the local rota. But we are strongly of opinion that these mercantile or scientific assessors should not have any voice in the decision, and that the whole responsibility of the decision should rest with the judge.

We think that in cases in which an appeal is allowed there should be power for the judge or Court to call in the assistance of like assessors.

Our opinion is that the assessors should be paid for their services in Court, but not receiving any other remuneration. We think that for moderate fees the services of gentlemen possessing sufficient knowledge and independence to afford the requisite assistance to the judge could be obtained. Their fees should be costs in the cause.

These provisions, we venture to think, would supply the judge with the requisite practical or technical knowledge to enable him to do justice between the parties. We hope that the Legislature will always provide sufficient judicial strength to obviate the great complaint as to delay, and that under the new judicial system, of which the Judicature Act is the first fruit, effectual rules will be established to meet the other great grievances of expense.

We hope soon to be in a position to lay before your Majesty our further report upon other matters included in our commission, which have not been already disposed of.—SELBORNE, C., CAIRNS, HATHERLEY, *(1), A. E. COCKBURN, FITZROY KELLY, WILLIAM ERLE, ROBERT PHILLIMORE, GEORGE WARD HUNT, HUGH C. E. CHILDERS, W. M. JAMES, MONTAGUE SMITH, R. P. COLLIER, †ACTON S. AYRTON, G. BRAMWELL, COLIN BLACKBURN, J. R. QUAIN, COLERIDGE, G. JESSELL, JOHN B. KARSLAKE, *(2), CHARLES S. WHITMORE, H. C. ROTHERY, GEO. MOFFATT, WILLIAM G. BATESON, JOHN HOLLAMS, FRANCIS D. LOWNDES.

R. A. Fisher, Secretary, 21st January, 1874.

* (1) Lord Penzance and * (2) Sir Sydney H. Waterlow do not sign the Report.

MEMORANDUM OF MR. AYRTON.

† In signing this report, I am unable to concur in the reasons assigned for deeming it inexpedient to place the mercantile members on a footing of equality with the legal judges of the tribunals proposed to be invested with power to decide commercial cases. The argument that the uniform administration of the law would be impaired has, I believe, been usually urged against proposals for withdrawing causes from the courts at Westminster and remitting them to inferior tribunals. It was suggested that this evil would arise from the establishment of county courts, and from the extension of their jurisdiction, but it is proved by experience that no such evil has arisen, nor does it arise from the exercise of the judicial functions of the Courts of Quarter Sessions or the Petty Sessions, or the stipendiary or unpaid magistrates, although their decisions in criminal cases, and in certain civil cases, affect the rights and liabilities of the public in as great a degree as the decisions of Tribunals of Commerce would affect the commercial community.

It appears to me that when a dispute arises in the course of a commercial dealing, the compulsory settlement of it by a tribunal may be regarded as only a continuance or a conclusion of the transaction, and that it is unreasonable to insist that the parties interested shall, as a condition of having their dispute determined, be required, at an enormous cost and inconvenience to themselves, to create a precedent for the benefit of society, and to add a rule of law to a commercial code.

I venture to think that it is not necessary to regard the decision of particular cases as such precedents, but where parties desire, as now sometimes happens, that a rule of law should be established, regardless of the trouble and expense of litigation, there would be no difficulty in carrying the case from a Tribunal of Commerce to the Supreme Court of Justice for that purpose.

I consider that the advantages which would result from placing the legal and commercial elements of the tribunal on an equality, outweigh the objections. The legal judge could exercise sufficient influence over his commercial colleagues to prevent them from acting contrary to settled law, but the sagacity and experience of the commercial men would, in general, be of more service to the suitors in the decision of their disputes than the legal knowledge of the judge.

The advantage of a Tribunal of Commerce does not, however, consist merely in the constitution of the Court, but it is in the mode of procedure. It seems desirable to have a guarded, formal, and somewhat tardy procedure through legal agents where the judicial power is entrusted to a single state judge, not only for the protection of the suitors against each other, but against any abuse of power on the part of the judge. Nor does the ordinary litigation in these Courts require a more summary mode of procedure. But commercial disputes frequently demand a very speedy decision, as well as special treatment whilst under adjudication, such as those arising out of dealings relating to the loading and despatch of vessels, the sale and resale, the warehousing, transfer, and stoppage of goods, the transactions of agents, and of others, involving several liabilities. Tribunals of Commerce, with the safeguard of mercantile members, are authorized to proceed in the most summary manner, to adapt their procedure to the exigencies of each particular case, and to require the personal attendance of the parties who have been engaged in the dealing to afford such explanations as may be requisite, instead of being obliged to wait in order to have every representation to the Court, it may be said, filtered, and perhaps mystified, through a single or even double legal agency.

It seems to me to be no sufficient answer to the request of the mercantile community, that tribunals which have for so many years shown their usefulness abroad should be introduced into this country, to assert that individuals are

Digitized by Google

not agreed upon the best mode of constituting such tribunals, or of regulating their procedure. The Committee of the House of Commons, after considering a variety of opinions, arrived at conclusions indicating how Tribunals of Commerce might be established, and the Commission has in very material points concurred in those conclusions. It may, therefore, be hoped that a measure may be framed which will meet with general acquiescence.

Acton S. Ayrton.

Reasons of Lord Penzance and of Sir Sydney H. Waterlow for not signing the Report.

(Lord Penzance).

I have been unable to concur in this report because I am not satisfied that tribunals might not be established consisting of commercial men with adequate legal assistance, capable of settling commercial disputes in a satisfactory manner, at greater speed, and at much less cost than at present. And I think the well-known fact, that in the large majority of commercial disputes, the parties avoid the courts of law and resort to private arbitration is strong to show the need of some such Tribunals, and a cogent reason for making the experiment.

Penzance.

(Sir Sydney H. Waterlow.)

I am unable to agree in all the recommendations of this report, and therefore do not sign it. I feel very strongly that in a great commercial country like England tribunals can and ought to be established where suitors mignt obtain a decision on their differences more promptly, and much less expensively, than in the superior courts as at present constituted and regulated.

Those who support the present system of trying mercantile disputes seem to regard them all as hostile litigation, and lose sight of the fact that in the majority of cases when differences arise between merchants or traders, both parties would rejoice to obtain a promp settlement, by a legal tribunal duly constituted, and to continue their friendly commercial relations. The present system too frequently works a denial of justice, or inflicts on the suitor a long-pending, worrying law suit, the solicitors on either side pleading in their clients' interests every technical point, and thus engendering a bitterness which destyroys all future confidence and puts an end to further mercantile dealings.

It is essential that the procedure of our mercantile courts (whether called tribunals of commerce or by any other name) should be of the simplest and most summary character, similar to that of the tribunals of commerce in Hamburg or in France, or before justices of the peace in this country, as recommended by the select committee of the House of Commons in 1871.

The liberty of the subject is, perhaps, more jealously guarded in this country than property. If the summary jurisdiction conferred on justices of the peace in criminal cases, when exercised by gentlemen who are not lawyers, gives satisfaction, it can scarcely be doubted that a similar jurisdiction in civil cases would be equally acceptable.

Sydney H. Waterlow.

FELONY BY CARRIERS' SERVANTS.

It is obviously important that bailors whose goods are lost whilst in the custody and care of carriers should know what their remedies are, and how the loss is to be brought home to the carrier. Carriers have been very properly protected by Act of Parliament against liability for the loss of goods above £10 in value, unless such value is declared at the time of the consignment, but by the 8th section of the Carriers' Act, it is provided that nothing in the Act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any coachman, guard, bookkeeper, porter, or other servant in his or their employ. On this section a case which is instructive was recently decided and reported by us last week: (*Vaughton and another* v. *The London and North Western Railway Company*, 30 L. T. Rep. N.S. 119). There the question was one of evidence—was it necessary, in order that the plaintiff might recover, that he should prove affirmatively a felony by some particular servant or servants of the company? The plaintiffs had obtained a verdict at the trial, and the argument took place upon the rule to set aside that verdict.

It may be useful shortly to notice the facts and arguments. The property lost was a box of jewellery, and portions of the jewellery were found by different persons laying about a siding platform. One servant of the company was taken into custody, but said that he had found the property in his possession, and was thereupon discharged. Two other servants named respectively Hindley and Wilson were suspected, Hindley being driver of a parcel van on the morning of the robbery in which the box for delivery was duly entered. Wilson was a clerk in the parcel office, who had possession of some of the property. It was proved that there was no part of the defendant's station open or accessible to the public nearer the spot where the parcel van was, while the parcels were being placed in it, than from six to ten yards. The defendants called no witnesses, and the learned Judge in summing up to the jury, told them that they must, before they could find a verdict for the plaintiffs, be satisfied that the goods were stolen by the felony, not of one of the public, but of one or more of the company's servants, although the plaintiffs might not be able to fix the felony on any one particular servant, nor was it necessary that the jury should be satisfied as to which of two or more implicated servants was the actual thief.

The argument for the company was, that they could not have placed the suspected men in the box, for that to do so would have been to subject men with a criminal charge hanging over their heads to cross-examination, and, further, that it would have been to try them on such charge upon an entirely collateral issue. It is impossible not to see the inconvenience and possible injustice attendant upon calling the suspected men to deny the felony, but it is difficult to see how the company could successfully avoid it. And the result shows that it was not possible. It was out of the question that these men should be called by the plaintiff, and, in the absence of a positive confession of the men, what could the plaintiff do? Only that which they did, namely, make out a *primâ facie* case. "It is quite sufficient," was the argument on their behalf, "in a case like the present, if it be shown beyond reasonable doubt that the loss of the goods in question must have resulted from a felonious act on the part of some one or other of the servants of the railway company, and it is not incumbent on the plaintiffs to fix by their evidence any one servant in particular with the felonious act, nor even to adduce such distinct and precise proof of the act as would be held needful to establish a case for the jury if one of the servants were on trial on an indictment for the felony."

This argument was fully appreciated by the court. The Lord Chief Baron referring to the section of the Carriers' Act (sect. 8) said: "The intention of that section is manifestly to protect the public from loss or injury to their goods arising from the felonious act of any servant of the carriers or company, and to make the latter liable whenever the articles in question are stolen by persons under their control. Is it possible to say that such a case as the present does not come within that section?" His Lordship then draws a distinction between cases of felony and civil cases, and the evidence which should be given under different circumstances. He said: "We must deal with cases arising under it [*i.e.*, the section of the Act] on very different principles from those which are applicable to a case of a person indicted for a felony. In the latter case where the prisoner cannot give evidence or be examined, if evidence were given that the particular article had come into the prisoner's possession, and had been in his possession for a time, and had then disappeared, the bare fact of the possession which might, consistently with the rest of the evidence given, lead to no other inference than that the party charged had been guilty of negligence, could not justify a Judge in leaving the case to the jury at all. But is not the case very different here, where the company could have called all the servants in their employ who were at all suspected of being implicated in the matter to have explained the disappearance of the box, and anything in the circumstances

Digitized by Google

that might really be deceptive? Here there is much circumstantial evidence against Hindley, from his having possession of the book, the parcels mentioned in which had been checked and looked over, and his being also in the exclusive possession of the van in which they were placed. The question then arises, whether there is any difference between a civil action, in which we have to consider whether the words of this Act of Parliament have been complied with or not, and the case of the same individual (Hindley), if he had been indicted for a felony. It might be no justification for a Judge leaving such a case to a jury, had Hindley been indicted for the felony, that there was circumstantial evidence that he had possession of the parcel, and that it had disappeared at the time when it was his duty to deliver it; but in a civil action like the present, it is surely no answer to say, in argument, merely that there was no case to go to the jury, because the man might never have had actual possession of the parcel, or if he had, that it might have been stolen from his van on the way to the hotel."

We have quoted extensively from this judgment because the subject is one of great importance, and the admission of circumstantial evidence in a civil case to prove a *primâ facie* case of felony—which to all intents and purposes is equivalent to a conviction of the suspected servants—is apparently an infraction of the strict laws of evidence. It is undoubtedly a forcible observation to say that the procedure in civil and criminal trials is different, and evidence may be admitted in one case which would be rejected in another; but that this would not be generally contemplated, and that for the purposes of a civil suit men would not be assumed guilty of a felony who were not proved by direct affirmative evidence to be so, is clear. And we think that *Vaughton and another* v. *The London and North Western Railway Company*, must be considered as introducing a somewhat novel principle, but one nevertheless which we confess appears to us to have been necessarily applicable to the case in order to give the plaintiffs their proper remedy.—*The Law Times.*

RECENT DECISIONS.

COMMON LAW.

EXECUTOR DE SON TORT.

Williams v. *Heales*, C.P., 22 W. R. 317.

An executor *de son tort* may be described as a person who, as long as he remain such, has, by reason of his possession of the assets, all the liabilities and none of the rights of a true executor. While his assumed office lasts he must discharge his functions by the same rule as a true executor (*Oxenham* v. *Clapp*, 2 B. & Ad. 309); but its existence depends on the vacancy of the real office; and as soon as there is a true representative of the deceased, whether by probate or letters of administration, his character as executor ceases, and his liability as such to third persons is replaced by a liability to the true representative, whose acquittance (before action) discharges him, and whose affirmance or disaffirmance of his acts either validates or nullifies them (*Anon.* 2 Mod. 293; *Hooper* v. *Summersett*, Wightw. 16; *Hill* v. *Curtis*, 14 W. R. 125, L. R. 1 Eq. 90). From this quality of his office it follows that there is no privity between his personal representative and the estate with which he has intermeddled. By 30 Car. 2, c. 7, s. 2, his executor was, as executor, rendered liable in respect of any waste of the original estate by the executor *de son tort*, or any conversion of it to his own use; but he cannot be sued on any liability which attached to the deceased whose estate the executor *de son tort* intermeddled with (*Wilson* v. *Hodson*, 20 W. R. 438, L. R. 7 Ex. 84). Neither is the *quasi* office of executor *de son tort* communicated or extended to a third person, who takes from him any portion of the estate, so as to constitute that person also executor *de son tort* (*Paull* v. *Simpson*, 9 Q. B. 365; *Hill* v. *Curtis* (*ubi sup.*). Thus in the former of these two cases it was held that a person who came into possession under the executor *de son tort* of a lease which formed part of the estate could not be sued as executor of the original deceased. The motion of executor *de son tort* did not, as Wightman, J., said, admit of a multiplication of persons bearing that character, "a person who is executor *de son tort* is executor generally." But in the present case of Williams *v.* Heales, it was held that although there could not be concurrent there might be successive executors *de son tort*, and that a person who, after the death of the original executor *de son tort*, took possession of and occupied a leasehold belongi g to the estate, might be sued as such by the lessor. On the representation of the original lessee coming to an end by the death of his administratrix, one Heales entered into possession and received the rents to his own use; on his death his son (the defendant) entered into possession and received the rents to his mother's use; and on her death he continued in possession and received the rents to his own use. According to Keating and Brett, JJ., the mother was executrix *de son tort* during her life, during which time the decision in Paull *v.* Simpson would prevent the son being executor *de son tort*; but after that time they held that the son became such, and was therefore liable as assignee. Denman and Honeyman, JJ., however, appear to have declined to put the defendant's liability on this ground, the former treating him as estopped from denying that he was assignee (which, however, appears not wholly consistent with Paull *v.* Simpson), and the latter drawing the inference of an assignment—from whom is not stated. The *ratio decidendi* of the case must, we think, be found in the judgments of Keating and Brett, JJ., and though the point is novel there is nothing in the decision inconsistent with the authorities.—*Solicitors' Journal.*

BANKRUPTCY JURISDICTION.

The decisions in *Ellis* v. *Silber* (28 L. T. Rep. N. S. 156) and in *Ex parte Motion, Maule* v. *Davis* (28 L. T. Rep. N. S. 906; on appeal, 22 W. R. 225) are calculated to determine somewhat the limits of the jurisdiction in bankruptcy under the sects. 66 and 72 of the last Act in questions between the trustee and third parties. To understand what *Ellis* v. *Silber* establishes, it must be premised that with every bankruptcy there devolve upon the trustee (1) a certain number of assets in the hands of the bankrupt, (2) a certain number of claims on persons connected before the bankruptcy with the bankrupt in business, (3) a certain number of liabilities to the same class of persons. In what forum or forums a trustee is to pursue the claims numbered (2) is a point of some importance, and the two cases cited above bear particularly upon it.

The case of *Ellis* v. *Silber* (*ubi sup.*) was this. A claim was made by the trustee of a bankrupt's estate upon a former partner of the bankrupt for compensation for improperly dissolving the partnership. This claim the trustee attempted to prosecute by a bill in Chancery, and a demurrer to the jurisdiction was filed, a course always adopted wherever the Bankruptcy Act gives jurisdiction to the Bankruptcy Court: (*Stone* v. *Thomas*, L. Rep. 5 Ch. App. 219; 22 L. T. Rep. N. S. 359). On the criterion adopted in *Ex parte Anderson re Anderson* (L. Rep. 5 Ch. App. 481; 22 L. T. Rep. N. S. 361), to determine whether the Bankruptcy Court had jurisdiction or not, viz,, "Is or is not the question in the present case one which it is necessary to decide with a view to the distribution of the bankrupts' estate," it is quite clear, the matter in dispute in *Ellis* v. *Silber* was within the jurisdiction of the Bankruptcy Court. In *Anderson's* case the trustee desired to recover some pictures which had got into the hands of a third party, and if that had to do with the distribution of the assets of a bankrupt *pari ratione* had the trustee's claim in *Ellis* v. *Silber*. In *Ex parte Motion* the same criterion of jurisdiction as in *Ex parte Anderson* (*ubi sup.*) was taken by the Chief Judge, who held that a claim which, if successful, would produce assets was a question which had to do with their distribution. Clearly on the tests adopted in *Ex parte Anderson* and *Ex parte Motion* the claim made in *Ellis* v. *Silber* was within the jurisdiction of the Court of Bankruptcy. The decision of Lord Selborne that *Ellis* v. *Silber* was a proper case for the courts of equity (which amounts to a denial of bankruptcy jurisdiction: *Stone* v. *Thomas*, *sup.*) is, therefore, of considerable importance, because it displaces at once the tests by which, since *Anderson's case*,

Digitized by Google

bankruptcy jurisdiction has been measured. In his decision the Lord Chancellor drew a distinction between questions which arise because a bankruptcy has happened, *e.g.*, the payment of dividends, &c., and questions which arise from other sources than that event. Such a distinction the following extract from his judgment clearly defines: "There was no case cited and no clause quoted from any Act of Parliament to the effect that whenever the trustee of a deed or a trustee or assignee in bankruptcy has a demand against a third person, which, but for the bankruptcy, would be proper to be prosecuted in a court of law or equity, the jurisdiction of the court of law or of the court of equity is, as against that third person, transferred to the Court of Bankruptcy. I apprehend that there is nothing whatever in the Acts relating to bankruptcy which in an ordinary case, not governed by the special clauses of the Act, has any such effect." The result of these words is clearly to except from Bankruptcy jurisdiction all claims and demands and questions which, if no bankruptcy had happened, would have been tried elsewhere. This seems to point to the test of bankruptcy jurisdiction as being this (creditors coming under special provisions), "Would the question have been tried with the debtor as plaintiff or defendant if the bankruptcy had not taken place?" This view of Lord Selborne's words is borne out by the remainder of his judgment.

"That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors as the parties to the administration in bankruptcy are subject to that jurisdiction. The trustees or assignees, as the persons entrusted with the administration, are subject to that jurisdiction. The assets which come into their hands, and the mode of administering them, are subject to that jurisdiction, and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition that whenever the assignees or trustees in bankruptcy, or the trustees under such deeds as these, have a demand at law or in equity as against a stranger to the bankruptcy, then that demand is to be prosecuted in a Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige of authority."

Lord Selborne, it will be seen, takes as the subjects of bankruptcy control (*a*) the debtor, (*b*) the creditors, (*c*) the trustee, (*d*) the assets which come into the trustee's hands. He certainly excepts the second head of our classification of the bankrupt's effects—viz., a certain number of claims on persons connected in business with the bankrupt—from the bankruptcy jurisdiction. And this exception, which must have been made advisedly, is perfectly consonant with reason; for while creditors could, if unrestrained, absorb the assets, and so defeat an adminisiration in bankruptcy, it is very clear those on whom the trustee alone has claims can do nothing of the sort. The same rule of administration prevails with respect to estates in the hands of the Court of Chancery, against which the creditors prove, and against the debtors to which actions have to be brought.

So clearly does *Ellis* v. *Silber* displace the test laid down in *Anderson's* case as the test of jurisdiction, that Lord Selborne expressly shifts the ground on which *Ex-parte Anderson* rested, and places it on the submission of the holder of what were claimed as assets to the bankruptcy—viz, on the ground that that person "had come in and made certain arrangements as to the pictures in dispute with creditors of the bankrupt, and therefore the matter was *primâ facie* brought by his own submission and his own acts under the administration in bankruptcy." *Ellis* v. *Silber* may therefere be considered (1) as setting aside the authority of *Ex-parte Anderson:* (2) a demurrer to the jurisdiction being always entertained in a court of equity, where there is a concurrent jurisdiction in bankruptcy, as establishing that the trustee of a bankrupt estate must, unless in some cases specially provided by the Act, pursue against debtors to the estate equitable and legal remedies. A similar claim was discussed in *Ex parte Motion, Maule* v. *Davis*. The object of the motion was to set aside a sale made by an assignee of a former bankruptcy under a decree in Chancery, and then to carry out the decree by another sale, on the allegation that the trustee of a second bankruptcy considered if the property were fairly sold a considerable sum would come to him and the creditors. The Chief Judge sitting in Bankruptcy granted the relief desired, but on appeal it was held that the Court of Bankruptcy had no power to entertain the cause, clearly one of the same nature as *Ellis* v. *Silber* and *Ex parte Anderson*, viz., a demand by the trustee against some third persons, which, if successful, must swell the assets. "Sect. 72," said Lord Selborne, the Lords Justices concurring, "gives the Court" (of Bankruptcy) "a very large authority to decide such questions as it may consider expedient and necessary to decide for the proper purposes of the administration in bankruptcy; but it does not, as we understand it, at all enable the Court of Bankruptcy to draw compulsorily within the sphere of its jurisdiction property or the owners of property not vested in the assignee, and not originally subject to the administration in bankruptcy." That the above case includes in its principle the simple one of a legal claim by the trustee on a person not a creditor, as well as a complicated equitable claim on the same description of person, is very clear from the observations made during the argument. "If a bankrupt claimed to be the owner of an estate, you contend," asked Lord Justice James, "that the Court of Bankruptcy could not be the proper tribunal to try that question, but an action of ejectment must be brought or a bill filed?" Lord Selborne on this remarked, "Certainly, I should hold that." After these two decisions it will be very difficult for the bankruptcy courts to absorb into themselves much of the jurisdiction they continually absorb by injunction. By a very strained construction of these cases bankruptcy courts may perhaps retain a concurrent jurisdiction in matters of the nature therein adjudicated upon; but in such a case it ought clearly to be remembered, when injunctions are applied for, that one court cannot transfer a cause to itself from a court of concurrent jurisdiction.—*Law Times.*

BONA FIDE PURCHASERS WITHOUT NOTICE.

The case of *Caballero* v. *Hentz*, which came up on appeal on the 11th March, from the Master of the Rolls, before the Lords Justices, seems to establish a new principle in relation to the rights of that well protected person, the *bonâ fide* purchaser without notice. A brewer sent his agent to bid for property, described as in the possession of certain tenants, and producing £30 a year. At the sale, however, it appears that these tenants were under-tenants of a lessee of the vendor, who held the whole property for a lease, of which nine years were unexpired, at a rent of £20. The lease was read at the sale, but it was not referred to in the abstract sent to the purchaser. A bill was filed for specific performance, but it was held by the Master of the Rolls, and his decision was affirmed, that the purchaser was not bound by the unauthorised act of his agent, and that he had not received constructive notice of the lease. The two cases most relied on by the plaintiff's counsel were those of *Daniels* v. *Davidson* (16 Vesey, 249) and *James* v. *Litchfield* (L. Rep. 9 Eq. 51; 21 L. T. Rep. N. S. 526); the former of which may be looked upon as much shaken in authority, and the latter overruled. The point decided in *Daniels* v. *Davidson* was, that the possession of a tenant is notice to a purchaser of the tenant's interest, created by an agreement to purchase from his landlord; and it was intimated in the judgment of Lord Eldon that generally notice of occupation was notice of the terms of occupation. And the case of *James* v. *Litchfield* lays down that rule to its full extent. It is true that in the present case complications existed which were absent from the earlier ones. The question of principal and agent was involved, and the statement in the particulars of sale that the property brought in a certain annual rental, whereas it produced, in fact, considerably less, had great influence upon the decision. But there are statements in the judgment of Lord Justice James which go much further; so that, whereas under the older decision the usual rule was that notice of possession was notice of the terms under which the possession was held, the law may now be taken as settled, if the decision of the Lords Justices is maintained, that a purchaser may safely assume the tenancy of an

Digitized by Google

occupant to be from year to year or at will, unless he is distinctly informed of the contrary. After stating his indisposition to follow the dicta in *James* v. *Litchfield* (*ubi sup.*), the Lord Justice said :—"If there is anything in the nature of the tenancies which affects the property sold, it is the vendor's duty to inform the purchaser of it, and he is not afterwards entitled to say, 'Oh, yes, but you ought to have gone and inquired.'" This decision seems to place the law upon a satisfactory basis, and while justly relaxing the stringency of the rule of *caveat emptor*, to discourage the fraudulent concealment of facts material to the property on the part of vendors.

ELECTION PETITIONS.

On Thursday, Judge Lawson sat in chamber to hear motions. The first notice to be disposed of was in the petition presented by Mr. O'Beirne against the return of Mr. Ormsby Gore for Leitrim, and the object was to obtain leave for the officer to list the petition, and thereupon that the petitioner shall be at liberty to proceed, but, on the application of respondent's counsel, the matter was adjourned for a week. Sergeant Armstrong and Mr. M'Mahon, Q.C., appeared for the petitioner, instructed by Mr. Kiernan. Mr. May, Q.C., and Mr. Gibson, Q.C., instructed by Mr. Bolton, for the respondent. The second notice related to the Athlone petition, in which Mr. Sheil claims the seat as against Mr. Ennis, both gentlemen having been returned as having an equal number of votes, and the sitting was to settle the terms of the "special case" for the Court of Common Pleas. This was done. Sergeant Armstrong and Mr. D. Fitzgerald, with Mr. V. Dillion, solicitor, appeared for Mr. Sheil. Mr. Heron, Q.C., and Mr. H. M'Dermott, with Mr. Stapleton, for Mr. Ennis; and Mr. Nicoll, with Mr. V. Daly, for the Sheriff.—*Freeman.*

MR. BEALES AND MR. JUSTICE BLACKBURN.—On Wednesday last, at the April sitting of the Cambridge County Court, Mr. Beales, the Judge, acknowledged the receipt of an address which had been presented to him in consequence of some remarks made upon him by Mr. Justice Blackburn in the Court of Queen's Bench. The address was as follows :—"Dear Sir,—We, the undersigned barristers-at-law or attorneys practising before you in the Courts of which you are the Judge, have read with much pain and regret a report in the *Law Times* of the 7th of February, 1874, of a remark alleged to have been made by Mr. Justice Blackburn in reversing a decision given by you in the case of '*Taylor* v. *the Great Eastern Railway*,' that if you were in the habit of making such rulings he owned, he thought, the Lord Chancellor should be made aware of it. Without discussing the particular point before the Court of Queen's Bench in the case alluded to or presuming in any way to question the correctness of the view taken by that eminent Judge, we think it due to you to state that we have been perfectly satisfied with your rulings generally, that we consider you bestow more than usual attention and care on all cases coming before you, that your judicial conduct during the whole time you have been the Judge of this circuit has commanded our high respect and esteem, and that we have the fullest confidence in your able and impartial administration of the law in your several Courts." This address was signed by four barristers and thirty attorneys practising in the several Courts. His Honour returned thanks at some length. He said he had read with great indignation what Mr. Justice Blackburn was reported to have said, but upon reflection he deemed it the best thing to attribute the remarks to some mistake or exaggeration in the report, or to some grave misapprehension as to the real facts of the case. On one point—the conditions under which the company had been allowed to appeal—the Court above was wholly unjustified in what it said, as the solicitor of the company himself would admit. So far as he could gather from the report his decision was reversed without the shadow of or an attempt at argument, and in no very courteous terms. He was borne out in his views on the main point in the case by one of the most eminent courts of jurisprudence in the world—the Supreme Court of the United States—in which the very question at issue here had been made the subject of an elaborate and exhaustive argument.—*The Times.*

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

ARBITRATION—POWER OF JUDGE TO ENLARGE TIME FOR MAKING AWARD.—A superior court or a judge at chambers may enlarge the time for making an award beyond that fixed by the parties themselves in the agreement of reference : (*Re Denton*, 30 L. T. Rep. N. S. 52. Q.B.)

LIQUIDATION — BANK OF DEPOSIT—VERBAL ASSENT TO.—The provisions of ss. 20, 30, of the Bankruptcy Act, 1869, and the 109th rule, with respect to the duty of a trustee under a bankruptcy to audit his accounts, and pay all moneys into the Bank of England unless otherwise directed by the creditors, or the committee of inspection, apply also to liquidations by arrangement. Under a liquidation, however, it is not in every instance necessary, under sec. 125, cl. 8, by formal resolution to prescribe the bank into which the moneys are to be paid if the evidence clearly shows that the creditors have assented to and adopted the course proposed by the trustee : (*Ex parte Old, re Bright*, 30 L. T. Rep. N. S. 72. Bank.)

REVIEW.

The Practice before the Railway Commissioners under "The Regulation of Railways Act, 1873," with the Law applicable thereto, and the General Orders, Forms, Table of Fees, Statutes, &c. By R. GORDON JUNNER, Esq., of the Middle Temple, Barrister-at Law. London: Wildy and Sons, Lincoln's Inn Archway, W.C.

The Act passed in last Session of Parliament known as "The Regulation of Railways Act, 1873," has created a new tribunal, to which in certain matters relating to railway and canal companies, the jurisdiction of the Court of Common Pleas and the Board of Trade has been transferred, and on which additional powers, particularly with respect to adjusting through rates, and settling by arbitration disputes between companies, have been conferred. This tribunal at present consists of three members, who are styled "The Railway Commissioners."

This volume fairly sets out the method of practice under the new Act, and gives abundant references to the cases already decided. Unfortunately our railway system is not sufficiently developed to give the people at large an interest in this style of things, but we are much mistaken if the solicitors of the South and West of Ireland do not make out good cases against the railway companies in their neighbourhood from the assistance derivable from this volume, which contains the Practice under the Regulation of Railways Act, 1873 ; Application and Extent of "Railway and Canal Traffic Act, 1854 ;" Undue Preference generally ; Reasonable Preference and Advantage ; Rights of Passengers ; Receiving and Forwarding Traffic ; Stational Arrangements ; Parcels ; Just and Reasonable Conditions in Forwarding Traffic.

The work has been well done by the learned editor, who has referred to every case decided under the several statutes, and we are glad to see a law book at last brought out in the best style of the typographical art.

APPOINTMENTS.

The Lords Justices have appointed Mr. Joseph Faviere Elrington, Q.C., LL.D., to the office of Queen's Advocate of the High Court of Admiralty, vacated by the Right Hon. J. T. Ball, Attorney-General of Ireland. Dr. Elrington was the Secretary to the Irish Church Commission appointed in 1867.

Digitized by Google

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, April 20th, 1874, when the following subject will be debated:—

(ADJOURNED DEBATE.)

"That the Debtors Act, 1872, is conducive to the public interest."

SPEAKERS:

Affir. Mr. G. B. Nash, Mr. O. Thomas. | *Neg.* Mr. L. P. Dillon, Mr. L. S. Eiffe.

The Chair will be taken at Eight o'clock by Edward Morphy, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 18th and 19th days of May, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Saturday, 2nd May, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place on Wednesday and Thursday, the 20th and 21st days of May, 1874, *at the same hour.*

By Order of the Council,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Thursday, the 28th of May, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

EASTER AND TRINITY SESSION, 1874.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Easter and Trinity Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Monday*, the 20th of April, 1874.

The Course will consist of *Eighteen* Lectures, *Thirteen* of which *must* be attended so as to entitle Candidates to Professor's certificate.

By Order,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts,
Dublin, *April, 1874.*

The Professor of Law has fixed upon the following Book for Lectures, viz.:—"BROOM'S COMMENTARIES ON THE COMMON LAW." Last Edition.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—G. Raleigh, confirm sale.—Rev. H. Stepney, do.—W. Armstrong, to set aside sale.—Sir J. W. King, proposals.—G. Rawson, do.—Hugh Bell, to adjourn sale.—Anne Reynolds, allocation.—J. A. Synge, ditto.

IN COURT.—Anne Greene, from 9th ultimo.—A. H. Wood, do.—Marquis Waterford, objections 2 notices.—Same, for order to re-sell lot 43.—A Lynch and others, for liberty to proceed.—J. Hasleton, re-entered notice of 13th February.—F. Beatty, on title.—E. J. Ryder, payment.—Rev. S. R. W. L. Malone, for liberty to inspect title.

Before EXAMINER (Mr. M'Donnell).

Anne Bergin, vouch.—E. O. Lloyd, do.—G. H. Pentland, do.—T. S. Hagerty, do.

Before EXAMINER (Mr. Dobbs).

H. Dempsey, rental.—Trustee Flood, do.—E. Colgan, ditto.

TUESDAY.

IN CHAMBER.—G. Murphy, re-entry of schedule.—M. O'Connor, final schedule.—J. Luddy, do.—J. Bleazby, do.—W. Armstrong and others, do.—Rev. H. R. Graves, do.—T. Bell, do.—H. Greer, do.—W. Fitzsimons, do.—W. Whitmore, do.—Rev. O. W. Moore, do.—M. M'Inerney, do.—J. Mullen, do.—S. Hutchins, from 12th ultimo.

Before EXAMINER (Mr. Dobbs).

M. Carroll and others, rental.—Executor Wilkin, do.—Trustee Bell, do.

WEDNESDAY.

IN CHAMBER.—J. Gaggin, confirm sale.

IN COURT.—W. Turquand, final schedule.—A. S. Ker, from 15th.—Trustee De Bazancourt, from 16th.

Before EXAMINER (Mr. M'Donnell).

C. Toole, vouch.—J. Devenish, do.—Rev. A. Broderick, rental.—R. H. Beresford, do.—Right Hon. W. C. Temple, ditto.

THURSDAY.

IN CHAMBER.—J. H. Bowley, tenant's objection.—H. Greer, final schedule.

FRIDAY.

SALES AT 12 O'CLOCK.

SIR J. W. KING.—2 lots.
A. SOTHERN.—5 lots.
W. M'CORMICK.—5 lots.
M. FITZSIMONS, ADMINISTRATRIX PLUNKETT.—3 lots.
M. W. KNOX.—1 lot.
TRUSTEE R. D. LAWLESS.—2 lots.

Before EXAMINER (Mr. M'Donnell).

John Stanley, rental.—R. T. Lahey, do.—E. Henderson, do.—L. Murphy, do.—Jane Bellingham, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Hackett	Prove debts	*Barlow*
James M'Kenna	do	*Kennedy & Nagle*
O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*
William Anderson	Vouch account	*Fay & M'Gough*
John Hosford	Costs	*Beauchamp*

Digitized by Google

TUESDAY.

Before the Court, at 11 o'clock.

Peter Wright	1st composition sitting	*Mathews*
John Deegan	1st public sitting	*Roe*
James Coady	Final examination	*Hunter*
Michael Broderick	do	
Patrick Byrne	do	*Leachman*
———	Show cause against adjudication	*Larkin & Co.*
James E. Best	Take charge of Bank of Ireland	*Darley*
A. F. MacDonald	Take charge of F. Pollock & Co.	*Leachman*
Maurice Cassidy	Examine debtors	*Fay & M'Gough*
Alfred Parker	Confirm sale	*Delandre*
Richard Boyle	Motion	*MacSheehy*
Eugene Sheehan	do	*Scallan*
Same matter	Application for certificate of conformity	*Scallan*
John M'Fadden	Examine witnesses	*Larkin & Co.*
T. and J. Delany	Motion	*Coppinger & Son*
Edward Smith	do	*Kavanagh*
Patrick Moylan	Audit assignee's acct.	*Stone*
Patrick Flinn	Audit and dividend	*Maxwell & Weldon*
John Hosford	do	*Beauchamp*

The following at 12 o'clock.

John Neil	Sale	*Fay & M'Gough*

Before the Chief Registrar, at 12 o'clock.

John C. Walsh	Prove debts	*Dutch*
Thomas M'Murray	Costs	*Larkin & Co.*
John Nolan	Title, conditions, and posting	*Orpen & Sweeny*
John Godfrey	Costs	*Lett*
Same matter	Vouch account	*Lett*

THURSDAY.

Before the Chief Registrar, at 12 o'clock.

James W. Dillon	Prove debts	*Toomey*

FRIDAY.

Before the Court, at 11 o'clock.

Lewis R. West and Wm. Tisdall	1st public sitting	*Oldham & Eaton*
John Kirwan	do	*Stapleton*
Henry Abbott	do	*Larkin & Co.*
William J. Coyne	do	*Leachman*
George Blunt	do	*Lynch*
A. M. Sheridan	Final examination	*Findlater & Co.*
Daniel Cullen	do	*Larkin & Co.*
Samuel Doyle	Examine witnesses	*Meldon & Sons*
William Darragh	Motion	*Lawler*
Same matter	do	*Davys*
Patrick Nolan	Take charge as proved	*Colfer*
B. Cummings	Audit and dividend	*Bradley & Son*

Before the Chief Registrar, at 12 o'clock.

World & Bunn	Costs	*Neilson*
Elder & Adams	do	*Neilson*
George Craig	Prove debts and vouch	*Cronhelm & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Fortune, James, Churchtown, Wexford, grocer. Sittings, *Friday, May* 8, and *Tuesday, May* 24. *Lett*, solr.

Foxall, William, Commercial Buildings, Dame-street, Dublin, broker. Sittings, *Friday, May* 8, and *Tuesday, May* 24. *Oldham and Eaton*, solrs.

Hay, Arthur Graham, Redbarns House, Dundalk, Louth, Bart. Sittings, *Tuesday, May* 5, and *Friday, May* 22. *Mathews*, solr.

M'Kee, Joseph, 31, Waring-street, Belfast, broker and commission agent. Sittings, *Friday, May* 8, and *Tuesday, May* 24. *Leachman*, solr.

Martin, Lewis Vaughan, Newry, county Armagh, grocer and spirit dealer. Sittings, *Friday, May* 8, and *Tuesday, May* 24. *Lynch*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	APRIL Fri. 10	Sat. 11	Mon. 13	Tues. 14	Wed. 15	Thur 16
	Government.						
—	3 p c Consols	91⅝	91⅝¾	—	91⅝	91¾	91¾
—	New 3 p c Stock	90⅝½	90⅝⅝	90⅝½	90⅝⅝⅝	90⅝⅝	90⅝¾⅝
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	106½	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	101⅛	—	—	101	101	—
	Banks.						
100	Bank of Ireland	307	307	307	—	—	307
25	*Hibernian Banking Co.*	—	57⅛	—	57⅛⅛⅛	—	57⅛
20	*London and Westminster*	—	—	—	70	—	—
3½	*Munster Bank (Limited)*	8⅛	—	—	—	8⅛	—
30	*National Bank*	58⅛	—	58¼	58⅛	58⅝⅛	58⅝¾
15	*National of Liverp'l (Litd)*	14⅛¼	—	14⅛¼	—	—	14⅛⅝
25	*Provincial Bank*	—	—	—	94⅝¾	—	—
10	Do. New	—	38⅛	—	38⅛	—	38⅛
10	*Royal Bank*	—	28¾	—	—	28¾	—
	Steam.						
100	City of Dublin	—	—	108¼	108⅛	—	108⅛
50	Dublin and Glasgow	—	63⅛	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	56
50	Peninsular and Oriental	58	—	—	58	—	—
	Mines.						
3½	*Berehaven (Limited)*	3/6	—	—	3/6	3/6	—
1	Killaloe Slate Co. (lit'd)	—	—	—	—	15/	—
7	*Mining Co. of Ireland (lit'd)*	4⅛⅝	—	—	4¾	—	—
2½	Wicklow Copper	—	—	—	2⅛⅝	2⅛⅝	—
	Miscellaneous.						
	Alliance & Dub. Cons.' Gas	—	—	—	—	9⅛	9⅛
3	*Cork H. D. & W. Co. (lit'd)*	—	—	—	—	—	—
10	Do., 7 p c preference	—	—	—	10 ⅛	—	—
9½	*Dublin Tramways*	7⅛	—	—	—	—	7⅝
9-4-7	*Patriotic Assurance*	—	—	—	10⅝	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	66⅛⅝	66¼	—
20	Cork, Blackrock & Passage	—	—	—	10⅝	—	—
100	Dublin and Belfast Junct.	86	—	—	—	87	—
100	Dublin and Drogheda	—	109¾⅛	—	—	—	—
100	Dublin, W'klow, & W'ford	73⅛	—	73	73¼	74 ⅛	74⅛
100	Gt. Southern and Western	108½	108⅝⅛	108½	108½	108⅛	108–7⅝
100	Midland Gt. Western	85	—	83¾	83–2⅛	83–2⅝	82⅛⅛
25	Portdn. Dun. & Omh. Jun.	—	—	—	—	—	13
50	Waterford and Limerick	34½	—	34½	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	92¾	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	93	—	—
100	Gt. South'n & West'n 4 p c	—	—	97	97	97	97
100	Mid. Great Western, 5 p c	—	—	—	—	109⅛	—
25	Portadown, Dun., &c., 5 p c	—	—	—	—	—	—
100	Do., 4½ p c	—	—	—	—	98⅛	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new redeemable 5 p c	49⅝	49⅛	49⅛⅝	49⅛⅝	49⅛⅝	49⅛⅝
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	99½	—	—
—	Dublin & Meath 4½ p c	—	—	—	—	89	89
—	D., W., & W., 4½ p c	99	—	—	—	—	—
—	Gt. South'n & West'n, 4 p c	98½ f	98½ f	—	—	—	98⅝ f
—	Midland Gt. West'n, 4½ p c	—	—	—	—	99¾	99¾
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	101⅛ f

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—April 28th, and May 13th, 1874.

Account Days—April 29th, and May 14th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p m.

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

GENERAL NOTICE TO CLAIMANTS.

In the Matter of the Estate of Louisa Maria Kiernan, Augusta Maria Adney, wife of Benjamin Adney; and Mary Stedder, Owners and Petitioners.

THE Court having Ordered a Sale of the Three Dwelling-houses and Premises in Parliament-street, formerly known as Coal Market, held respectively under three Fee-farm Grants, dated the 10th day of July, 1703, the 10th day of July, 1703, and the 4th day of October, 1711, from the Duke of Ormond to Richard Connell; and Eight Dwelling-houses and Premises situate in Vicar-street and Green-street, held under Fee-farm Grant dated 19th day of January, 1783, from the Mayor and Citizens of Kilkenny to Thomas Bulkelly: all said Premises being situate in the Parish of Saint Mary and City of Kilkenny.

All parties objecting to such Sale of the said Houses and Premises, are hereby required to take Notice of such Order.

And all persons having claims thereon, may file such claims, duly verified, with the Clerk of the Records.

Dated this 15th day of April, 1874.

JAMES M'DONNELL, Examiner.

HAMILTON & CRAIG, Solicitors having carriage of the Sale, 30 South Frederick-street.

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF ARMAGH.

SALE,
IN PORTADOWN,
On SATURDAY, the 25th APRIL, 1874.

In the Matter of the Estate of Henry Stevenson and Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, or some or one of them, Owners; *Ex-parte* Anthony Cowdy, Petitioner.

And in the Matter of the Estate of Henry Stevenson, and of Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, Owners; *Ex-parte* John Handcock, Petitioner.

TO BE SOLD BY PUBLIC AUCTION, By the direction of the Honourable Judge Flanagan, At the COURT HOUSE, PORTADOWN, In the COUNTY OF ARMAGH, By MR. WILLIAM CHERRY, OF LURGAN, In the said County, AUCTIONEER, On SATURDAY, The 25th of APRIL, 1874, At the Hour of One o'clock in the Afternoon, In Six Lots, The following Premises, viz.:—

LOT No. 1.

Consisting of Part of the Lands of Clencarrish, containing 8a 2r 26p, statute measure, and Parts of the Lands of Ballinary, containing 8a 2r, statute measure, held under lease dated the 7th of April, 1839, for three lives, at the yearly rent of £15 16s 4½d; also another Part of said Lands of Ballinary, containing 2a 1r 26p, statute measure, or thereabouts, held under lease dated the 6th of May, 1842, for three lives, subject to the yearly rent of £1 10s; another Part of said Lands of Ballinary, containing 2a 0r 39p, or thereabouts, statute measure, held under lease dated 22nd July, 1839, for three lives, subject to the yearly rent of £3 10s; all situate in the Barony of Oneilland West, and County of Armagh.

LOT No. 2.

Consisting of Part of the said Lands of Clencarrish, containing 4a 2r 17½p, or thereabouts, statute measure, held under lease dated the 7th day of April, 1839, for three lives, and subject to the yearly rent of £4 4s 0½d.

LOT No. 3.

Consisting of another Part of the said Lands of Clencarrish, containing 4a 2r 33p, or thereabouts, statute measure, held under lease dated the 3rd of June, 1841, for three lives, and subject to the annual head rent of £6 6s 9d.

LOT No. 4.

Consisting of Part of the said Lands of Clencarrish containing 29a 1r 23p, or thereabouts, statute measure, and held under lease dated the 16th day of October, 1866, for the unexpired term of 21 years, from the 1st of November then last, and subject to the yearly rent of £39 7s 9d.

LOT No. 5.

Consisting of Part of the Lands of Clantilleu, in the Barony of Oneilland West, and County of Armagh, containing 4a 0r 2p, statute measure, held under lease bearing date the 9th day of November, 1842, for three lives, and subject to the annual head rent of £6.

LOT No. 6.

Consisting of Part of the Lands of Breagh, in the Barony of Oneilland West, and County of Armagh, containing 31a 2r 38p, or thereabouts, statute measure, and held from year to year, at the annual head rent of £41 sterling.

Dated this 2nd day of April, 1874.

J. E. MADDEN, for Chief Clerk.

ATKINSON and FROSTE, Solicitors.

GENERAL DESCRIPTIVE PARTICULARS.

The Lands are all situate about four to five miles from Portadown, in a peaceable and thriving district of the County of Armagh, where good feeling has long existed between landlord and tenant.

The Biddings will be taken by the Auctioneer on the 25th day of April, 1874, at Portadown, aforesaid, commencing at One o'clock, and they will be submitted to the Honourable Judge Flanagan, at his Chambers, on Thursday, the 30th day of April, 1874, at Eleven o'clock in the forenoon, without further notice to any person.

Private Offers will be received by the Solicitors for the Petitioner, having the carriage of Proceedings, for the entire, or for any of the Lots separately, up to the 15th day of April, 1874, and submitted to the Judge for his approval, without further notice to any person; and notice shall be published in the event of any such offer being accepted.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, Dublin; or to

Messrs. ATKINSON & FROSTE, the Solicitors having carriage of the Sale, 50 Lower Sackville-street, Dublin, and Tandragee; or to

CHARLES H. WARD, Esq., Solicitor for the Owner;

HENRY STEVENSON, North Great George's-street, Dublin; or to

Mr. ANDREW CHERRY, The Auctioneer, Lurgan.

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF TYRONE AND DONEGAL.

In the Estate of The Rev. John Hutton O'Connor and Edward Carolin, Trustees for Sale under the Settlement of Rebecca Jones Pratt, with Joseph Bryan Hynes, since deceased, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 15th day of MAY, 1874, At the Hour of Twelve o'clock noon, At the Landed Estates' Court, Inns'-quay, In the City of Dublin,

The following Lots, as described in the printed Rental, viz.:—

LOT 1.

The Lands of Garvaghullion, otherwise Garvachullen, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 640a 0r 12p, statute measure, and producing a net profit rent of £140 11s 11d.

LOT 2.

The Lands of Leaght, otherwise Laght, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 462a 2r 18p, statute measure, and producing a net profit rent of £149 6s 9d.

LOT 3.

The Lands of Meencargagh, otherwise Meencarriga, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 384a 3r 29p, statute measure, and producing a net profit rent of £49 17s 6d.

LOT 4.

The Lands of Drummaghon, otherwise Drummahon, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 510a 0r 5p, statute measure, and producing a net profit rent of £45 9s 0d.

LOT 5.

The Lands of Aghamore, situate in the Barony of West Omagh, and County Tyrone, held in fee-simple, containing 330a 2r 6p, statute measure, and producing a net profit rent of £44 0s 2d.

LOT 6.

Fee-farm Rent of £34 6s 9d, issuing and payable out of the Lands of Kilmore Upper and Lower, and one-third of Coolnacrunaght, situate in the Barony of West Omagh, and County Tyrone, containing 754a 0r 6p. The Poor Law Valuation of said Lands being £396 2s 0d.

LOT 7.

The Lands of Knockagarron, situate in the Barony of Raphoe, and County of Donegal, held in fee-farm, containing 331a 0r 27p, and producing a net profit rent of £126 13s 5d.

Dated this 20th day of March, 1874.

R. DENNY URLIN, Examiner.

The Quit Rents will be redeemed out of the Fund, and the only annual out-going to which the estate will be liable is Tithe Rent-charge.

The Lands are near to Strabane and Newtownstewart, excepting Lot 7, which is near Raphoe, County Donegal.

There is excellent Shooting on the estate.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, in the City of Dublin; or to

GEORGE BERNARD, Solicitor having carriage of the Proceedings, 12 Upper Ormond-quay, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

KING'S COUNTY.

SALE,
On FRIDAY, the 8th day of MAY, 1874.

In the Matter of the Estate of Anthony Molloy Fawcett, Owner; Caroline Rebecca Frizell, Petitioner.

TO BE SOLD, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, In the City of Dublin,

On FRIDAY, the 8th day of MAY, 1874, In One Lot,

Part of the Lands of Enaghan, containing 1,069a 2r 8p, statute measure, situate in the Barony of Philipstown, and King's County, held under lease for ever, dated 19th day of June, 1786, at the yearly rent of £202 19s 8d, and producing an annual profit rent of £136 0s 4d.

Dated this 3rd day of March, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

This very desirable estate is situate within four miles of Portarlington, five miles of Geashill, and eight miles of the Assize Town of Tullamore. all Stations on the Great Southern and Western Railway; also within seven miles of Philipstown, seven miles of Edenderry, and nine miles of Rathangan.

That portion of the estate called the House Division, in possession of Peter Manghan, Esq., is beautifully situated. The mansion cost over £2,000. The out-offices, walled-in garden, are all that can be desired.

The bog on this estate affords unlimited fowling, the game being grouse, widgeon, teal, geese, and hare.

The river mearing this estate on the south and west sides give abundant supply of trout and other fish. The estate is most conveniently situated in the centre of a sporting district.

For Rentals and particulars apply at the Registrar's Office, Landed Estates' Court, Four Courts, Dublin; to

JOSHUA BRERETON, Solicitor having carriage of Sale, 13 Harcourt-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, April* 18, 1874.

Digitized by Google

// THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, APRIL 25, 1874. No. 378.

IRISH BARRISTERS.

THE Bar is threatened with so many changes just now from the hands of friends and politicians, that it behoves the members thereof to look more carefully than usually after their own interests. If they would not have the landmarks by which they are separated from laymen gradually broken down, and the position of leadership, which they have always held in politics and social life removed, they must in some way raise up other influences in exchange for those which they are likely to lose if Mr. Callan's Bill be passed, and the Judicature Bill removes the Court of Appeal to England, and some other bills increase the jurisdiction of the Local Courts to such an extent as has been promised, that the After-Sittings in Dublin and Assizes shall be mere shadows of their present size, and the occupation of barristers shall be to a corresponding extent gone.

Mr. Callan has been good enough to bring in a bill to provide that Irishmen may be called to the Bar in twelve terms, and without (as now is necessary) keeping any terms at one of the Inns of Court in London. This is a *rechauffé* of a bill introduced by Sir Colman O'Loghlen, and of another measure proposed by the late Mr. George Henry Moore, when member for the County Mayo. Sir Colman O'Loghlen withdrew his measure, we believe, out of deference to the expressed opinion of the Benchers, and as these latter gentlemen have the government of the profession in their hands, and cannot well have interests opposed to their constituents, we may conclude that they had good grounds for refusing what, at first impression, would seem a boon. The necessity or disability of resort to England was imposed by a statute of Henry VIII., and much political capital may be made by a reference to the terms and the policy of that Act. With this we have nothing to do. We have only to consider whether it is desirable to enable men for the future to be called to the Bar in less time, and at less expense than at present—we candidly say not, in our opinion. It is possible that student's money and time might be better spent than in periodical short visits to London, with no duties to perform there, except to dine in Hall a few times; but it is clear that all men might be induced by rules to do that which the best and most sensible students do now with a view to their own advantage—viz., remain in London permanently during the eight or ten terms which have to be kept there, and attend the very valuable lectures of the Inns of Court Professors, or read in the Chambers of Special Pleaders, Equity Draftsmen, or Conveyancers. There is no use in disguising the fact that the Bar as a profession is not tempting to men who desire to make an early competency; and in view of the proposed changes in procedure in this country, it is still more plain that year by year the business for barristers is likely—nay, certain—rapidly to decrease.

At last the provisions of the Judicature Bill for Ireland are taking shape in the minds of the profession, although no accurate or definite account of it has yet been given, but we may safely assume that our Courts shall be treated much as those at Westminster Hall and Lincoln's Inn have been, and that the Irish Court of Queen's Bench, Exchequer, and Common Pleas, the various Equity Courts, the Courts of Bankruptcy, Probate, Landed Estates, and Admiralty, will be welded together into one tribunal, to be termed the Irish High Court of Justice. This High Court will be divided into five divisions—the divisions of Queen's Bench, Common Pleas, and Exchequer—presided over respectively by the Lords Chief Justices and the Chief Baron, and composed of the present Judges of the respective courts—the Chancery Division presided over by the Lord Chancellor, and manned by the present Equity Judges; and the Probate Division, composed of the present Judges of Probate, Bankruptcy, Landed Estates, and Admiralty. In England, above these various Courts, there is a High Court of Appeal, which fills the place of the House of Lords, and which will decide definitely all English appeals, the intermediate tribunals of the Exchequer Chamber and the Chancery Appeal being then abolished. In Ireland an intermediate tribunal will, probably, be preserved, with final appeal to the Westminster High Court of Appeal, on which certain Irish judges will have seats, and a division of which may possibly sit for part of the year in Dublin to hear Irish appeals; though many of the most eminent constitutional lawyers would prefer to have the Appellate jurisdiction of the House of Lords retained, at least for Ireland and Scotland. Our readers will recollect some series of articles which we published on the effect and *modus operandi* of the English Act, and which will almost equally apply to the Irish Bill; of course we shall have the same *quasi* fusion of Law and Equity, the same abolition of the Long Vacation, and the same continually sitting Courts of Nisi Prius and in *banco.* But it is rumoured that we are to have changes in our circuit arrangements, which will for a time probably cause some little inconvenience, but which certainly would be improvements. It is understood that the Leinster Circuit will be joined with the Home—the county of Tipperary being added to the Munster Circuit, and the North-West Circuit is to be in similar manner divided between the North-East and the Connaught. It is also rumoured that in Cork and Belfast, at least, there will be three assizes held in each year.

We think that these proposals, if only carried out with discretion, will be highly advantageous, and will be in the true interest of the profession and the public. By reducing the number of circuits to four, there will be at least four Judges rendered available for the Courts which are to sit permanently, and by thus sitting while the circuits are out, they will retain some men in town, and thus permit of a dispersion of business. Of course, in changing the extent of the circuits, due regard must be had to vested interests, such as crown prosecutorships.

ELECTION PETITIONS—INSPECTION OF VOTING PAPERS AND REGISTERS.

ON Thursday, in the Court of Common Pleas, Mr. Justice Lawson, in the case of the Drogheda Election Petition, made an order for the inspection of the ballot papers presented at the late election, on the application of the petitioner's counsel. This seems to be an extreme exercise of the powers given to the Court under the Act, and not quite consistent with the Petersfield case hereafter mentioned. The Act gives the Court power to order an inspection of the *rejected* papers, and even then provides that no papers shall be

Digitized by Google

examined until the votes of the persons who have given these votes have been proved or declared invalid. This application for the inspection of the *rejected* ballot papers was made, and granted by Fitzgerald, J., in the case of the Athlone Petition (7 I. L. T. R. 80-81), while the Court of Common Pleas, Westminster, have just given judgment on another application (of which we give a report in another page), raising an important question under the Ballot Act. It arose out of the Petersfield Election Petition, and took the form of a motion for a mandamus to the Clerk of the Crown calling on the respondent to show cause why the marked register of voters, the counterfoils of the ballot papers, and the backs of the rejected ballot papers, should not be shown to the petitioners. The Court differed in opinion, but a majority of the Judges have refused the application. No objection was made to the inspection of the marked registers, and it was admitted by the respondent's counsel that had they not been sealed up in the same packet with the counterfoils, the petitioners would have been entitled to see them. Mr. Justice Brett, however, held that the petitioners should have inspection of all the papers asked for, and that the facilities for such an inspection, while in themselves reasonable, would not be inconsistent with the secrecy of the ballot. Inspection of the rejected ballot papers and of the counterfoils corresponding to such papers was necessary to show whose votes had been rejected, but it would not show how any one had voted. Unless the most perverse ingenuity were displayed, this would not be known. Mr. Justice Grove and Mr. Justice Denman, on the other hand, while agreeing that the marked register should be produced, thought no case had been made out for the inspection of the rejected ballot papers and counterfoils. The question was, whether the Court should make such an order as a matter of course in cases of scrutiny; and a provision to this effect could, if it had been intended, have been made in two lines instead of the guarded sections which the Act contained. The Act did not intend even the Clerk of the Crown and his assistants to see these papers without strong grounds, and the order required should not be made without such strong grounds—shown, moreover, upon oath. The order asked for was accordingly refused, but it is to be noted that the two dissentient Judges expressly asserted the power of the Court to make such an order, merely holding that this was not a case in which this power should be exercised.

THE MARRIED WOMAN'S PROPERTY BILL.

The bill to amend the Married Woman's Property Act, 1870, prepared and brought in by Mr. Morley, Sir John Lubbock, and Sir Charles Mills, has been read a second time.

Clause 12 of the Married Woman's Property Act, 1870, enacts that "A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage." The Act came into operation on August 9, 1870. Any one who married before August 9, 1870, is under this Act, liable for his wife's debts contracted before marriage; and any one who married on or after August 9, 1870, is not liable for his wife's debts contracted before marriage. Now clause 1 of Mr. Morley's bill is as follows:—

"So much of the Married Woman's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is hereby repealed; but a husband shall not, after the passing of this Act, be liable for the debts of his wife contracted before marriage, except by reason of any marriage which shall take place after this Act has come into operation, and then only to the extent of any property to which he shall have become entitled in right of his wife by virtue of such marriage, or otherwise in right of, through, or under her."

ENGLISH LAWYERS.

A writer in an American journal, called the *Bench and Bar Review*, published at Baltimore, makes the following criticisms on English Judges and Lawyers:—We feel a great difficulty in speaking of the actual practitioners at the Bar of England. Never at any period within a century and a half was the Profession at so low an intellectual ebb as latterly. It is not that there is any deficiency of the day labourers, the plodding formalists of the Profession. These exist in greater numbers, and are probably as competent and well read in the lore of the blue books and practice cases as any of their predecessors. But superior intellects and brilliant talents are, in our day, altogether wanting. There is no Erskine, no Murray, no Law, no Romilly, no Brougham, no Copley, no Denman, no Follet; we have not even, in our time, a Best, a Garrow, or a Scarlett.

It will scarcely be credited by a lay reader—but the fact is not the less deplorably true—that with the exception of half a dozen men, we can scarcely name a barrister who can now address a jury, in an important cause, with average ability.—Sir Alexander Cockburn was among the best specimens, and among these there is only one who can be called eloquent, and Sir Alexander Cockburn's is the eloquence more of the rhetorician than of the man of fervid and impassioned feeling.

The present Attorney-General understands the practice of the courts well, is an excellent case lawyer, and is generally well-read in his profession. He is a man of subtle and acute intellect, not wanting in courage or self-possession, and not deficient in fluency, but, albeit most respectable as a lawyer, as an advocate he cannot be compared with the great lawyers.

Sir Fitzroy Kelly, from the elevation of Sir Thomas Wilde until the beginning of 1849, had the pick of the best legal business, and always performed his work with consummate acumen, subtlety, and address. The style of speaking of Sir Fitzroy Kelly was eminently legal. His sentences short, clear, and symmetrical; he arranged his facts lucidly, he grasped his details with considerable artistic skill and effect. He was ever chaste, natural, and uninvolved; and without being an *ad captandum* speaker, or descending to colloquial phrases, could make himself thoroughly understood by a jury. He possessed great judgment and tact, an excellent pleader, a good mercantile lawyer, and generally well-read in the common law of the land, yet, though a clear and dexterous arguer of cases, was not a man of eloquence. To scholarship, Mr. Kelly made no pretensions whatever, though he possessed some knowledge of modern languages, and was tolerably read in English literature. Of a docile nature, and of flexible mind, he was, however, one of those men who can get up any subject on or for a particular occasion, so as to please and satisfy an attorney, if not to carry the court or lead captive the jury.

Sir Alexander Cockburn is certainly a more accomplished and elegant scholar, and much more a man of the world than any one of the gentlemen we have mentioned. Not a very profound lawyer, he is yet so well skilled in the principles of the science, and has so scholarly a knowledge of the civil law, that he can readily grasp any principle of jurisprudence. His intellect is so clear, his power of generalization so rapid and so sure, his felicity of expression so great, that he readily makes himself master of details. In dealing with the passions of men, Sir Alexander Cockburn possessed greater powers than any of his colleagues. To say, however, that he had been a great advocate, unless as great among smaller men, would be incorrect. When not very many years at the Bar he obtained considerable practice, and one of the largest practices before Committees of the House of Commons. In this branch of the law three times larger incomes have been made, than ever have been acquired in the regular pursuit of the Profession. In 1844, 1845, and 1846, Mr. Charles Austin is said to have made on an average more than £40,000 a year. The Hon. John Talbot is known to have made more than £12,000 a year; and juniors who have never attained £200 a year at Westminster Hall, have made their £3000 and £4000 a year during those three years before committees.

In looking over what we have written, we feel obliged to confess that eloquence and high gifts, generally rare amongst the advocates of England, have now nearly perished from

Digitized by Google

amongst us. It is well stated in a work of considerable research, that one reason of the decay of everything resembling eloquence is the excessive degree of technicality which pervades every portion of English law. Though we do not deny that the principles of special pleading are based in rigid logic, yet we must admit—with Mr. John George Phillimore—who has published an admirable summary of the Roman law—that the wire-drawn distinctions of special pleading are the disgrace and the opprobrium of our age. To meander through such mazes would puzzle the subtlest intellect, and tax to the utmost the powers of a really robust, masculine understanding, and sometimes tax such powers altogether in vain. The involved phraseology, the expletives, the synonymes, the pleonasms, the obscure and barbarous verbiage of the modern system of pleading, are really the disgrace of our time and system. These abuses are excrescences of comparatively modern growth on the ancient body of English law, for in the earlier time pleadings were delivered *ore tenus* at the Bar, and not written. The evil has been much increased by a body of very ingenious and subtle gentlemen acting under the Bar as special pleaders, and it must be averred that for the last half century or more, our courts of justice in England have been far too prone to lend a willing ear to refined and technical points of objection which subtle pleaders below the Bar delight to raise, and pettifoggers at the Bar have a peculiar glory in sustaining in court.

The overgrown mass—the immense, shapeless, and unwieldly body of the English law is an impediment not less formidable to oratory than the technicality of pleading. The volumes of the Statutes at Large now amount, if we remember rightly, to about fifty-three volumes quarto, of about 850 pages each volume. On the construction of these statutes there are annually published about thirty volumes of Reports, containing, also, at an average, from 700 to 800 pages of matter, at a cost of about £2 a volume, or £60 a year to any one who subscribes to a complete set of Reports, beginning with the House of Lords, and ending with the Crown Cases Reserved. How can any one or any ten men master all this enormous or unwieldy mass, or properly digest and common-place it on his mind? Roger North, in his day, when the volumes of Reports were only sixty, spoke of them as innumerable. If he were to revisit the glimpses of the moon, what would he say, finding 600 volumes, containing, down to the end of 1849, 250,000 points of law, or more, as any man may see by a reference to Harrison's or Chitty's Index, or Jeremy's Digest? How can a man be eloquent, whose best days and hours are spent in learning to digest matter, and arrange in his mind, or to learn where to discover, and how to apply this vast mass of legislative verbiage, and the decisions upon it? Talents of a popular kind—the power of giving effect to large and comprehensive views, wither under such a discipline as this. All the fire, energy, and enthusiasm of a young man—all the genius and general principles he has acquired at college, and in the bosom of his family, die within him, smothered and overlaid by the forms and technicalities of a system, narrow, crabbed, and barbarous.

Independently of this, the practical workaday, money getting, and business-like spirit of our time, is against the theory and practice of eloquence. A man particularly gifted with grace of manner and affluence of expression, is despised by the prig and the formalist, who has thoroughly conned his Chitty and his Archbold, and is looked on with ineffable disdain by the successful railway speculator, or the man or woman who has (what is called within the precincts of the city of London) three stars in India Stock.

The multiplicity and detail of modern affairs, abounding in particulars and small items, also tends to stifle and suffocate everything like eloquence. Ours is an age of debtor and creditor—of profit and loss—of tare and tret—of free trade and barter—of buying and selling—of quick returns and small profits; and men have neither the time nor the taste to make fine phrases as of old. If we have perfected the steam-engine, and created railroads, we have also enthroned a servile, a crouching, and mammon getting spirit in high places—we have deified dullness and formality, and worshipped mechanism, and drudgery, and cotton spinning, and knife grinding, as though they were things lofty, ethereal, spiritual, and immortal. With such feelings pervading the aristocracy of trade—aye, and the aristocracy of land, and of acres—is it any wonder that the mass of barristers are timid formalists—is it any wonder that they will not speak with decision, and fearlessness, and energetic eloquence, like Erskine—that they shrink from giving their better and nobler thoughts noble expressions—that they are dull and decorous, and dead to the most generous and loftiest impulses? No doubt the times in which we live or vegetate are flat, level, and insipid. We are fallen on the cankers of a calm world and a long peace; yet we cannot but think that somewhat of the mediocrity of the Profession is owing to a man who was longer at the head of the Bar as Attorney and Solicitor-General than any man within a century. John Lord Campbell, though a sound and well-read lawyer, was neither a gifted nor a high-hearted man; neither a scholar nor an orator, nor a distinguished gentleman; and his leaden influence has operated in many ways most disastrously. When eloquence, or even a graceful and fluent elocution, is not prized, men will take no pains—will make no efforts to become successful speakers. Advocates will not labour earnestly to become eloquent when such barristers as the —— and the —— lead the Great Northern Circuit of England. We do not deny that there is great ingenuity and skill—a happy facility of dealing with entangled and complicated facts—that there are great judgment, quickness, tact, knowledge of practice and of cases now at the Bar of England; but of eloquence there is none, and of scientific or historic learning very little. Ours is an age of no flagrant wrongs—of no deeds of violence or rapine—of no great political trials—and the occasion has not, perhaps, arisen to call forth the eloquence of the "coming man." In Ireland two eloquent advocates appeared at the State trials. One, a fine old gentleman of the name of Holmes, then in his 78th or 79th year, and a brother-in-law of Thomas Addis Emmett; the other Mr. Whiteside, the author of a book in three volumes on Italy.

It is possible that in the back rows of the Queen's Bench and Exchequer there are some undiscovered Erskines, Currans, and Broughams; but so long as the system prevails among attorneys of giving the leading causes to Queen's Counsel wearing silk gowns, or rather to those among them who have business in law and equity—the Erskines, the Currans, and Broughams are likely to remain undiscovered. Half a century ago, there were not above twenty silk gowns in the Profession, ten of whom were men of real ability, and the remainder of great professional learning; but now silk gowns are given to men neither of eloquence, of legal learning, nor of high scholarship. Among them there are not nine men capable of leading or conducting a cause better—many of them not so well—as the many astute and sensible men without a silk gown.

One might fancy that in the criminal branch of the Profession we might find eloquent, ingenious, and able men at the Central Criminal Court. But there is scarcely one man above mediocrity, excepting a very few.

The Bar of England is now a very numerous body. In the beginning of the past year it consisted of over 7000 individuals, and there were called in the previous year 300 gentlemen. The Bar of England at this moment probably consists, to reckon new members, of about 8000 members but the returns cannot be accurately ascertained at present

In Ireland the Profession of the Bar is relatively greater than in England, and the Queen's Counsel also more numerous. We have no means of knowing the number of advocates in Scotland. No doubt there is much in success at the Bar to ennoble and gratify the mind, and to attract the eyes of those whose hopes outrun their judgment, but laymen and spectators perceive the spangles upon the robe of the advocate, profoundly unaware that all is not gold that glitters brightly. If the advocate has his triumphs he has also his troubles, and to the vast majority the troubles far exceed the triumphs. Crowds, says somebody whose name and book we forget, but who spoke truly—crowds admire the figures upon tapestry—the splendour of the colours, and the rich intertexture of its purple and gold; but who turns the array to contemplate the jagged ends of thread, rags of worsted and unsightly patchwork of the reversed side of the picture, and yet it is from this side the artificer sits and works—this is the picture as he sees it—the gay outside is for the spectator. Thus it is that we look upon life—ermine

Digitized by Google

lace, gold, jewels. Rank, station, ambition, glitter in our eyes, and we envy the good fortune of the possessors, and think they must be happy, seeing but the *show* side of their lives; yet not a life among them that has not, or has not had its rags and tags, and knotted ends, its wrong side, in that in which the artisan has been drudging all his days, until the splendour he has made becomes distasteful, and only serves to enrich the eyes of ignorant lookers-on.

A BILL

To Amend the Laws relating to the appointment, duties, and payment of County Coroners, and Expenses of Inquests in Ireland.

WHEREAS it is expedient to authorise coroners in Ireland to appoint deputies to act in their stead in certain cases, and to amend the law with respect to the appointment and payment of coroners, and the expenses of inquests, and to provide compensation for coroners obliged to give up their office, and to make provision with respect to the duties of such coroners:

Be it therefore enacted, &c. . . . . .

Repeal.

1. That *from and after the passing of this Act*: The several parts of the Acts herein-after mentioned shall be and the same are hereby repealed; that is to say, so much of an Act passed in the fourth year of His late Majesty George the Fourth, intituled "An Act to regulate the amount of presentments by grand juries for payment of the public officers of the several counties in Ireland," and so much of an Act passed in the ninth and tenth years of Her present Majesty, intituled "An Act to amend the laws relating to the office of coroner and the expenses of inquests in Ireland," as relates to the election of coroners for counties continuing for two days, and their property qualification, and the payment of such coroners for counties, and so much of the said last-mentioned Act and the Schedule C. thereto as relates to the payment of poor witnesses attending at inquests.

Appointment of Deputy.

2. From and after the passing of this Act, it shall be lawful for every coroner of any county, and he is hereby directed, by writing under his hand and seal, to nominate and appoint from time to time a fit and proper person, being a member of the legal or medical profession, to act for him as his deputy in the holding of inquests; such appointment being subject to the approval of the Lord Chief Justice of the Court of Queen's Bench, the Chief Coroner in Ireland, and all inquests taken and other acts performed by any such deputy coroner, under and by virtue of any such appointment, shall be deemed and taken, to all intents and purposes whatsoever, to be the acts and deeds of the coroner by whom such appointment was made: Provided always, that a duplicate of the order of such appointment shall be forthwith transmitted to the clerk of the peace for the county in which such coroner shall reside, to be filed among the records of the said county: Provided also, no such deputy coroner shall act for any such coroner as aforesaid, except during the illness of the said coroner, or during his absence from any lawful or reasonable cause; and that every such appointment may at any time be cancelled and revoked by the coroner by whom the same was made.

Qualification of Coroner.

3. From and after the passing of this Act, no person shall be elected or chosen to the office of coroner unless at the time of being so elected or chosen he is qualified as follows; that is to say,

(*a*.) Is duly qualified to practice medicine or surgery, and registered as such under the Medical Act of 1858, or any Act amending the same; or

(*b*.) Is a barrister-at-law; or

(*c*.) Is on the roll of solicitors or attorneys in one of the superior courts at Dublin; or

(*d*.) Is a justice of the peace of five years standing.

Remuneration of Coroner.

4. And be it enacted that, *on and after the first day of January, one thousand eight hundred and seventy-five,* there shall be paid to every county coroner, in lieu of the fees and allowances, which, if this Act had not passed, he would have been entitled to receive, such annual salary, not being less than the average amount of the fees upon inquests held by him or his predecessor in said office during the five years last past, calculated at not less than *two pounds ten shillings* sterling, for each inquest held by him or his predecessor during said period; and also the average of all allowances actually received by every such coroner during said five years: And the grand jury of each county, in fixing said salary, are also to take into consideration the special circumstances of each case; and they shall at the next assizes held after the passing of this Act fix the annual salary to be paid to each county coroner and his successors, in lieu of fees and allowances: Provided always, that the treasurer of each county shall pay out of the county rates such salary or salaries to all such county coroner or coroners, half-yearly; that is, to say, on the first day of May and the first day of November in each year; and whenever, from death or removal, or any other cause whatever, any county coroner shall not be entitled to a salary for the whole of a half-year, a proportionate part of the salary shall be paid him, or, in case of his death, it shall be paid to his personal representative: Provided always, that in case any grand jury of any county and any county coroner shall be unable to agree as to the amount of the salary to be paid to such county coroner, it shall be lawful for the Lord Lieutenant General, or other chief governor or governors of Ireland, and he or they is, or are required, upon application of any such grand jury, or any such coroner, on a statement of the case being laid before him or them, to fix and determine the amount of such salary, having regard to the averages as aforesaid, and also to the special circumstances of each case: Provided that nothing herein contained shall in any manner take away, alter, or deprive any such coroner of the right to be repaid out of the county rates the expenses and disbursements which may have been made by him on the holding of any inquest: And provided always, that every county coroner shall also be paid mileage for each mile travelled, going to and returning from each inquest, at the rate of *sixpence* per mile, which he may have travelled in order to hold such inquest: And be it further provided, that when upon the death or removal of any such coroner, the coroner of the adjoining district, in the same county, who shall be be called upon to act as coroner in said vacant district, shall, for each inquest held by him in said district, be paid a sum of *two pounds ten shillings* sterling, which the grand jury of such county wherein such vacancy has taken place are hereby directed to pay out of the county rates to all coroners discharging such extra duties.

Polling to continue for One Day.

5. From and after the passing of this Act, so much of the Act 9 & 10 Vict. c. 37, as authorises the polling at elections for coroners, to continue for two days, shall be, and the same is hereby repealed, and thenceforth such polling shall continue for one day only.

Payment of Witnesses.

6. From and after the passing of this Act, it shall and may be lawful for any coroner, deputy coroner, or two justices of the peace, by whom an inquest is held in Ireland, to pay to any poor witness, for each day of attendance at such inquest, any sum not exceeding *two shillings* per day, as shall seem just and reasonable, and to pay any sum not exceeding *five shillings*, as shall be reasonable for the removal of any dead body from the place where such dead body was found to the house at which an inquest thereon is intended to be held.

Superannuation of Coroner.

7. From and after the passing of this Act, no person shall continue to hold the office of coroner in Ireland after he has attained the age of seventy years, or after he has become incapable, from ill-health or infirmity, to discharge

Digitized by Google

the duties of his office, and every coroner in Ireland who has attained the age of sixty years and served in that office for twenty-one years, shall be entitled, at his option, to retire from the office of coroner; and it shall and may be lawful for every such coroner who may so desire to retire, or who may be obliged to give up his office, to apply by counsel to the Court of Queen's Bench, or to a judge of assize presiding in the county where such coroner resides, for a certificate or declaration that the applicant has attained the age of seventy years, or is incapacitated, by ill-health or infirmity, from discharging the duties of his office, or who, having attained the age of sixty years, has served in the office of coroner for twenty-one years (as the case may be), and upon hearing such evidence as may be given in support of such application, the court or judge before whom same is heard shall give such certificate, should the evidence given be sufficient to justify said court or judge of assize in so doing, and upon the production of any such certificate the coroner therein named shall be thenceforth entitled to receive an annuity or yearly sum, being two thirds of the salary to which he was entitled as coroner, said annuity to be paid half-yearly, at May and November, in each year during such coroner's natural life, and every such annuity shall be payable out of and chargeable upon the funds raised by fines and penalties in Ireland, and such annuities shall be paid, as herein provided, by the registrar or person in charge of the collection of all moneys and accounts connected with said fines and penalties, the receipt of each coroner entitled, as herein provided, to receive the same shall be a sufficient voucher for the payment of said annuity; provided always, that upon the death of any coroner in receipt of such annuity, his legal representative shall be entitled to a proportionate part of the current half year's annuity.

In case Coroner refuses Inquest.

8. And be it enacted, that if any coroner shall in any case refuse or neglect to hold an inquest which, in the opinion of the grand jury of the county, ought to have been held, it shall be lawful for such grand jury to apply to the Court of Queen's Bench, or to the going judge of assize, for a rule calling on such coroner to show cause why he did not hold such inquest, provided that two clear days' notice in writing of such intended application shall be personally served upon such coroner, and, if at the hearing of said application such coroner shall, in the opinion of said court or judge, fail to show sufficient cause for not holding such inquest, the court or judge shall direct such coroner to proceed to hold such inquest, or otherwise inflict upon said coroner such fine, not exceeding the sum of *ten pounds* sterling for each such case, as to such court or judge may seem right.

Jury on Inquest.

9. In case no twelve of the jurors who may be sworn upon a coroner's inquest shall agree and return a verdict within such reasonable time as the coroner, deputy coroner, or the magistrates before whom such inquest is being held shall determine, such coroner, deputy coroner, or magistrates shall then be at liberty, and are hereby authorised to discharge such jury, and upon their discharge to proceed anew to have another jury summoned and sworn to hold an inquest (none of the former jurors to be eligible to serve upon said inquest), and obtain the attendance of witnesses thereat, as in manner provided for the holding of inquests, and shall so proceed until the verdict of a jury be obtained.

Commitment of persons suspected of causing death.

10. And be it enacted, that when any person or persons shall be taken on charge or suspicion of being feloniously implicated in the death of the person on whose body an inquest is about to be or is being held, the coroner or deputy coroner doing duty at such inquest is hereby empowered upon a proper information of the fact being taken in writing by such coroner or deputy coroner, to commit to prison the person or persons so charged or suspected, who shall be retained in custody until the result of the inquiry and the verdict of a jury on such inquest shall be had; whereupon such coroner or deputy coroner shall recommit or release such person or persons as may be right in pursuance of such verdict: And be it further provided, that all persons suspected or accused of being principals or accessaries before the fact, if in custody, shall, upon a written order of the coroner presiding at any such inquest, be produced at the inquest or any adjournment of the same, and all such persons shall be allowed to hear the evidence given, and if necessary, to cross-examine the witnesses as to such coroner may seem right.

Bail in cases of Manslaughter.

11. In every case in which a coroner's jury shall have found a verdict of manslaughter against any person or persons, it shall be lawful for the coroner or deputy coroner before whom the inquest was taken to accept bail, if he shall think fit, with good and sufficient securities for the appearance of the person or persons so charged with the offence of manslaughter at the next assize and general gaol delivery to be holden in and for said county within which such inquest was taken, and thereupon such person or persons, if in the custody of any officer, or in a gaol under a warrant of commitment issued by such coroner, shall be discharged therefrom.

Recognizances.

12. In every case in which any coroner or deputy coroner shall admit any person to bail, he shall cause recognizances to be taken in the form given in the schedule of this Act, and shall, without unnecessary delay, return such recognizances to the clerk of crown for such county, and such coroner or deputy coroner shall be entitled to such fees and charges as the clerks of petty sessions are by law entitled to on admitting persons charged to bail.

Depositions.

13. At any time after all the depositions of witnesses at any inquest shall have been taken, every person against whom any coroner's jury may have found a verdict of murder or manslaughter shall be entitled to have, from the coroner or from the person having custody of the same, copies of the depositions on which such verdict shall have been found, on payment of a reasonable sum, not exceeding the rate of *twopence* for every folio of ninety words.

Interpretation.

14. In this Act the word "coroner" shall mean and extend to any person who is or shall be appointed coroner for any county, county of a city, or riding or division of a county in Ireland; and the word "deputy coroner" shall mean any person or persons appointed to such office under the provisions of this Act, or otherwise lawfully holding an inquest in lieu, or in the absence of a coroner.

Extent of Act.

15. This Act shall extend to Ireland only.

SCHEDULE.

Be it remembered that, on the day of in the year of our Lord , *A.B.*, of [*farmer*], *L.M.*, of [*grocer*] and *N.O.*, of [*butcher*], came before one of Her Majesty's coroners [*or* a deputy coroner] for the [*county*] of , and severally acknowledged themselves to owe to our Lady the Queen the several sums following; that is to say, the said *A.B.* the sum of and the said *L.M.* and *N.O.* the sum of each, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if the said *A.B.* fail the condition indorsed.

Taken and acknowledged the day and year first above mentioned, at , before me,

J.S. SEAL.

Coroner [*or* deputy coroner] for the [*county*] of .

Condition Indorsed.

The condition of the written recognizance is such, that whereas a verdict of manslaughter has been found against the said A.B. by a jury empannelled to inquire how and by what means came by [*his*] death: If, therefore, the said A.B. shall appear at the next court of oyer and

Digitized by Google

terminer and general gaol delivery to be holden in and for the [*county*] of , and there surrender himself into the custody of the keeper of the gaol there, and plead to such inquisition, or such other indictment as may be preferred against him, and take his trial upon same, and not depart the said court without leave, then the said recognizance shall be void, or else the same shall stand in full force and virtue.

RECENT DECISIONS.

(CONNOLLY *v.* LORD DIGBY, 8 IR. L. T. R.)

A decision of considerable importance has been delivered at the Tullamore Land Sessions by Mr. Jellett, Q.C., the learned Chairman for the King's County, in a case in which Mr. Andrew Connolly, of Clunagh House, sought to recover from Lord Digby £249 compensation for disturbance from a farm at Clonad, and for improvements which the claimant alleged he had effected in the holding in question. The case, in some particulars, recalls the unfortunate dispute which not long since took place on the Leinster Estates, and if it had been heard twelve months ago would have done a great deal to settle that disagreement. As on the Leinster Estate, the question involved in the case decided by Mr. Jellett, was the reasonableness of a "yearly lease," and the right of the occupier to refuse to abandon advantages conferred on him by the Land Act. In some details Lord Digby's lease would appear to differ from the instrument objected to by the tenants on the Leinster Estates, but there is nevertheless a sufficient resemblance between the main features of the dispute between Lord Digby and Mr. Connolly, and that between the Duke and his tenants, to justify a comparison. It appears that in 1864 Mr. Connolly became tenant of the lands of Clonad, under a contract from year to year which prevailed on the estate. This contract set forth that the tenancy might be determined by the death of the tenant or by a six months' notice to quit, and it excepted from the demise all royalties and minerals, and reserved to the landlord all control over fish and game. Some dispute appears to have arisen between the parties respecting the shooting of game, and in the month of February, 1873, a new yearly lease was sent to Mr. Connolly by the agent of the estate for his signature. The principal points of difference between the new lease and the contract under which Mr. Connolly formerly held would seem to be as follows:—In the new lease there was an exception out of the demise of all quarries, stone, slate, and of all marl, clay, bog, and bog timber, whereas there was no such exception in the former contract. A more important difference in the new lease was a clause providing that the lessee should not be entitled to any corn or other crop, as a way-going crop, sown at the expiration of the demise. But the provision in the new instrument upon which Mr. Jellett laid the greatest stress in delivering his judgment was a clause exactly similar to one contained in the Leinster lease. In this clause "it was set forth that the demise shall be forfeited in the event of the tenant assigning, sub-letting, or sub-dividing the farm, becoming bankrupt or insolvent; in case of the interest of the tenant being taken in execution of any judgment, decree, or order registered against it, or an order for the sale of it made by a competent Court."

Under the old contract the landlord, in the event of any of the occurrences specified in this clause might sue the tenant under the Landlord and Tenant Act of 1860, and recover damages for loss sustained, but as the learned Chairman explained, "under the new form of letting, all assignments, whether voluntary or involuntary, were included, and every assignment or sub-letting re-entails a forfeiture of the tenant's interest, and entitles the landlord to recover possession of the farm, discharged under the 9th section of the Land Act from all claim for compensation." Mr. Connolly refused to sign this form of lease and for this refusal he was ejected by Lord Digby, who resisted his claim for compensation for disturbance on the grounds that the provisions of the new lease were just and reasonable. Mr. Jellett, however, held that the claimant acted reasonably in refusing to sign the document, as it would have rendered his tenure more precarious than it had formerly been, and as there was nothing unfair in his refusal to "abandon one important benefit conferred on him by the Land Act." He therefore allowed him the sum of £107 15s.(or £141 5s. less than the amount claimed in this respect) as compensation for disturbance; he also allowed him £10 for improvements. Under ordinary circumstances the costs of the case would follow the decree, but Mr. Jellett, by way of consoling Lord Digby for the attacks made upon him by the claimant's counsel, refused to give costs to Mr. Connolly. Mr. Connolly will, perhaps, pocket a very small portion of the £117 15s. granted to him by the Chairman by the time his costs and £30 10s., one year's rent of his holding, are deducted from the amount, but he appears to be well pleased with the result, and the tenant farmers in general will have some reason to be satisfied with the decision, which acknowledges a most important principle.—*Leinster Express.*

COURT OF COMMON PLEAS, WESTMINSTER.

April 15.

(Sittings in Banco before Justices KEATING, CLAY, and DENMAN).

STOW *v.* JOLLIFFE.

This was an application arising out of the Petersfield election petition.

Mr. J. O. Griffits (with him Mr. Lumley Smith) moved for a peremptory mandamus, calling on the clerk of the Crown-office to permit inspection of the market register counterfoils and rejected ballot papers. The petition contained the usual charges of corrupt practices, and claimed the seat under a scrutiny. The Ballot Act provides for the inspection of the marked register under regulations to be approved by the Speaker of the House of Commons, but no such regulations have been made. The Clerk of the Crown refused inspection of the marked register because it was sealed up (as provided by the Act) in the same packet as the counterfoils marked with the number of the votes, and could not, therefore, be shown without the risk of exposing them.

The COURT granted a rule *nisi*, peremptorily returnable on Friday, the hearing of the petition being fixed for Tuesday next.

BATH COUNTY COURT.

[From the *Law Times.*]

Tuesday, March 31.

(Before C. F. D. CAILLARD, Esq., Judge.)

RUSSELL *v.* THE GREAT WESTERN RAILWAY COMPANY.

Carriers of passengers—Delay—It is necessary to render carriers responsible for delay in the running of trains, to show wilful misconduct.

Bartrum represented the plaintiff and *Wightman Wood* the defendants.

His HONOUR said.—The plaintiff in this action seeks to recover from the defendants a sum of 9s. 4d., for breach of contract, by delay of train under the following circumstances: He is a commercial traveller residing at Bath. On the morning of the 29th October last he took a second-class ticket in the usual way at the defendants' Bath station for Abingdon. According to their time tables for that month, which were put in evidence on his behalf, the train for which he was booked was to start at seven minutes past eight, and to arrive at Swindon at five minutes to nine; and there was another train to leave Swindon at a quarter-past nine, and to be at Didcot at twenty minutes past ten a.m. Then there was again another train to leave Didcot at twenty-five minutes past ten and to be at Abingdon at fifty-five minutes past ten a.m. The plaintiff stated that the passengers for the north stations and Abingdon had to change at Swindon, and that he did so; that the train into which he changed does not go beyond Didcot; that he had often travelled by that train for a great many years; that the usual time at which for some while past he had arrived at the latter place was twenty minutes past ten in the morning; that, according to his experience, the 10·25 train for Abingdon from Didcot waited for the train due at 10

Digitized by Google

at Didcot, and that he had never before the morning in question missed the 10·25 train. On that morning, however, there was a delay at Swindon in the starting of the train for Didcot. How long that delay was the plaintiff could not exactly tell, but I think it may be inferred it was some noticeable delay. He was informed at Swindon there had been a collision on the line, and he attributed his leaving late to that fact. He stated this in answer to a question from the defendants' counsel. There was, also, a delay in the progress of this train at some station before Wantage, between Swindon and Didcot; and the plaintiff saw that a damaged engine caused the obstruction. In the result the train arrived at Didcot at about 11 o'clock a.m., when he found that the 10·25 train for Abingdon had left. According to the time tables there was then no train for Abingdon until 1 o'clock p.m. Thereupon, having business engagements of an important nature at Abingdon that morning for the house which he represents, he posted thither from Didcot, the distance being seven posting miles. He paid 9s. for the fly and driver and 4d. for a turnpike—the 9s. 4d. sought to be recovered. On cross-examination he admitted most frankly and fairly that he was well acquainted with the paragraph headed "train bills," which is on the cover of the time tables, and to which I shall refer more at length, and he also said he was aware that the train he wished to catch comes from London to Didcot, and goes thence to the north. The ticket issued to the plaintiff had on it the words "Bath to Abingdon, second class, issued subject to the conditions stated on the company's time bills." The paragraph abovementioned—so far as it is material for the present case—is in these words, "Train Bills. The published train bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations, it being understood that the train shall not start from them before the appointed time; but the directors give notice that the company do not undertake that the trains shall start or arrive at the time specified in the bills; nor will they be accountable for any loss, inconvenience, or injury, which may arise from delays or detention, unless upon proof that such loss, inconvenience, injury, delay, or detention, arose in consequence of the wilful misconduct of the company's servants." This paragraph or conditional clause is printed on page 100, as well as on the cover of the time tables put in. The plaintiff alone gave evidence on his own behalf, and at the conclusion of his case it was pressed on me, with much ability, by Mr. Wightman Wood, the defendants' counsel, that there should be a nonsuit. It is obvious, that small as is the amount involved in this case, the principles upon which it is to be decided, one way or the other, are of the utmost importance to the railway companies, and to the innumerable travellers by rail; to the companies on account of the enormous cost which would be thrown upon them by the multiplicity of sums of more or less amount, which they would have to pay were they to be made liable in every instance for want of punctuality in their trains, and to travellers if they were to be without redress, and at the absolute mercy of the companies, however the delay might be occasioned, with all its many vexations and injurious consequences. For the plaintiff it was contended that there was a contract to convey him within a reasonable time of the hour named in the time table, and that if the collision at or near Wantage was caused by the negligence of the company's servants, then he ought to recover, but not if by a mere accident. For the defendants it was urged first that, if there was a contract at all it was upon the footing of the paragraph or clause on the cover of the time tables or book, and that, therefore, it was for the plaintiff to show there had been wilful misconduct on the part of the company's servants, but none had been shown. Secondly, that there was no contract—the time book being a notice for the convenience of the public, and nothing more. From this latter proposition I entirely dissent. It is contrary to the principles laid down by the authorities bearing on the whole subject before me. With the defendant's first proposition, however, which is in strict accordance with those principles, I as entirely agree. In the absence of any special contract, there would be between travellers and the railway companies, who hold themselves out as carriers of passengers, an implied contract by the companies to convey within a reasonable time. And even supposing the time tables were not actually part of the contract, I think they might fairly be deemed *prima facie* evidence of what is reasonable time in the particular instance. Then, further, the company would not be liable for delay arising from inevitable accident, but would be for delay proceeding from the negligence of their servants. But there is a special contract where the ticket issued to the passenger by a company, refers to bills or tables, which, besides indicating the hours of the departure and arrival of the trains, contain a clause for the protection of the company. These hours or times are then directly adopted into the contract, and this is so far in favour of the passenger; but then the protecting clause is also adopted into it, and that is, of course, for the benefit of the company. In the present case, the question whether the passenger had notice of the protecting clause does not arise. He admits that he had. It is well to observe, nevertheless, that his denial of it would have been of no avail. If notice be denied, and the train bills not put in, then where would be the evidence of the contract to convey within a reasonable time with reference to those bills? And if they are put in, then inevitably the clause protecting the company comes in also as part of them. On this point the case of *Hurst* v. *The Great Western Railway Company* directly applies, as does that of *Von Toll* v. *The South-Eastern Railway Company*, to show that notice would be inferred. It must be borne in mind that the Railway and Canal Traffic Act, 1854. does not apply to passengers, so that neither can the reasonableness of the protecting clause be questioned; nor is it necessary that the special contract should be signed by the passenger. The particular clause not only negatives any guarantee or undertaking by the company for the starting or arrival of the trains at the time specified in the bills, but throws upon passengers, and so upon the present plaintiff, in order to fix the company with liability for delay, the proof that it arose from the wilful misconduct of their servants. Thus the question is, has such proof been adduced? To this I am clearly of opinion there can only be a negative answer, and therefore that a non-suit must be entered. To show want of punctuality is not enough, to show negligence is not enough; nor would the showing of either shift the burden of proof which is upon the plaintiff, who has to establish against the defendants that the delay was occasioned by the wilful misconduct of their servants. Whether, apart from what I hold to be the existing law, this be right, is another matter. If I am wrong in my view of the law, the error can be pointed out by a superior court; but if my opinion be correct, and there be any undue hardship on passengers, then this can be remedied only by legislative interference. The authorities from which my deductions are chiefly drawn are *Denton* v. *The Great Northern Railway Company* (25 L. J. 129, Q.B.), *Van Toll* v. *The South-Eastern Railway Company* (31 L. J. 241, C. P.), *Hurst* v. *The Great Western Railway Company* (34 L. J. 264, C. P.), *Zunz* v. *The South Eastern Railway Company* (38 L. J. 209, Q. B.), *Glenister* v. *The Great Western Railway Company*, decided in the Queen's Bench 11th Nov., 1873, on appeal from the County Court at High Wycombe. My attention has been called to some decisions in the County Courts bearing upon the subject in question, and especially to the well known case of *Forsyth* v. *The Great Western Railway Company*, which are apparently favourable to the plaintiff. I have only to observe that the circumstances in these several cases differ from the circumstances in the present one; and notably (as I was informed by the defendants' counsel) that since the decision in *Forsyth* v. *The Great Western Railway Company* the protecting clause in the time-tables of that company has been altered by the insertion of the words "Wilful misconduct."

Nonsuit with costs, accordingly.

BANKRUPTCY.

Ex-parte James, Re O'Reardon, L.C. & L.J.M., 22 W. R. 196, L. R. 9 Ch. 174.

Two persons carried on business in partnership in England and Ireland. One of them was adjudicated a bankrupt in England, the other was adjudicated a bankrupt in Ireland, and shortly afterwards they were jointly adjudi-

Digitized by Google

cated bankrupts in Ireland. Out of these various adjudications the question arose as to who were the proper persons to distribute a sum of money arising from the sale of joint assets in England, and paid into an English bank under an order of the English court. The assignees under the Irish joint bankruptcy applied to have the money paid over to them, but this was opposed by the trustee under the English bankruptcy.

The Court of Appeal had no doubt as to their power, under the 72nd section of the Act, to order the money to be paid to the English trustee, or, under the 74th section, in compliance with a suitable order of the Irish court, to the Irish assignees. Upon consideration, however, of the effect of the various proceedings, the court were of opinion that as matters stood immediately prior to the joint adjudication, the English trustee and the Irish assignees were tenants in common of the joint assets, and that, after separate adjudications or a separate adjudication, a joint adjudication does not operate so as to vest the joint assets in the assignees under the joint bankruptcy. They held that at the time of the application the sum of money in question was the property of the English trustee and the Irish assignees as tenants in common; the latter having no better legal title as such assets than the former. Under the old practice, were there were both separate and joint adjudications, the separate adjudication used to be impounded or superseded, and the joint adjudication alone to be proceeded with. But in the present case it would plainly have been unjust towards the separate creditors of the English bankrupt if his separate bankruptcy had been superseded, and they had been accordingly remitted to the Irish court. As, therefore, the separate bankruptcy must in any case be proceeded with, and as (see the report in the *Weekly Reporter*) there were creditors in England to the extent of £11,400 who wished the proceedings to be carried on here, while the Irish claims amounted only to £600, the court, looking upon the legal rights of the English trustee and the Irish assignees as equal, treated the question as one of convenience only, and on that ground declined to order the money to be transmitted to Ireland.—*The Solicitors' Journal.*

HUDDERSFIELD.

(Before Mr. Serjeant TINDAL ATKINSON, Judge.)

March 27.—*Clough* v. *Lancashire and Yorkshire Railway Company.*

A railway company, notwithstanding a notice in their time bills that they will not "be accountable for any loss, inconvenience, or injury which may arise from delays or detention," are not protected from negligence or want of proper care, but where a fog had impeded the traffic, and thereby caused delay,

Held, *that the company were protected by the terms of their notice.*

The plaintiff, a solicitor at Huddersfield, sought to recover the sum of £2 2s. for loss sustained through alleged breach of contract on the part of the defendant company in not having despatched a train from Brighouse station on the 11th December last, at the time stated in the company's time table.

Clough argued his case in person.

Sykes appeared for the defendants.

The facts of this case appear from the judgment.

His HONOUR said:—In this case, which was tried before me on February 27th of this year, the plaintiff claims damages from the defendants for a breach of contract in not having on the 11th December, 1873, conveyed him (the plaintiff) from Huddersfield to Halifax, he having purchased from the defendants a through ticket for that purpose. The train by which the plaintiff was to travel was advertised in the company's time tables to leave Huddersfield at ten o'clock, arriving at Halifax at 10 33. A fog prevailed during the morning, which seriously impeded the traffic on the railway, and the train which was to take the plaintiff to Halifax was, when it arrived to take up the passengers at Huddersfield, twenty-four minutes late, and did not leave the station until ten minutes after the appointed time, and on arriving at Brighouse, owing to the obstruction caused by the fog, it was 45 minutes after its time. The passengers for Halifax by this train are obliged to change on their arrival at Brighouse, and are sent on by a train which awaits them there; but no notice of this change is found in the company's time tables. After waiting twenty-seven minutes beyond the usual time, the train which should have taken the plaintiff forward left Brighouse, and on the plaintiff's arriving he found that there was no other train for Halifax until 12 14. The plaintiff, having an important engagement, hired a carriage, and reached Halifax at 12 30, too late to keep his appointment. The company's time tables were put in, and contained the following announcement:—"Time bills. The published train bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations, it being understood that the trains shall not start *before* the appointed time. Every attention will be paid to insure punctuality as far as it is practicable. But the directors give notice that the company do not undertake that the train shall start or arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience, or injury which may arise from delays or detention." It is contended by Mr. Sykes, on behalf of the company, that there ought to be a nonsuit, on the ground that the notice in the time tables, which have been put in evidence, forms a special contract, the terms of which are binding on the plaintiff, and the defendants are not liable for the delay. Under ordinary circumstances the company are bound to carry out the contract they make with the passenger, and must use such diligence and bring to bear such appliances as they may have at their disposal to perform the promise contained in their time tables—namely, that the train will leave at a certain time and arrive at the terminus at the time stated; but in this case the delay arose from causes entirely beyond the company's control. In the language of Lord Campbell, in giving judgment in *Denton* v. *The Great Northern Railway Company*, 4 W. R. 240—"Looking at the nature of the contract there may be certain implied exceptions from perils of the land, as there is in the case of a policy of marine insurance from the perils of the sea, as if a train, without any fault of the company, should be prevented from going by an inundation, or by some convulsion of nature. There they might be discharged." Here the delay was caused by a fog, which imposed upon the company's servants the utmost care and caution in the conduct of the traffic, a caution which was necessary for the protection of human life and of property, and brings the case within the promise on the part of the company contained in the notice that "every attention will be paid to ensure punctuality as far as it is practicable." I am of opinion that the facts proved show that "punctuality" was not "practicable" in this instance, and although I was much pressed with Mr. Clough's contention that the train at Brighouse should have been detained in order to carry onward the Huddersfield passenger traffic, this could only have been done at the cost of delaying the passengers who had booked there, and who had acquired the right to go on without delay. In the case of *Prevost* v. *The Great Eastern Railway Company*, 13 L. T. N. S. 20, the facts of which were very similar to the present, it was held by Crompton, J., that the contract of the company is that they will use proper care and not be negligent. I cannot find in the facts before me any want of proper care or any negligence, and there must, therefore, be a nonsuit entered in favour of the defendants, but in this case without costs.

THE LAW CLERKS' ASSOCIATION.

The central committee met on Monday evening last, at 212 Great Brunswick-street. Mr. J. Dowling, Vice-president, took the chair, and among those in attendance were Messrs. Jervise, Clarke, Farrelly, Dodd, Power, M'Dermott, Walsh, and Crowley. Mr. Farrelly handed in £1, the subscription of Dr. Elrington, Q.C., to the library fund, and announced that the same gentleman had promised a donation of books. It was then arranged that Messrs. Jervise, Farrelly, and Crowley should wait, on Wednesday evening, upon the judges and leading Queen's counsel to solicit their support towards the new library and reading room about to be opened. The sub-committee having charge of the

Digitized by Google

intended Provident Society in connexion with the existing association was directed to bring up a final report within a fortnight. The Vice-President said he was pleased to find that these two useful objects of the association were progressing, but he observed that what appeared to him to be the most vital object of all, the registration of law clerks, seemed to be overlooked by the committee. Until some proper system of registration can be enforced the properly qualified law clerk will never be able to obtain that just recognition of his position and services to which his onerous duties entitle him. A good system of registration would speedily get rid of that large class of persons who hang upon the outskirts of our business—a class who have brought the very name of law clerk into discredit—a class who only get employment from the Solomon Pells, and Mr. Vholes of the profession. The facility with which, in our unprotected state, a person can assume the name of law clerk, and obtain employment in some attorneys' offices would be laughable were it not so injurious. It keeps down the rate of wages to the law clerk trained from his youth to the business, it entails an immensity of labour upon the officers of the court, who have frequently complained that persons absolutely unacquainted with the very names of the documents they are using, are sent down to transact business. Indeed the public, many of whom have had their cases irretrievably ruined by the blundering of incompetent clerks, are deeply interested in the question. The committee undertook to take the matter into consideration, and soon after adjourned.

Legal Examination.—At the recent preliminary examination for attorneys' apprentices, held on the 10th and 11th inst., Mr. Thomas Abraham (Aughnacloy) obtained second place, and Mr. Wm. James Reynolds (Dungannon) third place. We understand that these gentlemen were prepared by Dr. Mortimer, 26, York-street, Dublin, and that they were the only candidates sent forward by him.

Judge Fox, judge of the 11th District of Arkansas, recently committed Mr. Aldridge, a lawyer, to gaol for contempt of court. He was imprisoned for ten days, and on his liberation he armed himself with a shot-gun, and went in search of the judge. Meeting him in the street, Aldridge exclaimed, "Now, Judge Fox," and fired. The judge fell dead. This is the second judge who has been assassinated in Arkansas within the last six months.

Singular Death of a Judge.—There was a singular beauty in the death of Judge Hiram Gardner at Lockport, N.Y. On Thursday evening, he read to his family concerning the deaths of Fillmore and Sumner; and said quietly, "This is the best way to go, quickly, when one is prepared," and went to his room. But he had not finished disrobing when he sank to the floor, in great pain, and spoke no more, his death occurring next day. Judge Gardner was a man of high distinction and widely esteemed, and, though in his 75th year, was still in active life, having on the day before his death argued a suit before a referee.—*New York Times.*

Privileges of Solicitors and Clients.—The case of *The Original Hartlepool Collieries Company* v. *Moon* (39 L. T. Rep. N. S. 193) is one of some practical importance on the subject of production of documents, the question being whether a defendant could be compelled to produce letters relating to the subject-matter of the suit addressed by her solicitors to third parties. The Vice-Chancellor (Bacon) pointed out the important fact that the privilege of non-production is the privilege of the client, and does not extend to communications by a solicitor to other persons. His Honour said: "The privilege contended for is her [*i.e.*, the client's] privilege, and it is impossible to carry it any further, because, although in some of the cases that have been referred to, it might seem at first sight that it was the privilege of the solicitor, upon consideration there is no ground whatever for so treating it. A solicitor who is employed to conduct the suit and to collect evidence, to get up the case, as it is called, is acting on behalf of his client, and only on behalf of his client, and the privilege which he claims is not a privilege that he possesses, but a privilege that belongs to the client because of the employment of the solicitor." Consequently, letters written by the solicitor to a third party, who was, in a certain sense, the agent of his client, were held not privileged. It must be added, however, that it was further said that "The case of a solicitor who employs a person to collect evidence for him in a foreign country, or who employs an accountant to make up a report from books, is a part of the proper business of the attorney; the client has retained him to do that business, and he has done it, and cannot be compelled to disclose the manner in which it has been done.—*Law Times.*

Titles with a Meaning.—A writer in the *Boston* (Massachusetts) *Transcript* says:—"In old New England the title of esquire was bestowed on not more than a dozen of the principle gentlemen of the colony. "Mr." was also a title which conferred distinction; in a list of a hundred freemen you will not find more than four or five so styled. In the old records occurs the following entry:—"John Plaistowe, for stealing four baskets of corn from the Indians, is ordered to return them eight baskets, to be fined £5, and hereafter to be called by the name of John, and not Mr., as fomerly he used to be." In these times when everybody is Esquire, the ancient dignity of "Mr." seems to be forgotten. In more than one use it was a higher title than "Sir." In the Universities, as might be expected, "Mr.," "Magister," meant specially a Master of Arts, while the Bachelor was "Dominus" or "Sir." Of these titles a few traces still remain, especially in the Cambridge Tripos, where the Senior Wrangler always appears with the abbreviated title "Ds," which the printers often take care to turn into "Dr." So every priest, from Sir Hugh Evans upwards bore the knightly title; but "Mr." was reserved for those to whom it either belonged in its academical sense, or who, as holding come higher ecclesiastical post, were thus marked off from their less fortunate brethren. Thus, in some lists of Cathedral officers the canons or prebendaries are distinguished as "Mr.," while the vicars are merely "Sir." Knights, too, used the title among themselves. Malicious people have remarked that modern baronets and knights in talking to one another are fonder than other men of using the vocative case, because they are thus enabled the oftener to hear and to utter the sounds "Sir John" or "Sir Thomas." But a modern Sir Thomas would certainly not like to be spoken to as plain "Mr." as his surname. Yet Sir Thomas More and Sir Thomas Pope, when the one was sent to announce to the other that the day of his execution was fixed, while speaking in all respect and friendliness, called one another "Master More" and "Master Pope." Indeed "Master," like other titles, took an abstract form, and "your mastership" was a way of addressing a great man who was not your "lordship." It is used by the correspondents of Thomas Cromwell before he was raised to the peerage; it was perfectly right then that John Plaistowe, who sank so low as to steal four baskets of corn from the Indians, should be no longer allowed to bear so lofty a title. But one puzzle remains. Why is it that the old title of "Master" in something like its old use, is always written in contraction, and sounded in a peculiar way, while the word itself in its natural sound and spelling now means, sometimes a legal officer, but more commonly a little boy?—*Pall Mall Gazette.*

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

Collision — Steamship — Dumb Barge — Lights — Course on the Thames—Duty.—Dumb barges in motion driving with the tide up or down the river Thames at night are not bound to carry lights. A dumb barge coming up the river Thames in a flood tide may keep on either side of the river, and there is no obligation on her by custom or otherwise to keep in mid-channel. There is no duty on a dumb barge driving with the tide in the Thames to keep out of the way of a steamship; but it is the duty of the steamship to keep out of the way of the barge: (*The Owen Wallis,* 30 L. T. Rep. N. S. 41. Adm.)

Collision—Practice—Duty to Begin—Fog over Anchorage Ground.—In all causes of damage, the onus being upon the plaintiff to establish negligence against the defendant, the plaintiff must begin; and this rule applies to cases where the only defence is inevitable accident and the plaintiff's vessel is at anchor, contrary to the former practice

Digitized by Google

of the High Court of Admiralty. Where a steamship, whilst in a good and well-known anchorage ground, enters a dense fog, it is her duty to anchor at once; and if she neglects to do so, and continues her course, she will be to blame for a collision ensuing, provided that the other vessel has done all that the law requires: (*The Otter*, 30 L. T. Rep. N. S. 43. Adm.)

Bankruptcy — Execution Creditor of Trader — Seizure and Sale by Sheriff.—The 87th section of the Bankruptcy Act 1869, which requires the sheriff to retain in his hands for fourteen days the proceeds of sale of goods of a trader taken in execution in respect of a judgment for a sum exceeding £50, and provides that if no notice of a bankruptcy petition having been presented against the trader be served on him within such period of fourteen days, or if, such notice having been served, the trader is not adjudged bankrupt, "he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him," only protects the sheriff and the purchasers of the goods, and does not protect the execution creditor, who is liable to repay the money to the trustee in the event of the debtor becoming bankrupt within twelve months from the date of the sale by the sheriff: (*Ex parte Villars; re Rogers*, 30 L. T. Rep. N. S. 104. Chan.)

Bankruptcy — Re-hearing—Contrary Decision by Court of Appeal since original Hearing.—On the 15th March 1873, the Court of Bankruptcy made an order declaring, amongst other things, that the mortgagees of certain lease-holds had a valid charge on the trade fixtures comprised in their mortgage as against the trustee under the liquidation of the mortgagor, although the deed had not been registered under the Bills of Sale Act. On the 25th July 1873, the Court of Appeal in another case decided that an assignment of trade fixtures included in a mortgage of leaseholds to which they were attached, required to be registered under the Bills of Sale Act. The mortgagees became aware of this decision, on the 28th July 1873, and gave notice of motion for a re-hearing of their case on the 21st Nov. 1873: Held (reversing the decision of one of the Registrars) that they were not entitled to a re-hearing. *Quære*, whether a re-hearing would have been granted to them, if they had given notice within twenty-one days of the time when they became aware of the decision effecting a change in the law: (*Ex parte Brown; re Jeavons*, 30 L. T. Rep. N. S. 108. Chan.)

Married Woman—Debts contracted before Marriage—Bankruptcy—Married Woman's Property Act 1870 (33 & 34 Vict. c. 93), s. 12.—A married woman who has no property belonging to her for her separate use is not liable, under the 12th section of the Married Woman's Property Act 1870, to be made bankrupt. *Quære*, whether a married woman who has property belonging to her for her separate use is so liable: (*Ex parte Holland; re Henage*, 30 L. T. Rep. N. S. 106. Chan.)

Bankruptcy—"Debts due to him in the course of his Trade or Business."—Bankers' "marginal notes" (which are contracts that the bankers giving them will pay the amounts represented by them whenever they receive intelligence that the bills, in respect of the discount of which they retain the amounts represented by the marginal notes, have been paid) are not "debts due" to the trader "in the course of his trade or business" within the order and disposition clause, (s. 15 sub-sect. 5) of the Bankruptcy Act 1869: (*Ex parte Kemp; re Fastnedge*, 30 L. T. Rep. N. S. 109. Chan.)

Execution Creditor—Payments to Sheriff before Levy—Acceptance by Creditors in part Payment before the Bankruptcy—Pressure—Bankruptcy Act 1869, ss. 6, 87.—A judgment debtor, to avoid execution, paid part of the judgment-debt to the sheriff's officer. Two days after making this payment, the debtor filed a petition for liquidation, and notice of this was at once served on the sheriff's officer. The day before the petition was filed, the execution creditor told the sheriff's officer that he consented to accept the money paid by the debtor in part payment of his debt, but the payment was not made by the sheriff's officer till two days after the filing of the petition: Held, that there had been no seizure by the sheriff within the meaning of the 5th sub-section of the 6th section, or of the 87th section of the Bankruptcy Act 1869; that there was sufficient pressure by the creditor to support the payment, and that the creditor was entitled to retain the money paid to him by the sheriff's officer. Decision of the Chief Judge in Bankruptcy reversed on fresh evidence, that the creditor had, before the filing of the petition, consented to accept the money paid to the sheriff's officer in part payment of his debt: (*Ex parte Brooke; re Hassall*, 30 L. T. Rep. N. S. 103. Chan.)

LAW STUDENTS' JOURNAL.

KING'S INNS, HENRIETTA-STREET, DUBLIN.

Easter Term, 1874.

NEW STUDENTS.

The following gentlemen have been admitted as Students:—

1. George Joseph Napier Ferguson, Student T.C.D., fourth son of William Dwyer Ferguson, of Mountjoy-square, in the City of Dublin, Esq., LL.D., J.P. Certificate signed by Francis Meade, Esq., Q.C.
2. William FitzGerald, A.B., University of Dublin, third son of the Right Rev. the Lord Bishop of Killaloe, of Carisfort House, in the County of Clare. Certificate signed by Geral FitzGibbon, Jun., Esq., Q.C.
3. John Jordon, B.A., Queen's University, eldest son of Samuel Gordon, of Shankill House, in the County of Down, Esq. Certificate signed by William B. Campion, Esq., Q.C.
4. Frederick Fleming, A.M., University of Dublin, third son of George Fleming, late of Surock House, Moate, in the County of Westmeath, Esq., deceased. Certificate signed by Walter Boyd, LL.D.
5. Samuel Lee Anderson, A.M., University of Dublin, second son of Mathew Anderson, of Knapton House, in the County of Dublin, Esq., Crown Solicitor. Certificate signed by William O'Brien, Esq., Q.C.
6. Patrick Joseph O'Connor, eldest son of Michael O'Connor, late of Ballina, in the County of Mayo, Gentleman, deceased. Certificate signed by R. P. Carton, Esq.

NEW BARRISTERS.

The following gentlemen have been called to the Bar:—

1. Thomas George Overend, Esq., B.A., Oxford, fifth son of James Overend, late of Tandragee, in the County of Armagh, Esq., deceased. Proposed by James A. Wall, Esq., Q.C. [Mr. Overend obtained the Exhibition at the General Examination held after last Michaelmas Term, and takes rank accordingly.]
2. George Lawrence, Esq., eldest son of George Joseph Lawrence, late of Midleton, in the County of Cork, Esq., deceased. Certificate signed by William O'Brien, Esq., Q.C. Proposed by James Murphy, Esq., Q.C.
3. George Henry Pentland, Esq., A.B., University of Dublin, eldest son of George Henry Pentland, of Black Hall, in the County of Louth, Esq., J.P. Certificate signed by John Richardson, Esq., Q.C. Proposed by George A. C. May, Esq., Q.C.
4. Edmund Constantine Lawless, Esq., A.B., University of Dublin, only son of Edmund B. Lawless, of Upper Temple-street, in the City of Dublin, Esq, Q.C. Certificate signed by Mathew O'Donnell, Esq., Q.C. Proposed by J. J. Murphy, Esq., M.C.

Immediately after the call, the Right Hon. J.T. Ball was called to the inner Bar, as Her Majesty's Attorney-General for Ireland, by Lord Commissioner Sir Joseph Napier.

Digitized by Google

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Final Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland), 1866."

DUBLIN, EASTER TERM, 1874.

CHANCERY PRACTICE.

MR. DIX, *Examiner.*

1. Is there any exception to the rule requiring a Bill of Complaint to be printed before being filed?
2. In the computation of time state when Sunday is excluded.
3. What step is it necessary to take, to bind a person to the proceedings, who is served with a plain copy bill?
4. What is the difference between a general and special demurrer?
5. If there be no personal representative to a deceased person interested in a suit, how, under the Chancery Act, 1867, can that deficiency be supplied?
6. What will cause the abatement of a suit, and how is the suit so abated to be revived?

LANDED ESTATES COURT PRACTICE.

MR. D'ALTON, *Examiner.*

1. How is the duty payable on a Sale or Declaration of Title to be ascertained?
2. From what time should the Abstract of Title commence in cases of partition, exchange, or division of intermixed lands?
3. What powers has the Landed Estates Court in respect to Crown rents?
4. How far can the Settled Estates Act (19 & 20 Vic., c. 120) be acted on by said Court?
5. How does the Court apply the purchase-money of lands sold in pursuance of previous decrees or orders for sale made by the Court of Chancery, and by the Court of Bankruptcy?
6. In what cases are Solicitors expected to appear in person before the Judge, and Examiner?

PROBATE COURT PRACTICE.

MR. MAXWELL, *Examiner*

1. State distinctly the requirements of the Statute for the due execution of a will.
2. If no executor be named, or if he has renounced, or died without proving, who will then be entitled to prove the will?
3. Can a grant be revoked, and, if so, state some of the grounds on which it will be done.
4. When is an administration "*de bonis non*" required?
5. State some of the instances in which the Court will grant a *limited* administration.
6. Will the Court grant administration on presumption of death, and, if so, what course must be pursued to obtain it?

COMMON LAW COURTS PRACTICE.

MR. TANDY, *Examiner.*

1. *Entering Judgment* "*nunc pro tunc.*"—In what cases, if any, will the Court allow judgment to be entered, *nunc pro tunc?*
2. *Default in going to trial.*—State the time within which plaintiff shall proceed to trial; the proceedings to be taken by defendant when plaintiff is in default; the nature and effect of the order obtained.
3. Enumerate the cases which can be tried in the Consolidated Nisi Prius Court.
4. Name the actions which may be remitted to the Civil Bill Court; the time within which application should be made; and the proceedings necessary to by taken.
5. *Discontinuance in Ejectment.*—State the distinction between a sole plaintiff discontinuing; and *one of several plaintiffs* being desirous to discontinue an action.
6. In the case of death of one of several plaintiffs after verdict, can the other proceed to execution whether the legal right survives or not; and assuming there is a legal representative of the dead plaintiff, what is the effect?

PRACTICE OF THE COURT OF BANKRUPTCY AND INSOLVENCY.

MR. FINDLATER, *Examiner.*

Under "The Bankrupt and Insolvent Act, 1857," and "The Bankruptcy (Ireland) Amendment Act, 1872."

1. What must a creditor, who has instituted a suit against a bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved or admitted as a debt under the Bankruptcy, do, before he can prove in such bankruptcy?
2. Mention the cases in which interest can be proved on debts in bankruptcy, whereupon interest is not reserved or agreed for, and the rate at which such interest is allowed?
3. What is the effect, as regards the liability of a bankrupt, to the performance of any conditions, covenants or agreements in any conveyance or lease, in cases where the assignees elect to take the benefit of such conveyance?
4. What course should the assignees of a bankrupt adopt to get rid of liability in respect of onerous covenants binding land acquired by them under the Acts, unmarketable shares, or unprofitable contracts?
5. When a trustee is appointed under the provisions of the Act of 1872 and retains the dividend of a creditor, state the remedy the latter has against the trustee.
6. What is the course to be pursued by a trustee so appointed, when the bankruptcy is closed, to obtain his release?

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND
(Incorporated by Royal Charter.)

EASTER TERM, 1874.

At the Examination of applicants seeking to become Apprentices to Attorneys, held on Friday, the 10th, and Saturday, the 11th of April, 1874, the following were adjudged by the Court of Examiners to have passed said Examination, and their names are arranged in order of merit, viz. :—

1. P. J. MACHALE DALY,
2. THOMAS J. ABRAHAM,
3. W. J. REYNOLDS,
4. JOSEPH NOLAN,
5. JOHN S. VANSTON,
6. HUGH C. O'DOHERTY,
7. FREDERICK W. CHARLEY,
8. E. R. M'CLINTOCK DIX,
9. A. O'RORKE, Junior,
10. MAURICE HORGAN,
11. UNIACKE MACKAY,
12. WM. J. MAGNIER,
13. T. H. DOHERTY.

The remaining candidates on the list have been postponed until next Michaelmas Term Preliminary Examination.

The first candidate on the "admitted" list, namely, PATRICK J. MACHALE DALY, is to be permitted to compete for the Society's Prize at next Michaelmas Term (1874), Prize Examination.

EASTER TERM, 1874.

At the Examination of applicants seeking admission as Attorneys, held on Monday, the 13th, and Tuesday, the 14th of April, 1874, the Court of Examiners decided that Mr. J. J. MALONE should be allowed the Special Examination for which he was permitted to present himself.

The remaining Candidate has been postponed until next Michaelmas Term Final Examination.

The President (Sir Richard J. T. Orpen) distributed the following Prizes, awarded to successful Candidates at Hilary Term, 1874, Examination, viz. :—

FINAL EXAMINATION.

A *Gold* Medal to Mr. JOHN RALPH M'NEELY, and a *Silver* Medal to Mr. EDWARD FITZGERALD, and Special Certificates of Merit to Messrs. RICHARD ALLEN, GEORGE H. LYSTER, and WILLIAM M'WILLIAM.

Digitized by Google

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

MICHAELMAS TERM, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination, must lodge their Papers *on or before the first day of next Trinity Term.*

By Order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin,

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 18th and 19th days of May, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Saturday, 2nd May, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place on Wednesday and Thursday, the 20th and 21st days of May, 1874, *at the same hour.*

By Order of the Council,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Thursday, the 28th of May, 1874, at Three o'clock, p.m.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—J. Curran, confirm sale.—M. M'Grane, liberty to proceed.—J. Riddick, objection,—J. Nolan, delay.—T. N. E. O'Halloran, allocation.—M. C. Osborne, ditto.

IN COURT.—J. Shuldham, judgment.—J. Curran, do.—G. Surnam, objections.—E. J. Ryder, payment.—Trustee Kennedy, do.—E. R. Mahony, from 27th.—Trustee Jones, objections.—J. N. Ferrall, attachment.—R. Stannard, set aside order for sale.

Before EXAMINER (Mr. Dobbs).

Trustee Bell, rental.—E. Colgan, do.—J. Davidson, proofs.

TUESDAY.

IN CHAMBER.—H. M'Adam, payment.

IN COURT.—Executor Stritch, final schedule.—M. H. Smithwick, do.—Trustee Curran, do.—M. Cherry, do.—Executors Mullins, do.—J. Bleasby, do.—Rev. R. H. Graves, do.—H. Whitmore, do.—Earl Darnley, do.—H. Green, from 21st.—J. Hazleton, from 20th.

Before EXAMINER (Mr. Dobbs).

B. M'Sweeny, rental.—E. M. Fitzgerald, do.—J. Smith and another, do.—W. J. Graham, proofs.—S. Tierney, ditto.

WEDNESDAY.

IN CHAMBER.—D. Daly, proposal.—Trustee Goff, allocation.

IN COURT.—N. T. Murphy, final schedule.—Duke Devonshire, ditto.

Before EXAMINER (Mr. M'Donnell).

A. D. M'Gusty, vouch.—S. Cunningham, do.—Administratrix Keighron, do.—Sir D. Baxter, do.—J. O. Evans, do.—G. E. Toombe, do.—W. Cruise, for deeds.—M. Cosby, ditto.

Before EXAMINER (Mr. Dobbs).

C. Wilson, rental.—Assignees Elliott, do.—James Merrick, ditto.

THURSDAY.

IN CHAMBER.—H. Stevenson, confirm sale.

IN COURT.—William Peyton, make order absolute.—C. O. Blake, re-entry final schedule.

Before EXAMINER (Mr. Dobbs).

H. Grier, proofs.—R. J. M. St. George, rental.

FRIDAY.

SALES AT 12 O'CLOCK.

E. E. WIDDUP.—1 lot.
EXECUTOR HACKETT.—1 lot.
RICHARDA USHER.—1 lot.
S. K. JACKSON.—2 lots.
M. STUDDERT.—2 lots.
ASSIGNEES M'NULTY.—3 lots.

Before EXAMINER (Mr. M'Donnell).

Sir C. O'Loghlen, rental.—P. Lawless, to take account.—H. Lambert, vouch.—John Davidson, do.—Trustee Power, to produce deeds.

LANDED ESTATES' COURT.

SALES

April 17.—Before the Hon. JUDGE FLANAGAN.

COUNTY OF LIMERICK.—John H. Hall, owner; Robert Cooke, petitioner. Part of the lands of Ballmacurra Weston, held under lease for 99 years; and producing an annual profit rent of £238 17s. 4d. Sale adjourned. Solicitors, *Molloy and Watson.*

CITY OF DUBLIN.—William Kemmistree and Thomas Kemmisden, owners and petitioners. Houses and premises, 38, 39, 40, 41 and 42, Upper Erne-street; 51, 52, 53 and 54, Denzille-street, held under lease for 286 years; and producing an annual profit rent of £201 12s. 4d.; sold subject to portion of annuity amounting to £65 5s. 1d., to Mr. James Rowland, for £1,100.

COUNTY TIPPERARY.—Trustees and Executors of the late Lord Desart. The lands of Cloncurry, containing 45a. 2r. 5p.; held in fee; situate in the barony of Slieveardagh; and producing an annual profit rent of £18 19s. Sold to Mr. James Crooke, for £420. Solicitors, *Messrs. Poe.*

COUNTY MAYO,—W. N. Comyn, owner and petitioner. The lands of Dromedy, containing 151a. 3r. 12p.; situate in the barony of Clanmorris; and producing an annual profit rent of £41 10s. 9d. Sale adjourned. Solicitors, *Messrs. V. B. Dillon, and Co.*

COUNTY GALWAY.—Francis D. Butler, owner; J. W. Watson, petitioner. The lands of Garrymore, containing 88a. 0r. 9p.; held under fee-farm grant; situate in the barony of Kilconnell; and producing an annual profit rent of £101 10s. 7d. Sold in trust for Mr. Burke, for £2,250. Solicitors, *Messrs. H. and J. Watson.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Wm. F. Philipson	Prove debts and vouch	*Oldham & Eaton*
John C. Walsh	Prove debts	*Dutch*
Alexander Davison	Vouch account	*Leachman*
Philip L. Lyster	Prove debts and vouch	*Perry & Co.*
William Holmes	Reference	*Hartigan*
J. G. Nash & A. P. Harty	do	*Noblett & Son*
James W. Dillon	Prove debts	*Toomey*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Charles Dowler	Final examination	*Browning*
William Walker	do	*Lynch*
John Delius Burns	do	*Molloy & Watson*
Martin Hickey	do	*Mathews*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Wm. F. Philipson	Costs	*Mathews*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Hanlon	Prove debts and vouch	*Scallan*
J. and H. Brett	do	*Larkin & Co.*
Philip O'Halloran	Vouch account	*Larkin & Co.*
Charles B. Pigott	do	*Larkin & Co.*
Henry L. Dymoke	Prove debts and vouch	*Molloy & Watson*

FRIDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Bridget Walsh	Final examination	*Smith*
Richard O'Connor	do	*Hamilton & Craig*
Peter Wright	do	*Oldham & Eaton*
Michael Griffin	do	*Lawler*
Michael Crowley	do	*Perry & Co.*
Michael Hickey	do	*Mathews*
John Nolan	do	*Larkin & Co.*
Mercer Stevenson	do	*Synnott*
John Callaghan	do	*Mathews*
Joseph Sloan	do	*Hamilton & Craig*
Patrick Hanlon	do	*Scallan*
H. M. Thompson	do	*Oldham & Eaton*
S. P. Armstrong	do	*Perry & Co.*
Patrick Ahern	do	*Larkin & Co.*
———	Application to dismiss debtor summons	*Delandre*
Thomas F. O'Neill	Examine witnesses	*Maxwell & Weldon*
James Coll	Audit and dividend	*Findlater & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Andrew Rogers	Audit and dividend	*Mathews*

ADJUDICATIONS IN BANKRUPTCY.

Byrne, John, the Green Hills, Dublin, contractor. Sittings, *Tuesday, May* 12, and *Friday, May* 29. *Fottrell*, solr.

Collister, Robert Henry, 14 and 15, Main-street, Clonmel, county Tipperary, ironmonger. Sittings, *Tuesday, May* 12, and *Friday, May* 29. *Mathews*, solr.

Curtis, Thomas Joseph, Donegal-street, Belfast, in the county of Antrim, hotel proprietor. Sittings, *Friday, May* 15, and *Tuesday, June* 2. *M'Coombe & Todd*, solrs.

M'Fadden, John, Cross-roads, Donegal, draper. Sittings, *Tuesday, May* 12, and *Friday, May* 29. *Larkin & Co.*, solrs.

Ryan, Michael, Loader's Park Mills, Harold's Cross, Dublin, miller. Sittings, *Tuesday, May* 12, and *Friday, May* 29. *Larkin & Co.*, solrs.

Warnock, Robert, Gransha, county Down, grocer. Sittings, *Friday, May* 15, *Tuesday, June* 2. *Cronhelm & Co.* solrs.

DIVIDENDS IN BANKRUPTCY.

Johnson, Peter, West-street, Drogheda, grocer and spirit dealer. 1st dividend 4s. 6d. in the £. C. H. James, official assignee. *Scallan*, solr.

Murphy, John, trading as J. Murphy and Son, Waterford, tobacconist. 1st dividend 4s. 2½d. in the £. L. H. Deering, official assignee. *Maxwell & Weldon*, solrs.

O'Neill, Thomas F., Carrick-on-Suir, county Tipperary, miller and corn merchant. 1st dividend 4s. in the £. L. H. Deering, official assignee. *Maxwell & Weldon*, solrs.

Young, Jane, Fermoy, county Cork, grocer, wine and spirit dealer. 1st dividend 1s. 6d. in the £. L. H. Deering, official assignee. *Merrick*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	APRIL Fri. 17	Sat. 18	Mon. 20	Tues. 21	Wed. 22	Thur 23
	Government.						
—	3 p c Consols	92	91⅞–2	91⅞–2	—	91⅞	91⅞
—	New 3 p c Stock	91 ⅛	91 ⅛	91 ⅛	90⅞–1	90⅞¾	90¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	107½	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	101⅝¾	101¾	—	101¾	101¾
	Banks.						
100	Bank of Ireland	306	305½	305	303	303	303½–5
25	*Hibernian Banking Co.*	57⅝	57½	57½	57½	57⅞	58⅛
20	*London and County*	—	—	—	—	—	58¼⅜½
15	*London Joint Stock*	—	—	48½	—	—	49
20	*London and Westminster*	—	—	70½	—	—	—
3½	*Munster Bank (Limited)*	8⅞¾⅝	—	8¾	8¾	—	—
30	*National Bank*	58¾⅞	58⅝¾	59	59	58⅝¾⅞	58⅞–9
15	*National of Liverp'l (Litd)*	14⅝	14¾	—	—	—	—
25	*Provincial Bank*	94½	94	94⅜½	94⅜½	94½	94⅝
10	Do. New	38½	—	—	—	—	28¾⅞
10	*Royal Bank*	—	—	28½	28½	28⅝	—
2½	*Ulster Banking Co.*	—	—	10½	—	10½	—
15	*Union of London*	—	—	44½	—	—	—
	Steam.						
50	Dublin and Glasgow	—	—	—	—	—	63
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	56	—	—	—
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	—	—	—	—	26	—
1	Killaloe Slate Co. (lit'd)	—	—	—	—	—	15/
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	5	—
2½	Wicklow Copper	—	—	—	—	—	2⅞
	Miscellaneous.						
	Alliance & Dub. Cons.' Gas	9½	—	—	—	—	—
9½	*Dublin Tramways*	7⅝	7½⅝	7½	7½	7⅝¾⅞	7⅝
9-4-7	*Patriotic Assurance*	—	10¾	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	66½	66½
100	Dublin and Belfast Junct.	—	—	—	—	87	87
100	Dublin and Drogheda	109½	—	—	—	—	—
100	Dublin and Kingstown	—	—	—	209½	—	—
100	Dublin, W'klow, & W'ford	74½	—	—	—	—	—
100	Gt. Southern and Western	107½–7	106⅝	106¼½	106¼½	106¼½	106⅝
100	Midland Gt. Western	81	—	—	80½	80⅝	81–⅛¼
50	Waterford and Limerick	—	—	—	—	34	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	93⅝	—
50	D., W., & W., 5 p c (1860)	53	52¾–3	—	53	—	—
100	Gt. South'n & West'n 4 p c	97	97	97	97	97	97½
100	Mid. Great Western, 5 p c	109½	—	—	—	—	—
25	Portadown, Dun., &c., 5 p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
—	Do., 4½ p c	96	96	—	—	—	—
50	Do., new redeemable 5 p c	49⅝	49⅝	49⅝	49⅝	49⅝	-
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	95⅝
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	99½	—	—
—	Dublin & Meath 4½ p c	89	—	—	—	—	—
—	D., W., & W., 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	101	—	—
—	Gt. South'n & West'n, 4 p c	—	—	98⅝	—	—	—
—	Midland Gt. West'n, 4½ p c	99½	—	—	—	99½	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	101½f	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 15th January, 1874.
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—April 28th, and May 13th, 1874.

Account Days—April 29th, and May 14th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

THE LEGAL USES OF PHOTOGRAPHY.—Examples are constantly occurring of the uses in legal investigations of the art of photographing. The London *Times*, in its graphic account of the close of the Tichborne trial, thus alludes to this subject:—"It is impossible to avoid noticing, at the conclusion of the case, the important service rendered to the cause of justice by the art of photography. The principal documents in the case, the pocket-book of the defendant, his letters and those of Roger Tichborne, were photographed by the Stereoscopic Company, under the auspices of Mr. Nottage, their manager, and the *facsimiles* thus produced were of immense use in facilitating the comparison of handwriting, to which the Lord Chief Justice attached much importance as one of the great tests of identity. There probably never was a case in which the application of the invention was of greater service."

IMPRISONMENT FOR DEBT IN RUSSIA.—By a law to be promulgated on the 17th (29th) of April, the Czar's birthday, imprisonment for debt will be abolished in Russia.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

GALLOWAY—April 14, at 11 Belgrave-square, North, Monkstown, the wife of Joseph Galloway, Esq., solicitor, of a daughter.

LYNCH—April 22, at 24 Lower Leeson-street, the wife of David Lynch, Esq., barrister-at-law, of a daughter.

MARRIAGE.

CRONHELM and M'CLELLAND—April 21, at the Parish Church, Sephton, Lancashire, by the Rev. Henry Burrows, M.A., Henry C. Cronhelm, Esq., solicitor, Belfast, son of Theodore Cronhelm, Esq., of Dublin, to Mary, daughter of the late John M'Clelland, Esq., of Liverpool.

DEATH.

FRASER—April 19, at Mitchelstown, of heart disease, deeply and deservedly regretted, George Fraser, Esq., solicitor, eldest son of John Fraser, Esq.

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

WILLIAM HOLMES, of Riverlawn, Rathkeale, in the County of Limerick, Farmer, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on THURSDAY, the 7th day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 20th day of April, 1874.

HUGH DOYLE, Registrar.

LUCIUS H. DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

JEHU MATHEWS, Solicitor for the Assignees, 9 Lower Dominick-street, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

WALTER O'DONNELL, of Waterford, in the County Waterford, Draper, trading as Walter O'Donnell and Company, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on THURSDAY, the 7th day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 20th day of April, 1874.

HUGH DOYLE, Registrar.

LUCIUS H. DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

OLDHAM & EATON, Solicitors for the Assignees, 42 Fleet-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY AND CITY OF DUBLIN.

SALE,

On FRIDAY, the 5th day of JUNE, 1874.

In the Matter of the Estate of ARTHUR BRATHWAITE WARRE, CHARLOTTE SOPHIE COOPER, Selina Elizabeth Cooper, Richard Augustus Cooper, and Cicely Florence Cooper, his wife; and Francis Montgomery Olpherts, and John Henry Cole Wynne, their Trustees; Henry Charles Eastwood, and Emma Marie Eastwood, his wife; and Francis Edmond Eastwood, and Owen Phibbs, their Trustees, or some or one of them, Owners and Petitioners.

TO BE SOLD, On FRIDAY, The 5th day of JUNE, 1874, At Noon, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts Dublin, The following LANDS AND PREMISES, Held in Fee-simple and Fee-farm, All situate in the City and County of Dublin, As particularly specified in the printed Rental for Sale.

SUMMARY OF LOTS.

No. of Lot	Denominations	Quantity Statute Measure	Net Annual Rental	Government Valuation
		A. R. P.	£ s. d.	£ s. d.
1	Part of the lands of Finglass West, Springmount and Stubton, situate in the barony of Castleknock	31 3 39	84 16 0	78 0 0
2	The field or fields formerly known by the name of the Ten Acres and a Half, at present known as Cardiff's Castle, situate in the barony of Castleknock	17 2 24	32 6 2	28 0 0
3	The house with the stable, turret garden, and field thereto belonging, known by the name of Belview, Tolka, situate in the barony of Castleknock	3 2 3	46 3 1	90 0 0
4	House and premises known as No. 52 High-street, City of Dublin	0 0 6	60 0 0	48 0 0
5	House and premises known as No. 53 High-street, aforesaid	0 0 18	40 0 0	40 0 0
6	Plot of ground and premises erected thereon, No. 11½ Lower Kevin-street, City of Dublin	0 0 82½	20 0 0	20 0 0
7	House and premises, No. 12 Lower Kevin-street, aforesaid	1 2 38½	139 7 6	140 0 0

Dated 30th day of March, 1874.

R. DENNY URLIN, Examiner.

LOT 1.

An excellent dwelling-house, with suitable offices, garden, and pleasure grounds, distant only about four miles from the General Post Office.

LOT 2.

It is distant about four miles from Dublin; it is all prime land, and is let to a respectable tanant.

LOT 3.

Comprises part of the buildings, garden, and pleasure ground of Belview (Dr. Gregory's), situate at Finglas-bridge, about three miles from Dublin.

LOTS 4 and 5.

Consist of the houses and premises known as Nos. 52 and 53 High-street, the former held by Richard Allen, and the latter in the possession of the Guardians of the South Dublin Union.

LOTS 6 and 7.

Are held under fee-farm grant, subject to the yearly rent of £48, present currency, which will be borne by Lot 7.

Offers for purchase of any Lots if sent in prior to the 20th day of May will be submitted to the Court for approval.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, Dublin; to

Messrs. STEWARTS and KINCAID, the Land Agents of the Estate, No. 6 Leinster-street, Dublin; or to

JOHN J. TWEEDY, Solicitor having the carriage of the Sale, 29 North Frederick-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, April* 25, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MAY 2, 1874. No. 379.

LIABILITY OF MARRIED WOMEN TO BE MADE BANKRUPT.

THE recent decision of the Court of Chancery Appeal in England, in the case of *in re Heneage* (22 W. R. 425), has disclosed a somewhat strange anomaly in the law of husband and wife, as it at present stands. The question in that case was, can a married woman, married after the passing of the Married Woman's Property Act, be made a bankrupt? The case arose by Mr. P. H. Holland taking out a debtor-summons against Mrs. Heneage, for a debt contracted by her before her marriage, and for which he had obtained a judgment against her. The debt not being satisfied or secured, the creditor, at the time appointed by the Bankruptcy Act, presented a petition for adjudication against Mrs. Heneage. The Registrar dismissed the petition, and the creditor appealed. To the question thus raised the Court of Appeal gave answer in the negative. It did not appear from the evidence in the case that Mrs. Heneage had any separate property, independent of her husband; and Mellish, L.J., drew a distinction between the case before the Court and the case of a married woman having separate property. While giving it as his opinion that a married woman who had no separate property was not liable to be made a bankrupt, he was not quite satisfied as to whether, if a married woman was shown to have separate property, she might not be liable to an adjudication of bankruptcy. But Lord Cairns held that, upon the construction of the 12th section of the Act, the bankruptcy could not take place. The 12th section enacts that "a husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable to be sued for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her separate use shall be liable to satisfy such debts as if she had continued unmarried." The Lord Chancellor remarked that the words "liable to be sued for" and "liable to satisfy" were technical, and applied only to the remedies of the Courts of Common Law and Equity; and if the Legislature had intended to grant the power of making married women bankrupt, it would have done so by express words. In this opinion James, L.J., concurred. It is improbable after this, that if the case should occur of a married woman possessed of separate property, and refusing to pay her ante-nuptial debts, the creditor, following the distinction of Lord Justice Mellish, will try to make her a bankrupt, as the opinions of Lord Cairns and Lord Justice James are strong against him, and appear to be supported by every principle of legal reasoning on the words of the 12th section. It is well known that previous to the passing of the Married Woman's Property Act, Courts of Equity alone held that a married woman had a right to hold property independent of her husband. This right the Equity Courts upheld by means of the doctrines of separate use, and of restraint against alienation. Separate use was utterly unknown at common law, but though it was upheld in equity, originally a married woman was considered to be unable to bind her separate estate with debts. In course of time, however, this rule was relaxed, first as to one class of engagements, then as to others, until finally the doctrine was considered settled, that to the same extent to which a married woman is by Courts of Equity constituted a *feme sole*, with respect to the capacity of disposing of property, she ought also to be regarded as a *feme sole* with respect to the capacity of contracting debts, or engagements in the nature of debts. Moreover, all such debts or engagements should stand on the same footing, in whatever form contracted, so that a married woman's separate estate might be rendered liable, as well by a verbal engagement as by a written contract. In pursuance of this doctrine, it was decided in a recent case, that the restriction against alienation and anticipation was no bar to the creditor's rights, *Sanger* v. *Sanger*, L. R. 11, Eq. 470. So far the remedies of the creditors seemed complete enough with regard to the debts or engagements of a married woman. Then came the Married Woman's Property Act, which, in addition to the various beneficial provisions by which it protects a married woman's property, takes away, by the 12th section, the husband's liability for the wife's ante-nuptial debts. The defect of this section seems very apparent. It is left at the option of the husband and wife whether there shall be any reservation of separate property on the marriage, and they may, by omitting to make such reservation, whether collusively or innocently, defeat the only remedy left to her ante-nuptial creditors by the Act. Thus, if a husband, previous to the marriage, persuade his intended wife to contract for a quantity of goods or of furniture, which she might easily accomplish by paying a small deposit, or instalment, to the trader, then if the marriage takes place without any reservation of separate property, and before the debts are paid, the creditors are without remedy. The husband is saved by the 12th section, the wife has no separate property, and it has now been decided that she cannot be adjudicated bankrupt. Therefore the law has resolved itself into this, that marriage is a shield to the married woman and her husband from the ante-nuptial debts of the former.

Under the provisions of the Act, married women enjoy many privileges. By section 1 their wages and earnings in business or occupations, gained by them separately from their husbands, are to be taken to be settled to their separate use; by sections 7 and 8 certain other kinds of property coming to them are likewise to be taken to belong to them to their separate use; and by other sections they can invest and secure their property in different ways. Now, if they enjoy all these privileges, they should surely be liable to the responsibilities, because property has its duties as well as its rights. At present it is manifest that the rights of the creditors are totally unprotected.

In order to give them the power of making married women bankrupt, it will be necessary, according to the decision of *in re Heneage*, to have recourse to further legislation; and considering that the foundation of the law of bankruptcy in this country is to be found in the statute book, and not in the rules of common law, that course would certainly be in keeping with the general tenor of the system. The Act of 34 & 35 Henry VIII., c. 4, first gave creditors the power of adjudicating their debtors bankrupt—that is, their debtors of the masculine gender. When married women now possess the rights of property already mentioned, some similar

Digitized by Google

enactment ought to be passed with regard to them, so as to put it beyond their power to defraud their creditors. It may appear to some that such a piece of legislation would be of a very ungallant, and even harsh, description towards the fair sex; but, as the law at present stands, unmarried women of full age may be made bankrupt, either on their own or on a creditor's petition, and even a married woman may be bankrupt where she carries on business as a sole trader, according to a custom, as of London. Why, then, should not the same rules be extended to all? The present system is illogical and inconsistent, and productive of the grossest injustice. Some of those legal reformers who bring in bills year by year to amend the law with regard to the property of married women, would do well if they would take into consideration the state of the law, as disclosed by this case of *in re Heneage*. In an age of legal reform like the present, such a defect ought to find a speedy remedy.

NOTANDA.

Perjury; statutable declaration.—On an indictment for perjury, heard at the Tyrone Assizes, it appeared that O'Hare, the accused, in February, 1873, went to Mr. John Eccles, of Dungannon, the agent there of the White Star and Allan Line of Transatlantic steamers, and asked him what was the fare from Liverpool to New York. Mr. Eccles replied six guineas for each adult, and that in consideration of six tickets being required he might make a reduction. According to the statement of Mr. Eccles, in his evidence at the trial, he declined to make any reduction, but promised to make the man and his companions comfortable on board. It was alleged that O'Hare, after the interview, made a declaration before Mr. Alexander Dickson, J.P., containing a statement to the effect that Mr. Eccles had promised to take off 7s. 6d. from each fare. This statement, as Mr. Eccles swore, was wholly false. The traverser was convicted; but the case having been reserved by Dowse, B., for the consideration of the Court, *Irvine* (*Holmes* with him) now contended that the conviction should be quashed, on the ground that the statement contained in the declaration, being in itself immaterial, its falsehood could not be made the subject of a prosecution under 5 & 6 Will. IV., c. 62, s. 18; and that the declaration was not within the purview of the Act. *O'Brien*, Q.C. (*Molloy* with him), *contra*:—The 18th section is not confined to voluntary declarations with respect to the "confirmation of written instruments or allegations, or proof of debts, or the execution of deeds or other matters" mentioned in the preamble, which might perhaps mean matters *ejusdem generis*, but it extends to declarations generally; *R.* v. *Boynes*, 1 C. & P. 70. The Court held that the declaration was not within section 18, and was not one of those contemplated by the purview of the Act. Conviction quashed (*R.* v. *O'Hare*, Cr. Cas. Res.: before Monahan, C.J., Fitzgerald, Deasy, and Dowse, BB., and Morris, J., Jan. 26, 1874).

Remitting action by consent; appeal from Chairman.—Appeal from decree made by Chairman of county Antrim. This was an action of slander brought in the Court of Exchequer, and the defendant had pleaded. After the time for moving to remit the case had elapsed, a consent was entered into and made a rule of Court, to have the action remitted to the Civil Bill Court. The pleadings were not taken off the file. The Chairman gave a decree for £20 damages, and the defendant appealed. *Porter*, Q.C., on behalf of the respondent:—There was no jurisdiction under the C. L. P. A. Act, 1870, to remit the case after the eight days for moving had expired. The only effect the consent could have was to appoint the Chairman as an arbitrator; and that is shown to have been the intention of the parties, by the facts that the pleadings were not removed, and that the consent provided for the payment of the costs in the Superior Court in a manner different from that prescribed by the Act. The Chairman acting merely as arbitrator, there is no power to appeal from his award, and the consent does not provide for an appeal. *Andrews*, Q.C. (*Bruce* with him), *contra*:—The case was remitted, not to Mr. Otway personally, but to him *qua* Chairman, and he made a decree following the statute, and by virtue of his statutable jurisdiction; he was not a mere arbitrator, and an appeal lies. KEOGH, J., said he would allow the case to proceed, considering that the objection could not be maintained; but that if he were wrong, the respondent would have a remedy. *Porter*, Q.C., asked that the case should be heard before a jury; it was so heard in the Civil Bill Court. KEOGH, J., said he would first hear the facts stated, and then decide whether a jury would be necessary. And the facts having been then stated, the case was heard without a jury. Damages, 12s. 6d. (*Rodgers*, appellant, *Larmour* respondent; Antrim Assizes, March 6, 1874).

Lease, vesting in assignees; assignees electing not to accept; onerous property; disclaimer.—Motion on behalf of assignees in bankruptcy, that they be at liberty to execute a disclaimer of a lease from J. Rowan and others to the bankrupt, inasmuch as the head-rent was too high, and there was no beneficial interest for the creditors. *Seeds* for the assignees. *Weir* for the lessors. *T. P. Lynch* for an equitable mortgagee. MILLER, J., in delivering judgment, said that the absolute vesting of lands, &c., in the assignees under B. Act, 1857, s. 268, must, when read in connexion with s. 271, be accompanied by a further act of election on their part before they could be charged with the consequences. In England before the B. A., 1869, the bankrupt's property became absolutely vested in the assignees without any act of election. The 97th and 98th sections of the B. A. (Ir.) Act, 1872, were copied from the English Act of 1869, s. 98, providing that the assignees shall not be entitled to disclaim if, being called on to say whether they will or not, they do not answer in the prescribed time, is pointed, and applies to the specific class of property mentioned in s. 97; and, by reason of the distinction as regards the vesting of estates as above, must necessarily have a more limited application than the corresponding section of the English Act. But I would give it application in a case circumstanced like the present, of a lease of recent date, subject to a high rent, and to a prior equitable mortgage, if the assignees had elected, under s. 271 of the Act of 1857, and desired to be relieved. Here they had, when called on to elect, replied, declining to accept the lease; and no such vesting of the bankrupt's interest took place as to render any disclaimer necessary under s. 98. No rule on the motion (*Re J. Connor*, a bankrupt. Ba., April 14, 17, 1874).

Debtors Act, 1872, *ss.* 4, 5; *Judgment on writ of revivor; Costs.*—A judgment on a writ of revivor having been obtained after the passing of the Debtors Act, 1872, for debt and costs, on foot of a judgment marked before the passing of the Act, *Robertson*, on behalf of the plaintiff, moved for liberty to issue a *ca. sa.* for the amount of the debt and costs of revivor, stating that, as he was instructed, the officer had felt a difficulty as to issuing it in respect of the costs of the revivor. He cited *Re Harding*, L. R. 1 H. L. 29. [PALLES, C.B.—*Queen* v. *Pratt*, L. R. 5 Q.B., 176, is more in point.] PALLES, C.B.—I have communicated with the Master, and it appears that there has been some misapprehension as to what actually occurred in the office. The direc

Digitized by Google

tion of the Master was that the writ should be issued. I have looked into the Act. I consider that the plaintiff is entitled on his own responsibility to have the writ; but, I offer no opinion as to whether he can sustain it or not if it comes before me to be set aside (*Wogan* v. *Chamney*, Con. Ch.; Feb. 27, 1874.).

Drawing money lodged in Court.—*Webb*, Q.C., on behalf of the defendants, moved that a sum of £400, lodged in Court by them under the directions of Deasy, B., be paid out to them. The action was one of alleged libel in the publication by the defendants (the owners of "Stubbs' Black List,") of a judgment purporting to have been recovered against the plaintiff. It was tried at Cork, before Deasy, B., and the jury gave the plaintiff a verdict for £350. An application was made by the defendants for respite of execution, with a view to moving for a new trial, and Deasy, B. granted a respite on condition of the defendants lodging £400 in Court. The defendants lodged the money and then applied to the Court for a new trial on the grounds of misdirection by the learned baron, of the verdict being against the evidence, and of the trial being unsatisfactory. The Court on argument subsequently made the conditional order absolute, and under these circumstances the defendants now sought to have the money they had lodged in Court paid out to them. *O'Riordan*, *contra*, opposed, on the ground that the suit had not terminated. Motion granted (*Cosgrave* v. *The Trade Auxiliary Co.*, Con. Ch., Feb. 25, 1874; before Palles, C.B.)

Trespass in pursuit of game; reservation in lease; complainant.—Summons for trespass on land in pursuit of game. The complainant held the land as tenant from Mrs. Marshall, Barrone Court, who reserved to herself the right to all the game. At a previous petty sessions, *Mr. Sheppard*, for the defendant, contended that under the provisions of 27 & 28 Vict. 57, where the landlord reserves the exclusive right to the game, the summons should be brought in his or her name, and not in that of the tenant. The magistrates considered that it would be necessary to have the opinion of the Law Adviser, and accordingly adjourned it for one week. The Law Adviser's opinion was to the effect that if the game was exclusively reserved by deed or writing to the landlord, the summons should be brought in her name. The magistrates held that, as the tenant's lease contained the words, "all game, wild fowl, hunting and fishing, is reserved to the landlord," the summons should have been brought in the landlord's name, considering that the words "all" and "exclusive" bore the same meaning, and they dismissed the case without costs (*Bourke* v. *Head*, Parsonstown P. S., Jan. 20, 1874).

THE GALWAY ELECTION PETITION.

An important constitutional question in connexion with the Galway Election Petition is about to be raised in the House of Commons by Sir Colman O'Loghlen, who gave notice last night of his intention on Monday next to ask the First Lord of the Treasury whether the statement in the public prints, that the petition against the return of Mr. O'Donnell, one of the members for the borough of Galway, has been set down for trial at Galway, on the 18th of May, before Mr. Justice Lawson, one of the Lords Commissioners of the Great Seal in Ireland, be correct; whether the office of Lord Commissioner of the Great Seal in Great Britain and in Ireland is not an office held at the pleasure of the Crown; and whether he considers it proper and constitutional that a Judge should act as an Election Judge, while holding an office at the pleasure of the Crown—an Election Judge, empowered by statute to decide without appeal on the right of members petitioned against to retain their seats in this House? It will be remembered that the petition against the return of Mr. O'Donnell alleges, amongst other matters, that the Most Rev. Dr. M'Evilly, Bishop of Galway, was "employed" as election agent for Mr. O'Donnell, and that he, in his capacity of agent, canvassed some of the voters in favour of Mr. O'Donnell. The constitutional question raised has, however, no relation to these alleged facts. It is based on the doctrine that all Judges must be independent of the Crown, and the fact that Mr. Justice Lawson holds an office from which he may at any moment be removed by the Crown, is said by competent authorities to disqualify him from acting as Election Judge. The Great Seal of Ireland is now in Commission, and Mr. Justice Lawson holds, as one of three, this commission. The office is one from which he may be at any time removed by the Crown; and Sir C. O'Loghlen has raised, in the form of this notice, the question whether an officer who may be removed at the discretion of the Crown is competent to sit as Election Judge.—*The Freeman's Journal.*

ELECTION PETITIONS.

Three election petitions, the first fruits of the new parliament, have been decided within the last few days, and whatever may be the merits or defects of recent changes in our electoral system, there seems no reason to complain of the Act which transferred to the judges the duties which had been till then performed by committees of the House of Commons. The petitions for Windsor, Wakefield, and Petersfield, have each their interest, and they were not without points of difficulty; yet a few days have sufficed to dispose of them, so far as the facts are concerned, a legal question having been reserved from Petersfield for the Court of Common Pleas.

We may give precedence to the Royal borough, where the liberals petitioned against the return of Mr. Richardson Gardner. The electioneering history of Windsor during the last few years resembles that of many of its sister constituencies among the minor towns of England. Until 1868 it returned two members to parliament. At the general election of that year the fatal Act of 1867 took effect, and Windsor lost one of its representatives. It was then that Mr. Gardner first made his appearance. Mr. Gardner failed, but he stuck to the borough, and bided his time. He had his reward at the late general election, when he beat his opponent, Mr. Eykyn, by a very large majority. The ground of the petition was that Mr. Gardner in "nursing" the borough during the last five years had been guilty of intimidation, and had influenced voters by presents, which, as they were made with a view to the coming election, had the nature of bribes. It appears from the evidence adduced, including his own, that Mr. Gardner was not connected with Windsor by family or property, and that he first became acquainted with the place in 1866. About that time 85 cottages were in the market, and he purchased them. Since that time he has bought and built, and built and bought, so that "at the last election he had 300 tenants—220 voters, 61 non-voters, 19 widows—and 3 empty houses." This is certainly pretty well for eight years, and if it does not quite bear out the petitioners' counsel in saying that Mr. Gardner was able to swamp the whole borough, it must be allowed that if he were able to secure the votes of all his 220 tenants, and throw them into the balance in a town where the registered electors are only 1,858, he must be a very formidable competitor. That he had done this by a crafty mixture of severity and kindness was the charge of the petitioners. It was not denied that in letting the cottages political considerations were paramount. The sitting member acknowledged in cross-examination that "he told Mr. Chane he wished his cottages to be tenanted by conservatives. He had no doubt he was influenced by the hope that the cottages might help him to become member for the borough." "Immediately after the election (of 1868) two or three men were turned out at once. There might have been other reasons why he turned out his tenants besides the fact that they voted against him." "It was his desire that conservatives should occupy his cottages."

These answers sufficiently indicate the relations between the landlord and his humble but enfranchised dependents. There was a good deal about Mr. Gardner's presents of

Digitized by Google

coals and tea, and his roasting of oxen whole on an occasion of national rejoicing, but this added little to the case of the petitioners. The gist of the matter lay in the use which Mr. Gardner was alleged to have made of his rights as a landlord for political purposes in turning out "Radicals," and tolerating the impecuniosity of those who voted on his own side. Baron Bramwell decided that the acts proved did not sufficiently bear on the last election to constitute a ground for invalidating it. With respect to the charge that the respondent's tenants were evicted for voting against him, the judge did not think this would be undue influence, because the effect was over long before the last election. The judge found, as a matter of fact, that the tenants had been turned out by Mr. Gardner for voting against him in 1868, but for the reason given he declined to unseat him. "There was no evidence," said the judge, "of a corrupt practice at the election; but the conduct of the respondent ought to be severely condemned." He had brought the inquiry on himself, and must pay his own costs. This is not an unfamiliar history to those conversant with electioneering, and it is certainly a merit in the Ballot that it will tend to limit this particular form of the "rights of property," since the enterprising landlord can only guess whether his tenant has really supported him or not.

At Wakefield the sitting member was less fortunate. The case was too strong to be resisted, and the proceedings came to an early conclusion. Mr. Justice Grove gave judgment unseating Mr. Green.

The Petersfield election presents the novel feature of a scrutiny under the Ballot. The proceedings were exciting and amusing. When a voter was objected to as a defaulter in the payment of rates, the sacred secrecy of the Ballot was violated so far as he was concerned. His number on the register was read out, and then the counterfoil and the ballot-paper were handed to the judge by the clerk. But, of course, neither party objected to a voter unless it was thought he had voted for the enemy, and sometimes this supposition turned out to be incorrect, and the objection lost a vote for those who made it. We are told that when the objections to Mr. Nicholson's voters were taken, great laughter was caused by several votes which were objected to on the supposition that they had been given for Mr. Nicholson being found to have been given for Captain Jolliffe. In the end, Captain Jolliffe is left by the scrutiny in a majority of one, but the decision is subject to the judgment of the Court of Common Pleas on the question whether a voter whose name has been inserted on the register is disqualified by the subsequent receipt of parochial relief, or whether the register is final. No doubt, the intention of the law is that the pauper shall not have a vote, but, on the other hand, the balance of convenience and the advantage of diminishing litigation are in favour of taking the register for the time being as conclusive, and tolerating the votes of those who have fallen into poverty since the last registration.—*The Times.*

INSPECTION UNDER THE BALLOT ACT.

It is somewhat singular that upon the very first case which has arisen concerning inspection of documents under the Ballot Act, the Court of Common Pleas has been divided in opinion. The matter arose out of the Petersfield election petition (*Stowe* v. *Jolliffe*) upon a rule *nisi* to show cause why the marked register of voters, the counterfoils of the ballot papers, and the backs of rejected ballot papers, should not be shown to the petitioners.

By 35 & 36 Vict., c. 33, s. 2, each ballot paper has a number printed on the back, and attached to it is a counterfoil with the same number printed on the face. At the time of voting the ballot paper is marked on both sides with an official mark, and the number of the voter on the register of voters is marked on the counterfoil. Now the question in the case was, whether there should be an inspection of all the documents mentioned in the rule *nisi*, or whether the inspection should be limited to the marked register. The majority of the Court, consisting of Mr. Justice Grove and Mr. Justice Denman, were of opinion that the marked register alone should be produced, on the ground that the marked register would give approximately all the information required; but Mr. Justice Brett thought that the packet of rejected ballot papers should be opened, and the backs of them shown to the petitioners, in order to exhibit the sequence number corresponding with the number on the face of the counterfoil. His lordship also thought that the counterfoils corresponding to the rejected ballot papers should also be inspected in order that the petitioners might discover whose votes had been rejected. It seems to us that, so long as the secrecy of the ballot is maintained, the Court should grant all such inspection as will facilitate proof of the case, and diminish expense, and that on this ground the opinion of Mr. Justice Brett is to be preferred to that of the majority of the Court. It is manifest that the order which that learned judge desired to make would have at once enabled the petitioners to find out whose votes had been rejected by the returning officer, while at the same time, if the order were properly carried out, no risk would have been run of a disclosure of the way in which those particular electors had voted.

It appeared that, in this election, the returning officer had forwarded to the Clerk of the Crown in Chancery the marked register and the counterfoils sealed up in one packet, and this, it was admitted, was contrary to the intention of the Ballot Act and the rules. Rule 40 says that no person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons, or under the order of one of the superior Courts, or any judge thereof. Rule 41 says that no person, except by order of the House, or of any tribunal having cognizance of election petitions, shall open the sealed packet of counterfoils after the same has been once sealed up, or inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery. The same rule contains a proviso that, in the execution of such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid. Then Rule 42 declares that all documents forwarded by the returning officer to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection under certain regulations, and that the Clerk of the Crown shall supply copies of them to any one demanding the same on payment of certain fees. So that, whereas the marked register is made the property of the public at large, every precaution is taken to shield the ballot papers and counterfoils from revelation. Clearly, therefore, the returning officer for Petersfield committed an error in sealing up the marked register and the counterfoils in the packet.—*The Solicitors' Journal.*

RETURNING OFFICERS' FEES.

Sir Henry James and Sir William Harcourt have brought in a bill which proposes "to regulate the expenses and to control the charges of returning officers at parliamentary elections." The bill provides that the returning officers shall be entitled to certain fees, which are set forth in a schedule; that the amount of such charges shall be paid by the candidates at the election in equal several shares; and that if a candidate is nominated without his consent, the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent. A returning officer is not, unless by agreement in writing signed by the party to be charged, to be entitled to payment for any other services or expenses, or at any greater rates, than is contained in the schedule. The returning officer may require a deposit or security for the charges which may become payable to him, and his accounts may be taxed. Town clerks in municipal boroughs, which are also parliamentary boroughs, are to act under and assist the returning officer, and the latter is to make use, as far as practicable, of the ballot boxes and fittings provided for municipal elections. The schedule of charges referred to is as follows:—

The following are the maximum charges to be made by the returning officer, but the charges for expenses incurred are in no case to exceed the sums actually and necessarily paid or payable:—For preparing and publishing the notice

Digitized by Google

of election, £2 2s.; for preparing and supplying the nomination papers, £1 1s.; for travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile, 1s.; for hire of rooms or buildings for polling, or damage or expenses by or for use of rooms or buildings, the necessary expenses, not exceeding at any one polling station the charge for providing a polling station (—); for each polling station with its fittings and compartments (—); for ballot boxes (—); for stationery (—); for ballot papers (—); for stamping instruments (—); for copies of the register (—); for each presiding officer and travelling expenses at 1s. per mile, £3 3s.; for one clerk at each polling station and travelling expenses at 1s. per mile, £1 1s.; for every person employed in counting votes, not exceeding three such persons where the number of registered electors does not exceed 3,000, nor six such persons in any other case, £1 1s.; for making the return to the Clerk of the Crown, £1 1s.; for every occasion on which a notice or notices relating to the election is or are by law required to be published, the necessary expenses not exceeding 10s.; for conveyance of ballot boxes in the case of a county election from the polling stations to the place where the ballot papers are to be counted, per mile, 1s.; for the services of the under sheriff at a contested election for a county, or of the returning officer at a contested election for a borough in which the returning officer is appointed by the sheriff, £10 10s.; and where the number of registered electors exceeds 3,000, then for every 2,000 or fraction thereof beyond the first 3,000, the further sum of £5 5s.; for services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate, £1 1s.; for all other expenses, the sums actually paid, not exceeding in the whole £5.

COMPANIES AND THEIR SHAREHOLDERS.

The right of shareholders of companies to take action on their own behalf independently of the company is one which has been questioned on more than one occasion, and it is important to understand when such right exists at all. The most recent case on the point is that of *Menier* v. *Hooper's Telegraph Works* (30 L. T. Rep. N. S. 209), where a demurrer to a bill by one of a minority of shareholders in a company on behalf of himself and the other shareholders to enforce the rights of the minority was overruled. The plaintiff held 2,000 shares in the European and South American Telegraph Company, now in voluntary liquidation. Hooper's Telegraph Works (Limited) held 3,000 shares in the company, and the other shareholders were 13 persons, who held 21 shares each. Disputes arose between the European Company and Hooper's Works as to certain concessions for the construction of telegraphs, and a suit was instituted by Hooper's Works to restrain the working of concessions obtained by the European Company. It was refused by Vice-Chancellor Malins, and Hooper's Works appealed; but before the appeal came on the matter was compromised by the European abandoning the concessions. The present plaintiff, believing that Hooper's Works had obtained this compromise by means of their influence as shareholders in the European, filed his bill against them, praying for a decree that they were not solely entitled to the benefits received by them under the compromise, but that they were trustees of such benefits for the plaintiff and all the other shareholders of the European. "The only question which this suit brings forward is," said Vice-Chancellor Bacon, "whether he has a right to be relieved against such dealing with the property in which he and Hooper's Company were jointly interested." The only question with which we are concerned is the technical right of the plaintiff to sue on behalf of himself and the shareholders.

It is admitted that, according to *Gray* v. *Lewis* (26 L. T. Rep. N. S. 12), and *Foss* v. *Harbottle* (2 Hare 261) a suit for the benefit of shareholders ought to be instituted by the company, and not by a shareholder on behalf of himself and the other shareholders who take a similar view with himself. Is there then any exception to that rule? Vice-Chancellor Bacon suggests two: (1) where the company cannot sue; and (2) where it will not sue. He thought the difficulty in the latter case might be got over by application to the Court for leave to use the name of the company.

In the case of *Atwool* v. *Merryweather*, which was before Vice-Chancellor Page Wood, and is reported in a note to *Clinch* v. *Financial Corporation* (L. Rep. 5 Eq. 464), the bill was filed by a shareholder on behalf of himself and the other shareholders, and the Vice-Chancellor said: "With regard to the frame of the suit a question of some nicety arises how far such relief can be given at the suit of a shareholder on behalf of himself and other shareholders on the ground that the transaction might be confirmed by the whole body if they thought fit, and that the case would fall within *Foss* v. *Harbottle*, according to which the suit must be by the whole company." Then he added, "If I were to hold that no bill could be filed by shareholders to get rid of the transaction, on the ground of the doctrine of *Foss* v. *Harbottle*, it would be simply impossible to set aside a fraud committed by a director under such circumstances"—the director there being very much in the position of Hooper's Company towards the European Company—"as the director obtaining so many shares by fraud would always be able to outvote everybody else." Referring to the form of suit, Lord Justice James, on the appeal, said that it seemed to him the case afforded precisely the exception to the general rule which was pointed out by Vice-Chancellor Page Wood—a case in which the minority were the plaintiffs and the majority were the defendants—the wrongdoers who were alleged to have put the minority's property into their pockets.

This case, therefore, establishes a principle which was previously doubtful, to say the least, and gives an important right to shareholders of a company, the majority in which may be disposed, for private or secret considerations, to enter into compromises injurious to the general body of shareholders.—*The Law Times*.

STATISTICS OF BANKRUPTCY IN ENGLAND.

Among the official papers recently laid before Parliament is the fourth annual report by the Comptroller in Bankruptcy of the working of the Bankruptcy Act, 1869. From this report it appears that debtors have, during the past year, very freely availed themselves of the facilities offered by the Act for effecting arrangements between themselves and their creditors. In the first year of the new Act (1870) there were 5,002 failures, of which 1,351 were adjudications in bankruptcy, and 3,651 arrangements by way of liquidation or composition. Last year the total number of failures was 7,489, comprising 915 bankruptcies and 6,574 arrangements. So that, although the total number of failures has increased just 50 per cent., the bankruptcies have *decreased* 32½ per cent., while the arrangements have *increased* 80 per cent. The Comptroller attributes the decrease in bankruptcies to the preference of debtors for arrangements, and this is, no doubt, in great measure, the cause, as, under the arrangement clauses, the debtor takes the initiative by filing his petition for liquidation. The debtor has nothing to gain by bankruptcy if he can induce his creditors to consent to an arrangement.

It seems, therefore, somewhat strange that such a large number of bankrupts in 1870 (511 out of 1,351) were adjudicated on their own "declarations of inability" to pay their debts—that is, the voluntary commission by the debtor of an act of bankruptcy for the express purpose of enabling a creditor to file a petition for adjudication of bankruptcy against him. Probably debtors in that year, or their advisers, were scarcely alive to the advantages offered by the liquidation clauses in their interests. But in the year 1873 they were evidently more experienced, for we find that there were only 148 voluntary bankrupts; and no doubt many of these 148 declarations of inability were signed with the view of enabling a friendly creditor to obtain an immediate adjudication and the control of the proceedings, instead of a hostile creditor who might be endeavouring to procure an adjudication founded on the failure of the debtor to obtain the assent of his creditors to a liquidation arrangement. But, at any rate, there were no fewer than 171 adjudications actually founded on failure of proceedings under the debtor's petitions for liquidation—thereby indicating that, in many

Digitized by Google

cases, creditors have come to the conclusion that it is more conducive to their interests to insist on the exposure and investigation of the Bankruptcy Court than to consent to accept a paltry composition on their debts, or to the secret liquidation of their debtors' affairs by means of a private arrangement. A curious feature disclosed by the Statistical Tables appended to the Report is, that out of 592 cases in which trustees were appointed by the creditors, in County Courts, last year, no committees of inspection were appointed in 257 cases, or about 43 per cent. This would seem to indicate that creditors are not so averse to a limited amount of official control over the administration of their debtors' estate as was generally imagined, for it must be remembered that, where no committee is appointed, the duty of auditing the trustees' accounts, and performing other duties required of committees, is thrown on the Court.

The total number of bankrupts adjudicated during the four years ending the 31st December last was 4,437. Of these only 200 have succeeded in obtaining discharges, and 177 out of the 200 owe their discharges to the leniency of their creditors in allowing them to apply to the Court for orders, although their estates have not paid 10s. in the pound. In 1873 there were 522 bankrupt estates wound-up and "closed." In 85 cases no assets were realised, and in 165 the assets realised were insufficient to pay the costs of the bankruptcy. The remaining 272 estates were closed after payment of dividend. The assets realised in these 272 estates amounted to £176,980, out of which the creditors received £122,046, or 72 per cent., the remaining 28 per cent. being absorbed by the costs of realisation and distribution and bankrupts' allowance. This percentage of costs is arrived at by taking the average in the usual way, although as the Comptroller points out, "Such comparison, if aggregated, is of little value as a test of the merits of administration." The majority of cases wound-up in bankruptcy are of an inferior class, and this, no doubt, accounts in some measure for the unfavourable result shown in the comparative amounts of expenses of administration and dividend. In small estates the expenses of administration necessarily amount to a considerable percentage on the assets realised. But notwithstanding the smallness of estates wound-up in bankruptcy, it is worthy of notice that of the 178 estates closed last year in which the assets did not exceed £100 (the average being about £50) dividends were paid in more than one-fourth. The Comptroller deduces from this fact, that "the heavy rate of costs imposed on the majority of estates is not a necessity of administration, but the result, either of special difficulties, or, as is probably the more frequent cause, of *expenses improperly incurred.*" The better class of estates is evidently wound-up under liquidation by arrangement; for while the assets of the 915 bankrupts adjudicated last year were estimated at £675,023, the assets in the £4,152 liquidations by arrangement amounted to £4,034,553. We should certainly like to have some statistics of the administration of this large amount of assets—but none are forthcoming—no returns being required of trustees under liquidation by arrangement. So that while we get elaborate statistics of the small estates wound-up in bankruptcy, we are quite in the dark as to what proportion of the four millions of assets administered in one year under liquidations finds its way into the pockets of the creditors. Any amending Act will not be complete which does not provide for some information being given to creditors and the public of the way in which this large amount is administered. The total amount of liabilities in bankruptcies, liquidations, and compositions last year was upwards of nineteen millions as against fourteen millions in the previous year, while the *estimated* assets last year were about six millions; thus showing a loss to creditors of thirteen millions, without reckoning the loss and expenses on realisation and division.—*The Echo.*

STRANGE LAWSUIT IN PARIS.

A Contrast to the Tichborne Case.

A case has lately been decided by the Court of Appeal, presenting in one salient point a remarkable contrast to the Tichborne affair. Lady Tichborne persisted, against the advice and opinion of relations, lawyers, and ghostly directors, in recognising as her son Roger the Australian butcher now undergoing penal servitude as an impostor and perjurer. The Comtesse d'Yvon, the appellant, in the suit we refer to, has according to the judgment given against her, done just the contrary, and has denied the parentage of a daughter proved to be hers. This lady occupies a brilliant position in Parisian society. She inhabits a hotel in the Rue de la Chaise, which is one of the show places of the Faubourg St. Germain. The long suite of drawing rooms thrown open once a week to visitors, and the vestibules leading to them, are hung with tapestry and pictures, adorned with panoplies, and generally filled with furniture such as the late Marquis of Hertford collected in his different mansions. Madame d'Yvon is a woman of amiable manners, and is reputed good-natured in her social and other relations, and charitable to the poor. The Comte d'Yvon, who is her second husband, was under the Empire director of the Garde Mouble, He is a person of fine artistic tastes, and has the distinguished air and manners of the late Count d'Orsay, without any alloy of dandyism. He was married to the countess in 1842. Madame d'Yvon's first husband was Mr. Samuel Smith, an Englishman, whom she espoused in 1830, at Birmingham, and with whom she subsequently went to reside in Brussels.

According to the testimony of her regular physician—a testimony received both by the Tribunal of First Instance and the Court of Appeal—Mrs. Samuel Smith, now Comtesse d'Yvon, quitted Brussels about the month of July, 1834, in an advanced stage of pregnancy, to be confined in London. He remonstrated with her on what seemed to him an act of needless imprudence. Dr. Perkins, having occasion to go to England at the same time, crossed from Antwerp with his patient, whom he quitted on the quay, and did not see her until the month of August following. She then told him she had given birth in London to twins, a boy and a girl, and that the former died shortly after her accouchement. An infant of a few weeks old was then presented to him as the survivor. Her name, he was, moreover, told, was Frederika Mary Anne, and he frequently attended her as the child of Mr. and Mrs. Samuel Smith, up to 1836, the year in which the former died in London. The census of Brussels taken in 1835 confirms Dr. Perkin's testimony, inasmuch as the Smith family are inscribed in it as consisting of the father, Samuel Smith, aged 30; the mother, Mary Anne, aged 23; and the daughter, Frederika Mary Anne, aged 18 months, and born in London, July, 1834. Mrs. Samuel Smith, on marrying the Comte d'Yvon in 1842, came to reside in the hotel of the Rue de la Chaise, bringing with her the little Frederika, whom she presented to her new connections as her child, whom she placed as such in the fashionable convents of the Sacré Cœur and Oiseaux to be educated, and subsequently introduced into the most brilliant society in Paris. No doubt had ever been raised as to the right of Frederika to regard herself as Madame d'Yvon's daughter and heiress. The first time she heard the relationship disputed was in 1856, when the young lady announced that a retired officer without fortune, but of good Breton family, M. Ferdinand de Tregomain, loved her, asked her in marriage, and that she had made up her mind to accept the offer. Madame d'Yvon forbade Frederika to receive the attentions of M. de Tregomain, who was forbidden the house. Miss Smith, who must have been a very resolute girl, fled from her home in the Rue de la Chaise, and took refuge in a convent, pending the legal formalities which it was necessary to go through in order to dispense with the consent of her alleged mother to the marriage which she contemplated. She also brought an action against her for a dower, which the Tribunal of First Instance fixed during the life of Madame d'Yvon at 3,000f. a year. It is a noteworthy circumstance that Madame d'Yvon did not protest against the status assigned to the girl Frederika in the *Actes respecteuses* by which her approaching marriage was intimated to her. While taking no legal steps to contest the judgment of the Tribunal of First Instance, the Countess declared to all her friends that Miss Smith was not her daughter, but the child of a mendicant, named Mary Anne Chappel, and that she had taken her out of the Workhouse of Stoke Newington, where she was born in 1833, to adopt. The marriage took

Digitized by Google

place; M. de Tregomain was too proud to assert his wife's right to the 3,000f. a year, and all communication, either hostile or otherwise, ceased between her and the Count and Countess until 1871. M. de Tregomain, in 1870, had accepted a command in the auxiliary army, and was killed in a battle on the Loire, leaving his widow and four children in a state of utter destitution. It was under the pressure of want that Madame de Tregomain wrote to Madame d'Yvon, asking for assistance, which was sternly refused. The alleged mother wrote back to say that Madame de Tregomain had treated her with base ingratitude; that she was a beggar's daughter taken from the workhouse, had chosen to forfeit the advantages conferred on her by adoption, and that she might, for aught Madame d'Yvon cared, lie to the end of her days on the hard bed she had made for herself. The cast-off Frederika then wrote a third letter, in which she said she would acknowledge herself the child of Mary Anne Chappel in return for some pecuniary relief for herself and her destitute children. The latter remained unanswered, and steps were taken to enforce the judgment, allowing Madame de Tregomain a dower of 3,000f. a-year. Madame d'Yvon and her husband hotly contested this claim, the former pleading that she not only had not, but never could have, given birth to a child. In support of her plea she courted a medical examination, and obtained a certificate from four doctors to that effect. There was, however, no *expertise* ordered by the Court; in consequence of which the medical evidence went for naught. The witness chiefly relied upon by the defendant was a workhouse nurse, Jane Twirt, who swore that she recognised in Madame d'Yvon the lady who adopted the woman Chappel's child, in 1833. But she did not identify Frederika as the infant whom she had seen taken from the Stoke Newington Workhouse. This, with the letter of the plaintiff, in which she said she was ready to forego all claims upon Madame d'Yvon in return for some pecuniary relief, constituted the case of the latter.

The Tribunal of First Instance decided that, apart even from the evidence of Dr. Perkins and the Brussels census, which it regarded as very weighty, the uncontradicted notoriety for twenty-two years of Frederika's status as daughter of Mr. and Mrs. Samuel Smith, created a right which the defendant had entirely failed to break down. The Court of Appeal took the same view, which it expressed in even stronger terms in the judgment confirming the decree of the Court below, declaring the plaintiff to be the daughter of the Comtesse d'Yvon, and allowing her an alimentary pension of 3,000 francs. The appellants are sentenced to pay all costs.

LEGAL BIBLIOGRAPHY.

The Catalogue of the Library of the New York Law Institute.

By R. S. GUERNSEY.

In no science is it so necessary to know of that which was written in former times and at different periods as in the law—the very foundation of which is built and stands upon that which has gone before. A comprehensive work of this kind undoubtedly would have a marked influence on the future study, writing and knowledge of all laws in the English language.

Dr. Johnson truly said:

"By means of catalogues only can it be known what has been written in every part of learning, and the hazard avoided of encountering difficulties which have been already cleared, discussing questions which have been already decided, and digging in mines of literature which former years have exhausted."

A man that can make a great dictionary of a language can properly appreciate the utility of catalogues.

By giving the latest edition of a work, it can be seen at almost a glance how useful the work may be, without regard to the time it was originally written, as all the new editions of the old authors contain notes of alterations, adjudication, &c. When old ones are obsolete, by reason of better authors or by reason of change of law, new ones immediately step in, and thus the web of the law is continually being spun from year to year and century to century, until traced back to the time "when the memory of man runneth not to the contrary" and it was regarded as established law by mere custom.

Notwithstanding the utility and almost the necessity of a comprehensive bibliography of law books, the English and American law literature has shown a marked absence of works of that nature, more so at present than in former times.

The first one ever published relating to English jurisprudence was by a London book-seller, Thomas Bassett, in 1671, entitled "Catalogue of Common and Statute Law Books of this Realm," 8vo. A new edition of it was published in 1694, and again in 1720.

The second work was by John Worrall, in 1736, entitled "Bibliotheca Topographica Anglicana, London." Part II.: "Bibliotheca Legum: or a List of all the Common and Statute Law Books of this Realm to 1749," continued to 1765, 1768, 1777, 1782.

In 1788 a new edition was published, entitled "Bibliotheca Legum Anglica, Part I." Part II. was by Edward Brooke, and contained "A General Account of the Law and Law Writers of England, from the earliest times to the reign of Edward III.," 1788; a supplement was published in 1792.

The third work was in 1807, by R. W. Bridgman, entitled "A Short view of Legal Bibliography, containing some Critical Observations on the Authority of the Reporters and other Law Writers," &c. This can scarcely be called a legal bibliography, but is more of the nature of Warren's Law Studies.

The fourth work was in 1810, by John Clarke, a London book-seller, entitled "Bibliotheca Legum or Complete Catalogue of the Common and Statute Law Books of the United Kingdom;" new edition, 1819. This was classified under a few subjects only, and contained a valuable table of abbreviations used relating to law books.

This is the last general work of the kind ever published in Great Britain. In 1866 Mr. Ralph Thomas, a lawyer in London, undertook to obtain a subscription for the publication of a work entitled "Biographical and Bibliographical Dictionary of Writers upon English Jurisprudence, with Critical Remarks on their Works." This was abandoned, however, for want of sufficient encouragement; library catalogues, and those of law book-sellers seeming to be sufficient for all practical purposes.

Various useful works have been published from time to time relating to special subjects and to a course of law studies, but they are not within the province of the subject under consideration.

It may be said here, in passing from England to the United States, on this subject, that all the libraries in Great Britain are remarkably deficient in American law books, even the State reports of the highest Courts in any of the United States cannot be found complete in any of the law libraries in Europe, and the same may be said regarding the statutes of the different States.

In 1819 was published, in Baltimore, David Hoffman's "Couse of Legal Study." A new edition of it was issued in 1836. This is the most valuable and comprehensive work ever published upon the subject to which it relates, but it does not profess to be a complete bibliography, but to show the sources and means of obtaining a comprehensive knowledge of every branch of the law, and the best books where the same may be found.

The first bibliographical work, strictly speaking, ever published in America relating to law books, was in 1843, and is entitled "The Reporters—Chronologically Arranged, with Occasional Remarks upon their Respective Merits," by John W. Wallace; second edition in 1845; third 1855. This is supposed to comprise a descriptive list of all the reports and reporters in Great Britain and her colonies and dependencies and in the United States.

In 1847 was published in the United States the most complete and comprehensive work of the kind ever attempted in the English language, entitled "Legal Bibliography, or a Thesaurus of American, English, Irish and Scotch Law Books, together with some Continental Treatises, interspersed with Critical Observations upon their Various Editions and Authority," by J. G. Marvin, counsellor-at-law. The arrangement was by authors' names, and the index was by numerous subjects properly divided, under each of which was only the author's name.

Digitized by Google

The reporters were arranged only in the same manner, without stating the country, State or Court, excepting under the individual reporter's name. Both of these were a serious detriment to the usefulness of the book. It professed to contain all the titles of all law books, but more than five hundred titles in Great Britain and the United States were omitted. It contained a copious list of abbreviations used relating to law books. No other works of this nature have ever been published in the United States. The only guide that lawyers have in regard to books which have since been published are the catalogues of libraries, and they are frequently sought for as a library manual. The best and most comprehensive one, up to 1865, is that of the State Library at Albany. The catalogue of the Library of Congress, published in 1869, is only classified by subjects, and the reports and statutes are chronologically arranged, but there is no index of authors' names, and the latter library has not so large a collection as the former.

RECENT DECISIONS.

(WHITE AND HART *v.* CARROLL, 8 I. L. T. REP., p. 63.)

We recently had occasion to notice that the courts in Ireland had not adopted the rule laid down by our Court of Queen's Bench in *Raeburn* v. *Andrews*, that persons resident in Scotland or Ireland suing in English Courts need not give security for costs. The hesitation to follow this decision has now happily disappeared. In a case of *White* v. *Carroll* before the Chief Justice, Mr. Justice O'Brien, and Mr. Justice Fitzgerald, on the 16th instant, the efficacy of the Judgments Extension Act was acknowledged. The Lord Chief Justice said: "The three kingdoms were united, he hoped indissolubly, and the practice of compelling a person living in one part of the same United Kingdom to give security for costs on suing a person living in another part was anomalous, and ought to be discontinued." And Mr. Justice Fitzgerald said that he rejoiced that he had now disposed once and for all of a practice which since the three kingdoms had become a united kingdom was a disgrace to our land.—*Law Times*

THE LAW CLERKS' ASSOCIATION.

The Central Committee met last Monday evening, at their new rooms, 207, Great Brunswick-street. The Vice-president took the chair at half-past eight o'clock, and among those in attendance were—Messrs. Jervise, Farrelly, Dillon, Crowley, Power, Devereux, Sheridan, and Dodd. The Library Committee announced that they had received during the past week the following donations:—Mr. Sergeant Armstrong, £5 5s.; Mr. J. H. Monahan, Q.C., £2 2s.; Mr. Richey, Q.C., £1 1s.; and Mr. Jordan, £1 1s.; and the Chief Justice of the Common Pleas had given a donation of books. The detail business having been disposed of, the meeting adjourned.

POLICE SURVEILLANCE.—The director of convict prisons for Ireland, in his report for last year, remarks upon the frequency with which returned convicts escape with lighter sentences than those contemplated under the "Prevention of Crimes Act," owing in many instances to the fact that their former convictions are not included in their indictments. It does not appear that the Act referred to left any discretionary power as to including or not including former convictions in the indictments. The fact that the judge, in the case of former convictions being proved, cannot order a less sentence than seven years, appears to show conclusively that former convictions duly notified should be invariably included in the indictments. The report also calls attention to the rare cases in which police supervision is ordered; so far as his experience goes, placing a prisoner under police supervision has a deterrent effect, only less than that of lengthened terms of imprisonment or penal servitude. It has the advantage of being almost costless, and is probably a very great assistance to the police in pointing out to them suspicious characters hitherto strangers to the place. The only objection urged against police supervision, that it sometimes interferes with the endeavours of discharged prisoners to obtain employment, is of secondary importance to the protection of the public, which should be the first consideration; and it should also be borne in mind that a first conviction cannot entail police supervision, which can only be ordered after a previous conviction for felony. Moreover, police supervision is, so far as the director can judge, an assistance to the discharged prisoner anxious to lead an honest life.

THE LAND TRANSFER BILL.—The Lords have very sensibly decided not to send the Land Transfer Bill into a Select Committee. To refer Bills for legal improvements to a Select Committee is generally to dig their grave; and while in Opposition Lord Cairns always dug a grave for every Bill he did not wish passed, and quietly and quickly covered it up, and allowed it to be heard of no more. But when Lord Romilly proposed to treat in the same way Lord Cairns's own Bills, the Chancellor stated insuperable objections to such a course. The Law Lords are wanted to hear appeals, and if the appeals are to be heard they cannot attend Select Committees. So that either suitors are punished for the legislative activity of the Government, or the Committee adjourns its sitting until the Session is lost. Lord Selborne, too, pointed out that the Peers, by shirking all discussions in public, deprive the public of a great benefit, as, if such a Bill as the Land Transfer Bill is debated publicly, those who are practically interested in the questions raised have it brought to their notice what the Bill really means, and what it will or will not do for them. Landowners will always leave the details of dealings with their estates to their solicitors; but if they are men of any intelligence, they must wish to understand the general outlines of the system which Lord Cairns proposes to establish, and a debate sustained by Peers notoriously qualified to take part in it would afford the best of all possible popular explanations of the new measure.—*Saturday Review.*

"COURSING" RABBITS.—The Court of Queen's Bench, Westminster, has just decided a point of some importance to sportsmen, and of still more importance to hares and rabbits. They have had to put a judicial construction on the meaning of the word "baiting," in the Act for the more effectual prevention of cruelty to animals, and they have held that it does not include such a form of "sport" as that in question in the case of Pitts *v.* Mellor. The defendant in this case had been charged with encouraging, aiding, and assisting at the sport of hunting rabbits with dogs in a field walled round, so as to make it impossible for the animals to escape. The rabbits were taken separately, and held up before the dogs (which were in slips), and sixty yards in front of them; they were then set loose and the dogs unslipped. This practice the magistrates had held to be within the prohibition of that clause of the Act which forbids the "fighting or baiting any bull, bear, badger, dog, or other animal, whether of domestic or wild nature," and had convicted the defendant, who thereupon appealed. In the Queen's Bench it was urged on his behalf that the sport was not "baiting" within the meaning of the Act. The counsel for the defendant compared it to coursing, but the court pointed out that it differed from coursing in the respect that in the latter sport the hare had a chance for escape, and frequently did escape, whereas in this case it was not so. In the result, however, the court decided that the chase of rabbits or hares in this way could not be said to be baiting, "which implied that the animal was tied or fastened," and the conviction was quashed accordingly. Our judges are generally content with merely deciding what a prohibited practice is *not*, and do not usually commit themselves to a precise definition of what it is. In this case, however, they have departed from their customary rule, and the results might be not a little startling if some ingenious person were to attempt to revive bull or bear beating in closed spaces, with free animals and a sufficient supply of dogs.

NEW LAND BILL.—A bill bearing the names of Sir John Gray, Mr. P. Martin, Mr. Meldon, and Mr. O'Sullivan proposes to amend the Landlord and Tenant (Ireland) Act, 1870, with a view to facilitate the acquisition of property in land in fee and in fee-farm by tenants in Ireland.

Digitized by Google

REVIEW.

Supplement to Thom's Irish Almanac and Official Directory of the United Kingdom for 1874 (20th March, 1874).

Mr. Thom's Irish Almanac has already earned the enviable position of being the acknowledged authority on every question of general importance, relating to Ireland in particular, and the United Kingdom in general, including statistics, emigration, poor law, commerce, manufactures, charities, lists of members and positions of the professions of the Church, Law, the Army, and Medicine, as well as a Peerage and Parliamentary Roll. So that we wonder why it should any longer be called an Irish Almanac merely, since it contains more information concerning the United Kingdom than any other volume, and as such is quoted continually from the Bench and in the Houses of Parliament.

The present supplement is rendered especially useful by the fact of the Parliament having been dissolved, and the consequent change of ministry having occurred, since the beginning of the year; and the reader will find every change thus produced in the *personnel* of the Parliament, the Government, and the Executive, accurately noted in the supplement which the publisher, in the most public-spirited manner, supplies, we believe, gratuitously to the purchasers of the original volume—although it is certain that very many would, for its inherent value, have been ready to pay a large price for it, since it cannot be dispensed with.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, *53, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

TO THE EDITOR IRISH LAW TIMES.

SIR,—One of the readers of your valuable and widely circulated paper may, perhaps, have the goodness to give the answers to the following questions on "Common Law," given at the last Final Examination to Apprentices, and oblige,

Yours obediently,
"LAW CLERK."

1. In what cases, if any, will the court allow judgment to be entered *nunc pro tunc?*

2. State the time within which plaintiff shall proceed to trial, the proceedings to be taken by defendant when plaintiff is in default, the nature and effect of the order obtained.

3. Enumerate the cases which can be tried in the Consolidated Nisi Prius Court.

4. Name the actions which may be remitted to the Civil Bill Court, the time within which application should be made, and the proceedings necessary to be taken.

ANSWER.

Our correspondent will find the answers to the above questions in the following sections of the Common Law Procedure Acts, 1853, 1856, 1870:—

Q. 1.—C. L. P. A. 1853, § 155, and notes thereto in "Bewley and Naish," pp. 180, 181.

Q. 2.—C. L. P. A., 1853, § 106, and notes thereto, B. & N., pp. 115, 116.

Q. 3.—C. L. P. A., 1853, § 257, and General Order, 18th January, 1862, B. & N., pp. 255 and lxx.

Q. 4.—C. L. P. A., 1870, §§ 5, 6, and notes thereto, in B. & N., pp. 370–374.

LAW STUDENTS' JOURNAL.

THE FINAL AND SESSIONAL EXAMINATIONS.

In answer to several correspondents, who have written to us on the subject, we beg to state that we shall recommence our practice of publishing the "Answers" to the questions in Law and Practice, given at the Final and Sessional Examinations of the Incorporated Law Society, in our next issue.—[ED. I. L. T. & S. J.]

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, May 4th, 1874, when the following subject will be debated:—

"That manhood suffrage, coupled with additional votes for additional qualifications (*e.g.*, property and education), is the best form of political franchise."

SPEAKERS:

Affir.	*Neg.*
Mr. J. G. M'Cullagh.	Mr. M. Mathews.
Mr. J. B. M'Hugh.	Mr. H. Perry.

The Chair will be taken at Eight o'clock by Alexander S. Orr, Esq., Barrister-at-Law.

All Meetings open to ladies and gentlemen.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

MICHAELMAS TERM, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination, must lodge their Papers *on or before the first day of next Trinity Term.*

By Order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin,

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 18th and 19th days of May, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Saturday, 2nd May, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place on Wednesday and Thursday, the 20th and 21st days of May, 1874, *at the same hour.*

By Order of the Council,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Thursday, the 28th of May, 1874, at Three o'clock, p.m.

Digitized by Google

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

MANDAMUS—INSPECTION OF REGISTER—MOTIVE OF APPLICANT—SOLICITOR OF OPPOSING LITIGANTS.—Defendants were incorporated under Acts of Parliament, which provided, amongst other things, for inspection by the shareholders of the company's books and documents. A shareholder of nine years' standing was solicitor to a waterworks company, who had obtained a decree in Chancery against the defendants, and it was under consideration whether the defendants should appeal. This shareholder applied to the defendants' secretary, without stating his object, for inspection of the register of shareholders, and was refused. Upon a rule for *mandamus* by the shareholder to obtain this inspection, the defendants' secretary stated on affidavit, and it was not contradicted, that the prosecutor made his application for inspection in the interests of his clients, and not for any purpose or in the interest of the defendants or of any member of the company as such; that his object was to canvass the shareholders and endeavour to persuade them to oppose the said appeal. Held, by Blackburn and Archibald, J.J. (Quain J. *dissentiente*) that this was not sufficient reason for discharging the rule: (*Reg.* v. *Wilts and Berks Canal Navigation,* 29 L. T. Rep. N. S. 922. Q.B.)

RATING OF RAILWAYS—BRANCH RAILWAYS.—The appellants, a railway company, were owners of a branch line connecting their main line with three other main lines. If the branch were in the market, either of the three companies which owned these three other main lines would, in consequence of the traffic which it would bring to their line, be willing to acquire it upon the same terms in every respect as those upon which the appellants held it; if so acquired by either of such other companies, they would work it in a similar manner to that in which it was worked by the appellants, and, under such circumstances, the traffic upon it would not produce a higher rateable value, calculated upon the mileage principle in respect to the traffic of the branch only, than what it produced to the appellants. Held that, in assessing the part of the branch line within the respondents' parish, this circumstance must be taken into consideration in estimating the rateable value: (*Reg.* v. *The London and North Western Railway Company,* 29, L. T. Rep. N. S. 910. Q.B.)

HIGHWAY—DEDICATION TO THE PUBLIC—NEW STREET—METROPOLITAN LOCAL MANAGEMENT.—Respondent had leased land for building purposes, and the road between the houses he had built was, before 1863, used for sawpits and building materials. Since then footways on each side had been made by the appellants' vestry, and paid for by the lessees or owners of the houses. A barrier had been kept by the respondent across part of the carriage way and the remainder could be closed by a folding bar. Respondent had occasionally prevented the passage of vehicles, and had once recovered damages for trespass along this road. The freeholders also had given public notice that they objected to this road being used as a thoroughfare. The appellants, without notice to the respondent, resolved to pave, and paved this carriage way, and summoned respondent for his proportion of the expenses of a new street, under the Metropolis Management Act 1855, s. 105. The justices decided that this road had not been dedicated to the public, that it was not a new street within that section, and that respondent could be liable only if the appellants had proceeded under sect. 106. Held, on a case stated, that upon these facts the finding of the justices was conclusive as to the dedication of the road to the public; but that sect. 105 relates to the paving or forming new streets, as may be deemed expedient by the vestry, whether highways or not; that sect. 106 relates only to the repair of streets, not being highways, which have not been paved by the vestry; and that, therefore, the appellants had here proceeded rightly under sect. 105, and were entitled to recover: (*St. Mary, Islington* v. *Barrett,* 30 L. T. Rep. N. S. 11. Q. B.)

DEBTORS' SUMMONS—NON-PAYMENT UNDER—PETITION DISMISSED BY CONSENT—FRAUD—SECOND PETITION—THE BANKRUPTCY RULES, R. 39.—Prior to the hearing of a bankruptcy petition an arrangement was entered into between the petitioning creditor and the debtor, by which the petition was dismissed as for want of prosecution in consideration of the debtor having promised to give security for the debt. The debtor having failed to give the agreed security, the creditor, by leave of the Court, presented a second petition based upon the same act of bankruptcy. It being objected on behalf of the debtor that the act of bankruptcy had been purged by the dismissal of the first petition. Held, that the petitioning creditor was, under the circumstances, entitled to present the second petition: (*Ex-parte Love, re Jagger,* 30 L. T. Rep. N. S. 71. Bank.)

DAMAGES—ASSESSMENT—APPEAL AS TO QUANTUM.—The Court of Appeal will not entertain an appeal from an order of the Court below assessing damages, unless it is shown that the Court below has acted on a wrong principle in assessing the quantum of damages: (*Ball* v. *Ray,* 30 L. T. Rep. N. S. 1. Chan.)

ADMINISTRATION—ADMINISTRATOR BANKRUPT AND OUT OF THE COUNTRY—REVOCATION OF GRANT REFUSED.—An administrator became bankrupt, and in his capacity as administrator proved for a debt owing by him to the deceased's estate, a dividend became payable to the deceased's estate, but in the meantime the administrator became bankrupt again, and left the country. The court refused to recall the letters of administration granted to him, and to make a fresh grant to his creditors' assignee: (*In the goods of Hammond,* 30 L. T. Rep. N. S. 76. Prob.)

SHARES—TRANSFER—LIABILITY TO FUTURE CALLS—RIGHT OF TRANSFEREE TO INDEMNITY.—Plaintiff, the holder of a number of shares (not fully paid up) in a joint stock company, sold twenty of them to the defendant in Dec., 1865, the transfer to the defendant being duly executed and registered; and in March, 1866, the defendant transferred these shares to one M., in whose name they were at the same time registered. In April, 1866, the company stopped payment, and in May, 1866, an order for compulsorily winding it up was made. In July, 1866, an A. list of contributories (*i.e.,* of actually existing members) was made out on which M. was placed in respect of the twenty shares; and in October of the same year M. executed a deed of inspectorship under the 192nd section of the Bankruptcy Act, 1861, and the liquidator proved under the deed for the amount of the calls, but nothing was paid. The A. list of contributories being unable to satisfy the contributions required, a B. list of contributories was made out, consisting of persons who had not ceased to be members for a period of one year or upwards prior to the commencement of the winding-up, and both plaintiff and defendant were placed on this list. In December, 1867, defendant executed a deed of inspectorship under the 192nd section of the Bankruptcy Act, 1861. In March, 1869, a call was made on the defendant of £40 per share, and the liquidator proved against his estate, but nothing was paid. By a compromise with the liquidator, which was sanctioned by the Court, the plaintiff paid the official liquidator £15 per share, and now brought an action against the defendant to recover the amount so paid. Held (affirming the judgment of the Court of Queen's Bench), that the defendant was bound to indemnify the plaintiff against all calls in respect of the twenty shares made after the transfer of them by the plaintiff to the defendant, and that the inspectorship deed executed by the defendant was no defence to the action, as the plaintiff could not have proved under it: (*Kellock* v. *Enthoven,* 30 L. T. Rep. N. S. 68. Ex. Ch.)

WINDING-UP UNREGISTERED ASSOCIATION—PRACTICE.—In reply to a circular issued by M. and D., setting forth a project for acquiring and remodelling a theatre at the cost of £12,000, with the intention of selling it to a company, to be formed for the purpose, for £40,000, which would enable a return to be made of £300 for every £100 subscribed, several persons, exceeding seven in number subscribed to the project. Held (affirming the decision of Bacon, V.C.) that the subscribers were partners, and that the partnership, as it consisted of more than seven members, could be wound-up under the 199th section of the Companies' Act 1862: (*Re the Royal Victoria Palace Theatre Company,* 30 L. T. Rep. N. S. 3. L.JJ.)

Digitized by Google

RAILWAY—LANDS CLAUSES ACT.—A vendor's costs under the 80th section of the Lands Clauses Consolidation Act are not payable out of a fund paid into court by the promoters of an undertaking under the 85th section of the Act. Decision of Bacon, V.C., reversed: (*The Neath and Brecon Railway Company*, 30 L. T. Rep. N. S. 3. L.JJ.)

DEBTOR'S SUMMONS—DEBT COVERED BY GARNISHEE ORDERS—ACT OF BANKRUPTCY—BANKRUPTCY ACT 1869, s. 6, SUB-SECT. 6 AND SECT. 7.—The words in the 6th subsection of the 6th section of the Bankruptcy Act 1869, which render neglect to "secure or compound for" a debt exceeding £50, for which a debtor's summons has been served, an act of bankruptcy, mean to secure or compound for it to the satisfaction of the creditor. An adjudication of bankruptcy, founded on neglect to comply with a debtor's summons issued in respect of a debt exceeding £50 is valid, although the creditor has obtained garnishee orders to an amount exceeding his debt: (*Ex parte Tupper; re Tupper*, 30 L. T Rep. N. S. 102. Chan.)

LIBEL — PARLIAMENTARY ELECTION — AGENTS OF THE RIVAL CANDIDATES.—On the 17th Sept., a few days before a Parliamentary election for the borough of D., the defendant Hare, as agent for B., one of the candidates, came to an arrangement with a Mr. Hall, the agent of F., the other candidate, that the election should be conducted on principles of purity, and that no bribery should be permitted on either side during the election. On the morning of the polling day, the 22nd Sept., the defendant Hare being informed by a man called Fraser, who stated that he was a voter, that the plaintiffs, who were members of F.'s committee, had offered him money if he would vote for F., wrote to Hall telling him that some bribery on the part of some members of F.'s committee had been discovered, and at an interview which immediately took place between Hall and Hare, the names of the plaintiffs, as the persons charged with the bribery, were mentioned by Hare to Hall. The election resulted in favour of B., and on the following day, the 23rd Sept., Hare called on Hall, at the latter's request, and it was then arranged between them that if a certificate, affirming the fact of the bribery, and signed by Hare, and the other defendant Hilliard (the chairman of B.'s committee(, were sent to Hall, the latter would recommend the plaintiffs to tender an apology to B.'s committee, and to retire from public life for two years, in consideration of which no prosecution against them for bribery should be instituted. Thereupon the following document was, on the following day, the 24th Sept., drawn up by Hare, and was signed by him and the other defendant Hilliard :—" We certify that we have discovered that Mr. D. and Mr. R., two prominent members of Mr. F.'s committee, have been personally guilty of offering £1 10s. to a voter for his vote, and £1 10s. for every vote he could procure for Mr. F. The elector referrred to has been personally examined by one of us, and the evidence he will give on oath is clear and distinct." This certificate, together with a form of apology for the plaintiff to sign, was then sent by Hare to Hall, by whom it was handed to the chairman of F.'s committee, who communicated it to the plaintiffs. The plain iffs denied the truth of the charge, refused to sign the apology, and brought these actions respectively against the defendants for the libel contained in the above certificate, and it was Held by the Court of Exchequer (Kelly, C.B., and Pigott and Pollock, B.B.) refusing a new trial on the ground of misdirection), that the certificate in question was not a privileged communication ; and that there was nothing in the character or position of Hall, or of either of the defendants, which clothed the document with a privilege such as that which existed in the cases of *Harrison* v. *Bush* (5 E. & B. 344 ; 25 L. J. 28, Q. B.) ; *Beatson* v. *Skene* (2 L. T. Rep. N. S. 378 ; 27 L. J. 430, Ex.; 5 H. & N. 838; *Whiteley* v. *Adams* (9 L. T. Rep. N. S. 483 ; 5 C. B. N. S., 392 ; 33 L. J. 89, C. B.), and other cases of that character, and which the law has established for the general benefit of the public. *Quære*, whether, if a petition had been filed, or contemplated against B.'s return, the twenty-one days during which it might be filed under the Act. not having expired, the libel would have been privileged. Per Pollock, B.- The parties cannot, by their own acts, constitute circumstances which shall give them any right to privilege in a matter of libel which they do not possess according to natural, social, or legal position in which they stand with regard to each other; and the mere fact of a person having an interest in the conduct of people around him, is not of itself alone sufficient to clothe with privilege any communication, with regard to the conduct of such people, which he may make to them or others. At the trial, the following evidence, tendered on the part of the defendants, was rejected by the learned judge as inadmissible, viz: 1. The evidence of the defendant Hilliard as to what was said to him by his co-defendant Hare on the occasion of the certificate being drawn up by Hare and signed by both the defendants. 2. A letter of the 17th Sept. from Hall to Hare, embodying the terms of the arrangement between them as to the mode of conducting the election. 3. A letter written to the defendant Hare by a third person, who had been in communication with the plaintiffs, in which letter it was suggested, on the part of the defendants, that the writer mentioned that the defendants had admitted the truth of the charge. Held, *per totam curiam* (refusing a rule for a new trial on the ground of the improper rejection of evidence), that the evidence was inadmissible and irrelevant, and was therefore rightly rejected: (*Dickeson* v. *Hilliard and Hare*; *Robinson* v. *The Same*, 30 L. T. Rep. N. S. 197. Ex.)

PROOF ON BILLS—PRODUCTION OF—PRACTICE.—A creditor who seeks to prove upon bills of exchange or promissory notes must, on tendering his proof, exhibit his securities in like manner as under the old law, which in this respect is not altered by the late Act: (*Ex parte Jacobs; Re Carter*, 30 L. T. Rep. N. S. 133. Bank.

PARTNERSHIP — BANKRUPTCY — JOINT AND SEPARATE ESTATE—DECEASED PARTNERS—RIGHTS OF CREDITORS.—By a partnership deed it was stipulated that in case of the death of any partner, the partnership should not be dissolved, but that the surviving partners should carry on the business, and that the share of the deceased partner should be ascertained, and the payment thereof secured to his representatives in manner therein provided. The firm consisted of four partners, two of whom died during the partnership, and first the three and afterwards the two surviving partners continued the business for a few months. The latter then filed a petition for liquidation. At the date of the petition the shares of the deceased partners had not been paid or secured to their representatives. There had been no stock taking, but a great part of the stock-in-trade, consisting of machinery, which was in existence when the partnership was first constituted, still remained in specie; part, however, had been disposed of, and replaced by the three, and other part by the two partners. Held, that the creditors of the four were not entitled as against the creditors of the three and of the two to have the proceeds of such portion of the machinery as could be distinguished as having existed when the partnership was first constituted, and which still remained in specie, applied in satisfaction of their claims in priority to the claims of all the other creditors: *Ex parte Furness; Re Simpson and Co.*, 30 L. T. Rep. N. S. 134. Bank.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—B. Sheehy, confirm sale.—Assignees Bayley, allocation.—J. Flanagan, do.—H. Grier, do.—G. H. Pentland, do.—T. Murray, to vary order.—J. Green, proposal.

IN COURT.—J. A. Gandon, judgment.—M. St. John and another, to appoint trustee.—Trustee Smith, payment.—Devisees Donnellan, tenants' objection.—H. M'Ternan, to make order absolute —C. Langdale, from 30th.—A. H. Wood, ditto.

Before EXAMINER (Mr. Dobbs).

T. Bell and another, preference.—Tracy and Nagle, rental.—C. Wilson, ditto.

Digitized by Google

TUESDAY.

IN CHAMBER.—E. Moore, confirm sale.—W. Turquand, do.—Church Commissioners (Armagh), ditto.

IN COURT.—M. Corven, final schedule.—M. Cahill, do.—Assignees Gamble, do.—Rev. R. Graves, do.—J. Hazleton, ditto.

EXAMINER.

E. and M. Byrne, proofs.—R. C. Henry, ditto.

WEDNESDAY.

IN CHAMBER.—D. Daly, proposal.—T. Murray, allocation.

IN COURT.—Rev. H. Stepney, final schedule.—T. S. Eyre, from 29th.—W. Bagnall, payment.

Before EXAMINER (Mr. M'Donnell).

Right Hon. F. French, rental.—J. E. Redmond, do.—E. R. Mahony, ditto.

Before EXAMINER (Mr. Dobbs).

J. T. Bagot, rental.—Trustee Curran, proofs.

THURSDAY.

IN CHAMBER.—Motions of course.

IN COURT.—Rev. S. Raymond, final schedule.

SATURDAY.

SALES AT 12 O'CLOCK.

W. DOOLEY.—1 lot.
EXECUTOR MULLINS.—1 lot.
A. M. FAWCETT.—1 lot.
GRACE NIDDRIE.—2 lots.
R. KING.—2 lots.
A. WARNOCK.—2 lots.
W. HAGUE.—2 lots.
L. READ.—3 lots.
TRUSTEE MOORE.—3 lots.
N. HONE.—3 lots.

LANDED ESTATES' COURT.

SALES

April 24.—Before the Hon. JUDGE FLANAGAN.

COUNTY WEXFORD.—The estate of M. Wilson Knox, owner; James B. Ball, petitioner; and in the matter of the estate of Charles A. Von Steiglitz, trustee on behalf of Elizabeth M. Knox, owner; Charles H. Chaytor, petitioner. Part of the lands of Kilmanogue, containing 705a. 2r. 15p.; yearly rent, £1,152 10s. Sold to Mr. Samuel Barrett, for £20,650. Solicitor, *W. C. Cunningham.*

CITY OF DUBLIN.—The estate of Sir James W. King, Bart., and others, owners; Rev. William King, petitioner.

Lot 2.—Houses and premises, 59, Dame-street, and Nos. 1 and 2, Eustace-street, held under lease for lives renewable for ever; net yearly rent, £78 3s. 1d. Sold to Mr. Charles Bennett, for £1,270.

Lot 3.—Houses and premises, Nos. 23 and 24, North Great George's-street, held under lease for lives renewable for ever; net yearly rent, £59 0s. 6d. Sold to Mr. Richard Samuels, for £385. Solicitors, *Williamson and Hobson.*

COUNTY OF MAYO.—The estate of William M'Cormick, owner; Hon. and Rev. A. Compton and William Dickens, petitioners.

Lot 1.—The lands of Tonregee East and West, containing 1,327a. 2r. 11p.; net yearly rent, £269 8s., held in fee-farm. Sold to Mr. C. S. S. Dickens, for £2,800.

Lot 2.—The lands of Bolinglana, &c., containing 6,896a. 0r. 26p.; net yearly rent, £800 9s. 9d.; held in fee-farm. Sold to same, for £5,400.

Lot 3.—Premises in and adjoining the town of Newport, containing 32a. 0r. 16p.; held in fee-farm; net yearly rent, £37 18s. 6d. Sold to same, for £570.

COUNTY DUBLIN.

Lot 4.—Three dwelling houses, in Park-place, Conyngham-road, held in fee-farm; net profit rent, £100 8s. Sold to Mr. Samuel Davis, for £1,375.

Lot 5.—Part of Long Meadows, Island Bridge, with cottages and premises thereon, held under fee-farm; net profit rent, £276 14s. Sold to Mr. Henry Charles Harrison, for £1,850. Solicitors, *Byrne, Kennedy, and Co.*

COUNTY OF DUBLIN.—The estate of Alfred Sothern, owner; Charles Copeland, petitioner.

Lot 1.—Part of the Commons, Bray, held in fee; yearly value, £3 10s. Sold to Mr. John Fayle, for £30.

Lot 2.—Part of said Commons, yearly value, £3 10s. Sold to same, for £30.

Lot 3.—Part of said Commons, yearly value, £5. Sold to same, for £30.

Lot 4.—Part of said Commons, yearly value, £10. Sold to same, for £50.

Lot 5.—Part of said Commons, yearly value, £10. Sold to same, for £60. Solicitors, *Orpen, Sons, and Sweeny.*

CITY OF DUBLIN.—The estate of Lewis Heinekey, as Trustee, owner; *ex parte* said Lewis Heinekey, petitioner.

Lot 1.—An undivided moiety of plot of ground in Capel-street, on which houses from Nos. 78 to 84 inclusive are erected, held under leases renewable for ever; yearly moiety of rent £62 8s. 5d. Sold to Mr. J. D. Rosenthal, for £315.

Lot 2.—Undivided moiety of plot of ground in Lower Mount-street, on which houses Nos. 29 and 30 are erected; yearly moiety of rent £46 7s. 8d. Sold to Mr. Wm. Johnston, for £285. Solicitor, *Samuel Hughes.*

CITY AND COUNTY OF DUBLIN.—The estate of Mary Fitzsimons, administratrix of Joseph Plunkett, deceased, owner and petitioner.

Lot 1.—House and premises, 30, Lower Pembroke-street, held under lease from 1840 for 93 years; estimated yearly profit rent, £34. Sold to Mr. James Prendergast, for £600.

Lot 2.—Houses and premises in Frankfort-avenue, Rathgar, held under lease for 200 years. Sale adjourned.

Lot 3.—House and premises, No. 5, Rostrevor-terrace, Clontarf, held under lease from 1861 for 150 years; yearly profit rent, £42 4s. 6d. Sold to Mr. Harrison, for £390. Solicitors, *Thomas W. and J. Lawler.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Connor	Vouch account	*Cronhelm & Co.*
Philip L. Lyster	Prove debts and vouch	*Perry & Co.*
James Meglaughlin	Settle report	*Meldon & Sons*
William J. Lister	do	*Meldon & Sons*

TUESDAY.

Before the COURT, at 11 o'clock.

Charles Dowler	1st composition sitting	*Oldham & Eaton*
Same matter	Final examination	*Browning*
Stephen Rickard	do	*Findlater & Co.*
Catherine Holland	do	*Neilson*
John Delius Burns	do	*Molloy & Watson*
Walter Fitzsimons	do	*Lawler*
John Neil	Prove charge	*Fay & M'Gough*
Patrick Neil	Charge & discharge	*Perry & Co.*, charge; *Benner & Bloomfield*, discharge
William Anderson	Audit mortgagee's act.	*Fay & M'Gough*
Andrew Rogers	do	*Mathews*
C. and P. Maguire	Audit and dividend	*Larkin & Co.*

Digitized by Google

Before the CHIEF REGISTRAR, at 12 o'clock.

Alexander Davison	Vouch account	*Leachman*
Same matter	Prove debts	*Leachman*
Same matter	Costs	*Leachman*
Arthur Noble	do	*Rosenthal*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

William Holmes	Prove debts and vouch	*Mathews*
Walter O'Donnell	do	*Oldham & Eaton*

FRIDAY.

Before the COURT, at 11 o'clock.

Bridget Walsh	1st composition sitting	*Mathews*
Catherine Holland	do	*Neilson*
Joseph M'Kee	do	*Benner*
Same matter	1st public sitting	*Leachman*
James Fortune	do	*Lett*
Lewis V. Martin	do	*Lynch*
William Foxall	do	*Oldham & Eaton*
John Deegan	Final examination	*Roe*
G. & R. Ferguson	do	*Larkin & Co.*
Daniel Cullen, jun.	do	*Larkin & Co.*
Maurice Cassidy	Motion	*Casey & Clay*
John O'Brien	Audit and dividend	*Perry & Co.*
Arthur Noble	do	*Rosenthal*

Before the CHIEF REGISTRAR, at 12 o'clock.

O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Curtis, Thomas Joseph, Donegal-street, Belfast, hotel-keeper. Sittings, *Friday, May* 15, and *Tuesday, June* 2. *M'Coombe and Todd*, solrs.

Leahy, Mary, Ballinasloe, Galway, widow, grocer. Sittings, *Tuesday, May* 19, and *Friday, June* 5. *Molloy and Watson*, solrs.

Morrow, Thomas, Trillick, Tyrone, grocer. Sittings, *Tuesday, May* 19, and *Friday, June* 5. *Larkin and Co.*, solrs.

Warnock, Robert, Gransha, Down, farmer. Sittings, *Friday, May* 15, and *Tuesday, June* 2. *Cronhelm, Son, and Tobias*, solrs.

DIVIDENDS IN BANKRUPTCY.

Flynn, Patrick, Ballybricken, Waterford, grocer and publican. 1st and final dividend 4d. in the £. L. H. Deering, official assignee. *Maxwell & Weldon*, solrs.

Moylan, Patrick, Nenagh, Tipperary, dealer in wool, groceries, and provisions. 1st and final dividend 4s. 5½d. in the £. L. H. Deering, official assignee. *Stone*, solr.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

HUGGARD—April 29, at Selskar, Wexford, the wife of Martin Huggard, Esq., solicitor, of a son.

MARRIAGE.

O'CARROLL and THOMPSON—April 29, at St. Andrew's Westland-row, by the Rev. Dr. Crolly, St. Patrick's Maynooth, Frederick John O'Carroll, Esq., barrister-at-law, only son of Frederick Francis O'Carroll, Esq., Avondale, Blackrock, to Maggie, youngest daughter of William Thompson, Esq., Clare Hall, Raheny.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	APRIL Fri 24	Sat. 25	Mon. 27	Tues. 28	Wed. 29	Thur 30
	Government.						
—	3 p c Consols	—	—	—	91⅝¾	91⅝¾	91⅞
—	3 p c Reduced	—	—	—	—	90⅝¾	—
—	New 3 p c Stock	90⅝¾	90⅞	90⅝¾	90⅝¾	90⅞	90⅝¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trafble. at	107½	—	—	—	107	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	101⅞	—	101⅞	101⅞–2
	Banks.						
100	Bank of Ireland	305½–6	306	306¼	306⅜	306⅜	306¼
25	*Hibernian Banking Co.*	58⅝¾	58⅞	58⅞	59⅛	59	58⅞
20	*London and County*	—	—	—	—	—	—
15	*London Joint Stock*	—	—	—	—	19¼	19⅜
20	*London and Westminster*	70⅝¾	—	—	70⅝	—	—
3½	*Munster Bank (Limited)*	—	—	—	3⅞	—	—
30	*National Bank*	59	59⅛	59⅛	59⅛	59⅛¼	59⅛¼
15	*National of Liverp'l (Litd)*	—	—	—	—	14⅛¼	—
25	*Provincial Bank*	94⅛	94⅛	—	—	—	—
10	Do. New	—	—	—	—	—	28⅞–9
10	*Royal Bank*	28⅞	—	28⅞–9	—	28⅞	—
2½	*Ulster Banking Co.*	—	—	—	—	—	—
15	*Union of London*	—	—	—	—	—	—
	Steam.						
50	British & Irish	51	—	51	—	—	—
50	Dublin and Glasgow	—	—	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	56	—	—	—	—	—
10	Dundalk (Limited)	—	—	—	—	—	7⅝
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	—	2/6
7	*Cape Copper M. Co. (lit'd)*	—	—	—	—	—	—
1	Killaloe Slate Co. (lit'd)	—	—	15/	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	4⅞ 5	4⅞ 5
2½	Wicklow Copper	—	—	—	3	—	3 ⅛
	Miscellaneous.						
	Alliance & Dub. Cons.' Gas	8⅞	—	—	8⅞	—	—
9½	*Dublin Tramways*	—	—	—	7⅝	—	—
7½	*M'Swiney & Co., limited*	—	—	7⅝	—	—	—
9-4-7	*Patriotic Assurance*	—	—	—	—	—	10⅝
	Railways.						
10	Athenry and Tuam	3⅞	—	—	-	—	--
50	Belfast and Northern Cos.	—	66⅝¾	—	66½	67	—
100	Dublin and Belfast Junct.	87½	—	88	—	—	—
100	Dublin and Drogheda	—	—	—	—	—	—
100	Dublin and Kingstown	—	—	—	—	—	—
100	Dublin, W'klow, & W'ford	—	—	—	73⅝	—	—
100	Gt. Southern and Western	107⅛	—	108	108⅛	108½	108⅞–9
100	Do. do. free of Stamp	—	109½	—	—	—	109⅛
100	Midland Gt. Western	—	81⅝¾	81⅛	81⅛	82	82–1⅞
25	Portdn. Dun. & Omh. Jun.	13⅞	—	—	—	—	—
50	Ulster	—	—	—	—	—	—
12½	Do, Quarters	—	—	—	—	17	—
50	Waterford and Limerick	33⅞	33⅞	—	—	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	53	—	—	—	53⅛	—
50	Do. do. (1865)	—	—	—	—	52⅞	—
100	Gt. South'n & West'n 4 p c	97½	97½	97⅛	97⅛	97⅛	97⅛
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do, B 5 p c	—	—	—	100	100	—
100	Mid. Great Western, 5 p c	—	—	109½	109⅛	—	—
25	Portadown, Dun., &c., 5 p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
—	Do., 4½ p c	96	96	95⅛	—	—	—
50	Do., new red, 1860–72, 5 p c	—	—	—	—	—	49⅛
50	Do., new red, 1873, 5 p c	—	—	49⅛	—	49⅛	49⅛
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
—	Dublin & Drogheda 4 p c	94⅞	94⅞	—	—	—	—
—	D., W., & W., 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	101	—
—	Gt. South'n & West'n, 4 p c	98⅞ f	—	98⅞ f	—	—	--
—	Irish Nth Westn 1st C 5 p c	100	100	—	—	—	100⅛
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	--
—	Do., 4½ p c	102⅞	—	-	102⅞	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	101⅛	101⅛	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 30th April. 1874
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—May 13th and 28th, 1874.
Account Days—May 14th and 29th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price - whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Digitized by Google

PUBLICATIONS:

JUST PUBLISHED, Price 12s., 476 pages, cloth, gilt lettered.

LAND ACT CHAPTERS AND REPORTS,
CONTAINING
DISCUSSIONS ON CONTROVERTED POINTS UNDER THE LAND ACT,
AND
FULL REPORTS OF NEARLY ONE HUNDRED LAND CASES.

BY
ROBERT DONNELL, M.A.,
Barrister-at-Law,
Professor of Political Economy, T.C.D.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.
Sold by all Booksellers.

OPINIONS OF THE PRESS.

"A valuable contribution on an important subject, and well worthy of the author's high reputation as a lawyer and political economist."—*Freeman's Journal.*

"This volume is a perfect hand-book both to the general effect and particular bearings of the law as interpreted by the tribunals, and has been edited with the greatest care, and arranged on so simple and clear a plan that no owner of land can mistake the force of the rulings that have been made, or their relation to his own circumstances in regard to the tenants on his property. We commend Mr. Donnell's treatise to the attention of all holders of property, or tenants with valuable interests, as a perfect key to their legal position, and the privileges, restraints, or remedies attaching to it."—*Dublin Evening Mail.*

"The volume forms a sequel to Mr. Donnell's *Practical Guide to the Land Act*, which, on its publication, became the standard work on the subject, and the two volumes now form a complete text-book on those most difficult points of law, raised in the working of the new Irish land system."—*Irish Law Times.*

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

In the Matter of the Estate of John Thornton, Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 29th day of MAY, 1874, At the Hour of Twelve o'clock noon, Before the Honourable Judge Flanagan, At his Court, Inns'-quay, in the City of Dublin, In Three Lots,

The following Houses and Premises, situate in the City of Dublin:—

LOT 1.

Consists of the House and Premises known as No. 16 Upper Rutland-street, situate in the Parish of St George and County of the City of Dublin, held (with Lots 2 and 3, and other premises) under two leases, dated respectively the 27th of April, 1805, and 2nd December, 1808, for the respective terms of 9,999 years from the 25th of March, 1805, and 999 years from the 29th September, 1808, indemnified from head rent, and producing a profit rent of £36 per annum, as set forth in rental.

Griffith's Valuation of this Lot is £25.

LOT 2.

Consists of the House and Premises known as No. 17 Upper Rutland-street, aforesaid, held (with Lots 1 and 3, and other premises) under said two leases, indemnified from head rent, and producing a profit rent of £36 per annum, as set forth in rental.

Griffith's Valuation of this Lot is also £25.

LOT 3.

Consists of the House and Premises known as No. 18 Upper Rutland-street, aforesaid, held (with Lots 1 and 2, and other premises) under said leases, indemnified from head rent, and producing a profit rent of £36 per annum, as set forth in rental

Griffith's Valuation of this Lot is £23.

Dated this 23rd day of April, 1874.

H. R GREENE, Chief Clerk.

E. MULVIHILL, Solicitor having carriage of Sale, No. 6 North Great George's-street, Dublin.

DESCRIPTIVE PARTICULARS.

The premises are situate in one of the most respectable parts of the City of Dublin, adjacent to Mountjoy-square, and immediately adjoining Charles-street Free Church.

They are in excellent repair, having been built of the best materials. There are coach-houses and stables attached.

The present lettings were made to the tenants at a time when property was much deteriorated in value. The letting value of a similar class of house in the same locality is £45 per annum.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates Court, Four Courts, Inns'-quay, Dublin; to
JOHN THORNTON, Solicitor, Loughrea; or to
E. MULVIHILL, Solicitor having carriage of the Sale, No. 6 North Great George's-street, Dublin, by whom proposals to purchase by private contract all or any of the Lots will be received up to the 10th day of May, 1874, and submitted to the Honourable Judge Flanagan for approval. 414

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MONAGHAN.

SALE.

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of the Estate of John Jackson, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, (If not previously disposed of by private treaty, as mentioned below), By the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Four Courts, Inns'-quay, Dublin, On FRIDAY, the 12th day of JUNE, 1874, At the hour of Twelve o'clock noon, The following valuable Fee-simple Lands, namely:—

LOT 1.

Part of the Lands of Killyleen, in the Barony and County of Monaghan, containing 80a 3r 30p, statute measure, and yielding a net profit rent of £58 11s 10d; Ordnance Valuation, £65 5s.

LOT 2.

Part of the Lands of Kilcreen, in the same barony and county, containing 75a 1r 12p, statute measure, and yielding a net profit rent of £75 2s 8d; Ordnance Valuation, £64.

Dated this 27th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

Lot 1 consists of good tillage and pasture land, and is in the occupation of a prosperous and peaceable tenantry. It adjoins the thriving town of Smithborough (a station on the Ulster Railway line), and is within five miles of Monaghan, where weekly markets and monthly fairs are held.

Lot 2 is close to the village of Ballinode, and within a few miles of Monaghan. The land is of superior quality, and is occupied by a prosperous and peaceable tenantry. Both lots are considerably underlet, the valuation being almost equal to the rental.

Private proposals will be received by the Solicitors having carriage up to the 28th day of May, 1874, and will be submitted to the Judge on the 1st day of June, 1874, at the sitting of the Court, or at the earliest opportunity afterwards, without further notice to any person.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates Court, Four Courts, Inns'-quay, Dublin; or to
Messrs. MEADE and COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 413

IN THE COURT OF BANKRUPTCY, IRELAND.

THOMAS MORROW, of Trillick, in the County of Tyrone, Grocer, was on the 21st day of April, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 19th day of MAY, 1874, and on FRIDAY, the 5th day of JUNE, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

MICHAEL LARKIN & CO., Solicitors, 51 Dame-street, Dublin. 409

STATUTORY NOTICE TO CREDITORS.

In the Matter of William Menary, late of Maghery, in the County of Armagh, Farmer, deceased.

PURSUANT to the Statute 22nd and 23rd Victoria, chapter 35, intituled "An Act to Further Amend the Law of Property and to Relieve Trustees," Notice is hereby given, requiring all persons claiming to be Creditors, or who may have any claims or demands against the Estate and Effects of the said William Menary—who died at Maghery, in the County of Armagh, on or about the 7th day of February, 1874—on or before the 1st day of JULY, 1874, to furnish the particulars (in writing) of their Debts, Claims, or Demands, to ALEXANDER M'COMBE, Solicitor for William Robert Ferris, of Armagh, Merchant, to whom Letters of Administration of all and singular the personal Estate and Effects of the said deceased were granted forth of the Principal Registry of Her Majesty's Court of Probate in Ireland, on the 23rd day of April, 1874. And Notice is hereby given, that after the said 1st day of JULY, 1874, the said Administrator will proceed to distribute the Assets of said deceased amongst the parties entitled thereto, having regard only to those Debts, Claims, or Demands, of which his said Solicitor shall have had notice, as aforesaid.

Dated this 24th day of April, 1874.

ALEXANDER M'COMBE, Solicitor for said Administrator, 4 Dame-street, Dublin; and Armagh. 408

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, May 2, 1874.*

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MAY 9, 1874. No. 380.

THE IRISH JUDICATURE BILL.

THE Lord Chancellor of England, in the House of Lords on Thursday evening, brought forward the Irish Judicature Bill, which the profession has been long and anxiously expecting. This measure is, in its present shape, perfectly revolutionary, and will, if passed, create a much greater change than was expected. Our readers will find a complete report of the Lord Chancellor's speech in another column, containing an ample account of the lines of the measure. We shall, in future articles, criticise the proposals in detail, but now we only feel inclined to call in question the intention of changing the Ultimate Appeal from the House of Lords to the English Supreme Court of Appeal. It is true that our Judges and the profession desire one Court of Appeal for the United Kingdom, but they desire that this Court shall be the old and constitutional one which has given such wonderful satisfaction to litigants and lawyers. Lord Moncrieff, on behalf of Scotland, showed that the Scotch did not desire any other Court of Final Appeal, and consequently they have not been disturbed. We trust that Lord O'Hagan will be able to exert a similar influence on behalf of Ireland. In another point, too, we consider due allowance has not been made to Irish interests, and that is, that in the proposed Court of Final Appeal there are not to be any Irish lawyers necessarily appointed as Judges. In the English Act this was proposed to be done, but the Lord Chancellor of England, an Irishman himself, thinks it would not be desirable to have an Irish element in the Final Court of Appeal, to which Irish cases are to be taken. Truly the profession of this country fared better from the sense of justice of the former and English Lord Chancellor of England. The proposal to leave us our Courts of Intermediate Appeal is undoubtedly good, and we have no hesitation in saying that the new Courts appear to be better arranged in their outline than on the present existing Courts of Appeal in Chancery and Exchequer Chamber. As a reduction of the Common Law Bench appears inevitable, we have only to say that the Common Pleas and Exchequer can better bear reduction than the Queen's Bench. But we are at a loss at present to see how each circuit can be got through by one Judge. It would have been better for the public and the profession to have reduced the circuits to four, and allowed two Judges to each, than to reduce them to five, as is proposed, with only one Judge each. The whole saving expected by the reduction is £14,000 per annum, and this would be dearly bought by creating delay in the administration of justice. The *Times*, in discussing the proposals, says:—"It is notorious that the Irish Bench has long been overmanned—a circumstance mischievous in many ways, but in two especially—first, in impairing the efficiency of Courts not sufficiently employed; and, secondly, in holding out a superfluity of temptations to seek the Bench through the byeways of political partisanship. Lord Cairns fuses all the Irish Courts into one, according to the English precedent of last year, while retaining the names of the old Divisions; and out of the materials thus at his hand he constructs a scheme involving the suppression of four Judgeships and two or three subordinate offices, to be balanced, however, by the creation of one new Judgeship. The pecuniary saving thus effected is estimated at £14,000 a year, though Lord Selborne intimated a doubt whether so much would be realized; but the increase in the efficiency of the new Courts must be valued at much more than the saving in salaries. The Irish Judiciary will be hereafter divided into a High Court and a Court of Appeal, and the latter will consist of the Lord Chancellor, the present Lord Justice in Chancery, and another Lord Justice of Appeal, which is the new office to be created. To these three ordinary members of the Appeal Court will be added, *ex officio*, the Lord Chief Justices of the Divisions of the Queen's Bench and the Exchequer and the Lord Chief Baron. The High Court will consist of five Divisions, the first uniting the present Chancery and Landed Estate Courts, with the suppression of one Judge; the second being the Queen's Bench; the third the Common Pleas and Admiralty, suppressing two Judges; the fourth the Exchequer, suppressing a Baron; and the fifth Probate and Bankruptcy."

RAILWAY LEGISLATION.

A VERY serious and important decision, as affecting the future of Railway Bills for this portion of the United Kingdom, has just been pronounced by the Committee on the Sligo and Leitrim project, and has formed the subject of an animated and important debate in the House of Peers. It appears that Mr. Tottenham and a few other large landed proprietors in the counties of Leitrim and Fermanagh, were anxious to promote a line of railway, running from Enniskillen towards Sligo, and forming a junction with the Midland Great Western near Ballisodare, thus giving a direct communication between the northern and western districts, and opening up a tract of country hitherto unaccommodated with railway communication. Several public meetings were held in Sligo and Leitrim, and the grand juries of both these counties, by majorities, carried resolutions in favour of a guarantee, by which they pledged the rateable property of their respective counties to contribute a rate-in-aid towards securing a certain dividend on the capital expended in the construction of the line.

We believe the first instance in which the practice of guaranteeing a dividend was introduced in this country was, in the year 1849, in the case of the Galway extension of the Midland Great Western Railway. On that occasion the Government advanced a sum of £500,000 to the Commissioners of Public Works, to be advanced by them to the railway company, for the construction of the line from Athlone to Galway, and the repayment was secured by instalments at the rate of six per cent. on the capital advanced, which instalments were payable by certain baronies and by the county of the town of Galway, in certain proportions, to be ascertained by an arbitrator, to be appointed by the Treasury for that purpose. On this subject of the proportions of instalments we cannot avoid referring to the objection of the Marquis of Salisbury, on which he relied as affecting all guarantees, viz., that one valley taversed by a railway should not levy a rate for the support of that railway from another valley totally unaccommodated by it. Had the noble Marquis acquainted himself with the townland boundary system, and the course of legislation

Digitized by Google

hitherto adopted in these matters, he would have found his objection could be easily met. A rate could be struck in such a manner as altogether to exclude the very unlikely contingency of an isolated and unaccommodated valley. By the statute above referred to, it was provided that when the profits of the line would be available they should be applied, in the first place, to the exoneration of the baronies from the rate thus imposed, and, as was anticipated, in the interval between 1849 and 1865 the profits began gradually so to increase that in the latter year an Act was passed exonerating the baronies from the guarantee after the 1st of October, 1870. The beneficial effects produced by this advance of £500,000 on the condition of the people in the central and western districts of Ireland, in the year 1849, are almost incalculable. In that year the horrors of the great famine were at their height, and deaths by starvation were frequent in the more remote districts about to be traversed by the railway. The gigantic project of arterial drainage, in connexion with inland navigation, was then being carried out under the auspices of the Commissioners of Public Works. The costly weirs and gates on the Shannon, through which a vessel never passes, and the cut-stone portals of the capacious locks on the canal between Loughs Corrib and Mask, in which a drop of water cannot be retained sufficient to float a punt, testify to the reckless expenditure of the political economists of the day, who persistently refused to expend the public moneys on works of a reproductive character, in the fear of interfering with private enterprise. The advance of £500,000 to the Midland is the bright exception to the mistaken policy of the Government of the day; and the benefits conferred by that departure from frigid economical principles, to meet and countervail an unprecedented national calamity, ought to teach modern politicians the propriety of sometimes relaxing the purse-strings of the national Treasury to relieve exceptional cases of necessity. But the retrograde movement of the Committee on this Bill (Sligo and Leitrim Bill) is pregnant with most disastrous results if followed up by the Legislature; and, for the sake of the country at large, it is to be hoped that the Peers who spoke against the decision of the Committee will persevere in their agitation for a Bill regulating the manner in which such guarantees are in future to be obtained, and recognizing their validity and effect when conceded. In the meantime it may be expedient to refer to the simple mode in which our transatlantic cousins encourage the construction of railways. When a railway is about to traverse a State, it obtains a charter, empowering it to borrow a certain amount to subsidize its stock. By a general law of the State each county is empowered to subscribe for the stock of the company, and issue its bonds in payment of its subscription. The board of supervisors of the county, who discharge the duties of a permanent grand jury, convene an election to be held by the ratepayers of the district or county, as the case may require, and propose to subscribe a certain amount towards the capital stock of the company, provided the railroad should be constructed in accordance with their suggestions, and frequently without altering the scheme of the promoters. The railway directors then, within a certain time, give notice of the acceptance or rejection of the proposed subscription, and on receipt of this reply, the board of supervisors put upon record a resolution making the subscription binding on the ratepayers, and direct the clerk of the county court, who is the same as our clerk of the peace, to execute and deliver the bonds on behalf of the county. For the protection of the interests of the ratepayers, and to secure the construction of the line in accordance with the conditions on which the subscription was voted, the resolution sometimes provides that the bonds shall only be issued on the written order of a committee, appointed by the ratepayers, to protect the interests of the county, who frequently refuse their assent until the company have made *bona fide* contracts with responsible parties, for the construction of the line, according to the deposited plans. The county thus becomes, in effect, a subscriber to the capital stock of the company. It can be represented by a public officer at a shareholders' meeting. It receives certificates to the extent of its shares, which are transferable at the price of the day, and it can levy a tax off the ratepayers to pay the interest falling due on its bonds. These bonds, with their accompanying coupons, are assignable at law, and can be enforced in the law courts against the subscribing county by a *bona fide* purchaser for value (*the Justices of Clarke County* v. *the Paris, Kentucky River, and Winchester Turnpike Company*, 11 B., Monroe, Kentucky Reports, 143), and such purchaser is not bound to look behind the bonds to see if the necessary conditions, precedents as to votes, resolutions, authority, &c., have been complied with (*Flagg* v. *the City of Palmyra*, 33 Mo., 440, down to *Grand Chute* v. *Winegar*, 15 Wallace, 355). Thus a marketable security of undoubted value is available at once for raising the capital of the company. Each county becomes its own fund-holder, the progress of the line is expedited, and simplicity and economy characterizes the whole proceeding. To a poor country like Ireland, struggling to maintain an expensive system of railway management, that is lying like an incubus on its straitened resources, such a boon would be inestimable, and it is to be hoped that those who are taking an interest in the question will avail themselves of this opportunity of realizing subscriptions, as well as guarantees, from counties about to be benefited by railway extensions.

THE BRIGHT CLAUSES OF THE LAND ACT AND SIR JOHN GRAY'S AMENDMENT.

WE give a summary of Sir John Gray's proposed Bill amending the Land Act, and which, we believe, is under the consideration of the Home Rule Members prior to its introduction into the House of Commons. As we do not wish to trench on the political aspect of any measures proposed to be introduced into the House, we must endeavour to abstain from any comments on the propriety or otherwise of an agitation which may tend to excite vain expectations amongst the tenant-farmers, considering the views entertained and expressed by the party at present in power as to the policy of the Land and Church Acts. But regarding the proposed measure in a legal point of view, we cannot help entertaining the opinion that it can never be accepted by the Government in its present shape. The jurisdiction proposed to be given to the Landed Estates Court would *pro tanto* despoil the owner of his property in cases where he would be the petitioner for sale of an incumbered estate, and no scale of incumbrances is suggested as justifying the usurpation by the Court of such unprecedented powers in the case of an incumbered property about to be sold for payment of creditors. We can scarcely consider it constitutional to vest in any court the power to make such sweeping alterations in the status of the tenancies as to change yearly tenures into fee-farms and long terms exceeding sixty years duration. We cannot anticipate the effect of such a metamorphosis on the price a purchaser would be inclined to give for an estate over which he would have only the control of a rent-charge instead of that of an ordinary proprietor. It is possible that such a conversion of the property might not have a deterrent effect, but we can

Digitized by Google

scarcely be so sanguine as to suppose a property would bring the same price in the market in cases where tenants from year to year would be suddenly elevated into *quasi* proprietors with funds advanced by the Government, subject to a large payment of interest on the advances in priority to the reserved rent thenceforth payable to the purchaser.

THE IRISH JUDICATURE AND APPEAL BILL.

The LORD CHANCELLOR in moving this measure in the House of Lords, on Thursday, said My lords, I don't think any apology will be required of me when I ask your earnest attention for a short time to some subjects which are connected with the administration of the law in this Empire, and which, as connected with that administration, are of the greatest importance. My lords, I refer to the present system of judicature in Scotland and the present system of judicature in Ireland, and to the arrangement which was made by Parliament last year with regard to appeals—to the question how far appeals from Ireland and Scotland should be connected with that legislation.

Your lordships are aware that the system of law is the same in Ireland as in England; and as the system is the same, so also in substance is the arrangement of the courts of judicature the same as that which exists in England. There are in Ireland, as in England, Courts of Equity and Courts of Common Law. There are three Courts of Common Law—the Queen's Bench, the Common Pleas, and the Exchequer. Then, in Chancery there are the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellors. There is a Judge of Admiralty, there is a Judge of Probate, there is the Landed Estates' Court, in which there may be two Judges, though at present there is only one; and there is the Court of Bankruptcy, with two Judges. My lords, following the example set with regard to England last year, I propose to blend the whole of those Courts in one Supreme Court—one High Court—for Ireland, in every branch of which all the jurisdiction now exercised in all the Courts shall be exercisable. I propose that to the extent it was done in the case of England last year, law and equity should be assimilated in Ireland; and I propose that, as in the case of England, the divisional names should be retained. I propose that the Landed Estates' Court should be attached to the Court of Chancery division of the High Court, carrying with it all the powers it now possesses. My lords, in Ireland we propose to maintain what now exists there—an intermediate Court of Appeal. The system of intermediate appeal in Ireland is this—there is an appeal from the Lord Chancellor, sitting alone, to the Lord Chancellor sitting with the Lord Justice of Appeal—an appeal to a Court of two members. From the Common Law Courts an appeal lies to the Exchequer Chamber—that is, an appeal from the Judges of one of the Common Law Courts to the Judges of the other two. I cannot think that either of those modes of appeal is satisfactory. With regard to the appeal in Equity, in coming to a Court which consists of only two members you always risk that the appeal will altogether fail; and with regard to the Court of Exchequer Chamber, that tribunal in Ireland is open to the same objection urged with such force against the Exchequer Chamber in England—that it is fluctuating in its composition and uncertain as to its time of sitting. Then it is a Court in which a set of primary Judges sit in appeal on another set of primary Judges, who again sit in appeal on the first. What I am anxious to do, and what I ask your lordships to assist in doing, is to create a strong, simple, and firm Court of Appeal for all cases coming from the various primary Courts. The mode in which I propose that should be done is this—To have a Court of Appeal, consisting of the Lord Chancellor, the Lord Justice of Appeal, and a second Lord Justice of Appeal, making three Judges of regular attendance, and to have, in addition, as *ex-officio* members, the heads of the three Common Law Courts. I propose that the Court of Appeal should never consist of fewer than three members as a quorum; and that to it should go all cases that may have been decided in any division of the New High Court of Judicature, and that there should also go to it cases of criminal appeal, with this qualification, that in such cases, in addition to the Judges of Appeal, two at least of the Chiefs of the Common Law Courts should sit. We propose, also, that to this Appeal Court should go all appeals in land cases which at present go to a fluctuating and uncertain body of Judges. I have nothing more to say with regard to the Court of Appeal, except that the Lord Chancellor and Lords Justices, if their time should not be fully occupied by appeals, should be qualified to lighten some of the original business in the Court of Chancery by taking some of that business. I shall now refer to the number of the Common Law Judges in Ireland. Of these there are 12—four in each Court—the chief and three puisne Judges. There are in Ireland six circuits, and two Judges go each circuit. Two Judges have also to attend the sittings of the Criminal Court for the city and county of Dublin. We propose to take advantage of the blending and amalgamation of all the Courts for doing that which was done in England last year—for dispensing in future appointments with some of the judicial staff. In this country your lordships and the other House of Parliament were able to reduce the number of the Common Law Judges by three. We propose under the new arrangements in Ireland to have in future five Circuits in place of six, and divide the Assize business among the five, and to require the attendance of only one Judge instead of two to preside at the criminal sittings in Dublin. We propose to leave in the division of the Court of Queen's Bench, where the business is somewhat heavier, because of Crown cases, the Four Judges; but to take one Judge each from the Court of Common Pleas and the Exchequer. As the transfer of the Judge of the Landed Estates Court to the Chancery Division of the High Court will get rid of some complicated business in the two Courts as they exist now, we propose that the Judge who at present so ably conducts the business of the Landed Estates Court should take it in the Chancery division, and that no second Judge should be appointed to that Court. We propose that on the death or the resignation of the present Judge of Admiralty, no new appointment to that office should be made, but the business of his Court be transacted by the Common Pleas division of the High Court. We propose after the tenure of office of the present holder to dispense with an expensive office, and one to which a considerable staff is attached, the office of Receiver Master, and also to dispense with the double office of Accountant-General and Notice Officer of the Landed Estates Court and the Court of Chancery. On the other hand, we propose to make an addition to the judicial staff by the appointment of another Lord Justice of Appeal. I should state to your lordships also, though this is rather a financial question for the other House, that, inasmuch as the puisne Judges in Ireland at present receive a salary of £4,000 Irish, or about £3,700 British, and the Master of the Rolls and the Vice-Chancellor receive £4,000 British, we propose by way of remunerating them for the addition to their duties to increase the salaries of the puisne Judges to £4,000 British. I believe that even after this increase has been set against the reduction, the saving will be about £14,000; but I commend the proposal to your lordships not on that ground. We propose that the measure effecting these objects should come into operation on the 1st of January in next year, and that disposes of all I have to trouble your lordships with on the subject of judicature inside of Ireland.

Your lordships will remember that what Parliament did by the measure of last year was to provide that all appeals from the Courts in England, and that all appeals at present heard by the Judicial Committee of the Privy Council, whether ecclesiastical appeals or other appeals, should be heard, if Her Majesty thought fit, by the Appellate Tribunal created by the Act of last year. The Legislature having prevented any further appeals in these cases either to the Judicial Committee of the Privy Council or to your lordships' House, the question now remains—What shall be done with regard to appeals from Scotland and from Ireland? I should observe that recently there has been a certain amount of discussion and controversy as to the feeling of the people of Scotland and of Ireland on the subject. I do not know that anything has occurred which could enable us to say certainly what is the feeling of those countries at

Digitized by Google

large. But I think we have had considerable indication of the feeling of the professional people in Scotland and Ireland on the subject, and, so far as I can gather it, the professional feeling in Scotland has been, and is at this time, that of contentment with the mode in which the jurisdiction of this House has been exercised. The professional classes in Scotland would be well satisfied if appeals from Scotland continued to be made to your lordships' House. But I think that, at the same time, they have indicated that, assuming that the jurisdiction of this House will be no longer exercised with regard to English appeals, they would prefer Scotch appeals being disposed of by the same tribunal as disposed of English appeals. An official communication was made last year to the Chief Secretary for Ireland, in the month of June, on behalf of the Judges of Ireland who assembled at the time to take into consideration the Supreme Court of Judicature Bill. From that communication it appears that the Irish Judges unanimously resolved—

"That it is of essential importance to the administration of the law that there should be preserved a right of final appeal from the decisions of the Courts in Ireland to the same tribunal as that to which the right of final appeal shall lie from the like decisions of the Courts in England," I will not trouble your lordships more particularly with that resolution, for this reason—I have this morning had a communication with one of the learned Judges in Ireland, who, I understand, was referred to in another place as entertaining a different opinion, and as having suggested that a different opinion was entertained in Ireland by the Judges generally; and he has begged me to state that the Judicial Bench in Ireland adhere to the resolution that I have just read—that whatever opinion they might entertain in favour of continuing appeals to this House, now that English appeals will cease to be made to this House they think it is expedient that Irish appeals should go to the same tribunal as the English appeals. Now, I may say at once that it is upon this principle that Her Majesty's Government propose to act. They propose to supplement the measure of last year by provisions which will carry to the same tribunal Scotch and Irish appeals, and they propose to constitute that tribunal as an Imperial Court of Appeal. At once arises a question which I have no doubt your lordships will put to me—If the Court created by the legislation of last year is to become an Imperial Court of Appeal, what alteration is it proposed should be made in the constitution of the Court and in the qualification and quality of the Judges? Now, let me remind your lordships what the composition of the Court of Appeal is under the Act of 1873. There are nine ordinary Judges of the Court of Appeal—that is to say, the two present Lords Justices, four members of the Judicial Committee of the Privy Council, and three other ordinary members to be appointed, but who have not yet been appointed, as members of the Court of Appeal. Then there are five *ex-officio* members—the Lord Chancellor, the Chief Justice of the Queen's Bench, the Chief Justice of the Common Pleas, the Chief Baron of the Exchequer, and the Master of the Rolls—14 in all. In addition to that there are what are termed additional members of this Court of Appeal—that is to say, any person who has served in the office of Lord Chancellor in England, or in the office of Lord Justice Clerk in Scotland, or in the office of Lord Chancellor in Ireland, or in the office of Chief Justice of any of the three Presidencies in India. They who have served in those offices and who will express in writing their willingness to serve in the Court of Appeal, may be appoinetd by the Crown to serve as additional Judges. It is, of course, impossible for me to say how many might be found with the necessary qualification and willing to give the requisite amount of what I may term voluntary service; but to speak of probabilitles with safety, I will assume that two or three could generally be secured to give attendance upon the Appellate Court. That being so, your lordships will observe that we have nine ordinary members, five *ex-officio* members, and other two or three of these voluntary or additional members. In that way you will have the Appellate Court composed of 16 or 17 Judges. Now, I may here state to your lordships as a matter of some interest the amount of business which we may suppose will require to be done, including Scotch and Irish appeals. I have taken as a test the number of appeals which have come before your lordships during the last five years, and I find that the average number in the year is 54, of which 27 come from England, 22 from Scotland, and only five from Ireland. It will be remarked that the appellate business from Ireland, at all events, is not very heavy. Now, the question naturally arises, are we to have any *ex-officio* members of the Court of Appeal from Scotland and from Ireland—that is to say, are we to have any of the Judges, at the time actually in office in Scotland or Ireland, attending the Appellate Court in this country? The conclusion at which Her Majesty's Government has arrived is that it would not be desirable or expedient to have any *ex-officio* members of that kind, and this is not from any want of appreciation of the value of services of those eminent men, but for a very different reason. Your lordships will observe from what I have said that the Judges in Scotland are at present fully occupied either as primary Judges or as fulfilling the duties of the intermediate Court of Appeal in that country. And the same remark applies to Ireland. Your lordships, therefore, will see that the precedent set in England by taking certain existing Judges and making them *ex-officio* members of the Court of Appeal is entirely inapplicable to the case of Scotland or Ireland, because in England there is no intermediate appeal, and the Judges are, therefore, able to give a certain amount of their time to the business of the Appellate Court. Moreover, it would be in the highest degree inconvenient to have Judges coming from Scotland or Ireland for one or two days to take part in proceedings here, which would have to be interrupted, and on subsequent days resumed, and the whole arrangements in regard to which would be impeded if they were made to depend on the arrival of Judges occupied elsewhere. We have, therefore, as regards the *ex-officio* Judges, no alteration to propose in the composition of the Appellate Court as settled last year. Now arises the question what alteration should be made in the qualification of those who are to be appointed Judges of the Court of Appeal. Your lordships may remember that last year when it was proposed to transfer the appeals from Scotland and Ireland to this Court, the further provision was suggested that of the ordinary Judges of the Court one should necessarily be chosen from the Bar or Bench of Scotland, and one necessarily from the Bar or Bench of Ireland. I think there are very grave objections to a provision of that kind. In the first place, if you lay down the hard and unyielding rule that you must always make a selection in Scotland or Ireland for a particular vacancy, it ceases to be in your power to consider whether it is possible at the time to find a suitable man in the country where the choice has to be made. No doubt at times there may be persons extremely eligible, but it might happen at other times that no eligible person could be found. There is another very strong objection to the clause. If you lay down the rule that the Appellate Court cannot be properly constituted unless there is a member from Scotland and one from Ireland, it will at once be said that the rule is intended to indicate an intention that Irish business must be heard by the Irish member and others, and Scotch business by the Scotch member and others. In fact, we should have logically to make a provision to that effect, and this would, of course, put an end to the idea of one general imperial Court of Appeal, homogeneous in its composition, and with no difference whatever in the capacity of its members. We think it would be more satisfactory to the kingdom at large to give a much more extensive area of choice to those who have the responsibility of appointing the ordinary Judges of the Court of Appeal. We propose that, without exception, all the ordinary Judges may be selected from the Bar or Bench of England, Scotland, or Ireland. We propose to make no distinction, but to leave it to those with whom the choice rests to appoint the best man they can get at the time, and probably this arrangement will be regarded as one which is like y to work efficaciously for the good of every one. I have no doubt that a great advantage will be derived from bringing together on the Bench of the Court men who have been trained at the different Bars of England, Scotland, and Ireland. Now, having, in this way, stated the only alterations we propose to make in the composition of the Court and the

Digitized by Google

qualification of its members, I have to ask your lordships to approach the subject which naturally presents itself next, and which is by no means the least important of all. Having got your Court of Appeal in this way, how do you mean to use it? What provisions do you mean to make as to the manner in which appeals are to be heard before it? I must remind your Lordships that, under the legislation of last year, there are no arrangements of that nature beyond this, that it is provided that the members of the Appellate Court—who, as I mentioned to your Lordships, may be 16 or 17 in number—may sit in any number of divisions with this qualification, that there must not be less than three Judges in any division. The consequence is that you may have three or even four divisions, with three members in each, all sitting at the same time and discharging all the ordinary functions of a Court of Ultimate Appeal. Now, I mention this not in the slightest degree to express surprise at the legislation of last year. When we remember the magnitude of the work which was then undertaken and the novelty of the provisions that were proposed, I think that, instead of wondering that the work was not then once and for all completed, it would be much more natural for us to be surprised if supplemental legislation on the subject were found to be unnecessary. Whatever difficulties may have to be met in connexion with the Act of last year, I believe that on account of the immense area of legal arrangements with which it dealt and the manner in which it treated the constitutions of our Courts—constitutions which had taken deep root in all our traditions and practices—it will take rank in future times among the legislative works that are regarded as of the greatest magnitude and importance. But it is for us now to consider whether some further provisions are not required with a view to an efficient working of the system of ultimate appeal. I certainly objected last year, and so did others, to the arrangements laid down by the Act. It appeared to me and to many others that the arrangements with regard to the ultimate Court of Appeal were anomalous in this respect, that they abolished any intermediate appeal for England, while an intermediate appeal would remain for Scotland and Ireland, and for all the Colonies, and also in ecclesiastical cases. The only case in which there would be no intermediate appeal would therefore be the cases from England. That appeared to me to be a very considerable anomaly, and, in addition, it certainly did seem to me there would be a very great danger of two or three Courts of Ultimate and Final Appeal sitting at the same time, and perhaps differing in the conclusions at which they arrived. It appears to me, also, that this consequence may possibly occur. You may have an appeal involving property of great magnitude brought to a division of this ultimate Court of Appeal from the decision of one Judge, or it may be a court in which there were three Judges, and you may have the three members of the Appellate Court divided upon it—two against one. Now, the decision of the case would of course rest upon the opinion of the two, and so you might have two Judges in the last resort overruling the opinion of three, or it may be four, other Judges. This, I think, would be a very great evil if it were allowed to pass without a remedy, and I would ask your lordships to bear in mind what are the real advantages of an ultimate Court of Appeal. It is a great mistake to suppose that its main and only object is to secure the best possible decision that can be arrived at in any particular line. That, no doubt, is one object, but it is by no means the only or even the chief object. I believe one of the great objects of an ultimate Court of Appeal is to steady and settle the law of the country. I believe you could have nothing more to be deprecated or deplored than a system of appeal, which, in place of settling and steadying the law of the country, would, by a conflict between the different divisions of the Court of Final Appeal, unsteady and unsettle the law. One of the objections which have been taken by many to the appellate jurisdiction which has hitherto existed in England, was that this House and the Judicial Committee of the Privy Council might come to a different decision on cases involving questions of English law, and that varying opinions on those questions might be pronounced by those two final Courts of Appeal. There was, of course, the possibility of such a difference arising in theory, if not in practice, but when we take the case of an Appellate Tribunal divided into two or three sections the difficulty, of course, becomes greater. By a slight departure among the different divisions from one settled principle of law, you might by degrees get up such a division as would unsettle the law altogether. These being the difficulties of the case, which I do not desire to dwell on at this stage, the question is how are they to be remedied? I must remind your lordships of the materials which we have for a final Court of Appeal. Nine ordinary Judges, the Lord Chancellor and four other *ex-officio* Judges, and probably two or three additional or voluntary Judges. Well, we propose that there should be a first division of this Court of Appeal sitting with not less than five members to constitute a quorum. We propose, as to the composition of that first division, that three of the ordinary members of the Court of Appeal should be nominated to it by the Crown triennally. We propose that the Lord Chancellor, the Lord Chief Justice of the Queen's Bench, and the master of the Rolls should be *ex-officio* members of the First Division, and we propose that two of the additional or voluntary members of the Court of Appeal should be nominated to that Firsst Division, and nominated also for a period of three years. In that way, your lordships will perceive, you will have three ordinary and three *ex-officio* members and two additional members, eight in all, who are to sit with a quorum of not less than five. We propose that to this First Division should be assigned the hearing and decision of all Scotch and Irish appeals, including those which may have been heard in a Court of intermediate appeal in these respective countries. We propose to assign to this First Division, also, for hearing and decision all ecclesiastical appeals, those also which may have been heard en intermediate appeal. We propose that the remaining members of the Court of Appeal should sit in one or two divisions of not less than three each, and that whenever in any of the cases heard before either of those two other divisions the Judges are not unanimous in their decision, that case may, if the parties desire it, be heard before the First Division. In that way there would be virtually a second appeal whenever the Judges on the hearing of the first appeal were not unanimous. We propose, further, that to the First Division shall also be sent, in the first instance, any colonial cases which are considered to be peculiarly important—cases such as are well known from time to time at the Privy Council Office, involving questions of constitutional law. Of course, any colonial cases which might be heard by either of the other divisions may by arrangement come also before the First Division. I must not omit to say that the 23rd Clause in the Act of last year provided that any appeal which might for any reason be re-argued might be so argued before a greater number of Judges in the Court of Appeal. I do not think that provision would be adequate to meet the necessities of the case. It is obvious that if you have two Judges deciding against one, the one Judge would probably be outvoted by the others who might desire that there should be a re-hearing. We propose, therefore, to give an absolute right to the parties, if they desire it, to have their case re-heard. These arrangements, should your lordships think fit to adopt them, will, I believe, have the effect—which is, after all, the great object of a Court of Appeal—of steadying and settling the law, and will give a point of contact between the Second and Third Divisions of the Appellate Court and the First Division, and in that way I think we shall preserve the inestimable benefit to the law of this country—an advantage we have hitherto possessed—of having one ultimate Court of Appeal. These proposals of the Government are embraced in two Bills, which I am about to lay on your lordships' table—the one being for the amendment of the Judicature in Ireland, the other for the amendment and extension of the Judicature Act of last year. I will only say that I hope these Bills will be in the hands of your lordships on Saturday, and that I propose to fix the second reading for next Tuesday week.

Lord SELBORNE believed there would be no cause for serious objection to the enactments proposed by the Lord Chancellor, but said that he should be agreeably surprised if the pecuniary saving to the public should be so great as the Lord Chancellor anticipated.

Lord O'HAGAN concurred in the principle of the Bill

Digitized by Google

some of the details of which would require, however, grave consideration. Misstatements were circulated last year to the effect that the then Government contemplated no intermediate Court of Appeal for Ireland, but this would have been a denial of justice to his countrymen, and Irish appeals were sometimes very numerous, though they had not lately been so. An efficient intermediate Court would have plenty of business. Both the Bench and the Bar of Ireland would have preferred the retention of the present jurisdiction, but the former unanimously resolved that the Court of Ultimate Appeal for England should be extended to Ireland, though the great majority of them were sorry to part with a time-honoured tribunal, the abolition of which he regarded as a political mistake. With respect to the question of representation in the Final Court of Appeal, he thought that Ireland and Scotland ought to be represented. Such was the opinion entertained in Ireland, and on such a matter public opinion ought not to be disregarded.

Lord Denman expressed his regret at the decision which had been arrived at by the Government that the appellate jurisdiction of the House of Lords should be surrendered.

Lord Redesdale expressed his extreme regret that his noble and learned friend, in proposing to re-establish the right of a second appeal, had not also proposed that the ultimate appeal should be to that House. As the Bill now stood, only in the event of the Judges of Appeal having some doubts among themselves was there to be a third hearing. The noble and learned lord on the woolsack had now brought in a Bill which differed from that which was brought in by the noble and learned lord opposite (Lord Selborne), but at the same time he did not determine what cases were to be re-heard. For his part, he could see no reason why the appeals from Scotland and Ireland should not be heard before that House.

MR. BUTT'S BILL TO AMEND THE LAND LAWS OF IRELAND.

Mr. Isaac Butt, on Wednesday last, in the House of Commons, obtained leave to bring in a Bill to make provisions for more effectually securing the Ulster Tenant Right and to amend the Landlord and Tenant Act. The Bill has three objects—to secure the Ulster Tenant Right more effectually, to extend it to other parts of Ireland, and to improve in various points the working of the Landlord and Tenant Act. Mr. Butt prefaced his explanation of the provisions by a long historical disquisition on the origin and nature of the Ulster Tenant Right. Under the first head the Bill provides that there shall be no restrictions as to the price nor as to the mode of sale of Tenant Right, except where it exists under the ancient custom, dating from at least 40 years back; and it settles a disputed question by providing that, except where the ancient custom is to the contrary, the Tenant Right shall be observed at the end of a lease. Under the second head the Bill proposes that the measure of compensation for eviction in other parts of the country shall be the same as if the land were under the protection of the Ulster Tenant Right. The third part of the Bill contains numerous alterations in the mode of working the Land Act, of which the principal is the repeal of the clause enabling tenants of £50 holdings to contract themselves out of the Act.

The Attorney-General for Ireland, in assenting to the first reading, guarded himself against being supposed to acquiesence in it or in Mr. Butt's opinions.

THE GALWAY ELECTION PETITION AND MR. JUSTICE LAWSON.

Sir Colman O'Loghlen, on Thursday last, brought before the House of Commons the arrangement made for trying the Election Petition relating to the Galway Borough, before Mr. Justice Lawson, who, besides being an Election Judge, was one of the Commissioners of the Great Seal in Ireland. This combination of offices, he insisted, was unconstitutional, and he laid it down that no person who held an office of profit or honour at the pleasure of the Crown ought to try the right to a seat in Parliament. With many protestations that he did not intend to impugn Mr. Justice Lawson's honour, Sir Colman traced the learned Judge's career, and the success with which he had recommended himself to both parties. He concluded by moving a resolution in condemnation of this practice.

The Attorney-General for Ireland warmly defended the private character and the professional eminence of Mr. Justice Lawson, and pointed out that along with his Judgeship he had been a Commissioner of the Irish Church Temporalities for the last five years, though no exception had been taken to it until this moment. The object of this motion, he hinted, was to prejudice the minds of the people of Galway against him, and it never would have been made if the conduct of Mr. Justice Lawson at the Education Board had not been displeasing to the party to which Sir Colman O'Loghlen belonged. In England it was always usual that a Common Law Judge should be a Commissioner when the Great Seal was put into commission, and Mr. Justice Lawson was chosen solely from his pre-eminence in Equity when at the Bar, and political motives had no connexion with the appointment. As to his selection to try this particular petition, he was on the rota to try it according to the Statute, and he could not avoid it.

Mr. Henry supported the motion, and Mr. Sullivan also spoke in favour of it, descanting on the danger of encouraging Irish Judges to look to the Crown for favour.

Sir H. James sympathized with the abstract sentiment of the motion, but pointed out to those who supported it that they should be careful to put themselves beyond the suspicion of making a covert attack on Mr. Justice Lawson. If there had been any breach of the Constitution it was committed when Mr. Justice Lawson was appointed a Church Commissioner by the late Parliament. He pointed out that in this country Baron Bramwell had acted as Election Judge while he held an office as Judicature Commissioner at the pleasure of the Crown. He advised the withdrawal of the motion.

The Solicitor-General argued that there was no law, written or unwritten, to prevent an Election Judge holding an office of profit or honour under the Crown, and if the objection were pushed to its logical extent it would apply to all the Judges equally. He denied, too, that it was expedient to establish any such disability.

Mr. Plunkett earnestly urged the House not to permit the motion to be withdrawn, and after a few observations from Captain Nolan, the motion was negatived without a division.

THE BRIGHT CLAUSES OF THE LAND ACT.

(LAND BILL INTRODUCED BY SIR JOHN GRAY.)

The Bill introduced by Sir John Gray for the amendment of the Bright Clauses of the Land Act, is an unpretending one in its demensions, but its operation would be very important to the tenantry and their landlords.

The 2nd Clause proposes to restore the amount which the Commissioners may advance for the purchase of tenants' holdings to *three*-fourths. They can now advance only *two*-thirds.

The 3rd Clause enables the commission of the landlord and tenant to agree to give a long lease on a *fine*, to advance three-fourths of the fine for the lease in the same way as they would if the land were sold in *fee*. The object of the clause is plainly to meet the objections of landlords to sell patches in fee, and so stud their estates with little estates, placed at random over a large area, which has hitherto practically impeded all sales by landlords to tenants. The portion of the bill which seems most likely to be operative of good on a large scale is that which enables the Landed Estates Court to give leases to all tenants of lands about to be sold in the court, and thus give the tenant an assurance that the sale of a large estate does not mean the eviction of the bulk of the tenant-holders thereof. Four or five clauses are directed to this purpose, and by them the court can give a long lease on a fine, and, in extending the fine, give the tenant credit as against the amount for all claims the tenant could establish if "disturbed" under the original act. These

Digitized by Google

clauses contain an important principle, and, as they are not long, we print them in full :—

5. The judges of the Landed Estates Court may in all cases in which land in the occupation of a tenant is about being sold, and in which they are satisfied that no injury can result to the interests of the creditors, or to the person beneficially interested in the sum that may remain after the payment of all incumbrances, grant a lease of his holding to the tenant for a term of sixty years, at a reserved rent, not being less than the rent existing at the time.

6. If the tenant of an agricultural holding, part of an estate about to be offered for sale in the Landed Estates Court, make application to the judges of the court in the prescribed form, stating his willingness to pay, by way of fine or premium for a grant in fee-farm, a lease for lives renewable, or a lease for a period fixed, not being less than sixty years, at such reserved rent as may be agreed upon between the court and the tenant, and if the court and the tenant agree upon the tenure to be granted, the rent to be reserved, and the fine to be paid in consideration of said agreement and grant, the Commissioners of Public Works may advance the same proportion of the purchase money in such cases on the same terms and conditions as in the other cases herein and in the recited acts mentioned.

7. The court after estimating the amount of the fine to be paid by the tenant for the grant of the tenure, and at the reserved rent agreed upon, shall take the prescribed means to ascertain the amount of compensation, if any, which the tenant would be entitled to obtain under the original act, if disturbed in his holding, and shall give to the tenant a certificate stating that he is entitled to the amount so ascertained as a credit against the amount of the said fine or premium, and shall give to the tenant credit for the amount specified thereon, on his depositing said certificate as part payment of the said fine or premium for the said grant.

8. The Commissioners of Public Works, Ireland, on receipt of a certificate from the court that the certificate of credit has been so deposited, shall consider the amount specified in such certificate of credit, when so deposited in the court, as part payment of the fine or premium to be paid by the tenant for such grant, as equivalent to payment in cash on account of the fine or premium, and may advance to the tenant for the completion of the payment of such fine or premium a sum not exceeding three-fourths of the whole amount of the fine or premium, on the tenant paying such sum, if any, as may be required to make up with the certificate the other fourth, on the same conditions and terms as to security as they may now advance moneys for the purchase of his holding by a tenant under the recited acts.

9. The amount of the fine or premium agreed on and paid for such grant of tenure by the tenant, after deducting from it the amount of the sum to which the tenant has been so entitled by the court to be entitled to credit as against same, shall be lodged as the court may direct to the credit of the estate, and shall be dealt with in all respects as a part of the price brought by the sale of the estate through the court.

10. The holding for which such grant of tenure has been given or agreed by the court to be given shall be sold subject to such tenure, and to the covenants stated in the instrument granting same.

THE MAYO ELECTION.

The Mayo election petition came before the Court of Common Pleas on Thursday last, on a special case. The facts were that the nomination of Sir George O'Donnell was objected to by the agents of Messrs. Brown and Tighe, on the ground that he had not appointed an expense agent before 2 o'clock on the day of nomination; he appointed one before half-past 2 o'clock, but they considered it was then too late, and the sheriff adopted their view, and refused to allow the nomination. The Court unanimously held that the nomination should have been received. They declared the election null and void, and ordered the sitting members to pay the costs.

RECENT DECISIONS.

(De Serancourt, a Bankrupt, 8 I. L. T. R. 60)

An interesting question under the Irish Bankruptcy Act was before the Irish Court in the case of *De Serancourt*, which raises a point much discussed in *Carter* v. *Dimmock* (4 H. of L. Ca. 351). The bankrupt sought to annul his adjudication, which was pronounced on the 2nd December, 1873. The application to annul was not made until the 9th January, 1874. Under the 129th section of 20 & 21 Vict., c. 60, before notice of an adjudication can be published in the *Gazette*, a duplicate of such adjudication must be served personally or at the last known place of business or abode of the person adjudicated, who shall be allowed three days, or such extended time, not exceeding seven days in the whole, from the service of such duplicate, to show cause to the Court against the validity of such adjudication. The Act then provides that if at the expiration of such further time no cause shall have been shown to the satisfaction of the Court for annulling such adjudication, the Court shall forthwith cause notice of such adjudication to be given in the *Dublin Gazette*. Then, by the 358th section of the same Act it is enacted that if the bankrupt shall not, within one month after the advertisement of bankruptcy, have commenced a suit to dismiss the petition, or to dispute or annul the adjudication, and shall not have prosecuted the same with due diligence and effect, the *Gazette* shall be conclusive evidence in all cases against the bankrupt. *Carter* v. *Dimmock* was decided upon the Acts we have cited, and it was there held that a petition to annul an adjudication was not "a suit" within 20 & 21 Vict., c. 60, and this case would therefore have been conclusive had the statute law received no addition. By sect 6 of 35 & 36 Vict. c. 58, however, it is provided that "The Court of Bankruptcy in Ireland shall continue to be a court of law and equity and a principal court of record, and may review, rescind, or vary any order made by it, in pursuance of the said Act." The Court held that this section did not empower it to annul an adjudication after the expiration of the time, when by the prior Act the advertisement in the *Gazette* was conclusive, and that any power which it had to rescind or vary its orders could refer only to orders made in the course of the proceedings, and not to annulling the adjudication. It is hardly possible to conceive that any other decision could have been arrived at.—*Law Times*.

Locke King's Act—Specific and Residuary Devises.

(Sackville v. Smyth, M.R., 22 W. R. 179, L. R. 17 Eq. 153.)

In *Brownson* v. *Lawrance* (16 W. R. 535, L. R. 6 Eq. 1) Lord Romily, M. R., held that when two estates are comprised in the same mortgage, and the owner of the equity of redemption specifically devises one of them, and leaves the other to pass under a devise of his residuary real estate, he thereby sufficiently indicates the contrary intention required by Locke King's Act in order to exclude the application of the rule laid down by that statute. If his Lordship had stopped there, it might, we think, have been, at least plausibly, contended by the residuary devisee that the Act was only to be excluded *quoad* the specific devise, and that the residuary devisee, if left to bear any part of the mortgage, ought to have the benefit of the statutory rule that each part of the property, according to its value, should bear a proportionate part of the mortgage charged on the whole—in other words, that the specific devisee should be exonerated as to his part of the mortgage debt out of the personalty, and that the residuary devisee should bear only his proportionate part of such debt. His Lordship, however, went further than this, and held, not only that the specific devisee was to be exonerated, but that the specific devise of one of the estates was "of itself an expression of the testator's intention that the part which passed by the residuary gift should be primarily liable to the payment of the whole of the mortgage debt." In taking this view he was following an opinion expressed in 2 Jarman on Wills, p. 611; though it certainly seems to us that far more

Digitized by Google

"intention" was squeezed out of the testator's words than they were calculated to yield. In *Gibbins* v. *Eyden* (17 W. R. 481, L. R. 7 Eq. 371), Malins, V. C., declined to follow *Brownson* v. *Lawrance*, and treated it as having been decided without a proper consideration of the fact that when it was decided it had then recently been held by Chelmsford, C., in *Hensman* v. *Fyer*, (16 W. R. 162, L. R. 3 Ch. 420), that since the Wills Act a residuary devise of real estate is specific. In *Sackville* v. *Smyth*, Jessel, M.R. expressed his opinion that Locke King's Act was "not intended to apply as between specific and residuary devises in the way it was held to apply in *Brownson* v. *Lawrance*," and in fact his decision could not stand if full effect were given to that case. We may think, therefore, that *Brownson* v. *Lawrance* is no longer of any authority.—*Solicitors' Journal.*

COURT OF EXHCEQUER (ENGLAND).

Tuesday, April 28th.

(Before KELLY, C.B., PIGOTT, and POLLOCK, BB.)

CLAPHAM *v.* OBIN.

Remitting actions to County Courts.

This was an action for a wrongful conversion of certain birds and monkeys, at one time in the Royal Park, Leeds, raising a point of some interest as to the right to sue in the Superior Courts in preference to the County Courts. An order had been made by a master in chambers referring the action to the Leeds County Court, under the County Court Act of 1867, which allows actions for "malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other actions of tort" to be so referred. The plaintiff appealed from this order to the Lord Chief Justice of England, sitting as chamber judge, who was of opinion that the power to refer did not apply to an action for conversion, and referred the matter to the court.

W. D. Foulkes now moved on behalf of the plaintiff for a rule to rescind the order of the master, and argued that the words "other action of tort" must be taken to refer to actions *ejusdem generis* with those enumerated, as otherwise the enumeration would have no effect.

C. Dodd showed cause.

The Court ultimately decided that the Legislature intended to protect defendants in all actions of tort from being sued in the Superior Courts by insolvent plaintiffs, who, if unsuccessful, would be unable to pay costs, and refused to grant the rule.

APPOINTMENTS.

THE MAGISTRACY.—The following gentlemen have been appointed to the Commission of the peace:—County of Wicklow—Edward Richary Bayly, of Ballyarthur, Ovoca, Esq. County of Wexford—Thomas Joseph Walker, of Tykillen, Wexford, Esq.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

MICHAELMAS TERM, 1874.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination, must lodge their Papers *on or before the first day of next Trinity Term.*

By Order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin,

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

TO THE EDITOR TO THE IRISH LAW TIMES.

SIR,—In one of the leading articles of the *Daily Express* of 25th April, on Mr. Butt's Municipal Privileges (Ireland) Bill, the *Express* says: "As to the clerks of the peace, . . . it would be much better if, instead of altering their mode of appointment, the office was abolished and the duties transferred to the clerks of the crown; it is almost a sinecure in some counties, or the work attached to it is performed by a deputy." Having read this article, I immediately wrote to the editor, and requested he would insert a reply which I handed him. He declined to insert my letter, but said he would give an extract from it. He did so, but in a very inaccurate manner, and stated it was written by a clerk of the crown. I have been requested to publish my letter, and therefore should feel much obliged if you publish it, in which I stated:—Whoever wrote this article in the *Daily Express* must have been completely ignorant of the duties of the clerk of the peace and his office, and also of the duties of the clerk of the crown, as I think I can completely reverse the writer's statement. In the first place the quarter sessions business, both criminal and civil, is attended to by the clerk of the peace and his clerk or deputy four times in every year, and frequently at three sessions towns at each quarter, and also land sessions, at which claims in the several counties in Ireland have been lodged and disposed of to the amount of £711,229. The time occupied at each quarter sessions and travelling is from ten days to three weeks, according to the size of counties at which the principal part of the local business in civil bills, extending to £40, and rent and ejectment cases to £100, and cases remitted from superior courts, are disposed of in the several counties in Ireland to a very large amount. Besides, the criminal business is also attended to, the preparation of all indictments, appeals from magistrates' decisions, publicans' licences, and other local matters, without any assistance from crown lawyers. The clerk of the crown's business is to attend and swear the grand jury, and he attends to criminal business *only* at assizes, which occupies a few days twice in the year, and he has the assistance of the crown solicitor and crown counsel in all difficult or important cases; he reads the presentments and countersigns the treasurer's orders. The civil business at assizes is attended to by the judges' registrars.

The clerks of the peace have, in addition to the business at quarter sessions, to attend to all business connected with the registry of voters' lists, the revision of those lists, and to make out the annual register of voters, and also all business connected with the jurors' lists, and making out jurors' books, both "general" and "special," both of which are separate and distinct proceedings, occupying a large amount of time, imposing great expense and trouble, and extend from the month of May to 31st December in each year, for which they are badly paid, besides the usual quarter sessions business, and making out parliamentary returns and other minor office business. The salaries provided are very moderate for the large amount of business to be disposed of, and were provided for upwards of fifty years since by 4 Geo. IV., cap. 43; no change or alteration since, and a much smaller amount of the trifling civil bill three-penny fees received than formerly. As it would occupy too much time to enter into all those matters in detail, I refer you to the *Civil Service Gazette* of 15th November, 1873, containing a full statement of those matters, by Mr. Meadows, clerk of the peace for Wexford, an old and respected county officer. I myself have served thirty-eight

Digitized by Google

years as clerk of the peace for Carlow, and attended personally to all office business, and I deny altogether the assertion contained in the article in the *Express* newspaper, that the office is a sinecure.

In conclusion, I assert that a clerk of the peace who does his duty well and conscientiously, would be occupied from year's end to year's end.

I remain, Sir,

Your obedient Servant,

A. J. HUMFREY,
Clerk of the Peace, Co. Carlow.

5th May, 1874.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Seeing that the questions put by "Law Clerk" have been so courteously answered by you in your issue of last Saturday, I take the liberty of asking for answers or references to the following questions. They, like those asked by "Law Clerk," are taken from the questions given at the last Final Examination.

Trusting you will excuse my intrusion on your valuable space, I am, Sir,

Yours obediently,

"LEX."

P.S.—As a postscript, might I ask if the questions in Real Property, Common Law, and Equity, usually given on the first day of examination, and which, I suppose, were set with other questions, will be published?

LANDED ESTATES COURT PRACTICE.

Q.—In what cases are solicitors expected to appear in person before the Judge and Examiner?

A.—Solicitors are expected to appear in person before the Judge and Examiner:—

1. On all Chamber Motions and Sales,
2. Settlement of Rentals,
3. Vouching Schedules,
4. Discharging Queries on Title or Searches.

(See Madden's Landed Estates' Court Practice, p. 304.)

COMMON LAW COURTS PRACTICE.

Q.—*Discontinuance in Ejectment.*—State the distinction between a sole plaintiff discontinuing, and one of several plaintiffs being desirous to discontinue an action?

A.—The plaintiff in ejectment shall be at liberty at any time before verdict or judgment against him to discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice, headed in the Court and cause, signed by the plaintiff or his attorney, stating that he discontinues such action; and thereupon the defendant to whom such notice is given shall, by filing an affidavit of the service of such notice, be entitled to and may forthwith sign judgment for costs; and any one of several plaintiffs desirous to discontinue may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as the Court or Judge may seem fit, and the action shall thereupon proceed at the suit of the other plaintiffs.—(C. L. P. A., 1853, § 221. Bewley and Naish, p. 231.)

Note.—Under the provisions of this section, a sole plaintiff may discontinue as to one or more of the defendants without leave, but one of several plaintiffs desirous to discontinue must apply to the Court or a Judge to have his name struck out of the proceedings.

Q.—In the case of death of one of several plaintiffs after verdict, can the other proceed to execution whether the legal right survives or not; and assuming there is a legal representative of the dead plaintiff, what is the effect?

A.—C. L. P. A., 1853, § 155-160, and C. L. P. A., 1856, § 93.

BANKRUPTCY PRACTICE.

Q.—What must a creditor who has instituted a suit against a bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved or admitted as a debt under the bankruptcy do before he can prove in such bankruptcy?

A.—No creditor who has instituted any suit against any bankrupt in respect of a demand prior to the bankruptcy, or which might have been proved or admitted as a debt under the bankruptcy, shall prove or be admitted as a creditor under such bankruptcy, or have any claim entered upon the proceedings, without relinquishing such suit; and the proving or claiming a debt under any bankruptcy by any creditor shall be deemed an election by such creditor to take the benefit of such bankruptcy with respect to the debt so proved or claimed; provided that such creditor shall not be liable to the payment to such bankrupt or his assignees of the costs of such suit so relinquished; and that where any such creditor shall have instituted any suit against such bankrupt, jointly with any other person, his relinquishing such suit against the bankrupt shall not affect such suit against such other person; provided also, that any creditor who shall have so proved or claimed, if the petition of bankruptcy be afterwards superseded or dismissed, may proceed in the suit as if he had not so proved or claimed.—(Bankruptcy Act, 1857, § 262. Kisbey, p. 145.)

Q.—Mention the cases in which interest can be proved on debts in bankruptcy whereupon interest is not reserved or agreed for, and the rate at which such interest is allowed?

A.—Upon all debts or sums certain, whereupon interest is not reserved or agreed for, and which shall be overdue at the filing of the petition of bankruptcy, the creditor shall be entitled to prove or be admitted as a creditor for interest, to be calculated at a rate not exceeding five pounds *per centum per annum*, up to the filing of such petition, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand.—(Bankruptcy Act, 1857, § 260. Kisbey, p. 140.)

[In answer to our correspondent's postscript, we have to say that the questions in Common Law, Property, Equity, &c., given at the last Final Examination, will not be published in the IRISH LAW TIMES, as it is understood they were similar to those given at the previous examination, and were not sent to us for publication.]

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Perhaps you, or some of the numerous readers of your Journal, may be able to inform me if there be any probability of a new edition of Mr. Madden's valuable work on the Practice of the Landed Estates Court being published. The first edition has, for some time, been out of print, and it is almost an impossibility to get a copy of it now. A work on this subject is much wanted, and therefore I trust you will consider the necessity of such a book the best excuse for my troubling you in the matter, and remain,

Your obedient servant,

"INQUIRER."

I may add that a similar want is felt regarding Messrs. Bewley and Naish's work on the Common Law Procedure Acts, and Messrs. Bewley and Richey's book on Chancery Practice, both of which it is impossible to get.

DUBLIN, *5th May, 1874.*

ANSWER.

[We cannot undertake to say whether new editions of Mr. Madden's book on the Landed Estates' Court Practice, or Messrs. Bewley and Naish's book on Common Law Practice, will be published, although we know they are in great request. Our correspondent should apply to Mr. Ponsonby, of Grafton street, who is the publisher of them, for information on the subject.]

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from 23rd February to 31st March*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Feb. 23	W. Quin Going and another, trustees of settlement of the Rev. James Going, owners and petitioners	Sale	Kerry	115 17 8	*Orpen, Sons, & Sweeny*
" "	Francis Farrell, owner; *George F. Blake, petitioner*	Sale	Dublin	60 0 0 The letting value	*Samuel Gerrard*
" 25	William Rochfort, owner and petitioner	Sale	Wicklow	46 1 7	*William Boughey*
" "	Terence Dempsey, owner; *Royal Bank of Ireland, petitioner*	Supplemental petition for sale	Kildare	Not stated	*Orpen, Sons, & Sweeney*
" 27	John Sherlock, trustee for sale of estate of Anna M. E. O'Brien, owner and petitioner	For appointment of trustee	—	—	*V. B. Dillon & Co.*
March 3	Maria St. John and Robert St. John, and of said Robert St. John, a trustee for sale, owners and petitioners, and Trusts of a certain Settlement	For appointment of trustees	—	—	*Joshua Brereton*
" 5	Patrick John Blake, owner and petitioner and trust of will of Columbus O'Flanagan	For appointment of trustees	—	—	*D. and T. Fitzgerald*
" 6	Executors of Erancis Sheridan, owners; *Robert Stewart, petitioner*	Sale	Dublin	113 10 0	*S. & R. C. Walker*
" "	William Peyton and Rutledge J. Peyton, owners and petitioners	Partition and sale	Roscommon	55 15 1	*David Galbraith*
" "	Bridget Qnirke and Ellen Mary Quirke, trustees for sale under will of Rose Mary Quirke, owners and petitioners	Sale	Kildare	94 10 10	*B. W. Rooke*
" "	Daniel Toler, Thomas Maunsell, and Robert W. Meade, trustees of settlement of Chas. A. Maunsell, owners and petitioners	Sale	Down	100 0 0	*Isaac W. Ogle*
" "	Sir Henry P. T. Barron, owner and petitioner	Sale	Waterford	1,344 15 1	*Dobbyn & Tandy*
" 7	Harriet Whitmore, Sarah Whitmore, Ellen Whitmore, and Emily Ross, owners; *Robert Barbe and another, petitioners*	Sale	Wicklow and Dublin	Not stated	*A. L. Barlee*
" 10	Thomas M'Mahon, owner and petitioner	Sale	Tipperary	377 6 11	*William Roche & Son*
" "	Joanna Odlum and Henry Eyre Odlum, owners; *John Thomas Hinds, petitioner*	Sale	King's Co.	416 7 1	*John T. Hinds*
" 12	Louis Montfort and others, owners; *Archibald Montford, petitioner*	For appointment of trustees	—	—	*Davis & Montfort*
" "	William Tennison or Michael Cosnahan, owner; *Thomas Avison, petitioner*	Sale	Monaghan	1,967 10 0	—
" "	Francis Carlton Reeves, owner; *Richard Binney Smith, petitioner*	Sale	Limerick	775 5 0 Tenement valuation	*Dalton & Smith*
" 16	Michael O'Connor, owner; *William Webbel and others, petitioners*	Sale	Limerick	208 16 0	*E. W. L'Estrange*
" 18	John M'Cann, owner; *Ulster Land, Building, and Investment Co., petitioners*	Sale	Down	120 0 0	*R. D. Bates*
" "	Robert Crawford, owner; *Samuel Nelson, petitioner*	Sale	Donegal	Not stated	*Cecil Moore*
" 19	William Martin Abbott, owner; *Frances Abbott, petitioner*	Sale	Tipperary	91 2 7	*John Julian*
" "	Robert Hall and several others, owners and petitioners	Partition and sale	Tipperary	882 10 11	*George Bolton*
" 20	Samuel Belcher, owner; *Thomas Fullwood, petitioner*	Sale	Cork	71 0 0	*H. J. P. West*
" 21	William Henry Finlay and Rev. James William Rynd, owners; *Anne Coates, petitioner*	Sale	Kildare	418 0 4	*W. C. Hogan & Sons*
" "	Robert Edward Gibbings, owner; *William H. J. H. De Massy and Ringrose Drew, petitioners*	Sale	Cork	71 10 0	*Thomas Ware*
" 23	Eustace Lynch, owner; *Trustees of the Irish Civil Service and General Permanent Benefit Building Society, petitioners*	Sale	Mayo	23 0 0	*H. T. Dix*
" "	Louisa Maria Kiernan and others, owners and petitioners	Sale	Kilkenny	52 0 10	*Hamilton & Craig*
" "	Peter Cosgrave, owner; *The National Bank, petitioners*	Sale	Mayo	37 0 0	*R. P. Bourke*

Digitized by Google

LANDED ESTATES' COURT—PETITIONS FILED—*continued.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Mar. 24	Jules Lobez and several others, owners and petitioners	Sale	Tipperary	575 15 7	*J. B. Kennedy & H. V. Kennedy*
„ 25	Jacob Scrader, trustee under the will of Alexander Hammett, owner and petitioner	Sale	Kilkenny	214 12 3	*R. W. Cherry*
„ 26	Nicholas Ogle M. Vise, owner; *W. H. Porter and another, petitioners*	Sale	Dublin	383 4 3	*Archibald Robinson*
„ „	Abraham Henry J. Heatly and Montgomery D. E. Heatly, owners and petitioners	Sale	Wicklow	87 16 11	*David Galbraith*
„ „	Walter Newton, owner and petitioner	Sale	Dublin	135 0 0	*Nunn & Jones*
„ 28	Daniel Gillman and others, owners; *The Munster Bank, petitioners*	Sale	Cork	102 10 0	*Benjamin Franklin*
„ „	Charles Bolton Geoghegan and Adelaide Geoghegan, his wife, owners; *Holt W. Archer and another, petitioners*	Sale	Dublin	115 0 0	*W. C. Hogan & Sons*
„ „	Henry Royse Cummins and Sophia H. Cummins, owners and petitioners	Sale	Queen's Co.	65 14 0	*W. C. Hogan & Sons*
„ „	John Joseph O'Mahony and several others, owners and petitioners	Sale	Cork	481 12 1	*John Barry*
„ 30	Nathaniel Swan, owner; *John Morgan Smith, petitioner*	Sale	Cork	70 0 0	*Walter Thornhill*
„ „	Robert A. Hickson, owner; *Sarah A. Hickson and another, petitioners*	Sale	Kerry	408 8 6	*William Fry*
„ „	James William Edward Cusack, owner and petitioner	Sale	Dublin	175 15 6	*S. P. Redington*
„ „	William Tennent Henry, owner; *The Northern Banking Company, petitioners*	Sale	Cavan and Antrim	219 8 0	*H. Wallace & Co.*
„ „	Robert Keating Sheehy, owner and petitioner	Sale	Cork	250 0 0 Estimated annual value	*Dalton & Smith*
„ 31	William Henry Smithwick, owner and petitioner	Sale	Limerick	136 0 0	*Patrick Coll*

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—Anne Clarke, allocation. — Assignees Bayley, do.—W. H. Wherland, do.—B. W. Falkiner, do.—E. K. Lynch, do.—J. F. Ferguson, confirm sale.—M. O'Connor, proposal.—R. Blackhall, do.—B. Sheehy, do.—P. Dane, ex-delay.

IN COURT.—J. Bleasby, rescind order.—J. W. Dickinson, statement of E. Greer.—A. Lynch, for liberty to proceed.

Before EXAMINER (Mr. Dobbs).

J. Smith and another, proofs.—M. Conner, do.—T. Murray, do.

TUESDAY.

IN CHAMBER.—Executor M. Tobin, confirm sale.—A. Beatty, do.—S. Crowe, allocation.

IN COURT.—Right Hon. F. French, to examine witness.—J. Lawton, re-entry final schedule.—R. Stannard, from 5th.—K. R. Day, from 6th.

Before EXAMINER (Mr. Dobbs).

H. W. Wilberforce, rental.

WEDNESDAY.

IN COURT.—J. Flynn, examine witnesses.—C. J. Douglas, from 22nd April.—Anne Greene, re-entry final schedule.—Same, examine notice.—T. Bell, re-entry final schedule.

Before EXAMINER (Mr. Dobbs).

G. Murphy, proofs.—W. Fitzsimons, ditto.

Before EXAMINER (Mr. M'Donnell).

Presbyterian Widows' Fund, rental.—W. F. Bindon, partition.—James Greer, rental.—D. J. Comice, do.—G. Gaynor, ditto.

THURSDAY.

IN CHAMBER.—H. Bell, confirm sale.

Before EXAMINER (Mr. Dobbs).

B. Hastings, rental.

SATURDAY.

SALES AT 12 O'CLOCK.

GEORGE KIDD.—1 lot.
D. C. O'REILLY.—1 lot.
J. L. MASON.—1 lot.
T. H. GREER.—3 lots.
M. A. E. O'REILLY.—3 lots.
TRUSTEE O'BRIEN.—6 lots.
TRUSTEE HINES.—7 lots.

LANDED ESTATES' COURT.

SALES

May 1.—Before the Hon. JUDGE FLANAGAN.

COUNTY ARMAGH.—Samuel Jackson, owner; Henry Jackson, petitioner.

Lot 1.—Part of the lands of Dundrum, Tassagh, and Tullamollog, containing 115a. 3r. 1p.; held under fee-farm grant, and lease renewable *toties quoties;* situate in the barony and County Armagh, and producing an annual profit rent of £185 13s. 9d. Sold in trust for owners, for £2,150.

Digitized by Google

Lot 2.—Part of the lands of Tassagh and Dundrum, containing 16a. 3r. 7p.; held under fee-farm grant; situate in the barony and County Armagh, and producing an annual profit rent of £57 12s. 6d. Sold in trust for owners, for £850. Solicitor, *John Swanzy.*

COUNTY DUBLIN.—Richarda Usher. Part of the lands of Ranelagh, with the houses known as M'Gowan's-terrace. Sale adjourned. Solicitor, *T. J. White.*

CITY OF LIMERICK.—Assignees M'Nulty.

Lot 1.—The House and premises, 57, George's street; held under fee-farm grant, producing an estimated annual profit rent of £16 13s. 10d. Sold in trust for Provincial Bank, for £250.

Lots 2 and 3.—Adjourned. Solicitor, *S. Bradshaw.*

COUNTY CARLOW.—E. E. Widdup. The lands of Ballyshancarragh, Crowsgrove, &c.; held under fee-farm grant. Sale adjourned. Solicitor, *Meldon.*

CITY OF CORK.—Executor James Hackell. Houses and premises in Hacket's-terrace, and Mahony's lane. Sale adjourned. Solicitor, *O'Keefe.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Peter Wright	Prove debts and vouch	*Mathews*
Susan Pratt	Vouch assignee's acct.	*Molloy & Watson*
Patrick Nolan	Reference under order 24th April, 1874	*Stephens*

TUESDAY.

Before the COURT, at 11 o'clock.

Robert H. Collister	1st public sitting	*Mathews*
John Byrne	do	*Fottrell*
John M'Fadden	do	*Larkin & Co.*
Michael Ryan	do	*Larkin & Co.*
L. West and W. Tisdall	Final examination	*Oldham & Eaton*
John Kirwan	do	*Goff*
Henry Abbott	do	*Larkin & Co.*
William J. Coyne	do	*Leachman*
George Blunt	do	*Lynch*
M. Bradshaw	do	*Larkin & Co.*
Christopher Flinn	do	*M'Govern*
John H. Sweet	do	*Maxwell & Weldon*
John Delius Burns	do	*Molloy & Watson*
A. M. Sheridan	do	*Findlater & Co.*
John M'Gowan	Examine witnesses	*Froste*
C. and P. Maguire	Application for certificate	*Scallan*
George Duncan	Confirm sale	*Colman*
————	Application to dismiss debtor summons	*Hickie*
Patrick Carew	Motion	*Larkin & Co.*
Thomas F. O'Neill	do	*Larkin & Co.*
Wm. F. Phillipson	Audit and dividend	*Oldham & Eaton*
Alexander Davison	do	*Leachman*

The following at 12 o'clock.

John C. Walsh	Sale	*Leahy*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Nolan	Reference	*Butler*
John Barrett	do	*Jordan*
William Holmes	Costs	*Oldham & Eaton*
Andrew Rogers	do	*Rosenthal*

FRIDAY.

Before the COURT, at 11 o'clock.

Peter Wright	2nd composition sitting	*Mathews*
Thomas J. Curtis	1st public sitting	*M'Coombe & Todd*
Robert Warnock	do	*Cronhelm & Co.*
Patrick Ahern	Final examination	*Larkin & Co.*
Michael Hickey	do	*Mathews*
Peter Wright	do	*Oldham & Eaton*
John Callaghan	do	*Mathews*
Thomas F. O'Neill	Examine witnesses	*Maxwell & Weldon*
Richard B. Pigott	Audit assignee's acct.	*Larkin & Co.*
Philip O'Halloran	do	*Larkin & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Connor	Costs	*Cronhelm & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Armstrong, James, Stephen's-green, Dublin, hosier, glover, and outfitter. Sittings, *Friday, May* 29, and *Tuesday, June* 16. *Larkin and Co.*, solrs.

Berkeley, Ludlow, Oldchapel lane, Cork, provision merchant. Sittings, *Tuesday, May* 26, and *Friday, June* 12. *Scallan*, solr.

Dolan, Mary, Shannon-bridge, King's County, widow. Sittings, *Tuesday, May* 26, and *Friday, June* 12. *Hardman and White*, solrs.

Flood, Patrick, 197, North King-street, Dublin, corn, hay, and potato factor. Sittings, *Friday, May* 29, and *Tuesday, June* 16. *White*, solr.

Gilshenan, John, Virginia, county Cavan, leather dealer. Sittings, *Friday, May* 29, and *Tuesday, June* 16. *Perry and Co.*, solrs.

Hetherington, Martin J., Beakestown Mills, near Thurles, Tipperary, miller. Sittings, *Tuesday, May* 26, and *Friday, June* 12. *Scallan and Babington*, solrs.

Keegan, Francis, 12, Lower Baggot-street, Dublin, fishmonger. Sittings, *Tuesday, May* 26, and *Friday, June* 12. *Boughey*, solr.

Ryan, Michael, Boggan, Tullaroan, county Kilkenny, farmer. Sittings, *Friday, May* 29, and *Tuesday, June* 16. *Kavanagh*, solr.

Singleton, Thomas, Lurgan, Armagh, grocer and general provision dealer. Sittings, *Tuesday, May* 26, and *Friday, June* 12. *Hamilton and Craig*, solrs.

DIVIDENDS IN BANKRUPTCY.

Coll, James, Banbridge, county Down, draper; and Portadown, county Armagh, draper and haberdasher, trading as James Coll and Co.. 1st dividend 8½d. in £ C. H. James, official assignee. *Findlater and Co.*, solrs.

Maguire, Charles and Patrick, trading as C. Maguire and Co., Omagh, county Tyrone, drapers. 1st and final dividend 9s. 4½d. in the £. C. H. James, official assignee. *Larkin and Co.*, solrs.

THE LAW CLERKS' ASSOCIATION.

A numerously attended general meeting of the association was held on Monday evening at the new rooms, 207, Great Brunswick-street. The attendance included the Vice-President, who took the chair, Messrs. Jervise, Dillon, Sheridan, Devereux, Byrne, O Grady, Kavanagh, Farrelly, Burke, Turley, and Sohan. Mr. Farrelly announced that the donation of books from the Chief Justice of the Common Pleas, consisting of twenty-five volumes, had been received, and that the following subscriptions had been paid in towards the library fund:—W. D. Ferguson, Esq., Registrar of the Court of Chancery, £2 2s.; John O'Hagan, Q.C., £2 2s; J. C. Coffey, Q.C., £2 2s.; T. A. Purcell, Q.C., £1 1s.; J. A. Byrne, Q.C.. £1 1s.; J. B. Murphy, Q.C., £1 1s.; Isaac Weir, £1 1s.; and J. Creed Meredith, Esq., 10s. He also stated that he and his colleagues had had an interview with Mr. Baron Dowse on the subject. His lordship had entered with warmth into the matter, and promised to introduce it to the notice of his brethren judges with the view of obtaining their support to it, and his lordship directed the committee to call on him in the course of a fortnight to learn the result.

The Vice-President addressed the meeting at some length,

Digitized by Google

impressing on the members that they had now permanent and convenient rooms in which they could meet every night in the week. These rooms were now the property of the members, and it was for them to use them in promoting their mental improvement. He recommended the formation of a Legal and Literary Debating Society and a chess club. The whole matter lay with the members themselves—the materials for improvement were now within their reach—let the members employ and use those materials.

A lengthened discussion took place in reference to what plan should be adopted by the association to check the influx of unqualified persons into the ranks of the trained law clerks. The subject excited much interest, but no action was decided upon for the present.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MAY Fri 1	Sat. 2	Mon. 4	Tues. 5	Wed. 6	Thur 7
	Government.						
—	3 p c Consols	—	91⅜	—	91⅜	91⅞–2	91⅜
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	—	90⅞	90⅞	90⅞	90⅞	90⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	106⅜
—	4 p c Oct. '88 } Bk. of Irel.	—	—	102	—	—	—
	Banks.						
100	Bank of Ireland ..	—	306½	306½	—	306⅜	—
25	*Hibernian Banking Co.* ..	—	58⅝	58½	58½	58½	58½
20	*London and Westminster* ..	—	71½	—	71½	—	—
3½	*Munster Bank (Limited)*	—	—	8⅞	--	8⅞	—
50	*National Bank*	--	59⅝	59½	59½	59½	59⅝
25	*Provincial Bank* ..	—	—	95½	—	—	—
10	Do. New ..	—	—	—	—	—	38⅜
10	*Royal Bank*	—	--	29	28⅞–9	29	29½
2½	*Ulster Banking Co.* ..	—	—	10½	—	—	—
15	*Union of London* ..	—	—	45	45½	—	—
	Steam.						
50	British & Irish	—	—	—	—	51	—
100	City of Dublin	—	109	—	109½	—	--
10	Dundalk (Limited) ..	—	—	7½	—	—	7⅜
	Mines.						
3½	*Berehaven (Limited)*	HOLIDAY	—	—	—	—	—
7	*Cape Copper M. Co. (lit'd)*		—	27	—	27⅜	—
1	Killaloe Slate Co. (lit'd)		—	—	—	15/	15/6
7	*Mining Co. of Ireland (lit'd)*		—	—	—	4½	—
2½	Wicklow Copper		—	—	—	3⅛	3½
	Miscellaneous.						
	Alliance & Dub. Cons.' Gas	8½	—	—	9	9	9⅝
25	*National Assurance* ..	—	—	48	48	—	—
9-4-7	*Patriotic Assurance* ..	—	—	—	10⅜	—	—
	Railways.						
10	Athenry and Tuam ..	—	—	—	-	3⅜	--
50	Belfast and Northern Cos.	—	67½	—	67½	—	—
20	Cork, Blackrock & Passage	—	—	—	10⅜	—	—
100	Dublin and Drogheda ..	—	—	—	110–½	—	—
100	Dublin, W'klow, & W'ford	—	74⅛	74½	—	74	—
100	Gt. Northern and Western	-	98	—	—	—	—
100	Gt. Southern and Western	—	109	109½	108⅞	108⅞	108½
100	Do. do. free of Stamp	—	109½	109½	—	—	—
100	Midland Gt. Western	—	81⅞–2	82	82⅛	82⅜	82¼
25	Portdn. Dun. & Omh. Jun.	—	—	—	—	—	13½
50	Ulster	—	—	—	—	—	—
12½	Do, Quarters	—	—	—	—	17	—
50	Waterford and Limerick ..	—	33⅜	33⅞–4	—	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	101½	—	—
100	Dublin & Meath 1st, 5 p c	—	—	—	—	45	—
100	D., W., & W., 6 per cent ..	—	—	129	—	—	—
50	D., W., & W., 5 p c (1860)	—	53½	—	—	—	—
50	Do. do. (1864)	—	—	53	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	—	—	97½
50	Watfd. & Limerick, 5 p c rd	—	—	50	50	—	—
—	Do., 4½ p c ..	—	—	—	—	—	96½
50	Do., new red, 1860–72, 5 p c	—	49⅝	—	—	—	49½
50	Do., new red, 1873, 5 p c	—	—	49½	49½	49½	49⅝
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	95½	—	—
—	Dublin & Drogheda 4 p c	—	—	—	94½	—	—
—	Do, 4½ p c	—	99⅞ f	—	—	—	—
—	Dublin & Meath 4½ p c ..	—	89½	—	—	90	—
—	D., W., & W., 4½ p c ..	—	—			—	
—	Do., 4½ p c	—	—	102	—	102	—
—	Gt. South'n & West'n, 4 p c	—	98⅜ f	98⅜ f	—	—	--
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	--
—	Do., 4½ p c	—	—	102½	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	101⅜	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4½ per cent., 30th April, 1874
Of Deposit—2½ per cent., 8th January, 1874.

Name Days—May 13th and 28th, 1874.

Account Days—May 14th and 29th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

Cedant Arma Togæ.—Colonel Evelyn Wood, V.C., C.B., one of the officers in the Ashantee Expedition, and a nephew of Lord Hatherley, has qualified himself for the law as a profession, and having kept the accustomed terms, has been called to the bar, but does not intend to quit the military profession.

Action for an Inch and a Half of Land.—The *San Francisco Chronicle* says:—On Monday afternoon, in the Fifteenth District Court, a judge, a clerk of the court, a sheriff, a short-hand reporter, three lawyers, a plaintiff, two defendants, and six witnesses, assisted by an audience of outsiders, consumed half a day in determining who owned a piece of ground an inch and a half wide, and in thirty feet running down to nothing. The land was in the rear of a lot on Tehama Street, and worth at the utmost not to exceed five dollars. The Court told the defendants to go in peace and made the plaintiff pay the cost.

After a prolonged trial, a Cincinnati court has decided that a purchaser of an admission ticket to an operatic or dramatic entertainment, who purchases his entrance card after the performance has commenced, has the legal right to occupy any seat he finds vacant, holders of reserved tickets possessing not a single right which he is bound to respect. A bill has passed the House of Delegates of Maryland imposing a penalty of five dollars for every seat sold as reserved after the performance begins.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

KENNY—May 1, at 47 Mountjoy-square South, the wife of William Kenny, Esq., barrister-at-law, of a son.

MARRIAGES.

DILLON and TREVOR—May 5, at St. Peter's Church, Dublin, by the Rev. G. W. Patton, James Dillon, Esq., C.E., to Mary Savage Trevor, daughter of Edward Shirley Trevor, Esq., barrister-at-law.

MACNAMARA and SAMPSON—April 28, at William Stadt, County Galway, the residence of the bride's father, Michael Macnamara, Esq., solicitor, Greenpark, Ennis, to Mary, eldest daughter of Francis Cornelius Sampson, Esq., M.D.

DEATH.

O'DRISCOLL—May 3, at 4 Upper Mount-street, William Justin O'Driscoll, Esq., barrister-at-law.

CASES for holding The Irish Law Times, and Solicitors' Journal, for One Year, can now be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. Falconer, 53, Upper Sackville-street, Dublin.

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

Pursuant to an Order of the High Court of Chancery, made in the Matter of the Estate of Henry Diamond, late of Derrynoid, in the County of Londonderry, deceased; Felix Donnelly, and Margaret Donnelly, otherwise Henry, his wife; Edward Hamon and Catherine Hamon, otherwise Henry, his wife; and Patrick Henry—the Creditors of the said

HENRY DIAMOND,

who died in or about the month of December, 1873—are, on or before the 6th day of JUNE, 1874, to send by post, pre-paid, to Messrs. Henry & Doherty, of 22 Bachelors'-walk, in the City of Dublin, the Solicitor of Anne Diamond, the administratrix of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Order.

Every Creditor holding any security is to produce the same before the Right Honourable the Vice-Chancellor, at his Chambers, Four Courts, Dublin, on the 19th day of JUNE, 1874, at Twelve of the Clock noon, being the time appointed for adjudicating on the claims.

Dated this 6th day of May, 1874.

A. T. CHATTERTON, Chief Clerk.

425 HANS M'MORDIE, Solicitor for Plaintiff, 43 Dame-street.

Digitized by Google

LANDED ESTATES' COURT, IRELAND.

QUEEN'S COUNTY.

SALE,

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of the Estate of Thomas A. Bailey, Esquire, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, In Three Lots, (if not previously disposed of by Private Treaty, as mentioned below), By the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Four Courts, Inns'-quay, Dublin, On FRIDAY, the 12th day of JUNE, 1874, At Twelve o'clock noon, The following Valuable Fee-simple Properties, situate in the Barony of Maryboro' West, in the Queen's County:—

LOT 1.

Consists of the Townland of Ockanaroe, containing 108a 3r 23p, statute measure, or thereabouts, and producing a present net profit rent of £70 7s 8d.

LOT 2.

Consists of the Townland of Springfield, containing 214a 0r 14p, statute measure, or thereabouts, and producing a present net rental of £83 10s 8d.

LOT 3.

Consists of the Townland of Camcloon, containing 535a 0r 35p, statute measure, or thereabouts, and producing a present net profit rent of £268 10s 10d.

Dated this 28th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The lands lie within a few miles of the Railway Stations of Mountrath and Maryborough, and are adjacent to Mountmellick, where fairs, &c., are held.

The tenants are of a superior class, and the land is of excellent quality.

Portions have been lately drained.

It is much underlet.

Messrs. Brassington and Gale have recently, by direction of the Court, made a verified valuation, and they report that the present letting value of the estate is £525 14s 9d, being about one-third more than the actual rental.

The tenants enjoy the right of turbary in the bog upon the adjoining lands of Iry (the property of Sir Charles Coote).

Proposals (in writing) for the purchase of all or any of the Lots will be received by the Owner's Solicitors up to the 28th day of MAY, 1874, and will be submitted to the Judge on the 1st day of JUNE, 1874, at the sitting of the Court (or at the earliest opportunity afterwards) without further notice to any person.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inn's-quay, Dublin; or to

Mr. CHARLES MOORE, Iry, Ballyfinn, Mountrath (who will point out the Premises); or to

Messrs. MEADE & COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 419

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

JOHN BRITTAN and HENRY O'TOOLE, of Connaught-place, Dalkey, in the County of Dublin, Grocers, trading as Brittan and O'Toole, Bankrupts.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on THURSDAY, the 21st day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 6th day of May, 1874.

HUGH DOYLE, Registrar.

LUCIUS H. DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

MOLLOY & WATSON, Solicitors for the Assignees, 18 Eustace-street, Dublin. 423

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

PATRICK BYRNE, of Victoria-street, Belfast, in the County of Antrim, Dealer in Tea, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on FRIDAY, the 22nd day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 7th day of May, 1874.

HUGH DOYLE, Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

DENIS LEONARD & H. F. LEACHMAN, Solicitors for the Assignees, 43 Dame-street, Dublin. 421

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

DANIEL LINEHAN, late of 1 and 2 Sullivan's-quay, in the City of Cork, Grocer and Spirit Dealer, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on MONDAY, the 25th day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 4th day of May, 1874.

HUGH DOYLE, Registrar.

LUCIUS H. DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

JOHN L. SCALLAN, Solicitor for the Assignees, 29 Bachelors'-walk, Dublin. 416

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

JEREMIAH O'GRADY, of Kilmallock, in the County of Limerick, Baker, Grocer, and Farmer, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on MONDAY, the 25th day of MAY, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 4th day of May, 1874.

HUGH DOYLE, Registrar.

LUCIUS H. DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

JOHN L. SCALLAN, Solicitor for the Assignees, 29 Bachelors'-walk, Dublin. 417

IN THE COURT OF BANKRUPTCY, IRELAND.

THOMAS BAILEY, of Larne in the County of Antrim, Publican, was on the 8th day of May, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 2nd day of JUNE, 1874, and on FRIDAY, the 19th day of JUNE, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

RICHARD POPE FROSTE, Solicitor, 50 Lower Sackville-street. 424

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, May* 9, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MAY 16, 1874. No. 381.

THE IRISH JUDICATURE BILL.

IN our last issue we gave a summary of the provisions of this measure, and we deem it unnecessary to offer any excuse for again returning to the subject. In the Hall, the Library, the Solicitors' Buildings, and the Courts, the proposed changes are eagerly and anxiously discussed. From the highest judicial personage to the lowest official the measure is canvassed and criticised with alternate hopes and fears. The Home Bar have met and passed important resolutions, which we print in another column. We cannot but sympathize with those members of that circuit who look forward with dismay to the severance of a professional connexion which is the fruit of many years of toil, exertion, and pecuniary expenditure. Those who may be added on to a strange circuit will have to begin their career anew, forfeiting the advantages which old acquaintance with the local attorneys conferred, and commencing a new start in pre-occupied ground under disadvantages which can easily be foreseen. Other circuit Bars are preparing to discuss the probabilities of the general scramble, and propose to submit their claims to an allotment of such of the dissevered counties as will supply most business, or be most accessible. There is one consolation, however, in all this commotion. Although Lord Cairns, in his opening statement, announced his intention to reduce the six circuits to five, yet his bill does not expressly enact that such a reduction shall take place. The 61st clause enables the Lord Lieutenant, by and with the advice of the Lord Chancellor and other judges, to cause rules to be prepared, in the Act referred to as Rules of Court, for the purpose, among other things, "of the reduction of the number of circuits, and for the regulation of circuits, including the times and places at which they are to be holden, and the business to be transacted thereat;" and the 84th section provides that "this Act, except as herein is *expressly* directed, shall not, unless or until other commissions are issued in pursuance thereof, *affect* the circuits of the judges, or the issues of any commissions of assizes, Nisi Prius, Oyer and Terminer gaol delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise." It would, therefore, appear that the circuit commissions will continue to issue as before until the Lord Chancellor and the judges, by their rules, ordain that a reduction in the number shall take place, and a new conformation be substituted for the old time-honoured system. Ample opportunity will, therefore, be given for bringing the weight of professional opinion to bear upon the Judges and the Legislature, and it is to be hoped that the Bar will look to their own interests and that of the attorneys and the suitors, which are inseparable when considered in connexion with the anticipated changes. A careful perusal of the bill and of Lord Cairns's statement will allay another apprehension extensively entertained by the general public as well as the Home Bar. The Act does not propose to commit the business of each circuit to one going judge of assize. That alteration is proposed to be limited to the Commission of Oyer and Terminer in Dublin. Two judges, it is to be presumed, will still be considered necessary for the concurrent despatch of criminal and civil business on circuit, and the number of judges in the High Court of Justice will, for a time at least, amply suffice for the six circuits. Until a vacancy is created by the death, promotion, or retirement of two of the nine puisne judges of the present Law Courts, the old number who have hitherto discharged the circuit duties will continue to be available; and we cannot, therefore, anticipate that a judicial dearth will render the reduction of the circuits immediately expedient. The abolition of Master Fitzgibbon's duties as Receivèr Master is also postponed to the termination of his tenure of that office, and thus all these changes are likely to be more protracted than at first sight would be deemed probable. The able remonstrances of the Lord Justice of Appeal, in regard to the Court of last resort, seem to have produced the desired effect. The Imperial Court of Appeal for the three kingdoms, which has been substituted for the House of Lords, will be one and undivisible as far as Scotland and Ireland are concerned, and will be capable of preferable selection by English appellants if they desire to have their appeals ultimately decided by the first division of that High Court. The possible exclusion of an Irish judge from a seat in that tribunal is to be deprecated; but we hope that the exigencies of the business to be transacted will dispel the apprehensions entertained upon that subject. On the whole, we think that, as these great changes are inevitable, the manner in which they are proposed to be effected afford less ground for dismay and apprehension than was at first supposed by those whose interests are so deeply involved.

The bill amending the English Judicature Act of 1863, and constituting the Imperial Court of Appeal, has been introduced by Lord Cairns as a companion measure to the Irish Judicature Bill. Both bills should be read together, as they form one code for this country. The first inroad is now about to be made on one of the ancient privileges of the Upper House, and some of its members seem to foresee disaster in the movement. Lord Redesdale is arousing himself for the contest, and has already given notice of motion to repeal the clauses of this Act of 1873 which proposes to abolish the legal tribunal of the House of Lords. If he can muster a majority of the Peers to support him, that noble House will still retain what will be an empty privilege to the great majority, an honourable duty to a very few. We think it matters little to the public whether the Court of Appeal consists of the Law Lords sitting nominally as the House of Lords, or the Law Lords, strengthened by an infusion of fresh judicial talent, sitting nominally as the Imperial Court of Appeal, provided that talent contained a fair proportion of Irish and Scotch members sufficiently qualified to represent the legal professions of their respective countries. But it appears by the resolutions of the Irish Bar, which we print elsewhere, that that learned body considers Lord Cairns's proposed Imperial Court undeserving of their approval, and would rather *stare decisis*, or, as one of their body facetiously observed, "prefer the ills they know than fly to those they know not of." They deprecate hasty legislation like the Judicature Act of last year, and require that the bill for Ireland should be considered by the profession before it is passed into law. This is but reasonable, and we are glad to see the Bar of Ireland, true to their ancient character for enlightened independence, throwing overboard all political and party

Digitized by Google

considerations, and unanimously agreeing to adopt the course most likely to ensure the passing of an unobjectionable measure. We do not think any Government can disregard the suggestions of the Irish Bar, and we hope that the Committee now appointed will not be dissolved until they have an opportunity of considering and reporting on the rules and orders, as well as on the provisions of the bill. We think we can safely prophesy that the Irish rules and orders will closely follow the precedent of the English, which are about to appear immediately. We therefore invite the attention of both branches of the profession to their consideration, and we hope the Solicitors will follow the example of the Bar, and apply themselves without delay to the consideration of these sweeping changes. For ourselves, we can only say we shall watch the progress of the bill in all its stages, and assist to the utmost of our power the deliberations of these bodies, by suggesting or publishing such views as may, from time to time, present themselves as worthy of consideration.

LEGAL BUSINESS OF THE IRISH CHURCH COMMISSIONERS.

A MATTER of some importance, not only to the Solicitors of Ireland but also to the public, was brought before the Incorporated Society, at their half-yearly Meeting, on the 9th instant, by Mr. Ellis, who alleged that the legal business of the Irish Church Commissioners was delayed and postponed.

Mr. Ellis stated that, by circulars, headed "Instructions to intending purchasers of Glebe Lands," issued in the name of the Commissioners, it is suggested to purchasers to employ the Commissioners' solicitor, whose name and the address of his private office are therein set forth—that, along with this, is sent another circular from the solicitor himself, suggesting to these purchasers to employ him to prepare their conveyances on terms that appear low, but which are asserted to be large in proportion to the work done. That thereby the Commissioners' solicitor procured for himself business which ought properly, and would, otherwise, be divided amongst the profession at large. It appears that when these instructions and circulars were first issued, the Council of the Incorporated Society strongly remonstrated against them, and asked the Commissioners to receive a deputation from their body to discuss the question, which the Commissioners refused, and declined to hold further communication on the subject.

It appears, further, that the Commissioners refused to supply to purchasers who employed other but the Commissioners' solicitor the printed form of conveyance on parchment, assigning as their reason for such refusal that they could only "be sure of the tenants deriving benefit from these parchment forms when in the hands of their (the Commissioners') own solicitor."

We have these printed forms of mortgage and conveyance before us, and we must say that writing a few words into them is very handsomely paid for by £3 3s. each—£6 6s. for the two, where there is not a single shilling of outlay or expense attending them, and that the imputation cast upon the profession, in the refusal to give them to others, is gratuitously insulting and unjustifiable.

We doubt not that the intention of the Commissioners in issuing these instructions was, as they say, for the benefit of the poorer tenants; but sometimes it seems to have had the opposite effect, and many of them are said to have lost their pre-emptive right under the statute to purchase their little holdings, from not being able to pay, at the same moment, their purchase-money and the costs of the mortgage and conveyance; whereas had the work of filling up these documents been left to the profession generally, there are plenty of high-minded and liberal local solicitors who would have done so at a lower scale of charge, and would have given these poor tenants time to pay at their convenience.

We have received numerous communications on this subject from various quarters; but, as was suggested at the meeting, the matter will probably become the subject of inquiry in Parliament.

THE JUDICATURE BILL AND THE IRISH BAR.

AT a meeting of the Irish Bar, held in the Library of the Four Courts, on Friday, Mr. Barlow, Q.C., in the Chair, Mr. Kisbey being appointed Secretary, Mr. Falkiner, Q.C., proposed, and Mr. J. F. Elrington, Q.C., seconded, the following resolution:—

"That the Secretary of the Meeting be requested to communicate to the Right Honourable the Attorney-General for Ireland, that in the opinion of the Bar of Ireland the House of Lords should continue to be the Ultimate Court of Appeal for the United Kingdom, and that, therefore, the proposals embodied in Lord Redesdale's pending resolutions are worthy of the serious consideration of Her Majesty's Government."

Several gentlemen, including Mr. Hemphill, Q.C., Mr. Andrews, Q.C., Mr. Gamble, Q.C., Mr. Hickson, and Mr. Frazer, took part in the debate which followed, and an amendment proposing to omit the latter part of the resolution referring to Lord Redesdale's pending resolution having been proposed and seconded, the original resolution was declared carried, the ayes preponderating considerably. Sergeant Armstrong then proposed, and Mr. Gamble seconded a resolution appointing a number of members of the Bar to act as a Committee to take into consideration the provisions of the Judicature Bill (Ireland), and report thereon to a general meeting of the Bar.

THE LATE WILLIAM SHORT, ESQ.,

BARRISTER-AT-LAW.

We much regret to have to announce the death of Mr. Short, of 4, Harcourt-street, in this city, which took place on Wednesday last. This gentleman was called to the Bar in Michaelmas Term, 1868, and enjoyed an excellent practice, considering his standing, and acquired the esteem and regard of all with whom he came in contact. Previous to joining the Bar, Mr. Short had been connected with the Irish Press, and in that sphere also he was highly successful.

CRIMINAL STATISTICS.—The Twentieth Report of the Director of Convict Prisons for Ireland, which deals with the period ended on the 21st of December, 1873, has been published. At that date the accommodation for convicts in the Government prisons was estimated as amounting to 2,050. On the 1st of January of the present year, there were confined 844 males and 289 females, making a total of 1,133. During the past year 228 persons were sentenced to various terms of penal servitude. A comparison of the number of prisoners in gaol at corresponding dates during the last twenty years exhibits a steady and almost unbroken decrease in crime. At the commencement of 1854, the Government prisons had 3,933 inmates; in 1864 there were 1,768; in the present year there are, as we have stated, but 1,133.

Digitized by Google

A BILL

Intituled—An Act for the constitution of one Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland.

WHEREAS it is expedient to constitute one Court of Judicature, and to make provision for the better administration of justice, in Ireland.

Be it therefore enacted, &c.:

PRELIMINARY.

1. This Act may be cited for all purposes as the "Court of Judicature Act (Ireland), 1874."

2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the first day of January 1875.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several expressions herein-after mentioned shall have, or include, the meanings following; (that is to say,)

"High Court of Chancery" and "Court of Chancery" respectively shall mean the High Court of Chancery in Ireland, and shall include the Lord Chancellor.

"Court of Queen's Bench" shall mean the Court of Queen's Bench in Ireland.

"Court of Common Pleas" shall mean the Court of Common Pleas in Ireland.

"Court of Exchequer" shall mean the Court of Exchequer in Ireland.

"High Court of Admiralty" shall mean the High Court of Admiralty of Ireland.

"Court of Probate" shall mean the Court of Probate in Ireland.

"Court for Matrimonial Causes and Matters" shall mean the Court for Matrimonial Causes and Matters in Ireland.

"Landed Estates Court" shall mean the Landed Estates Court, Ireland.

"Court of Bankruptcy" shall mean the Court of Bankruptcy in Ireland.

"Lord Lieutenant" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.

"Lord Chancellor" shall mean Lord Chancellor of Ireland, and shall include Lords Commissioners and Lord Keeper of the Great Seal of Ireland.

"The Lord Chief Justice" shall mean the Lord Chief Justice of Ireland.

"Master of the Rolls" shall mean the Master of the Rolls in Ireland.

"Lord Justice of Appeal" shall mean the Lord Justice of Appeal in Chancery in Ireland.

"Vice-Chancellor" shall mean the Vice-Chancellor of Ireland.

"Imperial Court of Appeal" shall mean Her Majesty's Imperial Court of Appeal established by the Supreme Court of Judicature Acts, 1873–1874.

"High Court of Justice" shall mean Her Majesty's Court of Justice in Ireland established by this Act.

"Judge of the High Court of Justice" shall not include an "additional Judge" of such Court.

"Court of Appeal" shall mean Her Majesty's Court of Appeal in Ireland established by this Act.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

"Registration of Voters Acts" shall mean the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, and all other Acts or parts of Acts relating to the registration or qualification of persons entitled to vote at the election of members to serve in Parliament for Ireland.

"Real estate" shall include leaseholds for years.

PART I.

Constitution and Judges of Court of Judicature.

4. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery, the Court of Queen's Bench, the Court of Common Pleas, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, and the Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Court of Judicature in Ireland.

5. The said Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice in Ireland," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal in Ireland," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

6. Her Majesty's High Court of Justice in Ireland shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the Vice Chancellor, the several Puisne Justices of the Court of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, the Judge of the Court of Probate and of the Court for Matrimonial Causes and Matters, and the Judge of the Landed Estates Court, except such, if any, of the aforesaid Judges as shall be appointed an ordinary Judge of the Court of Appeal.

Subject to the provisions herein-after contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice, the

Digitized by Google

Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their sucessors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice in Ireland."

Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed seven in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed seven, it being intended that the permanent number of Judges of the said High Court shall not exceed fifteen.

All the Judges of the said Court shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law in Ireland, and shall have in all respects, save as in this Act otherwise expressly provided, equal power, authority, and jurisdiction.

The Lord Chancellor for the time being, or in his absence the Lord Chief Justice for the time being, shall be President of the High Court of Justice.

7. The existing Judge of the Landed Estates Court shall continue to have all the powers, jurisdiction, and authority which he had before the passing of this Act, and also all power, jurisdiction, and authority which might before the passing of this Act have been exercised by two Judges in that Court, and save as herein-after expressly provided he shall not be liable to discharge any further or other duties; and every person succeeding the said Judge shall have the same power, jurisdiction, and authority as by any previous statute or by this Act have been conferred upon such Judge, and discharge the same duties as are continued or imposed upon him by this Act; provided, however, also that each and every other Judge of the High Court of Justice shall be capable of exercising the same power, jurisdiction, and authority as the said Judge of the Landed Estates Court.

8. The existing Judges of the Court of Bankruptcy and their successors in such offices respectively, who shall be appointed in the same manner as heretofore, and the existing Judge of the High Court of Admiralty, shall, as as to tenure of office, rank, title, salary, pension, jurisdiction, powers, and authority respectively, remain and be in the same condition and be liable to discharge the same duties respectively, and none other, as if this Act had not been passed.

When the existing Judge of the High Court of Admiralty shall die or resign, no person shall be appointed to succeed him in his said office.

9. Her Majesty's Court of Appeal in Ireland shall be constituted as follows: There shall be four ex-officio Judges thereof, and two ordinary Judges, who shall from time to time be appointed by Her Majesty. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lord Justice of Appeal in Chancery, and such other person as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either before or after the commencement of this Act, and if made before shall take effect from the commencement of this Act.

Besides the said ex-officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit), to appoint under Her Royal Sign Manual as additional Judges of the Court of Appeal any persons who having held the office of Lord Chancellor in Ireland shall signify in writing their willingness to serve as such additional Judges.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

10. The office of ordinary Judge of the Court of Appeal or of any Judge or Additional Judge of the High Court of Justice may be vacated by resignation in writing, under his hand, addressed to the Lord Lieutenant, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed to the office of ordinary Judge of the Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge or additional Judge.

11. Any person who has practised for not less than ten years at the Bar of Ireland shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed Lord Justice of the Court of Appeal in Chancery in Ireland, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed to the office of ordinary Judge of the said Court of Appeal.

12. Every Judge of the High Court of Justice, and ordinary Judge of the Court of Appeal, shall hold his office for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

13. The *ex-officio* Judges of the Court of Appeal shall rank in the Court of Judicature in Ireland in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal shall rank in the said Court next after the Lord Chief Baron, and between themselves according to the priority of their appointments.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the ordinary Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

14. Every existing Judge who is by this Act made a Judge of the High Court of Justice or ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, patronage, and the powers of appointment or dismissal, and all other privileges and disqualifications, and also as to salary and pension, save as is herein-after provided, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, every such existing Judge shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer or Gaol Delivery, unless he was so liable by usage or custom at the time of the passing of this Act.

Service as a Judge in the High Court of Justice, or as an ordinary Judge in the Court of Appeal, shall, in the case of an existing Judge for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

15. If in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of Justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such courts, save as herein-after mentioned, every

Digitized by Google

Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

16. From and after the time fixed for the commencement of this Act, there shall be paid by way of salary to each of the existing Judges following; that is to say,

To the Master of the Rolls and to each of the Puisne Justices and Junior Barons the sum of four thousand pounds; and

To the Judge of the Landed Estates Court the sum of three thousand five hundred pounds.

Such salaries shall be instead of the salaries by law payable to such existing Judges immediately before such commencement, and such salaries shall be paid to such Judges respectively on the same days and in the same manner in every respect as their former salaries, and the pensions of such Judges, if and when they shall respectively become entitled to the same, shall be calculated according to the salaries by this Act made payable to such Judges respectively.

17. Subject to the provisions in this Act before contained, there shall be paid to Judges appointed under this Act the following salaries, which shall in each case include any pension to which the Judge may be entitled in respect of any public office previously filled by him;

To the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices respectively receive at the time of the passing of this Act;

To the Judges of the Court of Probate and of the Landed Estates Court, the sum of three thousand five hundred pounds a year;

To each of the other Judges of the High Court of Justice, and to each ordinary Judge of the Court of Appeal, the sum of four thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal, but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

18. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice or ordinary Judge of the Court of Appeal appointed after the commencement of this Act who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life, of the amount following; (that is to say,)

In the case of the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office:

In the case of the ordinary Judges of the Court of Appeal, the same amount of pension which might have been granted to the Lord Justice of the Court of Appeal in Chancery in Ireland if this Act had not passed:

In the case of the other Judges of the High Court of Justice, an amount not exceeding two thirds of their respective salaries.

19. The salaries, allowances, and pensions payable to the Judges of the High Court of Justice and the ordinary Judges of the Court of Appeal respectively under this Act, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

Part II.

Jurisdiction and Law.

20. The High Court of Justice shall be a Superior Court of Record, and subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court, and including any jurisdiction of the Masters in Chancery:

(2.) The Court of Queen's Bench:

(3.) The Court of Common Pleas:

(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court:

(5.) The Court of Probate:

(6.) The Court for Matrimonial Causes and Matters:

(7.) The Landed Estates Court, including the control and direction of the Record of Title Office of the said Court, and all powers and authorities exercised by the Judges of the said Court, or any of them, under the Record of Title Act, 1865:

(8.) The High Court of Admiralty:

(9.) The Court of Bankruptcy:

(10.) The Courts created by Commissions of Assize, of Oyer and Terminer and of Gaol Delivery, or any of such Commissions;

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, or by any Master of the Court of Chancery, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, Masters or Master, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Provided always, that nothing herein contained shall abridge or alter the jurisdiction conferred by any Act or Acts upon any Judge or Judges, Commissioner or Commissioners, of Assize.

21. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, or the High Court of Admiralty:

(2.) Any jurisdiction usually vested in the Lord Chancellor in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

(3.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of Ireland:

(4.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:

(5.) Any jurisdiction of the Master of the Rolls in relation to records in Dublin or elsewhere in Ireland:

22. The Court of Appeal shall be a Superior Court of Record, and there shall be transferred to and vested in such

Digitized by Google

Court all jurisdiction and powers of the Courts following; (that is to say,)

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the High Court of Admiralty, or the Court of Bankruptcy:

(2.) All jurisdiction and powers of the Court of Exchequer Chamber, including its appellate jurisdiction in appeals under the Registration of Voters Acts:

(3.) All jurisdiction and powers of the Court for Land Cases Reserved at Dublin under the provisions of the "Landlord and Tenant, Ireland, Act, 1874."

23. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as herein-after-mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

24. No error or appeal shall be brought from any judgment or order of the High Court of Justice or of the Court of Appeal, subsequent to the commencement of this Act, to the House of Lords; but every decree and order of the Court of Appeal, in respect of any subject matter or proceeding wherein appeal now lies from any Court in Ireland to the House of Lords, shall and may, subject to the provisions of the Supreme Court of Judicature Acts, 1873–1874, be appealed from to the Imperial Court of Appeal, which shall in respect thereof possess and exercise all and every the power, authority, and jurisdiction conferred upon the said Court by the Supreme Court of Judicature Acts, 1873–1874; but nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords or to Her Majesty in Council, from any prior judgment or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

25. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the High Court of Justice and the Court of Appeal respectively shall cease to be exercised, except by the High Court of Justice and the Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or the Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the High Court of Justice and the Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued as follows; (that is to say,) in the case of proceedings in error or on appeal, or of proceedings before the Court of Appeal in Chancery, or in the Court for Land Cases Reserved at Dublin, in and before the Court of Appeal; and, as to all other proceedings, in and before the High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be), down to the point at which the transfer takes place; and so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued in and before the said Courts respectively, either in the same or the like manner as they would have been continued in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the High Court of Justice and the Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

26. The jurisdiction by this Act transferred to the High Court of Justice and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act, or in any such rules or orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

27. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit, instituted for that

Digitized by Google

purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

28. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next hereinafter mentioned: Be it enacted as follows:

(1.) In the administration by the Court of the assets of any person who may die after the passing of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities, respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the decree or order for the administration of such estate and make such claims against the same as they may respectively be entitled to by virtue of this Act.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him conjointly with any other person.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, without the concurrence of the assignor; Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto, to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Digitized by Google

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made: and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

(10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

(11.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III.

Sittings and Distribution of Business.

29. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice, the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

30. The Lord Lieutenant in Council may from time to time, upon any report or recommendation of the Judges by whose advice the Lord Lieutenant is hereinafter authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Court of Judicature herein-after mentioned, with the consent of the Lord Chancellor, make, revoke, or modify orders regulating the vacations to be observed by the High Court of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act

31. Provision shall be made by Rules of Court for the hearing in Dublin, during vacation, by Judges of the High Court of Justice and the Judges of the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

32. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Dublin as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

33. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Dublin, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Dublin, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the High Court of Justice.

34. For the more convenient despatch of business in the High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own), there shall be in the said High Court five Divisions consisting of such Judges and additional Judges respectively as hereinafter mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say),

(1.) One Division shall consist of The Lord Chancellor, who shall be President thereof, the Master of the Rolls, The Vice-Chancellor, the Judge of the Landed Estates Court, and the Judges of the Court of Bankruptcy;

(2.) One other Division shall consist of The Lord Chief Justice, who shall be President thereof, and the other Judges of the Court of Queen's Bench;

(3.) One other Division shall consist of The Lord Chief Justice of the Common Pleas, who shall be President thereof, and of the other Judges of the Court of Common Pleas;

(4.) One other Division shall consist of the Lord Chief Baron of the Exchequer, who shall be President thereof, and of the other Barons of the Court of Exchequer;

(5.) One other Division shall consist of the Judge of the Probate Court and of the Court for Matrimonial Causes and Matters, who shall be President thereof, and of the Judge of the High Court of Admiralty.

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Com-

Digitized by Google

mon Pleas Division, the Exchequer Division, and the Probate Division.

The Queen's Bench Division shall have not less than four Judges; the Common Pleas and Exchequer Divisions, each not less than three.

Any vacancy at the time of the commencement of this Act in the office of Judge of any Court the jurisdiction of which is by this Act transferred to the High Court of Justice or the Court of Appeal may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Save as by this Act expressly provided, any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the Division to which the Judge whose place has become vacant belonged.

35. The Lord Lieutenant in Council may from time to time, upon any report or recommendation of the Council of Judges of the Court of Judicature herein-after mentioned, order that any reduction or increase in the number of Divisions of the High Court of Justice, or in the number of the Judges of the said High Court who may be attached to any such Division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such Order may provide for the abolition on vacancy of the distinction of the offices of any of the following Judges, namely, the Chief Justice, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, if they shall be so reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such order of the Lord Lieutenant in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of Parliament, praying that the same may not come into operation. Any such Order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted. Provided always, that the total number of the Judges of the High Court of Justice shall not be reduced or increased by any such Order.

36. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the Division, or with the name of the Judge to which or to whom the same is assigned.

37. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively:

(3.) All matters pending in the Landed Estates Court at the commencement of this Act:

(4.) All matters which would have been within the exclusive cognizance of the Landed Estates Court, or of any Judge or Judges thereof, if this Act had not passed:

(5.) All matters pending in the Court of Bankruptcy at the commencement of this Act:

(6.) All matters to be commenced after the commencement of this Act, in respect of which the Court of Bankruptcy or the Judges thereof has or have exclusive jurisdiction:

(7.) All causes and matters for any of the following purposes:
- The administration of the estates of deceased persons;
- The dissolution of partnerships or the taking of partnership or other accounts;
- The redemption or foreclosure of mortgages;
- The raising of portions, or other charges on land;
- The sale and distribution of the proceeds of property subject to any lien or charge;
- The execution of trusts, charitable or private;
- The rectification, or setting aside, or cancellation of deeds or other written instruments;
- The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;
- The partition or sale of real estates;
- The wardship of infants and the care of infants estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed:

There shall be assigned (subject as aforesaid) to the Probate Division of said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Matrimonial Causes and Matters, or in the High Court of Admiralty, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognisance of the Court of Probate, and of the Court for Matrimonial Causes and Matters, or of the High Court of Admiralty, if this Act had not passed.

38. Subject to any Rules of Court, and to the provisions hereinbefore contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court, as he may think fit, by marking the document by which the same is commenced, with the name of such Division, and giving notice thereof to the proper officer of the Court; provided that all interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; provided also, that if any plaintiff or petitioner shall at any

Digitized by Google

time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions of this Act, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned.

39. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

40. In any matter pending in the Landed Estates Court at the commencement of this Act, or in any cause or matter which shall thereafter be commenced, for the sale or partition of real estate according to the procedure now in use in the said Landed Estates Court or any procedure which shall be substituted therefor by rules of Court, the judge to whom such cause or matter shall be assigned shall have the same jurisdiction and power to appoint a receiver over the said real estate as the Court of Chancery now has in a suit instituted for the like purpose; and no other suit or proceeding for the purpose of obtaining the appointment of a receiver shall be necessary, or shall be instituted by any person after the commencement of any such cause or matter, unless the same shall be specially ordered to be instituded by the judge. In any such cause or matter for the sale of real estate, the judge shall have jurisdiction and power to entertain and decide all controversies and questions as to the validity or effect of any deed, instrument, or contract affecting the said real estate or any charge or incumbrance thereon, or as to the construction or effect of any devise or bequest of any estate, or interest in or of any charge or incumbrance upon such real estate, which it may be necessary to decide for the purpose of such sale or for the complete distribution of the proceeds thereof, or as to the validity or effect of any lease or instrument of tenancy affecting the said real estate which it may be necessary to ascertain for the due settlement of a rental for the purpose of such sale; and it shall not be necessary to institute any other cause or matter for any of such purposes. The procedure in such cases shall be settled by rules of Court, and any person whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of any proceeding for such purpose pursuant to any rule of Court or order of the Court shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his claim or defence as if he had duly sued or been sued in a suit instituted for the purpose of deciding any such question or controversy.

41. Subject to any arrangements which may be from time to time made by mutual agreement between the Judges of the said High Court, the sittings for trials by jury in Dublin, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission any Ordinary Judge of the Court of Appeal or any Judge of the Chancery Division appointed after the passing of this Act, or any of Her Majesty's Serjeants-at-law, or Counsel learned in the law, who, for the purpose of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court: Provided also, that, any law or custom to the contrary, it shall not be necessary in any commission for the trial of crimes and offences in the county of the city and county of Dublin to nominate more than one judge to preside.

42. The Judges to be placed on the rota for the trial of election petitions for Ireland in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, would be the Judges upon the rota for the trial of such petitions during the year one thousand eight hundred and seventy-five, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed.

43. Any Judge of the High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

44. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or more of the Judges thereof. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

45. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law in Ireland, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively: and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court of Justice, and in case of difference among them, in such

Digitized by Google

manner as the majority of the said Judges with the concurrence of the Lord Chief Justice shall determine.

46. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit; Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by Commissioners, or in Dublin,) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the Court of Probate, or the Court for Matrimonial Causes and Matters, or of the Landed Estates Court, or of the Court of Bankruptcy, or of the High Court of Admiralty, shall be assigned to the Judge or Judges of such Court; Provided always, that after the death or resignation of the existing Judge of the Court of Admiralty, the causes and matters within his exclusive cognizance shall be assigned to the Judge of the Court of Probate.

47. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or of the Court of Appeal, or may direct any case, or point in a case, to be argued before any such Court: and any such Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

48. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Court of Appeal, and for the hearing of such Appeals the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, or two of such Chiefs at least, shall be bound to attend. The determination of any such question by the Judges of the said Court of Appeal in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said Court of Appeal in any criminal cause or matter, save for some error of law apparent upon the record.

49. Every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

50. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, unless by leave of the Court or Judge making such order.

51 Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

52. In case from the amount of business in the Chancery Division of the High Court of Justice, or in any Division of the said Court, from the absence of a Judge or Judges through illness, it shall be found expedient that some or one of the ordinary Judges of the Court of Appeal appointed after the passing of this Act should assist in transacting the business of such Division, it shall be lawful for them and him so to do; and while so sitting and acting such Judge or Judges shall have all the power, jurisdiction, and authority of a Judge or Judges of the said High Court of Justice.

53. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

54. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself or made by any Divisional Court of the High Court of which he was himself a member; and no appeal shall be heard or determined by less than three of the Judges of the said Court.

55. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal shall be made by and under the direction of the President and the other Judges of the said Court of Appeal.

Part IV.

Trial and Procedure.

56. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any special Referee appointed by such Court or Judge, and the report of any such Referree may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special Referees or assessors as shall be determined by the Court.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before a special Referee to be

Digitized by Google

agreed on between the parties, or in defalt of agreement to be appointed by the Court or Judge. All such trials before Referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

58. In all cases of any reference to or trial by Referees under this Act the Referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

59. With respect to all such proceedings before Referees and their Reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court, with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Amendment Act (Ireland), 1856.

60. The provisions contained in the fifth and sixth sections of the Common Law Procedure Act, Ireland, 1870, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a Civil Bill Court.

61. Subject to the provisions of this Act, the Lord Lieutenant may, at any time before the commencement of this Act, by and with the advice of the Lord Chancellor, the Lord Chief Justice and the other Judges of the several Courts intended to be united and consolidated by this Act, or of the greater number of them (of whom the Lord Chancellor and the Lord Chief Justice shall be two), cause to be prepared Rules, in this Act referred to as Rules of Court, providing as follows :—

(1.) For the regulation of the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Courts sitting in Chambers;

(2.) For the reduction of the number of Circuits and for the regulation of Circuits, including the times and places at which they are to be holden and the business to be transacted thereat;

(3.) For the regulation of all matters consistent with or not expressly determined by the Rules contained in the Schedule hereto, which, under and for the purposes of such last-mentioned Rule, require to be, or conveniently may be defined or regulated by further Rules of Court;

(4,) And, generally, for the regulation of any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or to the costs of proceedings therein, or to the conduct of civil or criminal business coming within the cognisance of the said Courts respectively, for which provision is not expressly made by this Act or by the Rules contained in the Schedule hereto.

The Lord Lieutenant may, with the like advice, fix and determine when such rules respectively shall come into operation.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses, within the next subsequent forty days on which the said House shall have sat, praying that any such Rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. This section shall come into operation immediately on the passing of this Act.

62. The Rules contained in the Schedule to this Act (which shall be read and taken as part of this Act) shall come into operation immediately on the commencement of this Act, and, as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority herein-after in that behalf provided, any of them may be altered or varied; but such Rules, and also all Rules to be made before the commencement of this Act, as herein-before mentioned, shall for all the purposes of this Act be Rules of Court capable of being annulled or altered by the same authority by which any other Rules of Court may be made, altered, or annulled after the commencement of this Act.

63. All Rules and Orders of Court which shall be in force in the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, and the High Court of Admiralty, respectively, at the time of the commencement of this Act, except so far as they are hereby expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been contained in the Schedule to this Act until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

64. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act, unless where the same are inconsistent with the express provisions of this Act.

65. Nothing in this Act or in the Schedule hereto, or in any Rules of Court to be made by virtue hereof, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the Rules of Evidence, or the law relating to jurymen or juries.

66. Save as by this Act, or by any Rules of Court (whether contained in the Schedule to this Act, or to be made under the authority thereof), is or shall be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virture of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or with any Rules contained in the said Schedule or to be made by virtue of this Act, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

67. From and after the commencement of this Act, the Court of Judicature may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter or annul any Rules of Court for the time being in force, or make any new Rules of Court, for the purpose of regulating all such matters of practice and procedure in the Court, or relating to the suitors or officers of the said Court, or otherwise as under the provisions of this Act are or may be regulated by Rules of Court: Provided, that any Rule made in the exercise of this power, whether for altering or annulling any then existing Rule, or for any other purpose, shall be laid before both Houses of Parliament, within the same time, and in the same manner and with the same effect in all respects, as is herein-before provided with respect to the said Rules to be made before the commencement of this Act, and may be annulled and made void in the same manner as such last-mentioned Rules.

68. A Council of the Judges of the Court of Judicature, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice, for the purpose of considering

Digitized by Google

the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the Court of Appeal: And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

69. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the High Court of Justice and the Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the High Court of Justice.

Part V.

Officers and Offices.

70. The Masters in Chancery, and in the Courts of Common Law, the Clerks of the Crown and Hanaper, the Clerk of the Crown of the Court of Queen's Bench, and all Masters, Secretaries, Registrars, Clerk of Records and Writs, Clerks of the Rules and Pleadings and Record Assistants, Chief and other Clerks, Commissioners to take oaths or affidavits, or the acknowledgment of deeds by married women, Messengers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of or connected with any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, shall, from and after the commencement of this Act, be attached to the Court of Judicature consisting of the said High Court of Justice and the said Court of Appeal.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed, and any such officer who is removable by the Court to which he is now attached shall be removable by the Court to which he shall be attached under this Act, or by the majority of the Judges thereof.

The existing Registrars and Clerks to the Registrars in the Chancery registrars office shall retain any right of succession secured to them by Act of Parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any Divisional or other Court thereof, or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the Superior Court by this section in such manner as may be directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this Act; and, subject to such Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this Act had not passed.

Subject to the provisions of this Act, all Secretaries, Registrars, Clerks, and other officers attached to and subject to removal by any existing Judge who under the provisions of this Act shall become a Judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such Judge and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions as if this Act had not passed: Provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this Act.

In case in such distribution of business in the Court of Judicature among the said officers it shall be found that the continuance of the services of any of them is unnecessary, the Treasury may, with the consent of the Lord Chancellor, make arrangements for the voluntary retirement of such officers, upon such terms as to compensation by way of annual payment, or gross sum by way of compensation, as may be agreed on with such officers respectively, and upon any arrangement being made, the Lord Chancellor may permit the present retirement of any such officer, who shall thenceforth cease to have any right or claim to any other allowance, pension, or compensation than that so agreed upon.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge.

71. Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, who is paid out of fees, and whose emoluments are affected by the passing of this Act, shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

72. Where a doubt exists as to the position under this Act of any existing officer attached to any existing Court or Judge affected by this Act, such doubt may be determined by Rules of Court: subject to this proviso, that such Rules of Court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

73. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal

74. In case at the commencement of this Act the existing Masters of the Court of Chancery, other than the Receiver Master, shall not have been released from duty pursuant to the provisions of "The Chancery (Ireland) Act, 1867," it is hereby provided that from and after the commencement of this Act they shall be so released; and the references, matters, and business pending before them

Digitized by Google

and not completed shall be transferred to such Judges of the Chancery Division as the Lord Chancellor shall direct.

No successor to the existing Reciver Master shall be appointed; and it shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor, to relieve the existing Receiver Master from the further discharge of his duties in the same manner, and upon the same terms, as the Lord Chancellor was empowered to release the other Masters by the Chancery (Ireland) Act, 1867; and upon the death, resignation, or release of such existing Receiver Master, the Lord Lieutenant, with the consent of the Council of Judges of the Court of Judicature hereinafter mentioned, shall and may distribute the matters and business then existing in his office and declare in which of the divisions of the High Court of Judicature and by what Judges and officers thereof for the future all matters, references, and business which were theretofore liable to be heard, transacted, and conducted by or under the superintendence of the said Receiver Master shall be heard, transacted. and conducted, and shall and may transfer and attach the officers of and connected with the said office of Receiver Master to such of the Judges and divisions of the High Court of Justice as shall seem expedient. Provided always, that the duties to be imposed upon such officers shall be same or analogous to those which they have hitherto performed.

75. Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Court of Judicature, there shall be attached to the said Court such officers as the Lord Chancellor, with the concurrence of the Presidents of the Divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice shall be one, and with the sanction of the Treasury, may from time to time determine.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties with respect either to the Court of Judicature generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular Judge or Judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, Divisions, and Judges accordingly.

All officers assigned to perform duties with respect to the Court of Judicature generally, or attached to the High Court of Justice or the Court of Appeal, and all Commissioners to take oaths or affidavits in the Court of Judicature, shall be appointed by the Lord Chancellor.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls or Vice Chancellor, shall continue, while so attached, to be appointed by the Master of the Rolls and Vice-Chancellor respectively in the same manner as heretofore.

All other officers attached to any Division of the said High Court shall be appointed by the President of that Division.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Any officer of the Court of Judicature (other than such officers attached to the person of a Judge as are removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Court of Judicature over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

76. There shall be paid to every salaried officer appointed in pursuance of this Act such salary out of moneys provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

77. Subject to the provisions herein-before contained, any rights of patronage and other rights or powers incident to any Court, or to the office of any Judge of any Court whose jurisdiction is transferred to the High Court of Justice, or to the Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this Act, shall be exercised as follows; that is to say, if incident to the office of any existing Judge shall continue to be exercised by such existing Judge during his continuance in office as a Judge of the said High Court or as an ordinary Judge of the Court of Appeal, and after the death, resignation, or removal from office of such existing Judge shall be exercised in such manner as Her Majesty may by Sign Manual direct.

78. Every Judge of the High Court of Justice and every ordinary Judge of the Court of Appeal shall have attached to his person, as Judge, a secretary appointed and removable by him at pleasure, and who shall receive a salary of two hundred and fifty pounds a year, and such Secretary shall be in lieu of and substitution for any registrar or clerk of assize heretofore provided for the Judges on circuit, and such secretary shall be bound himself or by deputy to discharge the duties of registrar or clerk of assize or nisi prius on circuit in case the Judge to whom he is attached shall go circuit, and shall receive for every circuit on which he shall accompany such Judge an additional payment of one hundred pounds; and each ordinary Judge of the Court of Appeal may appoint a trainbearer and tipstaff in the same manner and with the same salaries as the Lords Justices of Appeal in Chancery might before this Act: Provided however, that nothing herein contained shall interfere with the right of the existing Chief Justices of the Courts of Queen's Bench and Common Pleas and Chief Baron of the Exchequer to appoint a registrar or clerk of nisi prius for trials in Dublin in the same manner as heretofore, but such right shall not be continued to their successors, and, in lieu thereof, provision shall be made under the powers herein-before conferred for the attendance of proper officers at the trials in Dublin who shall discharge the duties heretofore discharged by such registrars.

79. From and after the commencement of this Act, all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Court of Judicature, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Court of Judicature and shall be admitted by the Lord Chancellor, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Court of Judicature; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

Digitized by Google

PART VI.

Jurisdiction of Inferior Courts.

80. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law or in equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next herein-after contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

81. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof; and in such case the Record in such proceeding shall be transmitted by the Registrar, or other proper officer, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

82. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts.

PART VII.

Miscellaneous Provisions.

83. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Court of Judicature, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Court making such order.

84. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Court of Judicature who are now officers of the Courts of Common Law in Ireland, and who perform duties in relation to either the civil or criminal business transacted on circuit.

85. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Court of Judicature, and by his successors. Provided however that it shall be lawful for the Treasury, with the consent of the Lord Chancellor, to consolidate, alter, or abolish any of such offices as are held during pleasure, and, with the like consent, to alter the salaries of such as shall be retained.

86. When the Great Seal of Ireland is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

[The Schedule of Rules appended to this Bill shall be published next week.]

RESOLUTIONS OF THE HOME BAR ON THE JUDICATURE BILL.

A Meeting of the Members of the Home Bar, convened for the purpose of considering the provisions of the Court of Judicature (Ireland) Bill, now before Parliament, so far as they may affect existing Circuits, was held at the Four Courts on Tuesday,

GEORGE BATTERSBY, Esq., LL.D., Q.C., Father, in the Chair.

The following resolutions were unanimously adopted :—

"That the reduction of the number of circuits would not be attended with any advantages, economical or otherwise, but would occasion the disturbance of vested interests, much inconvenience to the public by protracting the time of holding the assizes, and pecuniary loss to the members of the discontinued circuit or circuits."

"That if there be not a necessity for such a reduction, and the members of the Home Bar cannot find any, the change had better not be made."

"That inasmuch as, on the passing of the Judicature Bill, there will be fifteen judges of the High Court, and the judges of the Equity Courts and Court of Probate already preside at inquiries before juries, they could be made available for the assizes, and there is no necessity for the proposed reduction."

"That in case it should be suggested that the six circuits could be continued by having the business of the smallest circuits done by a single judge, as is the case in Wales, the Home Bar considers that such an arrangement would involve the postponing of the civil to the criminal business, and occasion so much delay and uncertainty in the time of the proceedings on circuit, that parties would be deterred from trying any civil cases on such circuits."

"That the language of the people of Wales, and the distance of the Principality from the capital, render advisable there a practice which would be disadvantageous in the neighbourhood of a metropolis."

"That copies of those resolutions be transmitted to the Right Hon. the Attorney General for Ireland, with a request that he will bring them under the notice of Her Majesty's Government."

(Signed) GEORGE BATTERSBY (Father).
CONSTANTINE MOLLOY (Secretary).

THE INCORPORATED LAW SOCIETY.

The half-yearly Meeting of the Members of this Society took place on Saturday last, at the Solicitors' Buildings, Four Courts :

Sir R. J. T. ORPEN, the President, in the chair.

Amongst those present were :—

Messrs. Arthur Barlow, James Burke, Joseph Burke, P. J. Conway, Robert Cooper, Edward D'Alton, Wm. D'Alton, Vesey Daly, Henry S. Dix, Arthur Ellis, Edward Fitzgerald, Charles Fitzgerald, Wm. Fry, D. Fitzgerald John Galloway, Joseph Galloway, John F. Goodman, David Galbraith. Richard P. Hackett, John T. Hammerton, Wm. Hitchcock, Thomas A. Hodgens, John E. Hughes, Wm. H. Jackson, Thomas Lynch, H. S. Mccredy, Edward M'Gauran, H. J. Moore, A. O'B. O'Connor, John E. O'Ferrall, Arthur H. Orpen, Richard H. M. Orpen, Frederick R. Pim, P. Poe, Wm. Roche, G. W. Shannon, Edward T. Stapleton, Charles Thorp, John Thorp, John Weldon, H. J. P. West, Richard Wright.

Mr. GODDARD, the secretary, brought up the annual statement of accounts, which showed a cash balance in bank of £1,743 13s. 1d. to meet the current expenditure.

Digitized by Google

The Chairman moved the appointment of the following Members as auditors of the accounts for 1873-74:—Messrs. John Weldon, Joseph Galloway, Arthur Lee Barlow, Joseph Burke, and Edward Charles Murray.

Mr. G. W. Shannon said it would be well to invest in the funds such portion of the cash balance as would not be called on. The Society would then have the benefit of the interest.

Mr. Wm. Roche said the suggestion was an excellent one, and, no doubt, would be acted upon.

The Chairman stated that, as notice had not been given of any motion, the business was concluded.

Mr. Shannon suggested that it might be well to express an opinion on the new Judicature Bill.

Mr. Roche said to do so would be inconvenient, as a copy of the bill had not yet been received, and they might be wasting time discussing questions that possibly might not arise at all.

Mr. Shannon concurred in this view, and moved that the meeting should stand adjourned till that day fortnight, for the consideration of the Judicature Bill, which, it was expected, would be to hand in the meantime.

Mr. Roche seconded the resolution, which was agreed to.

Mr. M'Cready asked had anything been done in reference to the difficulty which had arisen about admitting non-matriculated apprentices to the profession after four, instead of five years' service? There had been a meeting of the apprentices, and the question had been referred to the council.

The Secretary said the council had received a deputation on Wednesday last from the apprentices, and were now considering the matter. He believed there would be no difficulty in settling it.

Mr. Shannon observed that the difficulty arose from a clear mistake in the Act.

The Chairman, in reply to a member, said the question of a schedule of fees for the law courts had been brought before the judges on the first day of term; but, as the Judicature Bill was to be introduced, consolidating law and equity, the judges thought it would be premature to decide on a schedule at present.

Mr. Ellis, in reference to the certificate duty, expressed an opinion that it would be well the Society either abandoned altogether the agitation against the tax or took really vigorous action to get rid of it. At present their movement was limited to an annual stereotyped letter to the English Society and an equally stereotyped reply from that body.

The Chairman said the profession and the society would be very glad to get shut of the certificate duty, but there was a difficulty in carrying the question without the assistance of the English society. The subject, however, would not be neglected.

Mr. Ellis said he did not think that the council had been active enough in relation to the Irish Church Commissioners, who placed every obstacle in the way of any solicitor but their own dealing with the sale of Church property, and, besides, had treated the society with sovereign contempt. In connexion with the sales of glebe lands, the Commissioners sent notices to the tenants that they might purchase them on particular terms, and at the foot of the document there was a statement that, to facilitate the purchase of small holdings by the tenants, the Commissioners had short forms of conveyance and mortgage printed, and that their solicitor, Mr. John Ball, of 11, Hume street, was bound to prepare and register each conveyance or mortgage at the fixed charges (including everything except stamp duty and office fees) of £2 2s. where the sum did not exceed £200, and of £3 3s. where the sum was more than £200, and did not exceed £500. Now, that circular virtually asked the tenants to employ the Commissioners' solicitor in all cases. He (Mr. Ellis) happened to have a few conveyances of glebe lands in hands at the time, and he applied to the Commissioners for the printed forms, which, of course, were very convenient. He received the paper forms, but was refused the parchment forms. He wrote to the Commissioners stating that he thought other professional men ought to be on equal terms with Mr. Ball, and he did not see why Mr. Ball, in addition to getting all the general business of the Commissioners, should have the advantage over other solicitors of being supplied with parchment, stationery, postage, and everything else. The Commissioners replied to him, stating that they interfered in the matter solely in the interest of the poor tenants of the glebe lands, and that they could be sure of the tenants deriving any benefit from the parchment forms only when they were in the hands of their own solicitor, whose charges had been regulated by law, and that it was hardly for the Commissioners to distribute the forms amongst the solicitors at large, over whose charges on their clients they had no control. Now it seemed to him (Mr. Ellis) that but one meaning could be given to that reply, namely—that, if the parchment forms were given to the solicitors, the Commissioners could not be sure the forms would not be charged for to the clients, though they were supplied for nothing. He brought the answer of the Commissioners before the council, and he was correct in saying that they were as indignant as he was himself at the conduct of the Commissioners. A committee was appointed to reply to them. Two letters were brought up to choose from, but another committee was nominated, and they reported that there was no use in replying at all, as all the sales were over. This occurred in November last, and what turned out since? The other day the Premier stated in the House of Commons that only one-twelfth of the Church lands had been sold, and that in about 17 years the sales would be completed. He (Mr. Ellis) though that to be too sanguine an estimate. He believed it would take 27 years to complete the sales, because they were not carried out in regular order in any particular parish, district or diocese, but as the conveyances were prepared, for the purpose of gaining the fees of two or three guineas, thousands of which would go into the pocket of the Commissioners' solicitor, and out of the pockets of the profession at large. In this state of things, although the Commissioners might refuse to communicate with the profession on the matter, he certainly felt that it ought to be brought before Parliament—that the forms should be asked for, and the whole subject dealt with in the House of Commons. Every impediment was put in the way of the profession by the Commissioners. He had one sale before their solicitor for the last nine months, and it was no nearer completion now than at the beginning, and he believed many other solicitors present had the same story to tell.

Mr. West expressed his decided conviction that the Church Commissioners never intended to convey by their letter to Mr. Ellis that they believed the solicitors of Ireland would charge their clients for the parchment forms if they were given for nothing, but what the Commissioners did intend to convey was that, as Mr. Ball was their officer, and they controlled his charges, insisting that he should take considerably less than he otherwise would be entitled to, the forms were given to him, but, as the Commissioners had no corresponding power over the solicitors generally, they did not see that they ought to supply the forms, which were established in the interest of the poor tenants of glebe lands, to the solicitors, who, instead of charging the tenant only the paltry fee of two or three guineas, might look for the full taxable cost of the conveyance. That was the simple explanation of the whole thing. With regard to the sales not being completed for 17 years, the sales there referred to were sales of the general Church property, not of the glebe lands, the purchases of which had come to an end.

The subject then dropped.

Mr. A. Barlow, Vice-President, was called to the second chair, and the proceedings were closed with a cordial vote of thanks to Sir R. J. T. Orpen.

COURT OF COMMON PLEAS (WESTMINSTER).

(Before Coleridge C. J., Brett and Denman, J.J.)

Cock *v.* Cranston.

April, 1874.—*Exoneration of promise of marriage.*

This was an action to recover damages for breach of a promise to marry, and at the trial, before Mr. Justice Brett, in Middlesex, the jury found for the plaintiff for £200.

Clarke moved for a new trial, upon the ground that the erdict was against the evidence, and that the damages were

Digitized by Google

excessive. He said that the parties were in humble life, and the breach alleged was the marriage of the defendant with another person. The engagement between the parties commenced in December, 1869, and continued amicably until Sunday, the 20th February in the following year. The defendant visited the plaintiff on that day, and he was in a bad temper. Things got worse as the day went on, and she left the house and went to chapel, but not to the chapel that they usually went to. He went to find her, but without success, and when he came back he wanted her to apologise for going away from him. After some words she took out her earrings, which he had given her, placed them upon the table, and said, "They will do for some other girl." He said, "Give me my letters as well," but she replied, "I see through you now, and you shall not have either." He then left, and next day he wrote, saying that they could not be happy together and had better part. She wrote, "The last request I shall ever make of you is to tell me how I have offended you;" and she added, "If this is to be the finale, may God have more mercy on you than you have had on me." A few days after the defendant returned the plaintiff's presents, and asked for those he had made, but did not get them. The parties lived within some ten minutes' walk of each other, but no communication passed between them after this until nearly four years, when the defendant married another person, and therefore the writ in this action was issued. It was submitted to the Court that under the circumstances the plaintiff did not intend to hold the defendant to his promise, and must be taken to have exonerated him from its performance.

Brett, J.: What would you have the girl do? Go down on her knees to him in the street?

Clarke argued that the matter really seemed to have been treated as at an end.

Lord Coleridge: But still you do not answer the question, what was she to do? Was she to go to the defendant "with bated breath and whispering humbleness," and say, "Fair sir," and so on?

Brett, J.: He treated her brutally on the day of the quarrel, and she tried all she could to coax him; but he, as surly as a bear, leaves her to go to chapel alone, to be laughed at by those who know her, and then he insists upon her apologising, and leaves saying that he will never see her again.

Denman, J.: If the writ had been issued at once, you would have had nothing to say.

Clarke: Probably not, but surely the plaintiff should in the course of three or four years have taken some step to intimate that she considered the promise to be still alive.

Lord Coleridge: I have had an opportunity of seeing my brother Brett's notes of the evidence; and I certainly think you got your man off uncommonly cheap.

Clarke: That observation is the only consolation I have.

Rule refused.

APPOINTMENTS.

The Magistracy.—The following gentlemen have been appointed to the Commission of the Peace:—County Tipperary—John O'Meara, Esq., Somerset House, Lorrha, Roscrea. County Mayo—Edward Joseph Grant Dawson, Houndswood, Cong.

LAW STUDENTS' JOURNAL.

LEGAL AND LITERARY DEBATING SOCIETY.

On Thursday evening, 21st May, the usual Weekly Meeting of the Society will be held at 53, Lower Sackville-street. The chair will be taken at eight o'clock. An Essay will be read by Mr. J. T. Fox, M.A., solr., on "The Nature of Poetry and its Ministrations." Members are requested to attend this Meeting, as, after the essay, the nomination of officers for the ensuing year will take place. Members are also requested to take notice that the time for handing in compositions for the Poetry Medal will close on May, the 27th inst., and cannot be extended.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, May 18th, 1874, when the following subject will be debated:—

"That the British Colonies should have Representation in the Imperial Parliament."

Speakers:

Affir. Mr. P. S. Payne.	*Neg.* Mr. L. S. Eiffe.
Mr. John Joyce.	Mr. R. Andrews.

The Chair will be taken at Eight o'clock, by James Clarke Lane, Esq., Barrister-at-Law, King's Inns Professor of the Law of Personal Property, &c.

All Meetings open to ladies and gentlemen.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

Liability of a Corporation for the Fraud of their Agent—Authority of the Manager of a Bank.—An action for deceit will lie against a corporation for a fraud committed by their agent, provided the fraudulent act was within the scope of the agent's authority, and the corporation have derived some benefit from it. The cashier of the respondents' bank, who discharged the duties of manager, by sending a fraudulent answer to a telegram, induced the appellants to accept certain bills drawn upon them by one L., and indorsed to the bank: Held (reversing the judgment of the court below), first, that it was within the scope of the cashier's authority to send such a telegram; secondly, that the bank, having obtained the benefit of the bills, were liable in an action for the false representations. The decisions of the Exchequer Chamber in *Barwick* v. *The English Joint Stock Bank* (16 L. T. Rep. N. S. 461; L. Rep. 2 Ex. 259), and of the House of Lords in *Addie* v. *The Western Bank of Scotland* (L. Rep. 1 H. of L. Sc. 145, discussed and reconciled; *Mackay* v. *The Commercial Bank of New Brunswick* 30 L. T. Rep. N. S. 180. Priv. Co.)

Garnishee Order—Bankruptcy—Creditor holding Security—Bankruptcy Act 1869 (32 & 33 Vict. c. 71), ss. 12 & 16.—A garnishee order obtained and served by an execution creditor, especially when made absolute before the bankruptcy, constitutes the execution creditor a creditor "holding a security on the property of the bankrupt" within sect 12 of the Bankruptcy Act 1869. An execution creditor who has obtained, served, and made absolute a garnishee order before the bankruptcy, is also a creditor holding a "charge on the bankrupt's estate, as a security for a debt due to him" within sect. 16, sub-sect. 5, of the Bankruptcy Act 1869. The word "charge" in sect. 16, sub-sect. 5, has a wider meaning than the word "mortgage" or "lien" contained in the same section: (*Emanuel* v. *Bridger; Roberts* (garnishee), 30 L. T. Rep. N. S. 194. Q.B.)

Practice—Private Hearing.—The court will direct a case to be heard in private upon an assurance by counsel that in his opinion it is a proper case to be so heard, notwithstanding the objection of other parties: (*Anonymous*, 30 L. T. Rep. N. S. 153. V.C. B.)

Will—Separate Estate.—A balance in a banker's hands, belonging to a married woman at the time of her death, and arising from savings effected by her out of her separate estate, will not pass under agift of "all funds and property . . . . purchased out of" separate estate: (*Askew* v. *Rooth*, 30 L. T. Rep. N. S. 155. V.C. B.)

Underlease—Covenant not to Assign.—In an agreement for an underlease of coal mines, it was provided that the underlease should contain "the like provisions, conditions, and stipulations in all respects" as were contained in the original lease. The original lease contained a proviso and covenant against assignment or underletting without the landlord's consent. Held, that in the like covenant in the underlease the name of the original landlord alone was to be inserted as the person whose consent was to be required to any assignment or underletting, and not that of the underlessors: (*Williamson* v. *Williamson*, 30 L. T. Rep. N. S. 154. V.C. B.)

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—Sir H. Bruce, confirm sale.—R. White, objection. — R. Fosberry, ex-delay.— D. Bingham, from 14th.—J. H. Hall, proposal.—W. H. Wherland, allocation.

IN COURT.—M. Ternan, judgment.— E. Henderson, judgment.—C. Smith, do.—Assignees Bayly, do.—J. Rutledge, do.—M. W. Knox, final schedule.—W. Bagnall, payment.—Trustees Fitzherbert, proposal.—J. Devenish, to make order absolute.—J. Fossitt, rescind order.

Before EXAMINER (Mr. Dobbs).

T. Bell, proo s.

TUESDAY.

IN CHAMBER.—A. Warnock, confirm sale.—M. W. Knox, for liberty to file objection.—S. Bateman, tenant's objection.

IN COURT.—H. Bell, final schedule.—Trustee Manning, from 12th.—Executrix Nixon, final schedule.—Trustee Moore, to discharge purchaser.—Assignees Ryan, objection. —J. T. Walker, payment.—Marquis Waterford, objection.— J. L. Fausit, on petition.

WEDNESDAY.

IN CHAMBER.—Trustee Lawless, final schedule.—S. K. Jackson, do.—W. Kemmis, do.—John Dolan, rescind order for sale.

Before EXAMINER (Mr. M'Donnell).

N. B. Wyse, to settle allocation schedule.—Trustee Kirkaldy, rental.—H. H. Jones, do.—J. Hill, do.—R. A. Denny, do.—J. E. E. Dooley, ditto.

FRIDAY.

SALES AT 12 O'CLOCK.

C. T. CAMPION.—3 lots.
H. T. PARNELL.—47 lots.

Before EXAMINER (Mr. M'Donnell).

J. B. Daly, for deeds.—Same, vouch.—T. S. Eyre, as to costs. — Church Commissioners, rental. — Reverend T. Townsend, do.—Trustees Bocher, ditto.

LANDED ESTATES' COURT.

SALES

May 8.—Before the Hon. JUDGE FLANAGAN.

KING'S COUNTY.—Estate of Mark Stephen O'Shaughnessy and others, trustees for sale under the will of Richard Bernard Mullens, owners and petitioners. The lands of Lisduff, otherwise Ballyegan, containing 192a. 1r. 29p., held in fee; producing a net annual profit rent of £545 11s. 11¼. Sold to Mr. Richard Wallace, for £13,650. Solicitor, *John Moore Abbott.*

Estate of Anthony Molloy Fawcett, owner; Carolina Rebecca Frizell, petitioner. Part of the lands of Enaghan, in the barony of Phillipstown, held in perpetuity, containing 1,069a. 2r. 8p.; producing a net rental of £136 0s. 4d. Sold to Mr. James Sullivan, for £2,250. Solicitor, *Joshua Brereton.*

COUNTY OF KILKENNY AND THE CITY OF DUBLIN.—Estate of Richard Steele Hawkesworth and others, trustees J. T. Moore, owners and petitioners.

Lot 1.—The lands of Moneyheavy, and part of Ballyknockbeg, containing 297a. 2r. 31p., held in fee; yearly rental, £226 13s. Sale adjourned.

Lot 2.—Part of same, containing 37a. 3r. 20p., held in fee; yearly rental, £24 17s. 4d. Sale adjourned.

Lot 3.—Plot of ground on which houses Nos. 58, 59, and 60, Upper Dominick-street are situated; held under lease; yearly rental, £17 13s. 1d. Sold to Mr. William Green, for £290. Solicitor, *Thomas Turpin.*

COUNTY WICKLOW.—Estate of Letitia Read and others, owners and petitioners.

Lot 1.—House and premises in Main-street, Bray, held under fee-farm grant; producing a net profit rent of £36 3s. Sold in trust for Mr. Henry C. Joly, Miss Louisa Read, and Miss M. A. Read, for £620.

Lot 2.—House and premises in same street; producing a net yearly rent of £179. Sold in trust for Mr. Weir, for £2,900.

Lot 3.—House and premises also in Main-street, Bray; producing an annual profit rent of £196 15s. 10d. Sold in trust for Mr. Joly and the Misses Read, for £2,060. Solicitor, *H. M'Cready.*

COUNTY CAVAN.—Estate of William Hague, owner and petitioner.

Lot 1.—Mansion-house and demesne, and part of the lands of Kilnacrott, situate in the barony of Castlerahan, containing 148a. 3r. 8p. Sale adjourned.

Lot 2.—Part of same lands of Kilnacrott, containing 310a. 2r. 29p.; yearly rent, £296 16s. 6d.; held in fee-simple. Sold to Messrs. James M'Donnell and Patrick M'Donnell, for £6,580. Solicitor, *Edward M'Gauran.*

COUNTY GALWAY.—Estate of Michael Dooley, owner and petitioner.

Lot 1.—Plot of ground and premises known as 2, Palmyra-crescent, containing 1a. 0r. 5½p.; producing a net yearly rent of £23; held under lease for 999 years. Sold to Mr. Conolan, for £290.

Lot 2.—Plot of ground and premises known as 1, Palmyra-terrace; net yearly rent, £45; held under lease for 999 years. Same purchaser, for £560.

Lot 3.—No. 2, Palmyra-terrace; net yearly rent, £40. Same purchaser, for £480.

Lot 4.—Premises known as 1, Palmyra-crescent. Same tenure. Previously sold.

Lot 5.—No. 3, Palmyra-crescent; net yearly rent, £40. Sold to same, for £480.

Lot 6.—No. 4, Palmyra-crescent; net yearly rent, £36 11s. 3d. Sold to same purchaser, for £470.

Lot 7.—Part of Sherwood's Fields, containing 1a. 3r. 22½p. Sold to same purchaser, for £210. Solicitor, *P. Kelly.*

COUNTIES OF ARMAGH AND TYRONE.—In the matter of the estate of Robert King, owner; Thomas Hewatt, public officer of the Provincial Bank of Ireland, petitioner.

Lot 1.—The fee-farm rent of £14 17s. 1d., issuing out of part of the lands of Ballycullen, in the barony of Armagh, and part of the lands of Shanmullagh or Ballycullen, containing in the whole 144a. 3r. 19p., and producing a net yearly rent of £153 19s. 4d. Sale adjourned.

Lot 2.—Part of the lands of Moygashill, containing 25a. 0r. 32p., situate in the barony of Dungannon, held under lease for lives renewable for ever; net profit rent, £39 12s. 1d. Sale adjourned. Solicitors, *Longfield, Davidson, and Kelly.*

COUNTY OF SLIGO.—Estate of Grace Niddrie, widow, and another, owners and petitioners.

Lot 1.—The lands of Rathgoonane, containing 1,529a. 0r. 21p., in the barony of Tyreragh; held in fee; annual profit rent, £210 5s. 1d. Sold in trust for Lieutenant Colonel Cooper, for £3,600.

Lot 2.—The lands of Cuskernagh, Camcuil, and Comphull, containing 643a. 1r. 9p.; held in fee; annual profit rent, £210 5s. 1d. Sale adjourned. Solicitors, *Anderson and Lee.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Timothy Moynihan	Prove debts and vouch	*Bradley & Son*
Patrick Neill	do	*Bloomfield & Benner*
Philip L. Lyster	do	*Perry & Co.*
Peter Wright	do	*Mathews*
James Smyth	do	*Browning*
Patrick Nolan	Reference	*Hughes*

TUESDAY.

Before the COURT, at 11 o'clock.

Thomas Morrow	1st public sitting	*Larkin & Co.*
Mary Leahy	do	*Molloy & Watson*
John Byrne	do	*Fottrell*
Same matter	Examine witnesses	*Fottrell*
John Kirwan	Final examination	*Goff*
Mary Clancy	Examine witnesses	*White*
John Nolan	Prove charge of Royal Bank	*Orpen & Sweeny*
George Duncan	Confirm sale	*Colman*
Andrew Rogers	Audit and dividend	*Gerrard*
John Connor	Audit mortgagee's act.	*Cronhelm & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

David Bromfield	Prove debts and vouch	*Rosenthal*
Patrick Hennessy	Settle title and posting	*Dix*
John Nolan	Reference	*Butler*
J. and R. Reid	do	*Davis & Montford*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

James Farrell	Prove debts and vouch	*M'Govern*
John Hogan	do	*M'Govern*
John Delius Burns	do	*Molloy & Watson*
Brittain & O'Toole	do	*Molloy & Watson*
William Holmes	do	*Mathews*
Walter O'Donnell	do	*Oldham & Eaton*
Maurice Cassidy	Vouch assignee's acct.	*Fay & M'Gough*
Alfred Parker	do	*Delandre*

FRIDAY.

Before the COURT, at 11 o'clock.

Arthur G. Hay	1st composition sitting	*Mathews*
Same matter	Final examination	*Mathews*
John Deegan	do	*Roe*
G. & R. Ferguson	do	*Larkin & Co.*
Alfred Parker	Audit mortgagee's act.	*Delandre*
James Grierson	Audit and dividend	*Oldham & Eaton*
————	Application to dismiss debtor summons	*Hickie*

Before the CHIEF REGISTRAR, at 12 o'clock.

G. & R. Ferguson	Prove debts and vouch	*Larkin & Co.*
Patrick Byrne	do	*Leachman*
O'Reardon and Murphy	do	*Larkin & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Kennedy, Catherine, Glenties, county Donegal, widow, hotel proprietor. Sittings, *Friday, June* 5, and *Tuesday, June* 23. *Lett*, solr.

Miller, Peter, Poolbeg-street, Dublin, fish curer. Sittings, *Friday, June* 5, and *Tuesday, June* 23. *Oldham & Eaton*, solrs.

O'Shea, Patrick, Blackpool-street, Dungarvan, county Waterford, grocer and vintner. Sittings, *Friday, June* 5, and *Tuesday, June* 23 *Mathews*, solr.

Scott, Thomas, Greenbank, county Donegal, shirt factor. Sittings, *Friday, June* 5, and *Tuesday, June* 23. *Larkin and Co.*, solrs.

DIVIDENDS IN BANKRUPTCY.

Davison, Alexander, Knockboy, Antrim, glass spinner. 2nd and final dividend ¼ and 1/16th of a 1d. in the £, making with 1st dividend 1s. ¼th and 1/16th of a penny in the £. C. H. James, official assignee. *Carson & Leachman*, solrs.

Noble, Arthur, Church-lane, Dublin, watchmaker and jeweller. 1st and final dividend 2s. 11d. in the £. C. H. James, official assignee. *Rosenthal*, solr.

Phillipson, William F., Wellington-quay, Dublin, iron bedstead manufacturer. 1st and final dividend 4s. 7¾d. in the £ C. H. James, official assignee. *Oldham and Eaton*, solrs

"They come as a boon and a blessing to men,
The Pickwick, the Owl, and the Waverly Pen."
"Another blessing to men,
The Hindoo Pen."
1,200 Newspapers recommend them. See *Graphic*, 17th May, 1873.
Sold by every respectable Stationer. By Post, 1s 1d.
Patentees—MACNIVEN & CAMERON, 23 to 33 Blair-street, Edinburgh.
427

DUBLIN STOCK AND SHARE LIST

*Paid	DESCRIPTION OF STOCK	MAY Fri 8	Sat. 9	Mon. 11	Tues. 12	Wed. 13	Thur 14
	Government.						
—	3 p c Consols	—	91⅝	91⅝¾	—	—	92–⅛
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	90⅝¾	90⅞	90⅝¾	90⅝¾	90⅝¾	90⅞
	INDIA STOCK.						
—	5 p c July '80} Trafble. at	107	107	—	—	107⅜	—
—	4 p c Oct. '88} Bk. of Irel.	101⅝¾	101⅝¾	—	—	—	101⅞
	Banks.						
100	Bank of Ireland ..	307–⅛	308	307⅝	307⅝	307⅞	307⅛
25	*Hibernian Banking Co.* ..	58⅜	—	—	—	58⅜	—
20	*London and County* ..	—	61½	—	—	—	—
15	*London Joint Stock* ..	—	51	50⅞	50⅞	50⅞	50⅛
20	*London and Westminster* ..	—	—	71⅜	72	—	—
3½	*Munster Bank (Limited)*	—	—	—	—	—	8⅝
30	*National Bank*	59⅛	58⅞–9	58⅞	59–⅛	59⅛	59⅛⅜
25	*Provincial Bank* ..	96⅛	—	96¼	—	96⅛	96
10	Do. New ..	—	38⅛	—	—	—	—
10	*Royal Bank*	29¼⅜	—	29⅝	29⅝	—	29⅝
15	*Union of London* ..	—	45⅛	—	—	—	—
	Steam.						
100	City of Dublin	—	109⅛	—	—	—	—
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	—	—	28	—	—	—
1	Killaloe Slate Co. (lit'd)	—	16/	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	4⅛	—	—	—	—
2½	Wicklow Copper	—	—	3¼	3⅛	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	9⅝¾	9⅝	9½	9⅝¾	9¾⅞	9¾⅞
9½	*Dublin Tramways* ..	—	—	—	7⅝	—	—
25	*National Assurance* ..	—	—	48	48½	—	48
9-4-7	*Patriotic Assurance* ..	—	—	—	10⅛	10⅜	10⅜
	Railways.						
10	Athenry and Tuam ..	—	—	—	-	—	3⅛
50	Belfast and Northern Cos.	—	—	—	—	67	—
20	Cork, Blackrock & Passage	—	10⅝	—	—	—	—
100	Dublin and Belfast Junct.	—	89	88⅜	—	—	—
100	Dublin and Drogheda .	110⅛	—	—	—	—	—
100	Dublin, W'klow, & W'ford	73⅜	—	—	74½	—	—
100	Gt. Northern and Western	—	—	—	—	98	—
100	Gt. Southern and Western	108	108	108	108½	108⅜	108⅝
100	Do. do. free of Stamp	—	—	—	—	—	109½
100	Midland Gt. Western .	82½	82½	82⅝	82⅝	—	83–⅛
25	Portdn. Dun. & Omh. Jun.	—	—	13⅜	—	—	—
50	Ulster	—	—	68	—	—	—
50	Waterford and Limerick ..	—	—	33⅝	—	—	33⅝
	Railway Preference.						
6¼	Cork & Bandon, 5½ p c .	—	—	—	—	—	—
5	Do. do. 4 p c	3¼	3⅝	—	—	—	—
100	Dublin & Meath 1st, 5 p c	45½	45½	46	—	—	—
100	D., W., & W., 6 per cent .	—	129	—	—	—	—
50	D., W., & W., 5 p c (1860)	-	—	—	—	—	—
50	Do. do. (1864)	53	—	—	—	—	—
100	Gt. North'n & West'n, 5 p c	—	—	—	105	·	—
100	Do., new, 6 p c	—	—	—	105	—	—
100	Gt. South'n & West'n 4 p c	97⅛	—	97	96⅛	96⅜	—
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do, B 5 p c	—	—	—	—	100	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	50	—
50	Do., new red, 1860–72, 5 p c	—	—	49⅛	49⅛	49⅛	49⅛
50	Do., new red, 1878, 5 p c	49⅛	—	49⅛	—	—	—
	Railway Debentures.						
—	Gt. South'n & West'n, 4 p c	98½	98½	—	—	—	98⅜ f
—	Irish Nth Westn 1st C 5 p c	—	—	100	—	—	100½
—	Midland Gt. West'n, 4½ p c	—	—	99⅜	—	—	-

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount— 4½ per cent., 30th April, 1874.
Of Deposit— 2½ per cent., 8th January, 1874.

Name Days—May 28th, and June 13th, 1874.

Account Days—May 29th, and June 14th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause of the Rev. Hugh Behan and Gerald Robinson, plaintiffs; and Johanna Byrne, James Byrne, Mary Byrne the elder, Mary Byrne the younger, Kate Robinson, and James Robinson, defendants—the Creditors of

MATHEW BYRNE, late of Killeany House, in the County of Meath—who died in or about the month of May, 1873—are, on or before the 6th day of JUNE, 1874, to send by post, pre-paid, to Mr. P. COLL, of 4 Palace-street, Dublin, the Solicitor of the said Plaintiffs, who are executors of said Mathew Byrne, deceased, their Christian and surnames, addresses and descriptions, and in the case of firms, the names of the partners and style or title of the firm, the full particulars of their claim, a statement of their accounts, and the nature of the securities (if any) held by them; and all persons claiming to have incumbrances affecting the real estate of the said Mathew Byrne, are, by their Solicitors, to come in and prove their claims at the Chambers of the VICE-CHANCELLOR, Four Courts, City of Dublin, on or before said 6th day of JUNE, 1874; or, in default thereof, they will be peremptorily excluded from the benefit of said Decree.

Every Creditor or Claimant on real estate holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on TUESDAY, the 16th day of JUNE, 1874, at Twelve o'clock noon, being the time appointed for hearing and adjudicating upon the claims.

Dated 8th day of May, 1874.

A. T. CHATTERTON, Chief Clerk.

429 P. COLL, Solicitor for Plaintiffs, 4 Palace-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DONEGAL.

SALE,
AT LETTERKENNY,
On the 5th day of JUNE, 1874.

In the Matter of the Estate of William Elliott, Owner; Thomas Colquhoun and John Colquhoun, Petitioners.

TO BE SOLD BY PUBLIC AUCTION, By Mr. GEORGE L. HUNTER, AT HEGARTY'S HOTEL, In the TOWN OF LETTERKENNY,

On FRIDAY, the 5th day of JUNE, 1874, At the hour of One o'clock in the afternoon, In Three Lots.

LOT 1.

Consisting of the Houses, Tenements, and Premises situate on the south side of the street of Letterkenny, producing an estimated profit rent of £215 10s per annum, held under Lease for ever.

LOT 2.

The Parcel of Ground containing in front to the Main street of Letterkenny 37 feet, and the Piece of Ground containing in front to Church-lane to Letterkenny 76 feet; held under Lease for lives renewable for ever. The estimated annual value of this Lot, if built on, is £18 2s.

LOT 3.

The Three Fields adjoining the Town of Letterkenny, containing 3a 1r 24p; estimated annual value of £13; held in fee. All situate in the Parish of Connal, Barony of Kilmacreenan, and County of Donegal.

The biddings will be taken by the Auctioneer, and submitted to the Honourable Judge Flanagan, on the 11th day of June, 1874, without further notice to any person.

Dated this 29th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

LOT 1.—The greater portion of this lot consists of the dwelling-house and business establishment in the occupation of the owner. The remainder of this lot is let as offices, &c., to most respectable tenants, who pay punctually very profitable rents.

LOT 2.—This lot consists of building ground, with a frontage of 37 feet to the Main street of Letterkenny, on the opposite side of the street to Lot 1, and within a few doors of the Market square, and is one of the best business situations in the town. This lot runs back to Church-lane, presenting a building front to it of 76 feet, on which small houses of a remunerative class could be erected.

LOT 3.—This lot consists of three small fields or town parks, immediately adjoining the Letterkenny Workhouse, and abutting on the road leading to Glenear, and produce a rent of £13, if let for grazing. They are in a high state of cultivation, and very valuable either as town parks or a building site.

Proposals for the Private Purchase of one or all the Lots will be received by the Solicitor having carriage up to the 26th day of May, 1874; and if approved of, submitted to the Honourable Judge for confirmation.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; to

GEORGE C. LETT, Solicitor, 43 Dame-street, Dublin; or to
WILLIAM MARTIN, Solicitor having carriage of Sale, 43 Dame-street, Dublin, and Ramelton. 430

In the LANDED ESTATES' COURT, IRELAND.

COUNTY AND CITY OF DUBLIN.

SALE,
On FRIDAY, the 5th day of JUNE, 1874.

In the Matter of the Estate of ARTHUR BRATHWAITE WARRE, CHARLOTTE SOPHIE COOPER, Selina Elizabeth Cooper, Richard Augustus Cooper, and Cicely Florence Cooper, his wife; and Francis Montgomery Olpherts, and John Henry Cole Wynne, their Trustees: Henry Charles Eastwood, and Emma Marie Eastwood, his wife; and Francis Edmond Eastwood, and Owen Phibbs, their Trustees, or some or one of them, Owners and Petitioners.

TO BE SOLD, On FRIDAY, The 5th day of JUNE, 1874, At Noon, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Dublin, The following LANDS AND PREMISES, Held in Fee-simple and Fee-farm, All situate in the City and County of Dublin, As particularly specified in the printed Rental for Sale.

SUMMARY OF LOTS.

No. of Lot	Denomination	Quantity Statute Measure	Net Annual Rental	Government Valuation
		A. R. P.	£ s d	£ s d
1	Part of the lands of Finglass West, Springmount and Stubton, situate in the barony of Castleknock	31 3 39	84 16 0	78 0 0
2	The field or fields formerly known by the name of the Ten Acres and a Half, at present known as Cardiff's Castle, situate in the barony of Castleknock	17 2 24	32 6 2	28 0 0
3	The house with the stable, turret garden, and field thereto belonging, known by the name of Belview, Tolka, situate in the barony of Castleknock	3 2 3	46 3 1	90 0 0
4	House and premises known as No. 52 High-street, City of Dublin	0 0 6	60 0 0	48 0 0
5	House and premises known as No. 53 High-street, aforesaid	0 0 18	40 0 0	40 0 0
6	Plot of ground and premises erected thereon, No. 11½ Lower Kevin-street, City of Dublin	0 0 82½	20 0 0	20 0 0
7	House and premises, No. 12 Lower Kevin-street, aforesaid	1 2 38½	139 7 6	140 0 0

Dated 30th day of March, 1874.

R. DENNY URLIN, Examiner.

LOT 1.

An excellent dwelling-house, with suitable offices, garden, and pleasure grounds, distant only about four miles from the General Post Office.

LOT 2.

It is distant about four miles from Dublin; it is all prime land, and is let to a respectable tenant.

LOT 3.

Comprises part of the buildings, garden, and pleasure ground of Belview (Dr. Gregory's), situate at Finglas-bridge, about three miles from Dublin.

LOTS 4 and 5.

Consist of the houses and premises known as Nos. 52 and 53 High-street, the former held by Richard Allen, and the latter in the possession of the Guardians of the South Dublin Union.

LOTS 6 and 7.

Are held under fee-farm grant, subject to the yearly rent of £48, present currency, which will be borne by Lot 7.

Offers for purchase of any Lots if sent in prior to the 20th day of May will be submitted to the Court for approval.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Inns'-quay, Dublin; to

Messrs. STEWARTS and KINCAID, the Land Agents of the Estate, No. 6 Leinster-street, Dublin; or to
JOHN J. TWEEDY, Solicitor having the carriage of the Sale, 29 North Frederick-street, Dublin.

Digitized by Google

LANDED ESTATES' COURT.

In the Matter of the Estate of John Thornton, Owner and Petitioner.

NOTICE is hereby Given, that the entire of this Estate having been disposed of by Private Contract (confirmed by the Honourable Judge Flanagan), no further Proposals will be received after this date.

Dated this 14th day of May, 1874.

H. R. GREENE, Chief Clerk.

EDMUND MULVIHILL, Solicitor having carriage of the Sale, No. 6 North Great George's-street, Dublin. 436

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF LONDONDERRY.

SALE,

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of George Claudius Beresford Stirling and James Blair Stirling, Esq., surviving trustees of the will of the late Reverend John Blair Stirling, deceased, Owners and Petitioners.

TO BE SOLD, In Eleven Lots, As specified in the Descriptive Particulars, Before the Right Honourable Judge Flanagan, At his Court, At the Landed Estates' Court, Inns'-quay, in the City of Dublin, On FRIDAY, the 12th day of JUNE, 1874, At the Hour of Twelve o'clock noon.

Proposals for all or any of the said premises will be received by the Solicitors having carriage of the proceedings, or by James Blair Stirling, Esq., Oatlands, Ballymoney, County of Londonderry, one of the owners in this Matter, up to the 1st day of June next, and if approved of will be submitted to the Judge for approval.

Dated this 2nd day of May, 1874.

HENRY R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

LOT 1.

Comprises part of the townland of Ballydevitt, containing 63a and 28p statute measure, and producing a net yearly rent of £150 16s 11d; on this lot stands one of the finest mansion houses in the County of Londonderry, with first-class out-offices and splendid garden; also an excellent bleach-green, with superior bleaching and beetling works in full working order, with a never-failing water power in the driest season of the year from the Aghadowey River, which bounds this lot on the south; there is also an ample supply of very superior spring water, for bleaching purposes, attached to this lot; it is this water which makes the linen called the Coleraine, which are famed as the best and purest finish in Ireland.

LOT 2.

Comprises part of the townland of Ballydivitt, and part of Ballywillan, containing 105a 1r 15p statute measure, and producing a net yearly rent of £130 4s. 5d; there is a corn mill and flax mill on this lot, also supplied with water from the Aghadowey River; the land is of prime quality, well fenced and beautifully planted.

LOT 3.

Consists of part of the townland of Ballywillan, with a small portion of the bog of Carnrallagh, containing together about 117a 1r 0p statute measure, and producing a net yearly rent of £151 16s 5d; there are two fire proof corn kilns on this lot, composed of metal beams, spars, tiles, &c., which must have cost a large sum in erection, and are now very valuable.

LOT 4.

Consists of part of the lands of Ardreagh, containing about 131a 3r 14p statute measure, and producing a net yearly rent of £118 16s 6d; the lands are of prime quality, chiefly in tillage at present.

LOT 5

Consists of part of the lands of Carnrallagh, and part of Ardreagh, containing together about 241a 3r 21p statute measure, and producing a net yearly rent of £241 15s 8d.

LOTS 6 and 7.

These lots consist of the town and lands of Moneybrenan, and part of the lands of Crevolea, containing respectively 89a 0r 17p and 100a 0r 25p statute measure, and producing respectively a net yearly rent of £126 8s 0d and £98 12s 6d.

LOT 8.

Consists of town and lands of Keily, part of Ballydivitt, also part of Ardreagh, containing in the whole 194a 2r 27p, or thereabouts, producing a net yearly rent of £264 11s 11d; Keily House is a superior gentlemanly residence, with excellent out-offices and walled-in garden and demesne to correspond, stands on this lot; on the townland of Keily there is a flax mill; there were recently brick and tile works on this lot, for which there is an ample supply of good clay; the mansion house, offices, gardens, and mill premises, with about 101a 2r 19p of land, are in the possession of the owners.

LOTS 9, 10, and 11.

Consists of the lands of Mullan, and part of the lands of Crevolea; lot 9 contains 173a 3r 30p, lot 10 contains 108a 2r 12p, and lot 11 contains 241a 2r 31p statute measure, and producing respectively the net yearly rent of £190 14s 7d, £90 15s 0d, and £204 3s 8½d; there was up to very recently an extensive bleach-green, with houses, &c., on these lands, with an ample supply of water power in the driest season, and also a constant supply of spring water for bleaching purposes, or the buildings and water power are well adapted for a corn or flour mill; about 54 acres of the lands formerly used as a bleach-green, together with the bleach-houses, &c., are now in the owner's possession.

Lots 1, 2, 3, 4, 5, 6, 7, and 8 lie in a ring fence, and 9, 10, and 11 are about half a mile distant, and also lie in a ring fence.

There is a quantity of valuable timber on lots 1, 2, 8, 9, 10, and 11, and of turbary on lots 4, 5, 9 10, and 11. which has now become very valuable, and is to a great extent in the owner's hands.

These lands, which are well fenced, sheltered, and watered, are situate in the best part of the County of Londonderry, within about five miles of Coleraine, on the road from Coleraine to Garvagh, five miles from Ballymoney, on the road from Ballymoney to Garvagh, two miles of Garvagh, and five miles of Kilreagh, and in all of which markets and fairs are regularly held. The bog is now very valuable, and the lands are all of good quality, and well suited for tillage or pasture, and are in the midst of the best flax grown districts in Ulster.

The entire lands are held by a respectable, industrious, and thriving tenantry, who pay their rents punctually.

There is a Presbyterian Meeting House on lot 3 of these lands, and the Church and Post Office are in the immediate neighbourhood.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inn's-quay, in the City of Dublin; to

JAMES BLAIR STIRLING, Esq., Aghadowey, Ballymoney, County Londonderry; or to

JAMES SINCLAIR, Esq., Dundarg, Coleraine; or to

Messrs. LEONARD, DOBBIN & CO., Solicitors having carriage of proceedings, No. 27 Gardiner's-place, Dublin. 433

LANDED ESTATES' COURT, IRELAND.

QUEEN'S COUNTY.

SALE,

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of the Estate of Thomas A. Bailey, Esquire, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, In Three Lots, (if not previously disposed of by Private Treaty, as mentioned below), By the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Four Courts, Inns'-quay, Dublin, On FRIDAY, the 12th day of JUNE, 1874, At Twelve o'clock noon, The following Valuable Fee-simple Properties, situate in the Barony of Maryboro' West, in the Queen's County:—

LOT 1.

Consists of the Townland of Ockanaroe, containing 108a 3r 23p, stature measure, or thereabouts, and producing a present net profit rent of £70 7s 8d.

LOT 2.

Consists of the Townland of Springfield, containing 214a 0r 14p, statute measure, or thereabouts, and producing a present net rental of £83 10s 8d.

LOT 3.

Consists of the Townland of Camcloon, containing 535a 0r 35p, statute measure, or thereabouts, and producing a present net profit rent of £268 10s 10d.

Dated this 28th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The lands lie within a few miles of the Railway Stations of Mountrath and Maryborough, and are adjacent to Mountmellick, where fairs, &c., are held.

The tenants are of a superior class, and the land is of excellent quality.

Portions have been lately drained.

It is much underlet.

Messrs. Brassington and Gale have recently, by direction of the Court, made a verified valuation, and they report that the present letting value of the estate is £525 14s 9d, being about one-third more than the actual rental.

The tenants enjoy the right of turbary in the bog upon the adjoining lands of Iry (the property of Sir Charles Coote).

Proposals (in writing) for the purchase of all or any of the Lots will be received by the Owner's Solicitors up to the 28th day of MAY, 1874, and will be submitted to the Judge on the 1st day of JUNE, 1874, at the sitting of the Court (or at the earliest opportunity afterwards) without further notice to any person.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inn's-quay, Dublin; or to

Mr. CHARLES MOORE, Iry, Ballyfinn, Mountrath (who will point out the Premises); or to

Messrs. MEADE & COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 419

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF WEXFORD.

In the Matter of the Estate of The Reverend Edward Richards, Solomon Augustus Richards, and several others, Owners and Petitioners; Continued in the names of The Reverend Edward Richards, Bernard John Goddard Richards, a minor (devisee under the will of Solomon Augustus Richards, deceased), by Sophia Mordaunt Richards, his mother and guardian *ad litem*; the Rev. Robert Edward Richards, Emily Sophia Doyne, widow; George Maconchy, Samuel Johnson, and Marianne Johnson, otherwise Richards, his wife; William Hamilton Richards, Henry Eckersall Wynne, the Rev. Frederick Richards Wynne, Albert Augustus Wynne, Richard Donovan, and Elizabeth Agnes Donovan, otherwise Wynne, his wife, Owners and Petitioners

RENTAL AND PARTICULARS OF THE LANDS OF CORLICAN, containing 729 acres, 2 roods, 28 perches, statute measure, situate in the Barony of Bantry, and County of Wexford, held in fee, and producing a net yearly rental of £471 4s 5d,

TO BE SOLD BY PUBLIC AUCTION, In One Lot, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, The 12th day of JUNE, 1874,

At the hour of Twelve o'clock.

Dated this 30th April, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The Estate, which is held in fee-simple, comprises the entire Townland of Corlican, which is situate within a ring fence, and about seven statute miles from Wexford, about eight statute miles from Enniscorthy, and about three miles from Taghmon, where a leading fair is held. The Station of Killurin, on the Dublin, Wicklow and Wexford Railway, is about half a mile from the Estate on one side, and Sparrow's Land, on the Waterford, New Ross, and Wexford Junction Railway, is within about three miles on the other side.

The Lands are all let to respectable and solvent tenants, for the most part under leases for the life of His Royal Highness the Prince of Wales, and the rents are regularly paid.

Private Proposals will be received up to and including 1st day of June, 1874, and if approved will be submitted to the Judge without further notice.

For Rentals and Maps apply to

HENRY E. WYNNE, Esq., Richmond Terrace, Wexford; or to

Messrs. THOMAS JAMESON & SON, Solicitors having carriage of Sale, 182 Great Brunswick-street, Dublin.

418

COURT OF BANKRUPTCY, IRELAND.

SALE OF VALUABLE MILLS AND MACHINERY, AND PREMISES IN CARRICK-ON-SUIR.

In the Matter of Thomas Francis O'Neill, of Carrick-on-Suir, in the County of Tipperary, Miller, a Bankrupt.

TO BE SOLD BY PUBLIC AUCTION, On SATURDAY, 30th MAY, 1874, At Two o'clock p.m.,

AT THE TOWN HALL, CARRICK-ON-SUIR, Subject to the approval of the Court, The Life Estate of the Bankrupt and his Assignees and Mortgagees in the following Premises:—

LOT No. 1.

That Part of the Lands of Castletown called Annsborough, containing 48a 3r 36p statute measure, held in fee-simple, situate in the Barony of Iverk, and County of Kilkenny, with the Mill and Milling Machinery now in and upon said premises, indemnified against the payment of tithe rentcharge by other lands of ample value. The Bankrupt derives under his father's will, by which said lands were charged with two sums of £200, which sums are unpaid, and the premises are sold subject to such rights as the legatees under said will have to the payment of said sums out of said premises.

LOT No. 2.

That Part of the Lands of Cregg, containing 3r 32p, plantation measure, or thereabouts, situate in the Barony of Iffa and Offa East, and County Tipperary, held under lease for 999 years from the 25th March, 1822, at the yearly rent of £31 10s payable 25th March and 29th September; together with the Mill Premises thereon, and the Machinery and Fixtures therein.

LOT No. 3.

The House and Garden in the New Street of the Town of Carrick-on-Suir, held under fee farm grant dated the 27th November, 1852, at the yearly rent of £3 19s 6d, payable 25th March and 29th September.

LOT No. 4.

The Piece of Land adjoining the Castle Gate, and the Houses erected thereon, situate near the Strand, in the Town of Carrick-on-Suir, held in fee. A portion of the land is in the occupation of Gregory O'Connor, under an agreement for a lease for 10 years from the 1st May, 1871, at a rent of £10 per annum. One of the Houses is let to Michael Halley, at a rent of £6 per annum, and the other House is let to James Flynn, at a rent of £4 per annum. The yard attached to the premises is at present unoccupied.

LOT No. 5.

The House, Offices, Garden, and Store fronting the Main Street, Carrick-on-Suir, extending from the Street to the River, held under lease for lives, with covenant for perpetual renewal, at the yearly rent of £36 18s 6d, with peppercorn renewal fine, payable 25th March and 29th September. A portion of the premises is let to Mr. Quinlan, at the yearly rent of £10.

LOT No. 6.

The Dwelling-House and Garden in the Main Street, Carrick-on-Suir, lately in the occupation of the Bankrupt, held under lease for three lives, with covenant for perpetual renewal, at the yearly rent of £19, with 1s renewal fine, payable 1st May and 1st November.

LOT No. 7.

The Dwelling-House on the North Side of the Main Street, Carrick-on-Suir, adjoining Lot No. 6, held under lease for 61 years from the 1st November, 1861, at the yearly rent of £5, payable 1st May and 1st November, subject to the yearly tenancy of Thomas Mullins, at the yearly rent of £10, without taxes.

LOT No. 8.

The House, Yard, and Concerns in the Main-street, Carrick-on-Suir, in which the Bankrupt lately carried on business as a Corn Merchant, held for the term of 61 years from the 25th March, 1833, if the interest of the lessors therein shall so long continue, subject to the yearly rent of £18 10s., payable the 25th March and 29th September.

The Biddings taken by the Auctioneer (if the Premises are not previously disposed of) will be submitted to the Court for approval, on Tuesday, the 2nd day of June, 1874 without further notice.

Tenders for the whole, or separate Lots, will be received by L. H. DEERING, Esq., Official Assignee, up to Saturday, the 23rd instant, and if approved of, will be submitted for confirmation to the Court.

Dated this 13th day of May, 1874.

HUGH DOYLE, Registrar.

DESCRIPTIVE PARTICULARS.

LOT No. 1.—These Premises are situate within about two and a half miles of Carrick-on-Suir, a station on the Limerick and Waterford Railway. The Mill Premises, which contain two pair of Stones and all the necessary Machinery, has been worked until recently, and is ready for immediate occupation. There is ample Storage attached to the Mill; there is Railway and Water Carriage; and a never-failing supply of Water for the working of the Mill. The Lands are all in Grass, which is of very superior quality.

LOT No. 2.—This is a splendid Mill, situate within about one mile of the Town of Carrick-on-Suir. It has recently been fitted up with the newest and most improved Machinery. The Mill is worked by water, of which there is an abundant supply; has five floors, with three pairs of Stones, a Kiln, Corn and Smut Machine. These concerns are situate in the centre of an excellent corn-growing district, and are well established.

LOT No. 3.—These Premises are situate in one of the best and most central positions in the Town. The House is well built, and contains Four Bedrooms, Drawingroom, Diningroom, Study, Pantry, &c. Immediate possession can be given to a purchaser.

LOT No. 5.—These Premises consist of an extensive Store, Garden, House, and Out-Offices. The House is let at £10 a year. The Store in the rere is a large one, extending to the Quay, and is admirably adapted for the purposes for which it was built, affording facilities for loading and unloading of corn, &c., by boats.

LOT No. 6.—This is an extensive and commodious residence, in good order, containing ample accommodation for a large and respectable family. Immediate possession can be given to a purchaser.

LOT No. 8.—These Premises are situate in the very best business portion of the Town of Carrick-on-Suir; and with a small outlay in alterations, to make them suitable for the carrying on of a retail business, they would produce a considerable income for a purchaser.

For further particulars apply to

MICHAEL LARKIN & CO., Solicitors having carriage of the Sale, 51 Dame-street, Dublin;

LUCIUS HENRY DEERING, Esq., Official Assignee, 33 Upper Ormond-quay;

D. K. CUMMINS, Esq., National Bank, Carrick-on-Suir;

CHARLES CARRUTHERS, Auctioneer, Clonmel. 435

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN GELSHENAN, of Virginia, in the County of Cavan, Leather Dealer, was on the 1st day of May, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 29th day of MAY, 1874, and on TUESDAY, the 16th day of JUNE, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

PERRY & CROSKERRY, Solicitors, 32 Lower Ormond-quay, Dublin. 431

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, May* 16, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MAY 23, 1874. No. 382.

IRISH LAND BILLS—THE SESSION OF 1874.

IT is said that Zaleucus, the legendary lawgiver of Locri Epyzephyrii, preserved for long time the integrity of his Republic and maintained the effective simplicity of its institutions, by enacting and rigorously fulfilling the following edict:—A LOCRIAN WHO PROPOSED ANY NEW LAW STOOD FORTH IN THE ASSEMBLY OF THE PEOPLE WITH A CORD ROUND HIS NECK, AND IF THE LAW WAS REJECTED, THE INNOVATOR WAS INSTANTLY STRANGLED. This specimen of speedy retributive justice would have been a most felicitous illustration, had it occurred to the cultivated mind of one of our most distinguished chiefs when lately illustrating the summary characteristics of the *sus. per coll.* But we would deplore its practical application to some of our modern Solons, even though it might be productive of the great national advantage of checking the torrent of legislation with which they seem determined to flood the *land.* A series of bills, each embodyiug the peculiar crotchet of its sponsor, has been introduced by the representatives of Irish constituencies, for acceptance or rejection by the present Parliament:—1st. The Agricultural Labourers' Dwellings Act, by Mr. Bruen, M.P.; 2nd. The Irish Land Extension Act, by The O'Donoghue; 3rd. The Landlord and Tenant Act, by Captain Nolan, M.P.; 4th. The Bright Clauses of the Land Act, by Sir John Gray; 5th. The Tenant Right (Ireland) Act, by Mr. Sullivan, M.P.; 6th. The Land Improvement Amendment Act, in the Lords, by the Earl of Bandon; 7th. The Act to extend the Tenant Right, by Mr. Butt, M.P. Thus we have seven distinct bills proposing to deal with the vexed question of the land, and each entitled to consideration in the existing state of dissatisfaction among the tenant classes in Ireland. The first in the above series contains a number of clauses which, when analysed and compared with the Workman's Dwelling Bill, for England, and the Agricultural Labourers' Dwelling Bill, for Scotland, contains nothing deserving of praise or censure. It enables a landowner to allot a cottage and half an acre of ground to a labourer, and on compliance with the service of certain notices and conditions to have same exempted from liability to poor rate. This is the encouragement held out for adopting the provisions of this meagre bill, and so trifling is the boon, that we venture to anticipate few landowners will avail themselves of its questionable advantages. If this is intended to be the result of the inquiries instituted by the Poor Law Inspectors of Ireland by the directions of the late government, we shall have reason to regret that such small results have flowed from the laborious exertions of these energetic officials. The Irish Land Extension Act will exceed the desires of one party, while it will be likely to fall short of restoring to public confidence the gifted promoter, who has given some umbrage to a portion of his former adherents.

The Landlord and Tenant Act of Captain Nolan combines an attempt at the abolition of notices to quit with the establishment of fixity of tenure at the old rent, or, if the landlord and tenant differ, at a rent to be fixed by the Court, for a period of ten years. We have given Sir John Gray's Bill in *extenso*, in a former number, and canvassed its provisions sufficiently to preclude the necessity of a second criticism. The Tenant Right (Ireland) Acts, by Messrs. Sullivan and Butt, respectively, contend for the approval of the Irish Home Rule Members; whether either or both will receive countenance from the present Government is more than we can anticipate. The Bill of the Earl of Bandon proposes to enable the Board of Works to extend the lending powers of the Land Improvement Act to persons holding land for a term of thirty years unexpired. If this short Bill should pass the Lords, we think an effort will be made to extend the provisions to persons holding lands under leases or agreements for a shorter period than thirty years unexpired. Under the Land Act, a tenant from year to year holds for an unexpired term by reason of the right to compensation for disturbance conferred upon him by that Act, and we know it is the opinion of many that such an interest would now afford sufficient security to the treasury for loans to enable the poorer class of tenants to render their homesteads habitable, and, by increasing the value of their holdings, indirectly benefit the landlord. We consider Lord Bandon's Bill the most important and least objectionable of all, if properly extended and worked out. The 6th section of the Land Improvement Act (10 Vic. chap. 32) proposed to be extended by this Bill, is conversant with owners applying for loans on the security of the land proposed to be improved. The 7th section applies to tenants holding under any lease reserving rent for two or more lives in being at the time of the application, or for any term of years absolute, whereof there shall be at the time of application *twenty-five* years or more unexpired, and who shall give such security as the Commissioners of Public Works shall direct, and no such loan shall be granted to such applicant except he shall state in his application for the same the name and address of his immediate landlord, or the person entitled to the next estate or interest in the land on the determination of his lease, and shall give notice to such landlord or person of his intention to apply for such loan, and shall satisfy the Commissioners that such notice has been given. From these extracts it is apparent that the 6th section, which Lord Bandon proposes to extend, is applicable principally to landlords; while the 7th section, which is applicable to tenants, is left untouched. We consider this a mistake, whether the omission be wilful or unintentional. The tenant farmers, as a class, are practically excluded from the benefit of Government loans. Their dwellings are consequently unimproved, their habits uncleanly, and the atmosphere of their homesteads unhealthy and impure. With the safeguard which notice to their landlord would ensure, many thoughtful persons are of opinion that the 7th section may, without risk and with great national advantage, be extended to tenants from year to year; and we believe this design was entertained by the late Government, and would have been carried out by them had they continued in office. We expect to see this view advocated during the passing of the bill through the Commons; and, as the suggestion involves no considerations of party or political prejudice, we hope for the sake of the poorer classes of our agricultural population to see such an amendment introduced ere the bill receives the royal assent.

Digitized by Google

THE JUDICATURE BILL.

LORD JUSTICE CHRISTIAN, criticising the provisions of this Bill, has addressed a letter to the public papers, which we print in our present issue for the benefit of our readers. The Lord Justice of Appeal is, as was to be expected, very critical and, unfortunately, also very personal in one part where personality was unnecessary even to point his moral. The substance of his criticisms is that the post of Lord Justice of Appeal will no longer retain its relative superiority over the offices of the *puisne* judges, since the latter functionaries are to have their salaries increased by £312, and thus, in a pecuniary sense, are to be brought upon a level with the ordinary judges of the Appeal Court, and the *puisne* judges are, moreover, to have clerks, with a salary of £450 a year each, while the clerks of the judges of appeal are only to receive £250 each a year. Mr. Christian also complains that the duties of the Court of Appeal—formerly, as he confesses, light—will, in future, be onerous, and, as he says, monotonous; and, therefore, he assumes that the first-rate lawyers will prefer *puisne* judgships, and leave the Court of Appeal to be manned by second or third-rate men. He seems to take for granted that the Appellate judges cannot be paid higher salaries than the *puisne* judges, because it has been so enacted in England, but as these salaries are absolutely much higher than the Irish ones, we cannot admit the force of the reasoning. It will be admitted that if the duties of the two courts are equally onerous, then the judges of the Court of Appeal ought to receive a higher rate of remuneration, as their duties are more important. But in reference to the labour to be cast upon the Court of Appeal by the Bill, we think that the Lord Justice has overlooked the provisions of that clause which requires the chiefs of the Common Law Courts to be present and assist in appellate cases which now come before the Court of Exchequer Chamber; and, therefore, Mr. Christian is not correct in assuming that the whole work of the new Court of Appeal must be done by the Lord Chancellor and the two Lords Justices of Appeal.

The next objection of his Lordship to the measure is founded upon the fact that the Lord Chancellor is to remain—as he has always been in England, and in Ireland since the English connexion—a mixed legal and political functionary. There is much to be said on the subject in favour of abolishing the political duties of the office, and retaining merely the legal function; but we imagine this should, for some time, be left to debating clubs, or abstract resolutions, as the present Government is not likely to alter the laws of the constitution in favour of new theories, however well stated.

The following is the letter above referred to, and addressed to the editor of *The Times*:—

Sir,—Remembering that last year you opened your columns liberally to correspondence upon the English Judicature Bill while it was passing through Parliament, and again, quite recently, upon the expected new arrangements of the Imperial Court of Appeal, I venture to solicit a similar favour for the now pending Irish measure. I limit the request to that portion of the Bill by which it is proposed to re-constitute the jurisdiction of intermediate appeal in Ireland, because it is to that that I stand in a relation which, I trust, you will recognize as giving me some claim to be heard in the interests of the Irish public.

It is proposed by this Bill to unite with the jurisdictions at present residing in the Court of Appeal in Chancery those of the Exchequer Chamber, the Courts for Land Cases Reserved, for Registering Appeals, and for Crown Cases Reserved, and to concentrate them all upon one new Court. And, lest anything might be left uncovered by these transfers, it is provided by the 23rd clause that this Court shall hear appeals from *any* judgment or order of the High Court of Justice or of *any* Judges or Judge thereof. This will cover, *inter alia*, the whole criminal jurisdiction of the Queen's Bench division.

The Court by which, practically and normally, this vast jurisdiction is to be exercised, will consist of three Judges—the Lord Chancellor and two Lords Justices of Appeal. The three Common Law Chiefs are to be nominally *ex-officio* members, but they will be fully occupied elsewhere, and, it may be confidently reckoned, will rarely, if ever, give their attendance, save in the one instance in which they are made indispensable—viz., the sittings for Crown Cases Reserved. The continuous and working tribunal will be the three Judges first mentioned. In the English Appeal Court there are nine ordinary Judges—*i.e.*, three full quorums, which may sit separately and contemporaneously. In the Irish Court there are to be only two ordinary Judges, the Chancellor being the one who will in practice complete the one and only Irish acting quorum.

That these two ordinary Judgeships of Appeal should hold some points of vantage relatively to the primary Judgeships which would insure their being at all times preferred by the *élite* and flower of the legal profession, is too obvious to need dilating upon. Neither need it be more than stated that, as a rule, Courts of Appeal ought to be recruited from the Bench rather than the Bar. The choice should fall on men whose judicial quality has been already tested; for we know how deceptive success in advocacy may prove as an index to the possession of the judicial faculty.

Now, unhappily, so it is, that things are arranged in the Judicature Bill in such a way as to make it certain that the Lord Justiceships will be refused by the men of the first order, and will fall inevitably into the hands of those of the second or third. All the advantages which hitherto give preference to the existing Lord Justiceship are to be done away with, or rather, indeed, transferred to the Judgeships of the first instance.

As matters have stood down to the present time, the Lord Justice has had an advantage in salary over the puisne Judges and Barons of some £312. But a far more attractive vantage ground lay in the plan and arrangement of his work. Though onerous and engrossing while it lasted, it was concentrated within foreknown and comparatively short periods, while the intervals of leisure were correspondingly lengthened and unbroken. Both these points of preference the Bill destroys. On the one hand, it raises the salaries of the Puisnes to the same level as those of the Lords Justices, and, on the other, it transfers from the former to the latter the most onerous part of their labour—the whole work of the Exchequer Chamber, of Land Cases Reserved, of Crown Cases Reserved, and of Registry Appeals.

Nor is this all. Under the 78th Clause the Appeal Judge will have a Secretary at £250 a year. The puisne Judge will have one at £450 a year, being an addition of about £90 to the salaries of their present Registrars.

What makes this short-sighted transfer of advantages the more singular is that it has been made in the face of the known impossibility of redressing the balance by an addition to the salaries of the Judges of Appeal, for that is already *res adjudicata*. It was decided in the House of Commons last Session, after full discussion, that the salaries of the new English Appeal Judges should not be made higher than those of the Judges of the First Instance. And as the maxim, *nulla vestigia retrorsum* seems to be now relentless in the legislation as the politics of England, that point must be regarded as closed.

It may be said the having to go Circuit is a disadvantage on the side of the puisne Judges. Most of them like it, and the expense is in Ireland trifling. There is nothing of the parade and display of English Assizes—no entertaining of Grand Juries and County Magistrates. The Judges' lodgings are paid by the Treasury, and, since the railways superseded posting, the expense of a circuit need rarely be more than some £50 or £60.

In short, the puisne Judgeships of Ireland will henceforth, even more than heretofore, be among the most enviable of legal offices.

The moral of all this is patent. The office of Judge-Ordinary of the new Court of Intermediate Appeal will be

Digitized by Google

the least desirable in the superior Judicature. Its work will be, beyond that of all others, laborious, continuous, monotonous, and of the kind of which the most wearing part will be that which must be got through at home. No Judge of a primary Court can be persuaded to exchange for it. It is notorious that the most authoritative names are now, and in Ireland have almost always been, among the puisnes of the Common Law Courts. There, at this moment, are all the men whom common acclaim would designate as the fittest for appellate duties. But it is already known as a fact that they would, every one of them, refuse the new Lord Justiceship. How could it be otherwise? How could they be expected to accept the most irksome and wearying of labour for themselves, to call upon their registrars to sacrifice nearly half of their salaries, and all without the smallest compensation if equivalent beyond the saving of the £100 or £120 a year spent on circuit, which many of them consider to be more than amply repaid by the change and stir of the circuit life. And so it will be always. Even the leading barristers who shall be eminent enough to have a choice will stand out for a primary Judgeship; and the inevitable out-come will be a Court of Appeal with the reputation fastened upon it of being composed of Judges, the majority of whom, at least, will be the known and acknowledged inferiors of those who will sit in nearly every tribunal, whose decisions they will have to review.

Is there, then, no remedy or palliative? No one will grudge to the puisne Judges the increase of their salaries. To raise those of the Appeal Judges is, as already explained, now impossible. Thus, the two ordinary Judgeships of Appeal are consigned to hopeless inferiority, and the last and sole hope of averting ignominious failure rests upon the third Judge, the Lord Chancellor.

Here, at least, we have an office which, in point of attractiveness, leaves nothing to be desired. Among the legal posts of the Empire there is not one other so disproportionately endowed. His salary (£8,000 a year) exceeds by £2,000 the judicial salary of the Lord Chancellor of Great Britain. It has a patronage in the way of personal *attachés*, chief clerks, &c., to the amount of about £4,500 a year, with retiring salary and other allowances on a corresponding scale. This office, we may be very sure, will be coveted and competed for by the best of our Bench and Bar.

They will covet and compete for it, but will they get it? Alas, it is here that we encounter the most fatal shortcoming and disfiguring blot in the whole scheme embodied in Lord Cairns's two Bills. The Chancellorship of Ireland is to remain a political office.

I doubt if many Englishmen quite realise what that means. Yet it is not so very long since its import was brought out with a neatness and precision than which nothing could be more complete. It means simply an office in appointing to which all other considerations whatsoever will be unhesitatingly subordinated to political expediency.

Hitherto the judicial functions of the Chancellors have been confined to Equity, the affairs of which can rarely or never trench upon the domain of politics. But now there is to be a change. The Irish Chancellors of the future will not only be among the daily dispensers of Common Law and Criminal Law, but they will also be the administrators in the last resort—themselves unappealable, and unchecked save by the presence of a couple of second-rate and discredited men—of the special Irish Land Laws and the laws for the Registration of Parliamentary Voters.

Sir, I invoke the judgment of the instructed and masterly essayists whose writings on kindred subjects, whether in the shape of letters or of leading articles, have adorned your pages and given to English public opinion its tone, whether it is right, or constitutional, or even decent, that a Judge charged with such functions as those, and, of all places upon earth, in Ireland, should be a mere party hack, chosen, as might be, as a means of appeasing some menacing faction, and at best holding office at the good will and pleasure of the Minister of the day? Is he certain to be always such a one as in the Appeal Court shall be capable of redressing the inferiority which this Bill has stamped, for all time, upon his colleagues? This Court of Intermediate Appeal will be practically, for the bulk of the Irish business, a Court of Final Appeal. We were told lately by a great authority that the high tribunal is to "steady and settle the law." How can that be if the chief and only redeeming member of it shall himself be unsteady and unsettled—shifting and changing with every change of Ministers? To-day we may have a good President, a little after an indifferent one, and again, a little after, one so bad as none but those who have been behind the scenes, and seen things at their seamy side, can form the faintest conception of.

Let the Irish Chancellorship retain all its great endowments. Henceforth, at least, the holder can, if he will, give something like equivalent work for it. But let not this precious opportunity be let slip of fitting it for its new duties by making it non-political and permanent, no longer held at the beck and pleasure of a Minister, but, like all other superior Judgeships, at the united will and pleasure of the three branches of the Legislature.

By a rare chance it so happens that the recipient of the first life tenure would be one whose appointment would be universally approved, and whose efficiency might be reckoned upon, so far, at least, as that can be safely predicted of any one who has not already been judicially tested.

I am grieved, Sir, at the length of this trespass upon your space. I did not think of it until after I had addressed these same representations, without avail, to a responsible official quarter. I have concluded that I ought not to remain silent. But I have no means of making myself heard in Parliament. I cannot appeal to public opinion in Ireland, for no such thing exists there. What other opening, then, is left for one who is himself a responsible public servant through which to try to arouse the public mind to a subject which he deems to be of deep public moment in the department to which he belongs—what other, I say, than the upper section of the English Press? I am no mere amateur critic—16 years upon the Irish bench—divided nearly equally between Common Law and Chancery—I have accomplished. And, speaking out of that experience, and without a shade of personal interest in things which now, for me, are merging near upon their close, I do not hesitate to proclaim it as my deliberate conviction that the constitution which this Bill proposes to give to the new Court of First Appeal is one of *failure pre-organized*—no better than that.

We have heard something lately about the benefits of a strong majority, and how Governments that are blessed with it can dare to frame their law reforms on more heroic lines. But it will be consolatory to many at this side of the Channel to find that, after all, the traditions of the good old Irish school as to the true uses of occasions of legal change have not fallen wholly obsolete.

Your obedient Servant,

Dublin, *May 14*. J. CHRISTIAN.

In noticing the above letter, the *Times* says:—"The Lord Justice is by no means satisfied; indeed he strongly condemns the clauses providing for the Court of Intermediate Appeal. He observes that the Judges of Appeal will be burdened with heavier work and greater responsibility than the Judges of the Court of First Instance, and will receive no greater emolument and no greater honour, and he is apprehensive that the best men will prefer the inferior judicial dignity and leave the settlement of the law to minds of the second class. He is also much moved, not now for the first time, at the abuse of the Irish Chancellorship as a political office, and strongly urges that advantage should be taken of the opportunity to make the Chancellor a purely judicial functionary. Taking the facts as he states them, we are satisfied that a leader of the Irish Bar would generally prefer to be a Lord Justice to being a Puisne Judge, and if he did not, he would be the kind of person who ought not to be appointed a Judge of Appeal. The emolument being the same, authority and power more than overbalance a small possible addition of work. The re-settlement of the Lord Chancellor's duties is a matter of more importance, and there is no reason why it should not be undertaken; but even if this were delayed, we should not be worse off than we are already. On the whole the letter of Lord Justice Christian, rightly understood, is a testimony in favour of the Bill of Lord Cairns."

With reference to the new Court of Final Appeal in London for the United Kingdom and Ireland, our English contemporary says:—"It would lose its semblance of a con-

Digitized by Google

nexion with Parliament, and would form an integral part of the Judicature of the Kingdom; but the First Division of the Imperial Court of Appeal, which is this new Court, would be composed of nearly the same men as now sit in the Court of the House of Lords. That such would be the case is tolerably evident from this broad consideration, that we cannot go beyond the very best lawyers of our time, and the very best of each generation will be necessarily drafted to the Court of highest honour, dignity, and emolument in the kingdom. The Lord Chancellor is, *ex officio*, a member of it, and ex-Lord Chancellors will always be appointed to it. In short, the differences between the new Court and the existing Court will be twofold—first, that no great lawyer will be excluded from the former through his inability or unwillingness to bear the burden of a peerage; and, secondly, that it will always contain one or more members who have served on the Scotch or Irish Bench. We do not pretend to be in the secrets of the Government, but the distinguished abilities of the judicial chiefs of Scotland and Ireland are not unknown in London. Lord Cairns, supported by Lord Selborne, has very wisely resolved not to make the presence of a certain proportion of Scotch or Irish trained Judges a necessary element in the First Division of the Imperial Court of Appeal, but to make the best men eligible wherever they may have served before.

"The remonstrance of Lord Justice Christian may be admitted to be just, but the flaws he has detected can be easily amended. There is no insuperable difficulty in raising the salaries of the Judges of Appeal above those of the primary Judges if the arguments in favour of this course are sufficient, and the reduction of the office of Lord Chancellor from being a mixed political and legal to a purely legal post is clearly desirable. We are afraid the change would not prevent Judges from being appointed for political reasons, but this is an evil most likely to be cured by the reduction in the number of the Irish Judges, so that they shall not be out of proportion to the work done. This last amendment is a point upon which the Government cannot with any self respect modify its conclusions, however unsatisfactory they may seem to the members of the Irish Bar. The craftsmen of all countries before and since the days of those of Ephesus are apt to look with disfavour upon those who disturb them in their occupations, but the world cannot be stopped on account of their complaints. The reconstruction of the judicial machinery of Ireland is a work which has too long been delayed, and, now that it has been taken in hand with an honest resolution to perform it, all good Irishmen should hasten to co-operate in bringing it to a satisfactory conclusion."

THE COURT OF JUDICATURE (IRELAND) BILL.

In the House of Lords, on Tuesday last, Lord Redesdale, on the motion for the Second Reading of the Court of Judicature (Ireland) Bill, said he would recommend the House to revert to the old practice, and, after determining what Peers were fit persons to hear appeals, constitute them as a body for deciding upon such cases, with the addition, if necessary, of certain judicial persons sitting *ex officio*. By this plan the final appeal might be retained in the House of Lords; and that result he should consider an advantage, for no one could tell whether a new Court of Appeal would be received by the country with the same favour.

Lord Belmore observed that the Irish Bar were in favour of the final appeal being heard in the House of Lords, and he expressed some doubt as to the expediency of the reduction of the number of the Common Law Judges.

Lord O'Hagan would not upon the present occasion enter on the details of the measure, but he observed that, as far as Ireland was concerned, the feeling was strong in favour of the maintenance of the House of Lords as the Final Court of Appeal.

The Lord Chancellor stated that, as a public representation had been made of the supposed opinions of the Scotch Judges, he desired to say that he had received certain resolutions agreed to by them, and he inferred from those resolutions that they would not wish Scotch Appeals to come to the House of Lords if the English Appeals did not likewise go there. Such he believed to be also the opinion of the Irish Bench. With regard to the reduction of the number of the Irish Judges, he pointed out that by the provisions of the Bill the duties of the Irish Judges would in some respects be lightened.

Lord Selborne said he should deeply deplore any attempt to undo the work of last year with regard to the Court of Final Appeal.

The Bill was read a second time.

THE JUDICATURE (IRELAND) BILL.

(*Continued from page* 261.)

SCHEDULE.

RULES OF PROCEDURE.

Form of Action.

1. All actions which have hitherto been commenced by writ of summons and plaint in the Superior Courts of Common Law in Ireland, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate or Court for Matrimonial Causes and Matters, shall be instituted in the High Court of Justice by a proceeding to be called an action.

All other proceedings in and applications to the High Court may, subject to Rules of Court, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

Writ of Summons.

2. Every action in the High Court shall be commenced by a writ of summons, which shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

3 Forms of writs and of endorsements thereon, applicable to the several ordinary causes of action, shall be prescribed by Rules of Court, and any costs incurred by the use of any more prolix or other forms shall be borne by the party using the same, unless the Court shall otherwise direct.

4. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

5. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

6. Whenever it appears fit to the Court or to a Judge in a case in which the cause of action has arisen within the jurisdiction, or is properly cognizable against a defendant within the jurisdiction, that any person out of the jurisdiction of the Court should be served with the writ or other process of the Court, the Court or Judge may order such service, or such notice in lieu of service, to be made or given in such manner and on such terms as may seem just.

7. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond of contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially endorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

In case of non-appearance by the defendant where the writ of summons is so specially endorsed, the plaintiff may sign a final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate

Digitized by Google

specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

Where the defendant appears on a writ of summons so especially endorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so endorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly. Permission to defend the action may be granted to the defendant on such terms and conditions, if any, as the Judge or Court may think just.

8 In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that such account be taken.

In default of appearance on such summons, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

Parties.

9. No action shall be defeated by reason of the mis-joinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by Rules of Court, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in such manner as may be prescribed by Rules of Court or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

11. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any, and any party to an action may in such case apply by summons to a Judge in Chambers for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

12. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, in such manner and form as may be prescribed by Rules of Court, make such order as may be proper for having the question so determined.

13. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as may be prescribed by Rules of Court or by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

15. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

16. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

17. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as may be prescribed by Rules of Court, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

Pleadings.

18. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

Unless the defendant at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as shall be prescribed by Rules of Court, file and deliver to the defendant after his appearance a printed statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as aforesaid file and deliver to the plaintiff a printed statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner file and deliver a printed statement of his reply (if any), to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

A demurrer to any statement may be filed in such manner and form as may be prescribed by Rules of Court.

The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of

Digitized by Google

determining the real questions or question in controversy between the parties.

19. Where in any action it appears to a Judge or Additional Judge that the statement of claim or defence or reply does not sufficiently disclose the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

20. A defendant may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

21. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

22. Subject to any Rules of Court, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

23. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

24. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, or as may be prescribed by Rules of Court, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Discovery.

25. Subject to any Rules of Court, a plaintiff in any action shall be entitled to exhibit interrogatories to, and obtain Discovery from, any defendant, and any defendant shall be entitled to exhibit interrogatories to, and obtain Discovery from, a plaintiff or any other party. Any party shall be entitled to object to any interrogatory on the ground of irrelevancy, and the Court or a Judge, if not satisfied that such interrogatory is relevant to some issue in the cause, may allow such objection. No exceptions shall be taken to any answer, but the sufficiency or otherwise of any answer objected to as insufficient shall be determined by the Court or a Judge in a summary way.

The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

26. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

27. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Place of Trial.

28. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in the county of Dublin, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of the city of Dublin. Any order of a Judge as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

29. The list or lists of actions for trial at the sittings in Dublin shall be prepared and the actions shall be allotted for trial in such manner as may be prescribed by Rules of Court, without reference to the division of the High Court to which such actions may be attached.

Mode of Trial.

30. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before a special Referee, with or without assessors.

31. The plaintiff may give notice of trial by any of the modes aforesaid, but the defendant may, upon giving notice, within such time as may be fixed by Rules of Court, that he desires to have any issues of fact tried before a Judge and Jury, be entitled to have the same so tried, or he may apply to the Court or a Judge for an order to have the action tried in any other of the said ways, and in such case the mode in which the action is to be tried or heard shall be determined by such Court or Judge.

32. In any action the Court or a Judge may, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials.

33. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

34. Where an action or matter, or any question in an action or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial in open Court, de die in diem, in a similar manner as in actions tried by a jury.

35. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the action or any part thereof for re-trial or further consideration to the same or any other referee.

Digitized by Google

Evidence.

36. In the absence of any agreement between the parties, and subject to any Rules of Court applicable to any particular class of cases, the witnesses at the trial of any cause or at assessment of damages, shall be examined vivâ voce and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or examiner; provided that where it appears to the Court or Judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

37. Upon any interlocutory application evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

38. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

39. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Interlocutory Orders and Directions.

40. Any party to an action may at any stage thereof apply to the Court or a Judge for such order, as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties.

41. The Lord Chancellor, with the concurrence of the Lord Chief Justice, may order any question of law or of fact which may arise in any action or matter to be transferred from any Judge to any other Judge, or to be tried or heard by any other Judge of the said High Court, and may confer on such Judge power to deal with the whole or any part of the matters in controversy.

42. The Court or a Judge may, at any stage of the proceedings in an action or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special matter to be tried, as to which it may be proper that the cause should proceed in the ordinary manner.

43. When by any contract a primâ facie case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

44. It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order and in such manner, and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

45. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. The Court or a Judge may also, in all cases where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any action or other proceeding to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

46. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's cost of the action or, if the action be not wholly discontinued, the defendant's costs occasioned by the matters so withdrawn. Such costs shall be taxed in the manner prescribed by Rules of Court, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. Any judgment of non-suit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

Costs.

47. Subject to the provisions of this Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

New Trials and Appeals.

48. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

49. Bills of exceptions and proceedings in error shall be abolished.

50. All appeals to the Court of Appeal shall be by way of re-hearing and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice

Digitized by Google

of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

51. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

52. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a decree or judgment upon the merits, at the trial or hearing of any action or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without power special leave of the Court. The Court of Appeal shall have to give any judgment and make any decree or order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

53. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by Rules of Court or by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers by this Act conferred upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

54. When any question of fact is involved in an appeal, the evidence taken in the Court below shall be brought before the Court of Appeal in such manner as may be prescribed by Rules of Court or by special order.

55. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

56. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

57. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal, or from such time as may be prescribed by Rules of Court. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be prescribed by Rules of Court, or directed under special circumstances by the Court of Appeal.

58. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

REVIEW.

Registry of Judgments, Ireland. General Orders of the 11th day of May, 1874, together with Observations thereon. By MARK PERRIN, Registrar of Judgments. Dublin: Alexander Thom. 1874.

THESE General Orders are the necessary complement of the statute 34 & 35 Victoria, chap. 72, and, together with it, complete the laws as to registration and searches. This is one of the most difficult and least known of the branches of our common law practice, and few but gentlemen in Mr. Perrin's position would be able to give a lucid account of it. Owing, however, to his great ability as a lawyer, and to his conscientious industry as Registrar of Judgments, Mr. Perrin has been enabled to reduce what was hitherto an entangled mass of details into a fair and complete system, which all who have studied Mr. Perrin's observations can understand, and can carry out without loss of time or money. Our readers will remember that Mr. Perrin, under the directions of the late Lord Chancellor, produced a valuable report, explanatory of the system of registration introduced under the provisions of the 34 & 35 Victoria, chap. 72. This report was so admirably done and so useful that the edition printed was bought up by the profession almost immediately, and is now out of print. In these observations the more prominent parts of that report are re-published. As an instance of the complete manner in which Mr. Perrin has done his work we make the following extract:—

"The observations I am about to make have reference to such searches only as are made for the purposes of a sale or mortgage of real property; and when I speak of judgments, &c., not being charges upon land, the words '*as against purchasers or mortgagees*,' are always to be understood.

"Judgments and Revivals obtained since the 15th July, 1850, are not charges upon land.*

"Decrees, Rules, and Orders made since the 15th July, 1850, are not charges upon land.*

"Judgments, Revivals, Decrees, Rules, and Orders, although obtained or made before the 15th July, 1850, are not charges upon land unless they have been registered or re-registered within five years.†

"Lis Pendens are not charges upon land unless they have been registered or re-registered within five years.‡ Recognizances, Crown Bonds, Judgments at the suit of the Crown, Statutes, Inquisitions, and Acceptances of Office are not charges upon land unless they have been registered or re-registered within five years.§

"Accordingly no search need be made for Judgments, Revivals, Decrees, Rules, or Orders of a date later than the 15th July, 1850: and no search for any of those instruments of an earlier date, or for Lis Pendens, Recognizances, Crown Bonds, Judgments at the suit of the Crown, Statutes, Inquisitions, or Acceptances of Office need be extended beyond five years. The first form of requisition contained in Schedule B to the Statute 34 & 35 Vic., c. 72, is therefore sufficient, and it is in practice the one almost invariably adopted."

It will be seen that this information is necessary both for counsel and attorney.

BOOKS RECEIVED.

We have to acknowledge the receipt of a copy of "Leading Common Law Cases"—Second Edition, from Messrs. Stevens and Haynes, Law Publishers, Bell Yard, Temple Bar, London. A review of this most useful work shall appear in our next number.

* See 13th and 14th Vic., c. 29, s. 1.
† See 13th and 14 Vic., c. 29, ss. 3 and 4.
‡ See 13th and 14th Vic., c. 29, s. 5.
§ See 34th and 35th Vic., c. 72, ss. 11 and 12.

Digitized by Google

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

THE ATTORNEYS' AND SOLICITORS' ACT (IRELAND), 1866.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Your kind insertion of the following correspondence in reference to the recent important decision of the Master of the Rolls upon sec. 9 of the above Act, will greatly oblige.—Yours very faithfully,

ATHOL J. DUDGEON.

Leinster Chambers, 43, Dame street,
19th May, 1874.

"Leinster Chambers, 43, Dame-street,
"27th April, 1874.

"DEAR SIR,—Annexed to this you have a copy of resolutions passed at a meeting of solicitors' apprentices, which was held at 212, Great Brunswick-street, on Friday evening, the 24th inst.

"Would you kindly inform me when the deputation appointed by the meeting can have the honour of an interview with the Council of the Incorporated Law Society of Ireland.

"I think it right to state that in holding the meeting and giving expression to the sentiments of the apprentices upon a matter which is of the utmost importance to many of them, those who took part in the proceedings were in no way actuated by a feeling of hostility towards the Council, or by a desire to act in a manner discourteous to that body.

"I am under the necessity of making this disavowal in consequence of an impression which prevailed in the minds of some few gentlemen who dissented from the first resolution—an impression which, I feel, they would at once have acknowledged to have been erroneous had they remained until the other business to be transacted had been brought forward, instead of abruptly leaving the meeting when the resolution alluded to was proposed.—I remain, dear sir, faithfully yours,

"ATHOL J. DUDGEON.

"To John H. Goddard, Esq.,
"Secretary of the Incorporated Law Society of Ireland."

(COPY OF RESOLUTIONS)

No. 1.

"Resolved—That the recent decision of the Right Honourable the Master of the Rolls, by which it has been laid down that at least one of the two collegiate years of lectures mentioned in section 9 of the Attorneys and Solicitors Act (Ireland), 1866, must be attended by an apprentice, prior to his being bound, in order to render him eligible to be admitted to the profession after four years' service, directing, as it does, attention to an error in said section, hitherto overlooked, imperatively demands the immediate action of those whose interests are affected thereby."

No. 2.

"Resolved—That this meeting do appoint a deputation to wait upon the Council of the Incorporated Law Society to solicit their assistance and co-operation in aiding those apprentices upon whom the recent decision of the Master of the Rolls, under sec. 9 of the Attorneys and Solicitors Act (Ireland), 1866, unduly presses, and in seeking such an amendment of said section as will effectually carry out what was the manifest intention of the framers of the act, as referred to by the Master of the Rolls when giving the decision in question."

No. 3.

"Resolved—That such deputation do consist of the chairman and secretary of this meeting, together with the proposers and seconders of resolutions, and that this meeting do now stand adjourned until Friday evening, the 8th of May, for the purpose of receiving the report of the deputation as to the result of their interview with the Incorporated Law Society."

"Solicitors' Buildings, Four Courts, Dublin,
"4th day of May. 1874.

"SIR,—In answer to your letter of the 27th ult., enclosing copies of resolutions stated to have been passed at a meeting of solicitors' apprentices held on the 24th ultimo, respecting the recent decision of the Master of the Rolls upon the 9th section of the Attorneys Act (Ireland), 1866, and asking the Council of this society to receive a deputation on this subject, I have been desired to inform you that the Council will receive a deputation, limited, as in copy, resolution No. 3, at the Council Chamber, on Wednesday next, the 6th inst. at 1.30 o'clock, p.m.

"Yours obediently,

"JOHN H. GODDARD, *Secretary.*

"A. J. Dudgeon, Esq.,
"Leinster Chambers, 43, Dame-street, Dublin."

"Solicitors' Buildings, Four Courts, Dublin,
"16th day of May, 1874.

"DEAR SIR,—Referring to your letter of the 27th ultimo, and also to the interview with you and the other members of the deputation who were received by the Council on the 6th instant, relative to the 9th section of the Attorneys and Solicitors Act (Ireland), 1866, I am desired to inform you that the Council have since carefully considered the matter, and will be prepared to afford such assistance as may be in their power to those apprentices already bound who may hereafter seek for admission after four years' service, upon such apprentices applying by petition to a law court for admission, at the expiration of the respective periods of four years, which course will be necessary in each case, pursuant to a recent decision of the judges. I am also to inform you that the council do not consider it advisable to apply to Parliament for any alteration of the section of the Act above alluded to as regards future apprentices.

"Yours truly,

"JOHN H. GODDARD, *Secretary.*

"Athol J. Dudgeon, Esq.,
"Leinster Chambers, 43, Dame-street."

LAW STUDENTS' JOURNAL.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall, King's Inns, on Monday evening, May 25th, when candidates to fill the offices of the Society for the ensuing session will be proposed.

The Chair will be taken at Eight o'clock, by John B. Falconer, Esq., LL.D., Barrister-at-Law.

LEGAL AND LITERARY DEBATING SOCIETY.

The usual Weekly Meeting of this Society will be held at 53, Lower Sackville-street, on Thursday evening, May 28th. Chair will be taken at eight o'clock, by Mr. E. Overend, President. Subject for debate:—"Are Races and the Racecourse beneficial to the morals of Mankind?" After the debate the adjourned consideration, and nomination of officers for the ensuing year, will take place. Members are requested to be in punctual attendance. All compositions for the Poetry Medal must be lodged with the Honorary Secretary, A. W. Gamble, 51, Fitzwilliam-square, on or before Wednesday, the 28th inst. Signatures to be fictitious.

Digitized by Google

THE LAW CLERKS' ASSOCIATION.

The Central Committee met on Monday evening at their new rooms, 207, Great Brunswick-street. The attendance included Vice-President Dowling, Messrs. Jervise, Norman, Dodd, Power, Devereux, Farrelly, Pride, M'Dermott, and Pigot. The Library Committee announced the following subscriptions:—The Chief Baron, £5 5s.; R. O. Armstrong, Esq., Lord Chancellor's Chief Clerk, £2 2s.; Hugh M'Dermott, Esq., £3 3s.; Henry Fitzgibbon, Esq., Q.C., £2 2s.; G. A. May, Esq., Q.C., £1 1s.; ·. C. Heron, Esq., Q.C., £1 1s.; T. Brinsley Sheridan, Esq., £1 1s.; John Naish, Esq., £1 1s.

Mr. Farrelly then brought the new Judicature Bill under the notice of the meeting, and a discussion ensued upon the clauses in it affecting the Law Clerk. The general opinion seemed to be that the changes proposed by the bill would be beneficial to the Law Clerk. The abolition of "terms" would have the effect of equally distributing the business over the whole year, instead of compressing it into a few months' work, as under the present system. It would put an end to that period of slackness—the long vacation—so injurious to clerks employed in the minor offices, and would materially strengthen the position of the Association in applying for the Saturday half-holiday. The use of printing the statements of complaint and defence, instead of writing them, would, no doubt, entail a temporary loss upon the writing clerk, but the increase of business which will take place by reason of the improved procedure and the speedy trial of causes would compensate them for this loss.

Applications for admission to membership were then taken up, and four gentlemen whose status and antecedents were approved of were enrolled.

The Vice-President, in reviewing the proceedings of the evening, stated that the Association was much indebted to the Bench, the Bar, and Solicitors of Ireland for their generous support to the Library. He looked with especial interest at the support and recognition given to the movement by Mr. Armstrong, the Lord Chancellor's chief clerk. Mr. Armstrong had been for many years a solicitor of great eminence and extensive practice, and was remembered as a just and considerate employer. Since occupying his present onerous position he had won the respect of every person transacting business in his office by his unwearied patience and evenness of temper. In both positions he has had ample opportunities of knowing what Law Clerks were, and his good opinion towards the Law Clerks' Association was invaluable to it (applause).

The meeting, having disposed of the routine business, adjourned.

THE LAW CLERKS OF LONDON.—The Benchers of Lincoln's Inn have granted the use of their hall to the United Law Clerks' Society for the next festival, and the Lord Chief Justice of England has promised to take the chair.

COURT PAPERS.

LANDED ESTATES' COURT.

May 23rd.

The several Offices of the Court will be closed on Whit-Monday and Whit-Tuesday, the 25th and 26th, save the Record and Affidavit Office, which will be open from 12 to 2 o'clock, each day, for the reception of Petitions, Objections, and Affidavits of Cause. The Record of Title Office will be open on Whit-Tuesday.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

WEDNESDAY.

IN CHAMBER.—J. B. Daly, allocation.—D. Bingham, from 18th.—L. B. Ireland, from 19th.—J. M'Carthy, do.—J. R. Clarke, to sue discharged annuity.

IN COURT.—E. A. Kemmis, final schedule.—M. Fitzsimon, do.—R. Usher, do.—Trustee Lawless, do.—G. Fossitt, from 18th.—Trustee Mannix, from 19th.—H. Stevenson, to postpone sale.—C. Wilson, objection.

Before EXAMINER (Mr. M'Donnell).

De Basancourt, vouch.—T. Murphy, do.—R. Fosberry, do.—C. O'Callaghan, for deeds.—J. Collins, rental.—Sir D. Baxter, ditto.

Before EXAMINER (Mr. Dobbs).

E. and M. Byrne, proofs.—F. H. Kelly, do.—Tracy and Nagle, rental.

THURSDAY.

IN CHAMBER.—M. Kerin, from 20th.

IN COURT.—M. Roberts, from 21st.—H. Campion, ditto.

Before EXAMINER (Mr. Dobbs).

M. K. Fitzgibbon, rental.

FRIDAY.

SALES AT 12 O'CLOCK.

J. A. DYER.—1 lot.
G. BOWLES.—1 lot.
TRUSTEE BURLUGH.—1 lot.
EXECUTRIX MULLINS.—1 lot.
EXECUTRIX RAE.—3 lots.
TRUSTEE REV. R. MACDONNELL.—5 lots.

Before EXAMINER (Mr. Dobbs).

Wm. Hamond, rental.

Before EXAMINER (Mr. M'Donnell).

J. B. Daly, for deeds.—V. W. B. Wall, rental.—W. Noole, do.—P. Savage, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Daniel Lenihan	Prove debts and vouch	*Scallan*
Jeremiah O'Grady	do	*Scallan*

TUESDAY.

Before the COURT, at 11 o'clock.

Francis Keegan	1st public sitting	*Boughey*
Thomas Singleton	do	*Hamilton & Craig*
Ludlow Berkeley	do	*Scallan*
Mary Dolan	do	*Hardman & Son*
M. J. Hetherington	do	*Scallan*
Joseph M'Kee	Final examination	*Leachman*
James Fortune	do	*Lett*
Denis V. Martin	do	*Lynch*
William Foxall	do	*Oldham & Eaton*
Daniel Cullen	do	*Larkin & Co.*
Stephen Rickard	do	*Findlater & Co.*
Mary Clancy	Examine witnesses	*White*
Henry Elliott	Motion	*Cronhelm & Co.*
Patrick Carew	do	*Larkin & Co.*
Catherine Holland	do	*H. C. Neilson*
Bernard Cummings	Audit and dividend	*Bradley & Son*
———	Application to dismiss debtor summons	*Kennedy*

Digitized by Google

TUESDAY.
Before the CHIEF REGISTRAR, at 12 o'clock.

Robert Gilmour	Title, conditions, and posting	*Larkin & Co.*
Michael J. Mellet	Vouch account	*Larkin & Co.*
Laurence Joyce	do	*Larkin & Co.*
Johnston, Broom, and Co.	Prove debts and vouch	*Larkin & Co.*
Susan Pratt	Vouch account	*Molloy & Watson*
Peter Wright	Prove debts and vouch	*Mathews*
William Holmes	Costs	*Hartigan*
Same matter	Title, conditions, and posting	*Hartigan*
John Kirwan	Costs	*Stapleton*
John Nolan	Title and posting	*Orpen & Sweeny*
James Smyth	Prove debts and vouch	*Browning*

WEDNESDAY.
Before the CHIEF REGISTRAR, at 12 o'clock.

Arrangement	Title, conditions, and posting	*Darley*

THURSDAY.
Before the CHIEF REGISTRAR, at 12 o'clock.

Arrangement	Settle report	*Casey & Clay*

FRIDAY.
Before the COURT, at 11 o'clock.

Joseph M'Kee	2nd composition sitting	*Benner*
Patrick Flood	1st public sitting	*White*
Michael Ryan	do	*Kavanagh*
James Armstrong	do	*Larkin & Co.*
John Gilshenan	do	*Perry & Co.*
Robert H. Collister	Final examination	*Mathews*
John Byrne	do	——
John M'Fadden	do	*Larkin & Co.*
Michael Ryan	do	*Larkin & Co.*
——	Application to dismiss debtor summons	*Larkin & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

Joseph M'Kee	Prove debts	*Benner*
Philip L. Lyster	Prove debts and vouch	*Perry & Co.*
J. C. Walsh	Costs	*Oldham & Eaton*
Patrick Byrne	do	*Leachman*
Francis Cahir	do	*Cullinan*

ADJUDICATIONS IN BANKRUPTCY.

Brennan, James, Bridge-street, Waterford, merchant. Sittings, *Tuesday, June* 9, and *Friday, June* 26. *Humfrey*, solr.

Coppinger, Thomas, Castlebar, Mayo, grocer and spirit dealer. Sittings, *Tuesday, June* 9, and *Friday, June* 26. *Hamilton and Craig*, solrs.

Dunne, William, Main-street, Bray, county Wicklow, provision dealer. Sittings, *Tuesday, June* 9, and *Friday, June* 26, *Thompson*, solr.

Labertouche, Abel William, 18, Fleet-street, Dublin. Sittings. *Tuesday, June* 9, and *Friday, June* 26. *Casey and Clay*, solrs.

Quirey, James, trading as James Quirey & Co., York-street, Belfast, and Hollywood, Down, manufacturer. Sittings, *Tuesday, June* 9, and *Friday, June* 26. *Thompson*, solr.

Walker, William, and Trevor, John, trading as Trevor & Co., Drury-lane, Dublin, rag and metal merchants. Sittings, *Tuesday, June* 9, and *Friday, June* 26. *Perry and Co.*, solrs.

Davey, John, Ballaghaderreen, county Mayo, grocer and spirit dealer. Sittings, *Friday, June* 12, and *Tuesday, June* 30. *Hamilton and Craig*, solrs.

DIVIDENDS IN BANKRUPTCY.

Moylan, Patrick, Nenagh, county Tipperary, wool, grocer, and provision dealer. 1st and final dividend 4s. 4d. in the £. L. H. Deering, official assignee. *Stone*, solr.

Rogers, Andrew, Clonmore, Louth, farmer. 1st and final dividend 16s. 2d. in the £. C. H. James, official assignee. *Gerrard*, solr.

LEGAL POSTINGS:

LANDED ESTATES' COURT.

COUNTY OF WESTMEATH AND KING'S COUNTY.

SALE,
On FRIDAY, the 26th day of JUNE, 1874.

In the Matter of the Estate of Duke Crofton, William Crofton, and Richard Henry Crofton, Trustees for sale under the will of William Jones, deceased, Owners and Petitioners; Continued in the name of Charles William St. John, a new Trustee, under Deed dated 15th December, 1873, in room of Duke Crofton, deceased, in conjunction with the other owners:

And in the Matter of the Estate of Maria St. John and Robert St. John, and of the said Robert St John, a Trustee for sale, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inn's-quay, In the City of Dublin, On FRIDAY, The 26th day of JUNE, 1874, In Twelve Lots, At the Hour of Twelve o'clock noon.

LOT No. 1

Consists of Part of the Lands of Joneslake, otherwise Tullaghandgeeragh, containing 50a 0r 23p, held in fee-simple, producing a rent of £57 6s; tenement valuation, £71 10s.

LOT No. 2,

Consisting of part of the Lands of Parkwood, containing 211a 2r 23p, held with Lots Nos. 3, 4, 5, 6, 7, 8, and 9, under fee-farm grant dated 23rd day of December, 1854, at the rent of £78 8s 8d, and 6d in the pound Receiver's fees. This Lot will be Sold primarily charged with the payment of the said rent in indemnification of all other premises subject thereto. This Lot produces a profit rent of £22 3s 2d. Tenement valuation, £124 17s 0d.

LOT No. 3

Consists of part of the Lands of Fearboy, containing 179a 1r 1p, held in fee-farm, producing a profit rent of £129 2s 9d. Tenement valuation, £109 2s 0d.

LOT No. 4

Consists of part of the Lands of Fearboy aforesaid, containing 5a 0r 29p, producing a profit rent of £2 3s 9d. Tenement valuation, £3 5s 0d.

LOT No. 5

Consists of the Lands of Ballinahinch, containing 105a 2r 24p, producing a profit rent of £16 16s 4d. Tenement valuation, £50 5s 0d.

LOT No. 6

Consists of part of the Lands of Faheeran, containing 6a 2r 28p producing a profit rent of £3 15s 6d. Tenement valuation, £4 5s 0d.

LOT No. 7

Consists of part of the Lands of Faheeran, containing 310a 0r 13p; and part of the Lands of Burrow or Glenanummer, containing 3a 2r 9p, producing a profit rent of £127 10s 5d. Tenement valuation, £165 5s.

LOT No. 8

Consists of part of the Lands of Faheeran aforesaid, containing 168a 0r 39p, producing a profit rent of £34 17s 11d. Tenement valuation, £102 5s.

LOT No. 9

Consists of part of the Lands of Burrow or Glenanummer, containing 95a 3r 13p, producing a profit rent of £62 19s 6½d. Tenement valuation, £55 15s.

LOT No. 10

Consists of the Lands of Carbrack, and part of the Lands of Noughaval, containing 102a 2r 11p, held with Lots Nos. 11 and 12, for the residue of a term of 1,000 years, created by deed dated 4th day of July, 1775, from February, 1792, producing a profit rent of £102 11s 5d. Tenement valuation, £76 5s.

LOT No. 11.

Consists of Part of the Lands of Coolvin, containing 209a 0r 6p, held as aforesaid, producing a profit rent of £190 9s 1d. Tenement valuation £154 5s.

LOT No. 12.

Consists of Part of the Lands of Coolvin aforesaid, containing 17a 0r 3p, held as aforesaid, producing a profit rent of £14 16s 1d. Tenement valuation £15 10s.

Dated this 16th day of May, 1874.

HENRY ROBERT GREENE, Chief Clerk.

PARTICULARS.

Lot No. 1 is situate in the Barony of Clonlonan, and County of Westmeath, within half a mile of Moate, a station on the Midland Great Western Railway.

Lots 2 to 9, inclusive, are situate in the Barony of Kilcoursey, and King's County, are within one mile of the Town of Moate. There is good partridge shooting on this portion of the estate

Lots 10 to 12, inclusive, are situate in the Barony of Kilkenny West, and County of Westmeath, are within six miles of Moate and two miles of the flourishing Town of Ballymahon, a good market and post town.

For Rentals and further particulars apply to the Registrar's Office, Landed Estates' Court, Inns'-quay, in the City of Dublin; or to

JOSHUA BRERETON, Solicitor having carriage of the Sale, 13 Harcourt-street, Dublin. 453

Digitized by Google

LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE OF DECLARATION OF TITLE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of Charles Blake, Owner and Petitioner.

WHEREAS the said Charles Blake has made application to the Landed Estates' Court for a Declaration that he has a good and sufficient title in fee-simple to the Lands of Ballyglass and Curramore, situate in the Barony of Claremorris and County of Mayo, and the Lands of Garrymore and the Lands of Coolcon, situate in the Barony of Kilmaine and said County of Mayo.

And whereas the Court has investigated the title of the said Charles Blake to the said Lands and Premises,

Now this is to give notice that the Court has decided that the said Charles Blake has a good and sufficient title in fee-simple to the said Lands and Premises, subject to the tenancies, rights, easements, and incumbrances set forth in the rental and schedule of incumbrances lodged in the proper offices of the said Court, and discharged from all other estates, interests, and demands whatsoever; and that a draft Declaration of Title has been settled, and may be inspected at my office; and that on the expiration of one month from the publication hereof the Court will proceed to sign such Declaration and all persons objecting to such Declaration are hereby required, within the said period of one month, to show such cause as they may be advised against the signature thereof, and no appeal from such Declaration of Title on behalf of any person will lie after the signature and registration of the same.

Dated this 21st day of May, 1874.

C. E. DOBBS, Examiner.

EDWARD and GEORGE STAPLETON, 28, College-green, Dublin, Solicitors having carriage of the Order. 446

LANDED ESTATES' COURT, IRELAND.

DECLARATION OF TITLE.—FINAL NOTICE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of The Reverend Charles W. Molony, Owner and Petitioner.

WHEREAS Charles Walker Molony, Clerk of Brick House, Seaton, South Devon, England, has made application to the Landed Estates' Court for a Declaration that he has a good and sufficient title in fee-simple to the Lands of Kilacrandy, otherwise Kilnecrandy or Kilnacrandy, with its subdenominations containing 291 acres, 2 roods, and 6 perches, statute measure, or thereabouts, situate in the Baronies of Upper and Lower Bunratty, and County of Clare,

And whereas the Court has investigated the title of the said Charles Walker Molony to the said Lands and Premises,

Now this is to give notice that the Court has decided that the said Charles Walker Molony has a good and sufficient title in fee to the said Lands and Premises, subject to the tenancies, rights, and easements, and incumbrances, set forth in the rental and schedule of incumbrances lodged in the proper office of the said Court, and discharged from all other estates, int rests, and demands whatsoever, and that a draft Declaration of Title has been settled, and may be inspected at my office; and that on the expiration of one month from the publication hereof, the Court will proceed to sign such Declaration; and all persons objecting to such Declaration, are hereby required, within the said period of one month, to show such cause as they may be advised against the signature thereof, and no appeal from such Declaration of Title on behalf of any person will lie after the signature and registration of same.

Dated this 16th day of May, 1874.

C. E. DOBBS, Examiner.

SAMUEL P. REDINGTON, Solicitor for Owner and Petitioner, 32, Rutland-square. 441

LANDED ESTATES' COURT, IRELAND.

DECLARATION OF TITLE.—FIRST NOTICE.

In the Matter of the Estate of Richard Dane, an owner of an Estate in Fee-farm.

THIS IS TO GIVE NOTICE TO ALL WHOM IT MAY CONCERN, that Richard Dane, of No. 3 Crosthwaite Park, Kingstown, in the County of Dublin, Esq., C.B., on the 9th day of May, 1874, presented his petition to the Landed Estates' Court, Ireland, praying that the Title to part of the Lands of Kellybevlin and Slee (part known as Gortgonnell), containing 58a 1r 37p, part of the Lands of Drumgallon, containing 90a 2r 10p, and Derrybeg, containing 47 acres, and part of the Lands of Derryvore, containing 83a 3r 0p, statute measure, situate in the Baronies of Magheraboy and Tirkennedy, and County of Fermanagh, might be investigated, and a judicial declaration made thereon by the Court, that he, the said Richard Dane, has a good and sufficient Title in fee-farm to the said part of the Lands of Kellybevlin and Slee (part known as Gortgonnell), situate in the Barony of Tirkennedy and County of Fermanagh, subject, with other Lands, to the rent of £132 9s 1d, created by a perpetuity conveyance dated the 27th June, 1851; also to part of the said Lands of Drumgallon and Derrybeg, situate in the said Baronies of Magheraboy and Tirkennedy, and said County of Fermanagh, subject to the rent of £56 14s 6d, created by a perpetuity conveyance dated the 27th June, 1851; also part of the said Lands of Derryvore, situate in the Barony of Tirkennedy, subject to the rent of £116 6s 4d, created by a perpetual conveyance dated the 15th July, 1861, and subject to the leases and tenancies, rights, easements, and incumbrances specified in the said petition.

Now, the Court will, after twenty-one days from the date hereof, proceed to investigate the Title to the said Lands, and if such investigation prove satisfactory, will make a Declaration of Title pursuant to the prayer of said petition and all persons objecting to such Declaration of Title being made, are hereby required to enter an appearance in the Matter of the said Estate within the time aforesaid, and to show such cause as they may be advised against such Declaration of Title as aforesaid being made.

Dated this 13th day of May, 1874.

JAMES M'DONNELL, Examiner.

WILLIAM JAMESON, 68, Harcourt-street, Dublin, Solicitor having carriage of Order. 438

LANDED ESTATES' COURT.

In the Matter of the Estate of John Thornton, Owner and Petitioner.

NOTICE is hereby Given, that the entire of this Estate having been disposed of by Private Contract (confirmed by the Honourable Judge Flanagan), no further Proposals will be received after this date.

Dated this 14th day of May, 1874.

H. R. GREENE, Chief Clerk.

EDMUND MULVIHILL, Solicitor having carriage of the Sale, No. 6 North Great George's-street, Dublin. 436

LANDED ESTATES' COURT, IRELAND.

QUEEN'S COUNTY.

SALE,

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of the Estate of Thomas A. Bailey, Esquire, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, In Three Lots, (if not previously disposed of by Private Treaty, as mentioned below), By the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Four Courts, Inns'-quay, Dublin, On FRIDAY, the 12th day of JUNE, 1874, At Twelve o'clock noon, The following Valuable Fee-simple Properties, situate in the Barony of Maryboro' West, in the Queen's County:—

LOT 1.

Consists of the Townland of Ockanaroe, containing 108a 3r 23p, statute measure, or thereabouts, and producing a present net profit rent of £70 7s 8d.

LOT 2.

Consists of the Townland of Springfield, containing 214a 0r 14p, statute measure, or thereabouts, and producing a present net rental of £83 10s 8d.

LOT 3.

Consists of the Townland of Camcloon, containing 535a 0r 35p, statute measure, or thereabouts, and producing a present net profit rent of £268 10s 10d.

Dated this 28th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The lands lie within a few miles of the Railway Stations of Mountrath and Maryborough, and are adjacent to Mountmellick, where fairs, &c., are held.

The tenants are of a superior class, and the land is of excellent quality.

Portions have been lately drained.

It is much underlet.

Messrs. Brassington and Gale have recently, by direction of the Court, made a verified valuation, and they report that the present letting value of the estate is £525 14s 9d, being about one-third more than the actual rental.

The tenants enjoy the right of turbary in the bog upon the adjoining lands of Iry (the property of Sir Charles Coote).

Proposals (in writing) for the purchase of all or any of the Lots will be received by the Owner's Solicitors up to the 28th day of MAY, 1874, and will be submitted to the Judge on the 1st day of JUNE, 1874, at the sitting of the Court (or at the earliest opportunity afterwards) without further notice to any person.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inn's-quay, Dublin; or to

Mr. CHARLES MOORE, Iry, Ballyfinn, Mountrath (who will point out the Premises); or to

Messrs. MEADE & COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 419

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF LONGFORD AND CAVAN.

SALE,

On FRIDAY, the 19th day of JUNE, 1874.

In the Matter of the Estate of Stamford Hutton and Ralph Robert Wheeler Lingen, Esqrs., Trustees of the Will of the late Robert Hutton, Esq., deceased, Owners and Petitioners.

TO BE SOLD, In Eight Lots, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, In the City of Dublin,

On FRIDAY, the 19th day of JUNE, 1874, At the hour of Twelve o'clock noon.

The following Fee-simple Estates, situate in the barony of Granard and county of Longford, and in the baronies of Clonmahon and Tullyhunco, in the county of Cavan, as specified in the descriptive particulars.

Proposals for all or any part of the Premises will be received by Messrs. L. Dobbin and Co., the Solicitors having the carriage of the proceedings, up to Friday, the 5th day of June, 1874, and, if approved of by the Owners and Petitioners, will be submitted to the Judge for his approval.

Dated this 8th day of May, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

LOT 1.

Consists of the Town and Lands of Leitrim or Corbawn, situate in the barony of Granard and county of Longford, containing 466a 1r 15p statute measure, and produces a net yearly rent of £245 19s 11d.

LOT 2.

Consists of the Town and Lands of Kilmore, situate in the barony of Granard and county of Longford, containing about 600a 3r and 4p English statute measure, and producing the net annual rent of £272 6s 10d.

LOT 3.

This Lot consists of the Town and Lands of Toome, situate in the barony of Granard and county of Longford, containing about 746a 1r 20p statute measure, and producing a net yearly rent of £260 16s 2d.

LOT 4.

This Lot consists of the Town and Lands of Drumbrucklis, situate in the barony of Clonmahon and county of Cavan, containing about 134a 2r 38p, and producing a net yearly profit rent of £70 5s.

LOT 5.

This Lot consists of the Town and Lands of Middletown, situate in the barony of Clonmahon and county of Cavan, containing about 225a 0r 23p statute measure, and producing a net profit rent yearly of £125 5s 8d.

LOT 6.

This Lot consists of the Town and Lands of Killycasson, or Killycartron, situate in the barony of Clonmahon and county of Cavan, containing about 156a 1r 20p statute measure, and producing a net profit rent yearly of £70 13s 6d.

LOT 7.

This Lot consists of the Town and Lands of Drumhawnagh, situate in the barony of Clonmahon and county of Cavan, containing about 423a 2r 23p statute measure, and producing a net yearly profit rent of £173 12s 3d.

LOT 8.

Consists of the Town and Lands of Drumkeerin Black, otherwise Beg, and part of Drumkilrooske, situate in the barony of Tullyhunco and county of Cavan, containing 139a 2r 8p statute measure, and producing the net yearly rent of £96 17s 10d.

The Premises described in Lots 1, 2, and 3, are of excellent quality for either grazing or tillage purposes, and are well watered, fenced, and sheltered, and are most eligibly circumstanced for purchasers, being situate in the best part of the county of Longford, and within about seven miles of the town of Granard, in said county of Longford, and twelve miles of Cavan, in the county of Cavan, in each of which first-class markets and fairs for all sorts of farm produce are regularly held.

The branch of the Midland Great Western Railway from Mullingar to Cavan passes adjacent to these Lands, with a Station at Ballywillan, about seven miles distant, thus affording cheap and expeditious access to the chief markets and fairs of Ireland. In addition to abundant turbary for the tenants, there is a considerable tract of excellent bog in the owners' hands, which has now become most valuable.

The Premises, Lots 4, 5, 6, and 7 lie in a ring fence, and are of good quality for either grazing or tillage purposes, being well watered, fenced, and sheltered, and lying within about ten English miles of the town of Cavan, the assize town for the county, and about six English miles of Ballinagh, and five miles of Granard, in the county of Longford, in each of which towns fairs and markets for all kinds of farm produce are regularly held. The Midland Great Western Railway from Dublin to Cavan runs through a portion of these Lands, and has Stations at Crossdoney and Cavan, distant about four and ten miles respectively, thus affording cheap and ready access to all the principal fairs and markets of Ireland.

There is a large and ample supply of turbary on these Lands, which greatly enhances their value, and also a considerable tract of valuable bog in the owners' hands. The entire of these Lands are situate in a most desirable position for purchasers.

The Lands described as Lot 8 were formerly held in fee-farm, but no rent has been paid in respect of these premises by the owners, or the late Mr. Robert Hutton, who purchased the premises in 1851, or, it is believed, for many years previously; are of excellent quality for grazing or tillage purposes, well watered, fenced, and sheltered, and lie within about five miles of the town of Arva, five miles of Killeshandra, and nine miles of Cavan, the assize town for the county, and in all of which fairs and markets for the sale of farm produce are regularly held.

There is a Station on the branch of the Midland Great Western Railway from Dublin to Cavan, at Crossdoney, about five miles distant from this Lot.

The entire Lands are occupied by a respectable, industrious, and thriving tenantry, at very moderate rents, who pay their rents regularly.

The vendors will, if required by the purchaser of any Lot, allow any part, not exceeding two-thirds, of the purchase money to remain on the security of a first mortgage of the property purchased for any term not exceeding ten years, with interest at 4½ per cent.; such mortgage to contain a proper power of sale in case of default being made in payment of the principal, or of any half-yearly instalment of interest for six months after the same shall become payable.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inn's-quay, in the City of Dublin; to

JOHN ARMSTRONG, Esq., Solicitor, Cavan;

ALBERT HUTTON, Esq., Drumully House, Killeshandra;

STAMFORD HUTTON, Esq., Lincoln's Inn, London; or to

Messrs. LEONARD, DOBBIN, and Co., Solicitors having the carriage of the proceedings, No. 27, Gardiner's-place, Dublin. 426

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF ARMAGH.

In the Matter of the Estate of Henry Stevenson and Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, or some or one of them, Owners;

Ex-parte Anthony Cowdy, Petitioner.

And in the Matter of the Estate of Henry Stevenson, and of Christopher Stevenson and Mercer Stevenson, his Trustees for Sale, Owners;

Ex-parte John Hancock, Petitioner.

PURSUANT to the ORDER Of the Honourable Judge Flanagan, Proposals For the Purchase, By PRIVATE CONTRACT, Of the Undermentioned Lots, Remaining Unsold, Will be Received, And Submitted to the Judge For his Approval, By the Solicitors having Carriage of the Sale, Viz.:—

LOT No. 1.

Part of the Lands of Clencarrish, containing 8a 2r 26p, statute measure, and Parts of Ballinary, containing 8a 2r, held under lease of 7th of April, 1839, for three lives, at the rent of £15 16s 4½d; also another Part of said Lands of Ballinary, containing 2a 1r 26p, held under lease of the 6th of May, 1842, for three lives, subject to rent of £1 10s; another Part of said Lands of Ballinary, containing 2a 0r 39p, or thereabouts, statute measure, held under lease dated the 22nd of July, 1839, for three lives, subject to the yearly rent of £3 10s; all situate in the Barony of Oneiland West, and County of Armagh.

LOT No 3.

Consisting of another Part of the said Lands of Clencarrish, containing 4a 2r 33p or thereabouts, statute measure, held under lease dated the 3rd of June, 1841, for three lives, and subject to the annual head rent of £6 6s 9d.

LOT No. 4.

Consisting of Part of the said Lands of Clencarrish, containing 29a 1r 23p, or thereabouts, statute measure, and held under lease dated the 16th day of October, 1866, for the unexpired term of 21 years, from the 1st of November then last, and subject to the yearly rent of £39 7s 9d.

LOT No. 5.

Consisting of Part of the Lands of Clantilieu, in the Barony of Oneiland West, and County of Armagh, containing 4a 0r 2p, statute measure, held under lease bearing date the 9th day of November, 1842, for three lives, and subject to the annual head rent of £6.

LOT No. 6.

Consisting of Part of the Lands of Breagh, in the Barony of Oneiland West, and County of Armagh, containing 31a 2r 38p, or thereabouts, statute measure, and held from year to year, at the annual head rent of £41 sterling.

Dated this 13th day of May, 1874.

H. R. GREENE, Chief Clerk.

ATKINSON and FROSTE, Solicitors.

The head rents up to the 1st of May, 1874, the county cess presented prior to the last assizes, and all poor rate, will be paid out of the funds in Court.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates Court, Inns'-quay, Dublin; or to

Messrs. ATKINSON and FROSTE, the Solicitors having carriage of the Sale, 50 Lower Sackville-street, Dublin; and Tandragee. 437

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

BRAY HEAD, COUNTY OF WICKLOW.

In the Matter of the Estate of Laurence Murphy, Owner and Petitioner.

And in the Matter of the Estate of Charles Putland, An owner of Land.

And in the Matter of the Partition Act, 1868.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan, On FRIDAY, The 19th day of JUNE, 1874, In One Lot, At the Landed Estates' Court, Dublin At Twelve o'clock,

The Plot of Ground called the Triangle Field, lately part of the Demesne of Bray Head, containing by ordnance survey 2a 3r 8p statute measure, upon which the House and Premises called "Grosvenor House" stands, situate in the Parish of Bray, half-barony of Rathdown, and County of Wicklow, held under lease dated 7th March, 1853, for a term of 1,000 years, at the yearly rent of £26 4s 0d.

Dated this 12th day of May, 1874.

RICHARD TOPHAM, for Chief Clerk.

The Triangle Field, which is let to a yearly tenant at £5 per annum, for grazing, presents splendid elevated ground, suited for building villa or cottage residences, which would be a profitable investment for a speculator, who would be certain to realise a large remunerative yearly profit rent for his outlay of capital expended in the erection of pretty sea-side residences, as the locality being on the line of the Dublin and Wicklow Railway, and quite close to the town of Bray, is much sought after by gentry and wealthy classes.

For situation the place has no superior, being opposite to the sea; it can never be out-built, or the present unrivalled view or surrounding scenery of the Bay of Dublin, Hill of Howth, Wicklow Mountains, Dalkey, Killiney Hills, &c., be shut out.

Building materials or stone can be had at the adjoining quarries at 4d. per load, containing not more than 15 cwt., pursuant to agreement contained in the lease of 7th March, 1853, and agreement of 28th June, 1858.

Grosvenor House is let to a yearly tenant at £45 per year, which two rents, after payment of the reserved yearly rent, leave a profit rent of about £23 16s 0d, which is capable of being greatly increased by building a large number of houses on the Triangle Field.

The Premises are within a few minutes' walk of the Terminus of the Bray Railway and town of Bray.

For Rentals, maps, and further particulars apply at the Registrar's Office, Landed Estates' Court, Dublin; or to

JOHN JOSEPH ADAMS, Solicitor having carriage of Sale, Office, No. 3, Upper Camden-street, Dublin. 434

In the LANDED ESTATES' COURT, IRELAND.

In the Matter of the Estate of John Ogle Evans, Esquire, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, Dublin, On FRIDAY, the 19th day of JUNE, 1874, At the hour of Twelve o'clock noon,

The following Property, situate in the Barony of Gallen, and County of Mayo:—

LOT 1 Consists of part of the Townland of Callow, held in fee, containing 823a 0r 39p statute measure, producing the net yearly rental of £474 10s 6d.

LOT 2 has been Sold.

LOT 3 Consists of the undivided moiety of the Townland of Collagagh, held in fee, containing in the whole 719a 3r 33p statute measure, producing the net yearly rent of £181 15s 6d.

LOT 4 has been Sold.

LOT 5 Consists of part of the Townland of Callow, held in fee, containing 417a 0r 27p statute measure, producing the net yearly rent of £212 15s 6d.

LOT 6 has been Sold.

LOT 7 Consists of part of the Townland of Belgarrow, held in fee-farm, containing 475a 0r 24p statute measure, producing the net yearly rent of £256 16s 6d.

Dated this 14th day of May, 1874.

H. R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The Lands in the County Mayo, comprising these Lots, are all situate within a convenient distance of the principal market and post towns of this part of the county, a portion of them being about half a mile from Foxford.

Proposals for all or any part of the property by private contract will be received up to the 5th day of June, 1874, and submitted to the Hon. Judge Flanagan for approval.

For Rentals and further particulars apply at the Office of the Landed Estates' Court; or to

Capt W. H. BROWNING, Lough'ober Castle, Cahir, Co. Tipperary, the Agent over the Estate; or to

Messrs. KEILY and LLOYD, Solicitors having carriage of Sale, 25 Clare-street, Dublin. 440

LANDED ESTATES' COURT.

COUNTY OF ROSCOMMON.

In the Matter of the Estate of Margaret M'Manus, widow, Anne Lynden, wife of Richard Lynden; James M'Manus, Elizabeth Holton, wife of James Holton; and William Beatty, Owners;

Ex-parte Anne Lynden, Petitioner.

TO BE SOLD BY PUBLIC AUCTION, In One Lot, Before the Honourable Judge Flanagan, On FRIDAY, The 12th day of JUNE, 1874, At the Hour of Twelve o'clock noon, At the Landed Estates' Court, Four Courts, Inns'-quay, In the City of Dublin,

Part of the Lands of Bogwood, situate in the Barony of Ballintubber South, and County of Roscommon, held in fee-simple, containing 159a 3r 37p, producing a net annual rental of £56 5s 8½d.

Dated this 13th day of May, 1874.

H. R. GREENE, Chief Clerk.

Proposals for the purchase by private sale of the property will be received up to the 1st day of June, 1874, by the Solicitor having the carriage of the proceedings, and will be by him submitted to the Judge for his approval.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; or to

THOMAS GERRARD, Solicitor having carriage of Sale, 25, Westmoreland-street, Dublin. 452

IN THE COURT OF BANKRUPTCY, IRELAND.

WILLIAM DUNNE, of Main-street, Bray, in the County of Wicklow, Provision Dealer, was on the 15th day of May, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 9th day of JUNE, 1874, and on FRIDAY, the 26th day of JUNE, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

BENNETT THOMPSON, Solicitor, 15 Bachelors'-walk, Dublin. 439

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause of John Bracken and John Gogarty, plaintiffs; Eliza Blake, Kate Blake, and Bridget Blake, defendants—the Creditors of

THOMAS BLAKE, late of Trim, in the County of Meath, Farmer and Cattle Dealer, who died in or about the month of March, 1873, are, on or before the 6th day of JUNE, 1874, to send by post, pre-paid, to Mr. JOHN THOMAS HINDS, of No. 37 Westmoreland-street, Dublin, the Solicitor of the said John Bracken and John Gogarty, Executors of the deceased, their Christian and surnames, addresses, and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 17th day of JUNE, at Twelve o'clock noon, being the time appointed for adjudicating on the claims.

Dated this 6th day of May, 1874.

A. T. CHATTERTON, Chief Clerk.

JOHN THOMAS HINDS, Solicitor for the said John Bracken and John Gogarty, 37 Westmoreland-street, Dublin. 451

SALE:

MACGREGOR'S NURSERY, RANELAGH.

TO BE SOLD,

The Interest in the DWELLING-HOUSES and LAND adjoining, known as above. The Land contains close on five acres, and presents a very valuable Building site.

Rent £55 a year. Lease for 127 years unexpired.

Apply to

Mrs. MACGREGOR, The Nursery, Ranelagh, Dublin; or JOHN FORSYTHE, Solicitor, 21, Eustace-street, Dublin. 450

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, May* 23, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, MAY 30, 1874. No. 383.

THE ATTORNEYS AND SOLICITORS ACT (IRELAND), 1866.

IN our last number we gave insertion to an important correspondence in reference to the recent decision of the Master of the Rolls upon section 9 of the "Attorneys and Solicitors Act (Ireland), 1866," but pressure upon our space obliged us to defer comment thereon until now.

The main object sought to be obtained by this Act was to elevate the status of the profession, and this the framers of the Act sought to accomplish, by providing that the fitness of all persons subsequently seeking admission should be tested by means of compulsory examinations upon general educational and professional subjects. This being so, we find in the Act certain privileges conferred upon persons who should voluntarily submit themselves to an additional course of study upon professional subjects.

It was as an incentive to such optional and additional study, and as a reward for its prosecution, that the 9th section, which provides for the admission to the profession after four years' service of any person who, as a matriculated or non-matriculated student, should attend a course of lectures extending over two collegiate years, and should pass certain prescribed examinations of the professors of law in the University of Dublin, or any of the Queen's Colleges, was, undoubtedly, introduced into the statute. It is unnecessary to observe that otherwise admission, except in the case of graduates of a university, can only be obtained after a service of five years, so that the effect of this section was to shorten by one year the service of all persons seeking to avail themselves of its provisions.

Since the passing of the Act large numbers of apprentices, induced by the prospect of saving the year, have availed themselves of the privileges conferred by this section, and of late the number of apprentices in attendance, as non-matriculated students, upon the lectures of both professors of law in Trinity College has so much increased, and their answering at examinations has been of such a high standard, that the Board of the College have thought fit to establish special prizes, to be competed for alone by those apprentices who are non-matriculated students.

The section in question may be, perhaps, ambiguous, but the practice hitherto adopted, and that with the knowledge and sanction of the Council of the Law Society, has been for the apprentices to attend such two years' course of lectures after being bound, and so become eligible for admission at the expiration of four years' service.

Lately, however, an objection was raised to this practice, upon the grounds that such lectures should, in fact, be attended prior to his being bound, in order to entitle an apprentice to the privileges conferred by the section, and such objection has been sustained by the decision referred to, which decision, we understand, has been concurred in by the Common Law Judges, and the Incorporated Society has been called upon to enforce it. The decision in question, by virtually annulling the practice hitherto in force, upon the faith of which a large number of those not yet admitted to the profession have attended, or are actually at present engaged in attending such lectures, and that at considerable expense and labour, injuriously affects the interests of these gentlemen. A meeting of apprentices was accordingly held on the 24th ult., at which the resolutions set out in the correspondence were passed. We think the determination of the apprentices, to place the protection of their interests, and the question of a proposed amendment of the section in the hands of the Incorporated Society will commend itself to general approval, although, we understand, numerous letters were read at the meeting from Members of Parliament connected with both branches of the legal profession offering to support or take charge of a "bill" upon the subject. A conference, as has been seen by the correspondence, took place on the 6th instant, between the deputation appointed at the meeting and the Council of the Law Society, and the final decision of the Council upon the subject is to be found in Mr. Goddard's letter of the 16th inst.

It must be satisfactory to those apprentices, whose interests are immediately affected, to know that in the applications which it will be necessary for them to make, by petition, for admission under the construction hitherto placed upon the section, they will be aided by the Incorporated Society. We feel bound, however, to state that we cannot concur with the Council in holding that it is not advisable to seek an amendment of the section. It was clearly the intention of the Legislature that non-matriculated, as well as matriculated, students should equally participate in the privileges conferred by the section. This being so, we hold that, should the section cease to be operative in the case of either or both of these classes of students, the intention of the Legislature will be frustrated, and Parliamentary interference will be rendered necessary. We submit that should the section in question remain unaltered, and governed by the decision referred to, it will be virtually inoperative in the case of non-matriculated students, and that for very obvious reasons. The Lectures of the Professors of Law in Trinity College are open free to all students whose names are on the College books, whereas Solicitors' apprentices, attending as non-matriculated students, are subjected to a payment of £10 for the course. From the nature of the decision, it requires but little reflection to perceive that hereafter the attendance of non-matriculated students will be *nil*, and that should any persons endeavour to take advantage of the very questionable privileges conferred by the section, it will be the matriculated students, who attend such Lectures free, and with this further advantage and inducement, that not only does attendance on professional Lectures confer certain privileges during both the sophister years, but it relieves a student from being required to answer in three out of the six courses prescribed for the degree examination.

The University of Dublin will sustain a considerable financial loss, but what is far more important, an acquaintance with the science of jurisprudence, Roman law, and other branches of law treated upon by the University Professors, and acknowledged as most essential to a good legal education, will be confined, for the reasons before given, to those apprentices who are also arts students. We are aware that the corresponding section of the English Act seems, at first sight, rather against the case put forward on behalf of the Irish apprentices since it would appear that, in the

Digitized by Google

case of their English brethren, the lectures must be attended prior to being bound, a provision which, in our estimation, is, however, qualified by the discretionary power which is undoubtedly given, in the latter part of the section, to the English judges, to make all such rules, as to admission under this section, as they may think fit, and to alter and amend the same, "*but not so as to allow a less term of service than four years.*"

The Legislature—by passing through the House of Lords during this session a Bill which aims at getting rid of certain disabilities under which apprentices have hitherto suffered, but which, for the present, is intended to operate only in the case of English apprentices—has demonstrated that the interests of apprentices are not too unimportant for it, so we conceive that, if introduced, a Bill of such practical utility would not meet with opposition. Putting out of the question the case of those at present affected by the decision, and who possibly may ultimately suffer no detriment thereby, we are strongly of opinion that the advancement of legal education amongst the apprentices demands that the same liberal and comprehensive construction, as hitherto, should be placed upon the section in question, and, as this is impossible without an amendment, we earnestly hope the Council of the Incorporated Society will reconsider their decision.

THE JUDICATURE BILL.

LORD JUSTICE CHRISTIAN has addressed a second letter to the public press, criticising the provisions of the Judicature Bill. We print the letter in our present issue, in order that our readers may consider the writer's suggestions. We, also, present a complete report of the proceedings at the meeting of the Incorporated Law Society, held for the purpose of taking the Bill into consideration. The committee appointed by the Irish Bar has not yet presented their report upon its provisions. We believe. however, that our readers may anticipate that the Bar Committee will express a cogent opinion in favour of the appointment of a second judge in the Landed Estates' Court, and that they will oppose any diminution being made in the existing number of *circuit going* judges. But the committee have not to consider the question whether or not the House of Lords should continue to be the ultimate Court of Appeal. That question has been answered already in the affirmative, by the resolution of one of the largest general meetings of the Irish Bar ever assembled; and a like opinion certainly prevails most strongly among the members of the Irish judicatory, one of whom—Lawson, J.—it will have been observed, expressed his own view to that effect in a case reported in our Reports of last week, *In re M.* (8 IR. L. T. R. 80). We observe, too, that writers in *The Times* of May 27, 28, state that this opinion prevails extensively throughout the legal profession in England, and indeed unanimously, so far as regards the Chancery Bar. Lord Justice Christian's conceptions on this subject are already fully before the public, and only a brief reference to the matter is made in the letter now printed.

The following is the letter referred to, and addressed to the editor of *The Times*:—

SIR,—As the Judicature (Ireland) Bill is now close upon its committal, I ask leave once more to intrude a little upon your space, while I point out in it what seems to me to be another defect. I hope I need not say that there neither is nor has been on my part any hostility towards the measure. Quite the reverse. I have no object but to offer for consideration a few suggestions for its improvement.

Of the companion Bill for the regulation of the Imperial Court of Appeal, it is outside my purpose to say more than that, supposing always that last year's momentous step must be accepted as being now, for England, irreversible, I believe the Scotch and Irish question has received the happiest solution possible. We are steered clear, I hope entirely, of the pernicious consequences which would have followed from the ill-judged suggestion made by the late Government last session, but which was then so happily baffled by Lord Cairns' well-timed and skilful demonstration.

Turning, then, to the Irish Bill: by the 34th clause it is provided that the Chancery Division shall consist of the Lord Chancellor, the Master of the Rolls, the Vice-Chancellor, the Judge of the Landed Estates' Court, and the two Judges of the Court of Bankruptcy.

Thus there will be in that division a descending gradation of no less than four distinct orders of Judges. First, the Lord Chancellor; second, *longo intervallo*, the Master of the Rolls and the Vice Chancellor; third, the Judge of the Landed Estates' Court; fourth, again *longo intervallo*, the two Judges of the Court of Bankruptcy. These last are, by the 6th clause, excluded from the High Court, while by the 34th they are somewhat illogically included in one of its divisions.

Even upon principle and in the abstract (if that were all) it would seem to be objectionable that there should be such disparity of grade between Judges in the same Division, who would all be liable to be called upon to perform the same classes of work. The justice dispensed by a Chancery Judge at £4,000 a year will not be prized at the same rate as that dispensed by another Chancery Judge at £2,000 a year. I submit that all the great Divisions of the High Court should be homogeneous, at least thus far, that they should be composed of none but those familiarly and commonly known as Judges of the Superior Courts; and that to that end this opportunity should be taken to abolish occasional and ephemeral offices, supplying their places by one or more of the superior order. Therefore it has occurred to me that the Chancery Division would be better composed if, instead of the two lower grades named in the 34th Clause, there were substituted a new Vice-Chancellor, or two new ones, according to the estimate which might be formed of the requirements of the business: the four other Judgeships—that is to say, Landed Estates (two) and Bankruptcy (two)—to be suppressed.

There is more involved in this than mere symmetry and homogeneousness, though these things are good in themselves. It is not long since you offered to Lord Cairns merited congratulation upon his courage in attacking what you called a true upas tree of his country—Patronage. But it is notably in the minor order of offices that this evil thing is most rampant; not only because they lie more in the shadow, but also because they are the more natural game of the common run of place-hunters. Now, I have myself been fond of thinking that by far the most hopeful feature for Ireland in the transitions which are now in progress is that she is united with England in one grand scheme of judicatorial reconstruction, which not only draws into nearer relevancy to each other the two Judiciaries, but has turned the minds of the thoughtful in each country upon the institutions of the other. I foresee and fervently hope that henceforth the public opinion of England will be brought to bear upon the exercise of legal patronage in Ireland in a way hitherto unknown. But it will naturally attach itself to the ancient and regarded names with which it is familiar at home, and will take no note of things newfangled and strange to it, such as special and exceptional Land and Bankruptcy Courts.

It was not unadvisedly that I applied to these Courts the terms ephemeral and newfangled. The first of them is, as all know, a continuation under a new name of the Incumbered Estates Commission of 1849—a revolutionary remedy for an extraordinary social emergency which has long passed away. It is now admitted on all hands that a great mistake was made in 1857 in rejecting the proposal of Lord Palmerston's Government to discontinue the Incumbered Estates Commission and restore the subjects of it to the Court of Chancery, and in adopting instead, in the following year, the Court now called the Landed Estates. But at present, at all events, there is not the shadow of a reason why the Court of Chancery should not be replaced

Digitized by Google

in those relations with the territorial property of the kingdom which are its natural appanage, and which it alone ought to possess if it be itself worth preserving. The other Court, that of Bankruptcy, is a modification made in 1857 of one which had been constituted in 1836-7, *auctore* Lord Plunket, and which was instantly filled by him with his family tutor and one of his sons. To bring these occasion-serving and temporary excrescences to an end, to transfer to the Chancery Division the title-giving and title-recording powers of the one, to restore to it a portion of the transactions of the other, corresponding with that which is now discharged in England by a Vice-Chancellor as Chief Judge in Bankruptcy, remitting the other portion now assigned in England to the County Judges, to the Irish County Chairmen—this would be simply a restoration to Chancery of branches of its ancient jurisdiction which, for reasons long spent or more than questionable, had been disannexed from it, and a replacing it upon the same footing as its sister Court of England. The Chancery Division would be made more homogenous, its members co-equal (at least, generically) with each other and with those of all the other Divisions, and a diminution effected in that lower class of offices which have ever been in Ireland the peculiar and chosen hunting-ground of the place-seeker and corruptionist.

Of the whole Irish Judiciary the best known and most popular with the general Irish public have been the twelve Common Law Judges. It is they who have been used to carry home to the people of the remoter provinces whatever ideas they may have imbibed of the majesty and grandeur of Law Yet it is this ancient and traditional body which has now been selected for the pruning knife, while the little group of mushroom excrescences is to be preserved—a standing temptation to the spirit of nepotism and jobbery.

But, if these Judges were suppressed, how many new Vice-Chancellors would be needed in their place? My own strong belief is that one would be sufficient; the present Judge of the Landed Estates Court to be that one. You would then have three Judges of the First Instance in Ireland (putting aside the Chancellor, who doubtless will, as he ought, confine himself to appeals) against four in England, and for the very same classes of work. If we put an Irish Judge's capacity for work at even half that of an English one, the allowance ought to be ample. There is something appalling in the comparison, Term after Term, of the cause lists of the two countries. Take this very Term. In Ireland the lists are as follows :—Of new causes—Chancellor, 4; Master of the Rolls, 14; Vice-Chancellor, 17; besides which there are, among them all, 25 standing over—making a total of the three Courts of 60; and this, under the Irish system of setting down, makes literally the entire of the causes for hearing in open Court which will have to be got through before the Courts rise for the Long Vacation. Now turn to the English lists For the sittings in the Term the causes are given in the last Weekly Notes as 369 among the four Judges; and these will, I believe, be found largely supplemented when the lists for the sittings after Term shall appear. But besides causes there is the vast department of business of the administrative class—petitions, motions, winding up of companies, bankruptcy, and all the other vast growths of commercial affairs, in which the disproportion between the two countries exceeds even that of the causes. Surely, even if we assign the whole Irish 60 to the two existing primary Judges, the Master of the Rolls and the Vice-Chancellor, there ought to be a margin of their time, not only for the bankruptcy work of the metropolitan district, but for aiding, if needed, the new Vice-Chancellor in the work of the Landed Estates. But take it at the worst. Suppose that in order to overtake the arrears and hasten the rate of progress in the Landed Estates affairs, the delays of which are attracting notice, a third Vice-Chancellor is thought necessary! Be it so. The united salaries of these two new Judges would be £2,000 less than those of the four they would supersede, and the second Vice-Chancellor might be one of the present Judges in Bankruptcy. And for the new official stalls there would be available those of the four abolished Courts; and, better still, the unhappy establishment of the Lord Chancellor's Chief and Junior Clerks, now a mere derision, though costing £1,700 a year, could at length be turned to utility.

If it be desired still further to retrench and to mitigate yet more extravagant disparities between Judges in the same Division, the means are at hand by which not only can these objects be effected, but the greatest legal scandal and anachronism of the time made an end of. Strike off £2,000 of the Chancellor's salary, and let the office be henceforth a purely judicial one. This, however, opens a subject too large to be treated of at the close of a letter already too long. It is possible that, if permitted, I may take occasion to return to it; for it is not too much to say, that in this lies the test of good faith and truth in any scheme which shall pretend to be a reform of the Irish Judicature.

Your obedient servant,

J. CHRISTIAN.

THE NEW JUDICATURE BILL.

The Incorporated Law Society met on Saturday last in the Solicitors' Buildings, Four Courts, to consider the new Judicature Bill for Ireland.

Sir R. J. T. ORPEN, President of the Society,

occupied the Chair.

Amongst the other members present were :—

John Joseph Adams, Mathew Anderson, George Arbuckle, Arthur Barlow, Lawrence Wm. Boughey, Michael Bourke, James Burke, Joseph Burke, E. N. Blood, Anthony R. Carroll, George L. Cathcart, Graves C. Colles, P. J. Conway, Henry G. Cooper, William J. Cooper, Joseph W. Coppinger. Thomas Craig, Arthur C. Crookshank, Wm. D'Alton, Vesey Daly, Peter Delany, Henry T. Dix, Arthur Ellis, Richard B. Falkiner, William Findlater, David Fitzgerald, George Fottrell, jun., E. Fitzgerald, John H. Goddard, John F. Goodman, Keith H. Hallowes, Samuel Hemphill, John T. Hinds, William Hitchcock, Thomas A. Hodgens, John E. Hughes, Samuel Hughes, William Johnston, John P. Kavanagh, Pierse Kelly, Thomas Kiernan, Robert C. Lee, Patrick Maxwell, Weldon S. Molony, E. Mulvihill, Henry C. Neilson, Allan Nesbitt, John H. Nunn, John Noble, Aylward O. B. O'Connor, John E. O'Ferrall, Joseph C. O'Megher, Charles L. Perrot, Ambrose Plunkett, Robert Ponclue, William Read, Edward Reeves, Robert Reeves, William Roche, John D. Rosenthal, Thomas V. Ryan, Frederick G. Saunders, John L. Scallan, Richard Scott, George W. Shannon, Edward T. Stapleton, James Tench, Archibald Tisdall, John J. Tweedy, John Weldon.

Mr. G. W. SHANNON first addressed the meeting. He said he apprehended that the society should deal with the matter in hand from a strictly professional point of view, putting forth the solicitors' opinion of the Judicature Bill, and none other. And, in doing that, they ought to deal with practical details rather than indulge in theoretical and elocutionary flourishes. Having regard to the circumstances under which the bill was brought in—supported by such a weight of legal acumen and authority in the Peers, as was supplied in the concurrence of two such luminaries as Lords Selborne and Cairns—it could not be expected that any great change would be made in the leading principles of the measure, and it was a matter of certainty that it would become law. But because it would become law, the greater the necessity for the society to take action in its details. And if they succeeded in showing by logic and by experience, that minor provisions of the bill required to be rejected or amended, he was confident, from the public character of those who had charge of the measure, that their suggestions would receive careful attention. Clearing the ground for the consideration of practical work only, he might at the outset state that he had no notion of saying anything upon such subjects as the reduction of the number of puisne law judges from nine to seven. He took it that that was a question more properly to be dealt with by the bar of Ireland, and he assumed that the contemplated reduction of the judges from nine to seven would inevitably be carried out. Neither would he say anything on that vitally interesting topic, the Intermediate Court of Appeal. The Lord Justice Christian had dealt with that part of the bill, and his view of it, backed with such large experience, made it unnecessary—even if it was not beside their functions otherwise—to go into that portion of the measure, further than to say that the Intermediate Appeal Court in Ireland had hitherto been in such a state as to very much need reform, and large reform, and that they were certainly very beneficial sections of the Act which provided that for the future no judge shall be at liberty to

Digitized by Google

hear a case in which his own decision was appealed from, and that the least number of the Court to form a quorum of the Court should be three—thus always providing two to one, without the presence of the judge whose opinion—it was but human nature—would be, of course, very much biassed in favour of his former decision. As to the Court of Final Appeal, he did not mean to dwell upon that topic. At present it formed a very interesting matter of controversy whether the House of Lords should retain its appellate jurisdiction, as was the opinion of the Judicature of Scotland and the Bar of Ireland; or there should be, as contemplated by the bill, a Court of Final Appeal, apart altogether from the old constitutional tribunal. That, however, was a matter they really need not trouble themselves about, because the question would be settled by argument and good sense, and in the end would come out right. But there were several matters as to which he thought they should be prepared to take action, even although it could not be done immediately—and there were some as to which very strong action should be adopted. For instance, by the 26th section it was enacted that rules and orders shall be made which shall have the same effect as the Act when passed—in fact, they were to be considered as a graft on the Act. Now, in the framing of these rules and orders the solicitors came directly and properly into play. These rules and orders could never be satisfactory to their profession, nor to the clients they represented, unless they were submitted in draught for consideration to the council and executive of the profession in Ireland before any conclusion about them was arrived at. For the 27th section he had nothing but unqualified approval. That section abolished the law terms except as mere arbitrary dates or periods, and also abolished the vacations. He gave the vacations his hearty benediction; he was delighted at the change, because he had considered the long vacation an unmitigated nuisance. He quite concurred with the Act that they should have no vacation except, perhaps, the month of September in each year. He trusted that, after the Act became law, they would have simply one month of vacation. That, at all events, was his individual opinion, though it might not be that of the profession generally, and he certainly held it to be a great improvement to abolish the terms and the long vacation, and allow the business of the country to go on without interruption the whole year round. The 30th section again called in the profession. By that section the Lord Lieutenant in council is, on the recommendation of the court or judges, to make rules before the commencement of the Act. Those rules, he emphatically declared again, would never be satisfactory, nor would they work smoothly, unless they were in draft first submitted to the executive of the profession. Passing by the five great divisions into which the legal business was to be divided, and with which they had nothing to do, he came to the 40th section, which enacted, what was to be highly approved of, namely—that the Landed Estates Court shall have authority and jurisdiction to appoint a receiver at once, on the application of the aggrieved creditors, instead of allowing, as at present, a tricky owner, or a tricky creditor, to go on from year to year, "using," in the language of Lord Chancellor Blackburne, "the forms of justice to pervert its ends," in that court. The power to appoint a receiver was not only just and beneficial, but would also greatly facilitate the despatch of the business of the Landed Estates Court, and prevent the accumulation of petitions that occurred under the present system. He next invited attention to the 61st section, which again empowered the Lord Lieutenant, before the Act commenced to work, to make, with the advice of the Lord Chancellor and the Lord Chief Justice and other judges of the several courts, rules which should be rules of court relating to the High Court of Justice, the Court of Appeal, and all the divisional courts, and providing that which was very important indeed, and to which something had been already said by the Bar of Ireland, and something ought to be said by the section of the attorney profession who were directly interested in No. 2 heading, the general order to be brought in for the reduction of the number of circuits in Ireland. Now, that was a matter of consequence. Whether their circuits should all be retained or reduced by one—the Home Circuit to be, as was reported, the martyr, and be split up amongst the other circuits—that was a matter he thought the profession should speak out their minds upon, and it was one of those matters of detail, upon which, he believed, the opinion of either branch of the profession, and *a fortiori* of both branches combined would have great weight and influence in the final settlement of the question. But he called attention to the section more for the first part of it, relating to the making of general rules and orders, and he repeated once more that if these rules were intended to work well and smoothly, they and all the rules and orders *in globo* should be submitted in draft before final settlement to the executive of the profession. If not the result would be such as they had so often deplored. They would have indignation meetings again, amendments, memorials, and petitions, and no end of trouble before them if the work was not now done effectually in reference to these rules and orders. Now he approached a subject which was so important that he would invite the attention not only of the members present, but of the profession through the country to it, and call on the council to look to it closely, immediately, and strenuously. They would find the text of the few words he now offered in the 78th section. In that section there were fifteen new officers created. They were to be secretaries of the judges. Every judge of the ordinary divisional courts and every Lord Justice of the Appeal Court should have the power to appoint a secretary, and if they put the first stipend which was set down for that secretary with the allowance afterwards when he went circuit as registrar with his judge they would find there were 15 offices of £450 each created. Having no objection to the creation of the offices, he asked them to hear the words of the section, and then a few words from him as to how he thought that would work satisfactorily. They should lubricate the section in every way so as to make it pass. "Every judge of the High Court of Justice and every ordinary judge of the Court of Appeal shall have attached to his person, as judge, a secretary appointed and removable by him at pleasure, and who shall receive a salary of £250 a-year; and such secretary shall be in lieu of and substitution for any registrar or clerk of assize heretofore provided for the judges on circuit, and such secretary shall be bound himself or by deputy, to discharge the duties of registrar or clerk of assize or nisi prius on circuit, in case the judge to whom he is attached shall go circuit, and shall receive for every circuit on which he shall accompany such judge an additional payment of £100." There it stopped, but he did not want it to stop there. He wished most emphatically that it should proceed thus: "Each of the said secretaries to be a practising solicitor of not less than five years' standing." He asked the council to take a very clear and express note of that section 78, and if they did not approve of his language of emendation that they would put in something better, and by every effort in their power endeavour to give the profession the protection that the large taxation to which they were subject entitled them by making those fifteen officials solicitors of some standing. Still more important than that, in his view, was the 79th section, which provided for rules and regulations to be brought in to enable the practitioners to go to work as solicitors of this High Court of Justice and of the Court of Appeal. He wanted to know how would the schedule of fees, about which they had been so long talking, be arranged. Were they to have over again the miserable low fees of 1854, against which they so often protested, or were they to have a continuation of the Chancery fees of 1868—were they to have the latter for all, or the former for all, or were they to have a compromise between both? That was a vital matter for the council to consider. Now they came to that which was a graft on the Act, the rules in the appendix. He was exceedingly puzzled by the regulations under the head of pleadings. It appeared that at law, as well as in equity, they were to print everything, and if that were carried out in detail it simply came to this, that every one of them must keep a printing press in their office. As to running off to the printer for first proof and second proof of every legal squib of that sort it was ridiculous, and it would be necessary for them to have a clerk who would be able to print whatever they had to do. The rule was sufficiently vague to land them into an unnecessary amount of trouble if they did not take care of it now. There was a very

Digitized by Google

important change made in the 50th rule in the appendix and schedule—namely, that all their cases for the Court of Appeal were to be abolished, and they were, instead, to proceed by notice of motion. He would ask a note of that to be taken by the council when they were arranging for the schedule of fees, because it was absurd to tell them they were to be remunerated by half-a-crown for a notice of motion—for drawing up that which was to be prepared by counsel, having been first draughted by them—the notice of an appeal, which involved the largest legal principles. That notice would no longer be the notice they were accustomed to, but be in itself a kind of pleading, which would be settled by counsel, and they should have reasonable authority to send that to him, and, of course, to be paid for it. He trusted they would enable their brethren and the public to see that they were quite alive to the nature of the juncture they have been landed in by this bill—but that they approved of its main principles, although that there were details as to which they respectfully submitted they were entitled to be consulted, or that they could not work satisfactorily.

Mr. Dix said they had at various times to consider bills, but never in his experience one so fraught with importance to the profession as that now before them. As a general rule, he thought the solicitors of Ireland, in the matter of legal reforms, were very great conservatives, and met every proposed change in our procedure with the cry of "*Nolumus leges Angliæ mutari;*" but, notwithstanding, they were, owing to legislation, continually obliged to re-learn the principles and practice of their profession. If any other profession were subjected to what they had been—to have all the practice of their profession upturned, and an entire revolution effected in procedure and practice—they would justly complain. If the doctors who were in practice for a great number of years were obliged to learn everything over again they would be likely to rebel. The first question that suggested itself in regard to this important measure, and the one that had been most discussed by the public, related to the appellate jurisdiction given by it. The opinion of the Bar of Ireland and a great many legal practitioners, was in favour of retaining the House of Lords, for which they had a great respect in this country and in England, and some people had gone so far as to treat the abolition of that jurisdiction as a constitutional question. If he considered it as such he would be the first to oppose it, but he could not look on it in that light. The appeal was not to the House of Lords, but to a court within it, the constituent elements of which consisted of lawyers, retired judges, and the House of Lords itself, *qua* House of Lords had no voice in the determination of the appeal. The reason they all had a respect for the decisions of the House of Lords was because of the amount of learning and ability brought to bear on them. They knew, however, in point of experience, there had been great objection to that tribunal, owing to its delay. They were aware that if they brought an appeal to the House of Lords it might be years before it was decided, and the suitors were in consequence kept in a state of suspense. The Court of Appeal proposed to be substituted possessed all the elements of learning and ability of the House of Lords, and he did not think they would lose anything in the weight of the decisions arrived at; and if they had another Court of Appeal composed of the very best men in the country it would be looked up to with the same respect as the House of Lords. There was one thing on which they were all agreed, and that was, that whatever Court of Appeal was determined on, it must be the ultimate jurisdiction for England and Ireland. The next point was of nearer importance, and that was the constitution of the intermediate Court of Appeal. They knew there would be a greater number of appeals brought to that court than to the House of Lords. Its greater accessibility and less expense would make it more generally used. On that point he thought most gentlemen had read the letter of the Lord Justice of Appeal, who on such a subject, they must all agree, was an authority. The Lord Justice of Appeal raised two objections to the present Court of Appeal, and though he had the misfortune to differ from him on other matters, he coincided with him on this. The two points raised by him were that the remuneration and status of the judge of the present Court of Appeal were not sufficient to make it attractive for the highest and most distinguished members of the Bar and the Bench, and that a man occupying the position of a Judge of Appeal should be in such a position as regarded status and salary as more or less to lift him above the ordinary judge of the law—his position should be a sort of premium in the judicial career. He thought on that point what the Lord Justice said was exceedingly forcible. The next point was the political character of the office of Lord Chancellor, which the Lord Justice proposed should be abolished, and that the office should be permanent. He had no doubt they would agree with him that there was no absolute necessity that the office of Lord Chancellor in this country should be a political one. In England, where the Lord Chancellor was the Speaker of the House of Lords, the case was different. There were no functions that could not be discharged by other officials quite as well as by the Lord Chancellor, and he believed it would be of advantage to the administration of justice if they had the Lord Chancellor's entire time. There was another great point in principle and practice in the bill that must strike everyone—the fusion of law and equity. They had heard a great deal on the subject for the last twenty years, and now at last they had it definitely before them. On consideration of the Bill it appeared that the entire fusion proposed amounted to the granting to every court an equitable jurisdiction in regard to both plaintiff and defendant, and to the enacting that whenever there was a conflict between law and equity, equity should prevail. Every man of experience should be of opinion that it was idle, wanton oppression that a suitor should be driven from one court to another, and that where his rights were undoubted he could not obtain redress in the court to which he first applied, but was driven to appeal to a different tribunal. The Judicature Bill, with this clause in it, had been passed in England, and they anticipated there that so far from decreasing business, it would impose no injury or inconvenience whatever upon the profession. As members of that profession—holding a responsible, he might say a fiduciary position—it behoved them to rejoice in the establishment of the best, cheapest, and quickest system of administering the law on behalf of their clients. There were many other important principles involved in the bill on which time would not permit him to expatiate. A great advantage was conferred by the section in the rules of law which enacts that all *choses in action*, debts, &c., shall for the future be assignable at law. This change, he believed, should be looked on as a very beneficial reform. In regard to the personal officers attached to the judges, he concurred with the last speaker, and he believed that at the very least they should be qualified practitioners, and not persons, from habit and education, wholly unfitted for the duties of the office. On one point, however, he differed strongly from an opinion that Mr. Shannon had expressed, and he felt bound to protest against it in the strongest and most indignant terms. He could not conceive how any professional man could, in such an assembly, have the temerity to advocate the abolition of the long vacation. If there had been no long vacation neither he nor a great many present would now belong to the profession. It was the only boon they had to console them for the arduous professional labour they had to endure during the residue of the year. In conclusion, he said that though the bill might contain some minor propositions which they might wish to see erased, altered, or improved, he believed that on the whole it would be for the advantage of the public, and facilitate administration of the law, and on those grounds it was entitled to the approval of their profession.

Mr. J. F. Goodman thought that they concurred in their approval of the main provisions of the bill; but whether they concurred or not was in his opinion a matter of very little importance, as those main provisions were, he believed, perfectly certain to become law. He had read it very carefully over, and had compared it with the English bill, and he had also read what was said on the introduction of the bill. Lord Cairns, when introducing it, had devoted but a small part of his speech to explaining the provisions of the bill, but had applied himself to explain how by it the law of Ireland was to be assimilated to the law of England. Law and equity should be fused in Ireland to the same extent

Digitized by Google

as in England, and the other details peculiar to the English bill should be adopted. These words were sure to recommend the bill to the House of Commons, as the assimilation of the laws of Ireland and England would be with them the main motive for adopting the measure. For this reason he believed that the bill, whatever they thought about it, would become law. Its main provisions were not merely analogous to the main provisions of the English bill—the corresponding sections in the Irish and English Acts were *verbatim* the same. Therefore, any changes proposed in the main provisions of the bill would have little chance of meeting with any attention. Mr. Dix had told them how far the assimilation of law and equity entered into the bill. In effect, it gave all courts jurisdiction to grant equities to plaintiffs and defendants. They would still have all their courts, with this restriction, that, instead of being called distinct courts, they should be called divisions of the High Court of Justice, the chief change in them being that they could all administer equity. But it might be fairly presumed that the old distinctions would in effect, to a great measure, be retained, and that the Court of Chancery would be still the Court of Chancery, and the courts of law the courts of law. The procedure in commencing a suit was very materially altered. The first step was called an action, and should be originated in every case by a simple writ of summons, and it was provided that any deviation from the form prescribed should be at the risk of incurring costs. Every action at law or equity should be commenced by a writ of summons. In some cases special endorsements might be made upon the writ of summons, and this brought him to a provision which had not been noticed by any previous speaker but which was, in his opinion, one of the most important in the bill. Every writ of summons specially endorsed should have the effect of a writ of summons and plaint on a bill of exchange, and would prevent any person taking defence without first obtaining the leave of the court. The provisions of that section were extended from bills of exchange to all demands for a definite liquidated sum, and to all guarantees, whether under seal or not, and in all such cases the defendant served with a writ of summons so endorsed must get special leave to defend. Then came the question of what court the case should be tried in and the form of pleading, and on both those points the Irish followed the English measure. For himself, he had great doubts as to the advisability of printing every few words they should have occasion to use in their pleading, but the argument in favour of such a course would be the necessity for uniformity. In any case it would be a matter for the council to report upon. Another important provision in the Act was the abolition of local venue. The plaintiff may fix the venue, subject, of course, to alteration by the court, or may issue the summons without venue at all, in which case it will be in the county of the city of Dublin, and this applies to the case of ejectments. The words were:—"There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in the county of Dublin, he shall, in his statement of claim, name the county or place where he proposes the action to be tried, and, unless a judge otherwise orders, it will be tried in the county or place named. Where no place of trial is named in the statement of claim the place of trial shall, unless a judge otherwise orders, be the county of the city of Dublin." A material change was also proposed in regard to the mode of trial. The mode of trial in law and equity was to be fixed by the court. Actions should be tried before a judge, or judges, or a judge and jury, or before a judge sitting with assessors, or before a special referee, with or without assessors. The plaintiff might give notice of the trial by any of the modes aforesaid, but the defendant might, by due notice of his wish, have the case tried before a judge and jury, or he might apply to the court or a judge to have the case tried in any of the ways already mentioned, and the question was to be determined by the judge or court so applied to. Every trial, in every case, should be held as directed by the court, in a manner analogous with that of the Court of Probate, where trials are fixed as the court thinks fit. This was a grave change, and if properly carried out could not fail to have a beneficial effect. Another serious and important change contemplated by a schedule of the Act was in regard to the mode which evidence was to be given on trials. It applies to every trial, and it enacted that evidence is to be given *viva voce*, except in special cases where affidavits are required. In contemplating the principal changes proposed by the entire Act they might say, in the very words of Lord Cairns, speaking of the Judicature Act of England when it was passed last year, "its provisions left as much to be done outside the Act as was done by the Act itself." This was what was said of the Judicature Act of England, passed in August and coming into force in England in November, and it might with equal truth be said of the act which it was proposed should come into force in Ireland in January. This proved the wisdom of what Mr. Shannon had said with regard to their council having a voice in the framing of the rules. He wished that their voice could persuade the executive to give their board some idea of what was going to be done before it was actually done, and to listen to their opinions on the subject. It would save a great deal of subsequent trouble and changes, and whether it did good or not it certainly could do no harm, as they would not be bound to adopting the suggestions made unless they believed them right and fair. Those changes would become law as a matter of course. The constitution of the new court would be divided into the High Court of Justice and the Court of Appeal. With respect to the High Court of Justice, two judges were to be removed, and their number thus reduced to fifteen, while one was to be added to the Court of Appeal. The second judge of the Landed Estates Court was not to be re-appointed. He confessed he did not see any reason for this. The Act conferred additional powers and jurisdiction, and, as a consequence, imposed additional duties and responsibility on the judge. They now expressed, and had frequently previously expressed, their opinion that the duties as they at present exist are far too onerous to be discharged by a single judge, and the very moment that law came into operation by which additional duties would be cast upon him, they should have an additional judge in the Landed Estates Court. He was glad to see an article of the *Times* which said that the saving of a few thousand pounds was in such cases a matter of very little importance, and he trusted sincerely that the operation of one of the most useful courts they had should not be delayed or hampered for the sake of some £4,000. He boldly said that the energies of one man could not sustain the strain, and it taxed the energies of the learned and able judge that at present occupied the position to endeavour to discharge what would be a fair and reasonable amount of duty for two hardworking judges. The voice of the profession should be loudly raised to endeavour to get that clause of the bill altered, and to have a second judge of the Landed Estates Court appointed. He had taken notes of what Lord Cairns had said on the subject. He said that by the transfer of the judge of the Landed Estates Court to the Chancery division, the High Court of Justice would get rid of some complicated business. The present judge of the Landed Estates Court was, it appeared, to be transferred to the Chancery division, and thus to have additional duties imposed upon his shoulders, for the duties of the Chancery judges were to be materially increased, as the present existing Masters were, to use the euphonious expression of the bill, to be relieved from their duties, and the business of the Master was to be imposed on the judge; and the argument for doing away with the judgeship because a large amount of Chancery business was to be given to the court, struck him as being an argument rather for the appointment of an additional judge. The only other subject he intended to allude to was the Court of Appeal, and it was on this subject he intended to move his resolution which, he thought, should be adopted by the meeting. With regard to the second Court of Appeal, it was a branch of the High Court of Justice, and he had no doubt that its operation would be satisfactory. To it was to be transferred the jurisdiction of the Court of Appeal in Chancery, of the Court of Exchequer, and of the Court for Land Cases Reserved at Dublin, and common law judges were to sit in that court with equity judges. Justice Christian had spoken, and his opinion was entitled to the utmost respect; and he entirely concurred with that portion of his letter which advocated

Digitized by Google

the necessity of making the position of a judge of appeal more honourable and more attractive than it is. The other portion of his letter, with regard to the political character of the Lord Chancellor, was a political question, and as such did not come under their notice at all; but as far as he was concerned he did not concur with Mr. Dix that the Lord Chancellor should not exercise any political functions, and he thought that nobody should be better pleased than Judge Christian that the Lord Chancellor was not, as he suggested in his letter, appointed for life. He would now allude to the construction of the Court of Final Appeal, which was as follows:—By the last year's Judicature Bill the jurisdiction of the House of Lords and of the Privy Council as a Court of Final Appeal was abolished, and for it was substituted the Supreme Court of Appeal in England. They were not satisfied, however, with this state of things; and at the very time the Irish Act was introduced there was also introduced an Act by Lord Cairns to change materially the constitution of this court, and an opinion was expressed that no beneficial change could be made by which the Court of Final Appeal should be transferred from the House of Lords. When the English Act came on for discussion, he thought that the matter should be considered by them, with a view to strengthening the hands of those that thought that the appellate jurisdiction should not be taken from the House of Lords, and for this reason he asked them to pass his resolution. It was said that the opinion of the Irish and the Scotch Bench, and of the Bar of Ireland, was unanimously in favour of the House of Lords continuing the Final Court of Appeal, and he wished that their opinion should be expressed upon the subject also. He begged leave, therefore, to move the following resolution:—

"That while we admit that the Court of Appeal must be the same for England, Ireland, and Scotland, we are of opinion that the House of Lords should continue to be the ultimate Court of Appeal for the United Kingdom."

Mr. ELLIS seconded the resolution, which met with his entire concurrence. He thought that the House of Lords, as the Final Court of Appeal, ought not to be changed. It was as old as the constitution of England, and won the respect of all that ever had an appeal before it. No doubt there was a great objection arising from the delay in disposing of the appeals. He himself had experienced the inconvenience of that delay. But the delay was a matter easily to be dealt with, and in the formation of a new Court of Appeal in the House of Lords arrangements could be made to have the sittings just the same as in any other court, or not depending upon the meeting of Parliament, but assembling for legal business during all the other portions of the year. If that was done, he thought all objection to the House of Lords would be obviated, and they certainly would have in the old Court of Final Appeal a tribunal which, for learning and ability, was unsurpassed. He would not go into the question of the reduction of the number of common law judges; and, as to the judge of the Landed Estates having more business put upon him by the working of the Judicature Act, he would merely observe that of course the judge would have some assistance in the Court of Chancery, because he apprehended what was done by the Act was to graft upon and annex to the Court of Chancery the business of the Landed Estates Court. Now, that was a very good move. The Landed Estates Court, no doubt, was a great necessity in the first instance, but the mistake was not to have originally given to the Court of Chancery the two jurisdictions. A portion of the business that concerned the profession vitally was the necessity that they should be put on the same footing as their English brethren with respect to remuneration. Hitherto there had been an exceptional schedule for Ireland. The English solicitors were paid on a much larger scale than the Irish solicitors for the same work, and he thought the Irish branch of the profession ought to insist upon equality in this matter.

Mr. WILLIAM ROCHE said he would not occupy their time for more than one moment, but as he did not concur in the resolution, he thought he ought not to give a silent vote. No person had a higher respect than he had for the legal attainments of the appellate tribunal of the Lords, but at the same time it was impossible to ignore the great delay, expense, and inconvenience attending the working of appeals in the House of Lords, and the sooner all that was corrected, and effectually corrected, the better. In the state of things he had mentioned, suitors were really without an accessible tribunal; while on the other hand it was admitted that the new tribunal would be most valuable and convenient. That being so, having regard to the feelings of the public, to the interests of suitors, and to the convenience of the professions, he thought no time ought to be lost in establishing the new facilities promised for obtaining prompt and inexpensive justice.

Mr. JOHN BARLOW said it was the 8th article of the Act of Union that was the origin of the right of appeal of the Irish people to the House of Lords as the final Court of Appeal, and he did not think that by another Act of Parliament it should be lightly taken from them. He suggested that they ought to take some notice of the matter in furtherance of Mr. Goodman's resolution, in which he agreed; and he moved an amendment by way of addition to it to the effect that it appeared to them the appellate jurisdiction of the House of Lords could not be taken away unless the article of the Act of Union was repealed.

Mr. SHANNON observed that unless Mr. Barlow insisted on a separate final Court of Appeal for the people of Ireland, even though the projected new Court should be passed, there was no amendment to the resolution.

Mr. GOODMAN said, if they insisted that they were, under any circumstances, entitled to go to the House of Lords, that was inconsistent with the first part of his resolution; and besides, as a matter of fact, the appellate jurisdiction of the House of Lords had been done away with by the Act of 1873.

The amendment was not seconded.

The PRESIDENT then put Mr. Goodman's resolution, and declared it carried by 15 to 12.

Mr. SHANNON said that unless they meant to neutralise what they had done on a former occasion with respect to the second judgeship of the Landed Estates' Court, they should now go a little farther. On the occasion he alluded to, they had brought such convincing arguments to bear on the Marquis of Hartington that he paused and withdrew the bill for the abolition of the second judgeship; and now, when the Judicature Bill still proceeded on the assumption that the second judge was not necessary, they ought to be consistent, and pass a substantive resolution, telling the Government that nothing had occurred since but what would fortify the opinion they formerly entertained. A mass of new business would be thrown on the present able judge in addition to what he had before, for each receiver motion was a hearing of the cause, and the result must be that things would come to a dead lock in that court. He concluded by proposing the following resolution:—

"That, having regard to the return of business in the Landed Estates' Court, which led to the abandonment by the late Government of the bill to abolish the second judgeship in that court, and having regard to the new and heavy equity business to be cast on that court by the Judicature Act, we are of opinion it is essential for its due working to appoint a second judge to it."

Mr. COOPER seconded the resolution.

Mr. FOTTRELL, jun., said he would not agree to the resolution in its present form. He thought they should not bind themselves to such a resolution, as they might seem to be objecting to the reduction of the Irish Bench. If they were about to pass a resolution objecting to a regulation in one particular question, they should state it was their opinion on the other hand that the work in other portions of the judicial system was not sufficient to occupy the staff. He thought it would be unwise in them to obstruct the Legislature in thus opposing the bill. He understood returns had been called for of the work done by the judicial staffs. This would be before the House of Commons, and they would show a state of things which he dared say would astonish many people. They would show, while the business in this country was not one-fourth what it was in England, the judicial staff to do it was in the proportion of about two to three; the number of writs here was not one-sixth of those issued in England; final judgments were not more than one-sixth, the trials at common law were not more than a fourth, and the vast proportion of the writs

Digitized by Google

issued in this country were for sums which should come under the cognizance of the county courts. He thought it would be unwise to pass a resolution of this sort, until they had got a report of the council on the bill before them. He should be sorry to advise any reduction in either number or pay of the Irish Bench which might impair its efficiency, but he submitted the resolution should be a comprehensive one, and not take up one branch of the subject.

Mr. DIX said he really did not see what he need reply to the last speaker. He did not concur in the view that they should wait for a report upon the whole bill before making any recommendations as to the number of judges in the Landed Estates Court. Already they had pledged themselves to the opinion that the court should have two judges, and seeing that additional work was likely to be put on the court, he thought they should have no hesitation in repeating their former opinions. The meeting was not now dealing with the common law judges. When that subject came on, they would, no doubt, give an impartial opinion upon it, but at present they really had nothing to do with the matter.

Mr. JOHN L. SCALLAN agreed in the view taken by Mr. Fottrell. That gentleman did not want to pledge the meeting to an opinion that an additional judge in the Landed Estates Court would not be desirable, but he was anxious to prevent any misimpression outside. If they passed a single resolution in favour of a second judge in the Landed Estates Court without dealing with the whole question of the Bench, it might be announced out of doors that because they opposed reduction in one department, they equally objected to reduction in another. They ought to put forward no view, no opinion upon any one part of the business; but upon full and proper materials consider the whole, and report upon the whole. By that means they would arrive at the best conclusion, and avoid any misconception of their action out of doors. This being his idea, he would vote against Mr. Shannon's resolution as premature.

Mr. J. T. HINDS also thought the question of a second Landed Estates Court judge should be passed over at present. The meeting was a small one—so small as not to have very great weight, even supposing a full meeting would carry weight. He said that, remembering in this particular matter their profession had been treated with as much contempt as any profession could be treated. Over and over again they expressed their opinion upon the subject, but no attention whatever was paid to it, and the contempt visited upon them in the first instance was endorsed by those who subsequently came into authority. He did not see that they should put themselves into the position of being again humiliated, and of enabling it to be again put on record that on the other side of the Channel no attention was paid to the opinion of mere Irish attorneys on a matter of this kind. He did not think it was the business of his brethren to subject themselves—if he might use the expression—to a third kicking upon this subject. The society has already stated its opinion; the bar has endorsed it; and he could state as a fact that the present Attorney-General for Ireland had within the last month used every influence in his power to further the view of both branches of the profession, that a second judge was needed in the Landed Estates Court, but the opinion of the Attorney-General appeared to be treated with just the same respect as the opinion of the bar and the solicitors. There was a wide difference of opinion amongst the profession as to the prudence of abolishing two of the judgeships and doing away with one of the circuits. The latter was a very important matter, because if one of the circuits was merged, there certainly would be greater delay in having trials at assizes, and there would be corresponding expense and inconvenience. That was a subject more worthy of attention by the society than the old grievance of the want of a second judge in the Landed Estates Court, upon which their representations had already been spurned. He concurred in the view of Mr. Fottrell, that it was premature to go into that question now, and besides, having before this got a slap in the face about it, he had no desire to be slapped again.

Mr. FOTTRELL said, to bring the question to an issue, he would move as an amendment that it was premature to raise the question of the necessity of a second Judge of the Landed Estates Court, until a council or committee shall have reported on the entire bill.

Mr. SCALLAN seconded the amendment.

Mr. SHANNON, in reply, expressed his surprise that a gentleman of Mr. Fottrell's ability should argue, that because it might turn out that the law courts were overmanned, therefore there should not be enough of judges in the Landed Estates Court. He (Mr. Shannon) was not dealing with the law judges at all. The bill dealt with them. Assuming that the courts were overmanned, they took away two judges, and raised the salaries of the remainder from £3,500 to £4,000. But the business of the Common Law Courts had nothing to do with the business of the Landed Estates Court, which should be dealt with according as the fact was, and no doubt existed that a second judge was needed in that court. With regard to the second point made against the resolution, namely, that it was premature, he would remind the meeting that the reason the Marquis of Hartington gave for not appointing the second judge was the coming Judicature Bill, when the returns of the business of the court furnished by the society made an unanswerable case in favour of the appointment. Nothing had since occurred to alter the state of things that previously existed. The present judge was overwhelmed with business. The new Act was introduced, and what more fitting time to again put forth the view of the society upon a matter of great importance to the public and the profession. When Mr. Hinds, with the elocutionary skill for which he was remarkable, put it that the society should scout the resolution because he did not approve of it, that gentleman should condescend to think of the reason why the late Government did not appoint the second judge—namely, as had been stated, because the Judicature Bill was to be brought in—and remembering that, was it possible he could urge upon the society not to follow up their previous action, now that the bill had been introduced, and they saw what was intended to be done. He (Mr. Shannon) confidently called upon the society to adopt the resolution.

The PRESIDENT put the amendment of Mr. Fottrell, and declared it negatived.

Mr. FOTTRELL called for a division, which was taken, with the following result:—For the amendment, 6; against, 21. The original resolution was then put and carried.

Mr. SHANNON next proposed that it be referred to the council, to consider the provisions of the bill, and report to an adjourned meeting of the society on a day to be chosen by themselves.

Mr. CARROLL seconded the motion, which was put and carried.

Mr. ELLIS moved that copies of the resolutions be sent to the Lord Chancellor for England and the Attorney General for Ireland.

Mr. BARLOW seconded the resolution, which was agreed to.

A vote of thanks having been passed to Sir Richard Orpen, the meeting separated.

REGISTRY OF JUDGMENTS, IRELAND.

GENERAL ORDERS

Made in pursuance of the Statute 34th and 35th Victoria, Chapter 72, the 11th day of May, 1874.

The Right Honorable James Whiteside, Lord Chief Justice of the Court of Queen's Bench in Ireland; the Right Honorable Edward Sullivan, Master of the Rolls in Ireland; the Right Honorable James Henry Monahan, Lord Chief Justice of the Court of Common Pleas in Ireland; and the Right Honorable Christopher Palles, Lord Chief Baron of the Court of Exchequer in Ireland, do hereby, in pursuance of an Act of Parliament passed in the Session holden in the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, intituled "An Act for the further Protection of Purchasers against Crown Debts, and for amending the Laws relating to the office of the Registrar of Judgments and other offices of the Court of Chancery in Ireland," and in pursuance and execution of all other powers enabling them in that behalf, order and direct:—

Digitized by Google

1. That the sixth General Order made and bearing date the 11th day of January, 1872, be repealed and annulled, except so far as regards any requisition lodged prior to this order.

2. That no requisition for a search shall be received by the Registrar of Judgments unless and until the same shall set forth the date at which the search is to commence, and the date to which it is to be made, which last mentioned date shall in no case be later than that of the lodgment of the requisition.

JAMES WHITESIDE, *C.J.*
EDWARD SULLIVAN, *M.R.*
JAMES HENRY MONAHAN.
CHRISTOPHER PALLES, *C.B.*

The Right Honorable James Whiteside, Lord Chief Justice of the Court of Queen's Bench in Ireland; the Right Honorable Edward Sullivan, Master of the Rolls in Ireland; the Right Honorable James Henry Monahan, Lord Chief Justice of the Court of Common Pleas in Ireland; and the Right Honorable Christopher Palles, Lord Chief Baron of the Court of Exchequer in Ireland, do hereby, by and with the consent of the Lords Commissioners of Her Majesty's Treasury, testified by their signatures hereunto, in pursuance of an Act of Parliament passed in the Session holden in the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, intituled "An Act for the further Protection of Purchasers against Crown Debts, and for amending the Laws relating to the office of the Registrar of Judgments and other offices of the Court of Chancery in Ireland;" and in pursuance and execution of all other powers enabling them in that behalf, order and direct:—

1. That the amount of Stamp Duty to be paid on every requisition for a seach for Judgments, or Revivals entered up in any of Her Majesty's Courts at Dublin, or obtained in any inferior Court of Record before the 15th day of July, 1850, and for decrees, rules, orders, or civil bill decrees for poor rates, made before the 15th day of July, 1850, and for lis pendens, registered against any person, and for recognizances, and Crown bonds, Judgments at the suit of the Crown, statutes, inquisitions, and acceptances of Office, registered, or re-docketed, against the same person be reduced as follows:—

If the period during which the search is required does not extend further back than one year from the lodgment of the requisition, from the sum of 16s. 6d. to the sum of 12s. 6d.

In all other cases, from the sum of 16s. 6d. to the sum of 15s.

2. That the amount of Stamp Duty to be paid on every requisition for a duplicate of a search, if the period during which such search was made does not exceed one year, be reduced from the sum of 5s. to the sum of 1s.

JAMES WHITESIDE, *C.J.*
EDWARD SULLIVAN, *M.R.*
JAMES HENRY MONAHAN.
CHRISTOPHER PALLES, *C.B.*

We, being two of the Lords Commissioners of Her Majesty's Treasury, hereby signify our consent to the alteration in the amount of Stamp Duty to be paid for requisitions for searches made by this order, as required by the 9th section of the Act of 34 and 35 Vic., cap. 72.

ROW. WINN.
J. D. H. ELPHINSTONE.

LEGAL EXAMINATION. — At the recent Preliminary Examination for Attorneys' Apprentices, held on May 13 and 19, when 17 candidates were rejected and only 12 passed, the following gentlemen were successful:—Mr. W. E. Mercer (Cavan), 1st place; Mr. P. J. M'Carthy (Kilfinane), 3rd place; Mr. Vincent Ryan (Dublin), Mr. J. F. Maguire (Cork), Mr. J. P. Harris (Stewartstown). We understand that the above-mentioned were prepared by Dr. Mortimer, 26, York-street.

LAW STUDENTS' JOURNAL.

KING'S INNS, HENRIETTA-STREET, DUBLIN.

TRINITY TERM, 1874.

At the General Examination of Students, held at the Hall of the King's Inns, on Tuesday, Wednesday, and Thursday, 12th, 13th, and 14th May, 1874, the Benchers awarded to

MATTHEW BOURKE, Esq., M.A., an Exhibition of Twenty Guineas per Annum, to continue for a period of Three Years; and to

JAMES SHANNON, Esq, A.B., a Prize of Twenty Guineas

Certificates of having satisfactorily passed the General Examination were awarded to

GEORGE H. NASH, Esq., A.B.
FANE VERNON, Esq., A.B.
W. M. LESLIE, Esq., A.B.
M. BIRCH, Esq.
P. H. BAGENAL, Esq., A.B.
J. W. HACKETT, Esq., A.B.
G. H. STACK, Esq., A.B.
HENRY C. WARREN, Esq., A.B.
ROBERT OLPHERT, Esq., A.B.
R. B. O'BRIEN, Esq., A.B.
J. B. BEVERIDGE, Esq.
N. E. WALLACE, Esq., A.B.
JOHN INCH, Esq.

JOHN D. O'HANLON,
Under Treasurer.

King's Inns, *22nd May, 1874.*

LAW STUDENT.

The memorial of the undernamed gentleman, addressed to the Benchers of the Honourable Society of King's Inns, and praying for admission as a Student of Law, will be taken into consideration by the Standing Committee of the Benchers, at its meeting on Thursday, 4th June:—

1. WILLIAM CHARLES TAYLOR, M.A., Queen's University, second son of George Taylor, of Cadiz, Esq. Certificate signed by Mark S. O'Shaughnessy, Esq.

NEW BARRISTERS.

The memorials of the undermentioned Students of Law, addressed to the Benchers, and praying to be admitted to the degree of Barrister at-law, will be taken into consideration by the Benchers, at their meeting on Friday, the 29th May, or at such other time as shall for that purpose be appointed:—

1. MATTHEW J. BOURKE, Esq., M.A., Queen's University, second son of John Bourke, of Kanturk, in the county of Cork, Esq. Certificate signed by W. M. Johnson, Esq., Q.C. To be proposed by Mr. Serjeant Armstrong. [Mr. Bourke obtained the Exhibition at the General Examination held after last Easter Term, and takes rank accordingly.]

2. JAMES SHANNON, Esq., A.B., University of Dublin, eldest son of George William Shannon, of Leeson Park, in the County of Dublin, Esq. Certificate signed by Theobald A. Purcell, Esq., Q.C. To be proposed by Mr. Serjeant Armstrong. [Mr. Shannon obtained the prize at the General Examination held after last Easter Term, and takes rank accordingly.]

3. JOHN F. B. BEVERIDGE, Esq., eldest surviving son of William Beveridge, late of Tralee, in the County of Kerry, Esq., deceased. Certificate signed by John O'Hagan, Esq., Q.C. To be proposed by the Right Hon. Lord O'Hagan.

Digitized by Google

4. WILLIAM KYLE, Esq., A.B., University of Dublin, younger son of Henry Kyle, of Laurel Hill, in the County of Londonderry, Esq., J.P. Certificate signed by John H. Orpen, Esq., LL.D. To be proposed by D. C. Heron, Esq., Q.C.
5. MICHAEL BIRCH, Esq., only son of Patrick Birch, of the City of Kilkenny, Esq. Certificate signed by H. W. Lover, Esq. To be proposed by Frederick William Walsh, Esq., Q.C.
6. GEORGE GREER, Esq., A.B., University of Dublin, eldest son of John W. Greer, of Woodville, in the County of Armagh, Esq., J.P. Certificate signed by Francis Meade, Esq., Q.C. To be proposed by the Right Hon. Hugh Law, M.P.
7. JOSEPH M. DAY, Esq., A.B., University of Dublin, second son of Arthur M. Day, of Rathgar, in the County of Dublin, Esq. Certificate signed by James S. Green, Esq., Q.C. To be proposed by James Murphy, Esq., Q.C.
8. FANE VERNON, Esq., B.A., Cantab., eldest son of John E. Vernon, of Erne Hill, in the County of Cavan, Esq., J.P. Certificate signed by John Richardson, Esq., Q.C. To be proposed by William Brooke, Esq., M.C.
9. HENRY C. WARREN, Esq., A.B., University of Dublin, only son of the Right Hon. the Judge of the Court of Probate, of Fitzwilliam-square, in the City of Dublin. Certificate signed by J. J. L. Dames, Esq., Q.C. To be proposed by Henry M. Pilkington, Esq., Q.C.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

TRINITY TERM, 1874.

At the Examination of applicants seeking to become Apprentices to Attorneys, held on Monday, the 18th, and Tuesday, the 19th of May, 1874, the following were adjudged by the Court of Examiners to have passed said Examination, and their names are arranged in order of merit, viz. :—

1. WM. E. MERCER,
2. DAVID R. CLEMENTS,
3. PATRICK M'CARTHY,
4. EDWARD P. CULVERWELL,
5. ROBERT KELLY, JUN.,
6. WM. J. MENTON,
7. JOHN POTTER,
8. JOHN D. COATES,
9. VINCENT P. RYAN,
10. JOHN F. MAGUIRE,
11. PATRICK CARROLL,
12. JOHN P. HARRIS.

The remaining candidates on the list have been postponed until next Michaelmas Term Preliminary Examination.

The Court of Examiners cannot permit any of the candidates at recent Preliminary Examination to compete at the next Michaelmas Term Prize Examination.

TRINITY TERM, 1874.

At the Examination of applicants seeking admission as Attorneys, held on Wednesday, the 20th, and Thursday, the 21st of May, 1874, the Court of Examiners decided that all the candidates who presented themselves should be allowed the examination, and their names have been arranged in order of merit, as follows:—

1. JAMES HENRY,
2. WM. BAXTER,
3. TIMOTHY NEVILLE,
4. WM. H. MEREDITH,
5. FRANCIS FITZMAURICE,
6. HENRY EXHAM,
7. WM. M. LANE,
8. THOMAS DAVIN,
9. ARCHIBALD TUTHILL,
10. FRANCIS CREAGH,
11. JOHN KEPPLE,
12. EDWARD MAC CROSSAN,
13. CHARLES J. MULOCK,
14. WM. J. G. WHITE,
15. JOHN R. COOPER,
16. JAMES A. S. GREGG,
17. CLIFFORD B. LLOYD,
18. FREDERICK J. GRAHAM,
19. WM. R. FENTON,
20. WM. H. NASON,
21. JAMES J. PLUNKETT,
22. JOHN F. MEADE,
23. JAMES CONNOR.

The Court of Examiners have awarded a *Gold* Medal to Mr. JAMES HENRY; *Silver* Medals to Messrs. WM. BAXTER and TIMOTHY NEVILLE; and Special Certificates of Merit to Messrs. WM. H. MEREDITH, FRANCIS FITZMAURICE, HENRY EXHAM, and WM. M. LANE.

LAW STUDENTS' DEBATING SOCIETY,

KING'S INNS, HENRIETTA-STREET.

A General Meeting of the Society will be held in the Lecture Hall King's Inns, on Monday evening, June 1st, 1874, when the following subject will be debated :—

"That the Political Career of Sir Robert Peel commands our approval."

SPEAKERS:

Affir.	*Neg.*
Mr. R. Andrews.	Mr. M. Bodkin.
Mr. W. L. Bernard.	Mr. T. Overend.

The Chair will be taken at Eight o'clock, by D. B. Sullivan, Esq., Bar-at-Law, Ex-Auditor.

All meetings open to Ladies and Gentlemen.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—M. Cherry, allocation.—C. O'Callaghan, ex-delay.—Rev. T. Stack, proposal.—Sir H. Bruce, do.

IN COURT.—J. W. Dickenson, from 11th May.—J. T. Walker, from 19th May.—J. T. Bagot, from 21st May.—George Fossit, peremptorily.—William M'Grane, as to costs.—H. Whitmore and others.—confirm sale.—W. Fitzsimons, from 28th.

Before EXAMINER (Mr. Dobbs).

J. Tuohy, proofs.—J. Lawton, ditto.

TUESDAY.

IN CHAMBER.—Assignees W. Bayley, allocation.—J. Flynn, ex-witnesses.

IN COURT.—H. T. Parnell, final schedule.—Trustees Glenn, do.—S. Quin, do.—Church Commissioners (Lurgan), tenant's objection.

WEDNESDAY.

IN COURT.—D. C. O'Reilly, final schedule.—G. Bennett, do.—N. Hone, do.—A. M. Fawcett, do.—C. Langdale, do.

Before EXAMINER (Mr. Dobbs).

H. V. Sampey, rental.

Before EXAMINER (Mr. M'Donnell).

Administratrix Humphrey, rental.—D. Port, do.—R. A. Denny, do.—Marquis Ely, do.—D. Darcy, do.—G. H. Pentland, vouch.

THURSDAY.

IN CHAMBER.—M. Roberts, from 28th.

FRIDAY.

SALES AT 12 O'CLOCK.

GRACE J. SHEIL.—1 lot.
T. J. LANNIGAN.—2 lots.
A. B. WARRE AND OTHERS.—7 lots.
F. GEARY.—37 lots.

Before EXAMINER (Mr. Dobbs).

Trustees D. Shipp, rental.

Before EXAMINER (Mr. M'Donnell).

Trustee O'Brien, rental.—C. Dower and another, do.—G. Minchin. do.

LANDED ESTATES' COURT.

SALES

May 8.—Before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN AND COUNTY WEXFORD.—Estate of Nathaniel Hone, owner and petitioner.

Lot 1.—Houses 47, 48, 49, and 50, Marlborough-street, held under lease for 900 years, from 1768; producing a net yearly rent of £44 18s. 5d. Sold to Mr. Henry Evans, for £575.

Digitized by Google

Lot 2.—Part of the lands of Ballyroe lower, in the barony of Bantry, County Wexford, containing 101a. 0r. 30p.; held in fee; net yearly rent, £62 11s. 9d. Sold in trust for Mr. Charles Tottenham, for £1,220.

Lot 3.—Part of the lands of Coolerin, in the barony of Shelbourne, held under fee-farm grant, containing 144a. 3r. 18p., and producing a net yearly rent of £31 5s. 11d. Sold to Mr. A. Barry, for £400. Solicitors, *Falkner and Hone.*

Sales, 15th May.

CITY OF DUBLIN.—In the matter of the estate of George Kidd, owner; Thomas M'Nally, petitioner; being one undivided fourth part of the houses and premises 17, 18 19, 20, and 21, Great Charles-street, 1, South Summer-street, 29 to 35, Upper Rutland-street; held under a lease for 999 years; yearly rent, £76 17s. Sale adjourned. Solicitor, *T. M'Nally.*

John Kidd, owner. Another moiety of same premises. Sale adjourned. Solicitors, *Maxwell and Weldon.*

COUNTIES OF TYRONE AND DONEGAL.—The estate of the Rev. John Hutton O'Connor and Edward Carolin, trustees for sale under the settlement executed on the marriage of Rebecca Jones Pratt, otherwise Colhoun, with Joseph Bryan Hines, deceased, owner and petitioner.

Lot 1.—The lands of Garvagh Mullion, situate in the barony of West Omagh, containing 640a. 0r. 12p.; yearly rent, £148 19s. 9d. Sold in trust for James Crossle, for £4,500.

Lot 2.—The lands of Leaght, situate in the barony of West Omagh, held in fee-simple, containing 462a. 2r. 18p.; net profit rent, £149 6s. 9d. Sold to Mr. Robert Sproule, for £3,800.

Lot 3.—Lands of Mencarragh, also in the barony of West Omagh, held in fee-simple, containing 334a.. 3r. 29p.; yearly rent, £49 17s. 6d. Sold in trust for James Crossle, for £1,300.

Lot 4.—Lands of Drumaghon, also in the barony of West Omagh, held in fee-simple, containing 510a. 0r. 5p.; yearly rent, £45 9s. Sold in trust for James Crossle, for £1,420.

Lot 5.—Sold by private contract.

Lots 6 and 7.—Sale adjourned. Solicitor, *George Bernard.*

COUNTY LIMERICK.—In the matter of the estate of John Leland Mason, owner; John Perrott, petitioner. An undivided moiety of part of the lands of Lisduane, known as "The Jointure Lands," situate in the barony of Upper Connelloe, held in fee-farm, containing 304a. 1r. 18p.; yearly rent, £124 14s. 9d. Sold in trust for Mr. Edmund L. Hunt and Robert M. Hunt, for £2,300. Solicitor, *Murdock Green.*

COUNTY KILKENNY.—M. A. E. O'Kelly, owner and petitioner. The sale of this estate was adjourned for insufficient biddings. Solicitor, *A. Boyd.*

Thomas H. Greer, owner and petitioner. The sale of this estate was adjourned, for insufficient biddings. Solicitor, *William Fry.*

COUNTY MEATH.—In the matter of the estate of Drake Christopher O'Reilly, owner and petitioner, being part of the town and lands of Drinadaly, containing 128a. 2r. 36p., situate in the barony of Moyfenrath, held in fee-farm; estimated profit rent, £183 12s. 2d. Sold to Mr. George A. Russell, for £1,620. Solicitor, *John T. Hinds.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Peter Woods	Prove debts and vouch	*Larkin & Co.*
James Cogan	Costs	*Fay & M'Gough*
Joseph H. Smith	do	*Mathews*

TUESDAY.

Before the COURT, at 11 o'clock.

John Byrne	1st composition sitting	*Rynd*
Bridget Walsh	2nd composition sitting	*Mathews*
Joseph P. Brown	1st public sitting	*Boughey*
Thomas Bailey	do	*Froste*
Hugh John Hall	do	*Cronhelm & Co.*
Robert Warnock	Final examination	*Cronhelm & Co.*
Thomas J. Curtis	do	*Jones*
S. P. Armstrong	do	*Perry & Co.*
Henry Abbott	do	*Larkin & Co.*
E. J. Fitzsimons	do	*Lawler*
James Fortune	do	*Lett*
William Foxall	Motion	*Mathews*
John Kane	do	*Maturin*
M. M'Monagh	do	*Maturin*
J. Hunter & Sons	Confirm sale	*Sohns & Beauchamp*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Barrett	Reference	*Jordan*
William Holmes	Vouch account	*Larkin & Co.*
John C. Walsh	Costs	*Dutch*
A. J. Cunningham	Title, &c.	*Dix*
John Nolan	do	*Orpen & Sweeny*
Robert Midgley	Vouch account	*Neilson*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

O'Reardon and Murphy	Prove debts and vouch	*Larkin & Co.*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

William Holmes	Prove debts and vouch	*Mathews*

FRIDAY.

Before the COURT, at 11 o'clock.

Catherine Kennedy	1st composition sitting	*Kernan*
Same matter	1st public sitting	*Lett*
Patrick O'Shea	do	*Mathews*
Thomas Scott	do	*Larkin & Co.*
Peter Miller	do	*Oldham & Eaton*
Thomas Morrow	Final examination	*Larkin & Co.*
Mary Leahy	do	*Molloy & Watson*
John Callaghan	do	*Mathews*
M. Bradshaw	do	*Findlater & Co.*
John Deegan	do	*Roe*
G. & R. Ferguson	do	*Larkin & Co.*
Daniel Cullen, jun.	do	*Larkin & Co.*
Arthur G. Hay	do	*Mathews*
Same matter	2nd composition sitting	*Mathews*

Before the CHIEF REGISTRAR, at 12 o'clock.

William Darragh	Prove debts and vouch	*Lawler*
Peter Wright	do	*Mathews*
Thomas F. O'Neill	Vouch account	*Maxwell & Weldon*

ADJUDICATIONS IN BANKRUPTCY.

Baillie, Alexander, Little Patrick-street, Belfast, provision dealer. Sittings, *Friday, June* 19, and *Tuesday, July* 7. *Wallace and Co.*, solrs.

Boyton, Mary Anne, Thurles, Tipperary, widow, hotel and shopkeeper. Sittings, *Friday, June* 19, and *Tuesday, July* 7. *Oldham and Eaton*, solrs.

Murray, James, 87, Harold's Cross, Dublin, grocer. Sittings, *Friday, June* 19, and *Tuesday, July* 7. *Hamilton and Craig*, solrs.

DIVIDENDS IN BANKRUPTCY.

M'Murray, Thomas, trading as George M'Murray and Co., Waringstown, Down, linen manufacturer. 2nd and final dividend 4s. 11½d. and $\frac{1}{32}$th of a 1d. in the £, making with 1st dividend 6s. 7½d. and $\frac{1}{32}$th of a penny in the £. C. H. James, official assignee. *Larkin and Co.*, solrs.

O'Brien, John, Shelborne-road, Dublin, grocer and spirit dealer. 1st and final dividend 20s. in the £ L. H. Deering, official assignee. *Perry and Co.*, solrs.

Digitized by Google

"They come as a boon and a blessing to men,
The Pickwick, the Owl, and the Waverly Pen."
"Another blessing to men,
The Hindoo Pen."
1,200 Newspapers recommend them. See *Graphic*, 17th May, 1873.
Sold by every respectable Stationer. By Post, 1s 1d.
Patentees—MACNIVEN & CAMERON, 23 to 33 Blair-street, Edinburgh.
427

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MAY Fri 22	Sat. 23	Mon. 25	Tues. 26	Wed. 27	Thur 28
	Government.						
—	3 p c Consols	—	92¼⅜	—	—	92 ⅛	92⅛
—	3 p c Reduced	—	—	—	-	—	-
—	New 3 p c Stock ..	91⅛	91⅛¼	—	91⅛¼	91	91⅛¼
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	107⅛	—	—	107⅝	107⅛	107⅝
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	101⅛	101⅛	—
	Banks.						
100	Bank of Ireland ..	309	309	—	—	308⅛⅝	308⅛
25	*Hibernian Banking Co.* ..	59⅛⅜⅝⅛	—	—	59⅝⅛	59⅛⅝	—
15	*London Joint Stock* ..	50⅛	50⅛	—	—	50⅛	50⅛
20	*London and Westminster* ..	—	—	—	72⅛	72⅜⅝	73⅛
30	*National Bank*	59⅝	—	—	59⅝⅜	59⅜	—
15	*National of Liverp'l (Ltd)*	14⅜	—	—	-	—	—
25	*Provincial Bank* ..	94⅛	—	—	—	95⅜⅛	--
10	Do. New ..	—	—	-	37⅛	—	37⅛–7
10	*Royal Bank*	30	—	—	29⅝	—	-
	Steam.						
100	City of Dublin	—	—	—	106⅛	106⅛	-
10	Dundalk (Limited) ..	—	7⅛	—	—	—	7
	Mines.						
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	—	4⅜
2⅛	Wicklow Copper	—	—	—	—	3⅛	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	9⅛	HOLIDAY	—	—	9⅛⅛
9⅛	*Dublin Tramways* ..	—	—		—	—	7⅝
100	Grand Canal ..	—	—		—	—	—
7⅛	*M'Swiney & Co., limited*	—	—		—	—	—
25	*National Assurance* ..	—	—		—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	66⅜
100	Dublin and Belfast Junct.	—	—	—	—	90	—
100	Dublin, W'klow, & W'ford	—	—	—	—	—	74⅜
100	Gt. Southern and Western	108⅝	108½	—	108⅝	108¾	108⅜⅝
100	Do. do. free of Stamp	—	—	—	109⅛	—	
100	Midland Gt. Western ..	82⅛	82–⅛¼	—	82¼	—	83
50	Waterford and Limerick ..	—	—	—	—	32¾	—
	Railway Preference.						
50	D., W., & W., 5 p c (1864)	—	53	—	—	53	—
50	Do. do. (1865)	—	53	—	—	—	—
100	Gt. South'n & West'n 4 p c	98	98	—	97⅝	—	97⅝
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do, B 5 p c	—	—	—	—	—	100⅛
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	49⅝	—	49⅜	—	—
50	Do., new red, 1873, 5 p c	49⅛	49⅛	-	—	—	—
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	-	—	—	—	94⅛	—
—	D., W., & W., 4½ p c ..	—	—	—	--	—	—
—	Do., 4½ p c	-	—	—	—	102	--
—	Gt. South'n & West'n, 4 p c	98	—	-	98⅜ f	—	98½
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	101½	—	—	—	—	101½

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount 4 per cent., 28th May, 1874
Of Deposit—2 per cent., 28th May, 1874.
Name Days—June 11th and 29th, 1874.
Account Days—June 12th and 30th, 1874.
On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

JOHNSTON—May 26, at Dundalk, the wife of Arthur Johnston, Esq., solicitor, of a son.

MARRIAGE.

O'CONNOR and LAWLESS May 7, at the Cathedral, Marlborough-street, Dublin, by the Rev. P. O'Neill, Wm. O'Connor, of Ballykisteen, County Tipperary, Esq., only surviving son of the late V. O'Brien O'Connor, Esq., of 8, Merrion-square, to Rose, only daughter of Edmund Lawless, Esq., Q.C., 13, Upper Temple-street.

DEATHS.

BETTY—May 8, at Croghan House, Killeshandra, County Cavan, suddenly, Emma Anne Betty, widow of the late James Betty, Esq., barrister-at-law, of Rutland-square, Dublin, and Lakefield, Cavan.

M'CORMACK—May 15, at his residence, 76, Eccles-street, James M'Cormack, Esq., solicitor, aged 88 years.

SHAW—May 17, at her residence, Rathmines, Catherine Clements, relict of Bernard Shaw, Esq., solicitor, and only surviving daughter of the late Austin Cooper, Esq., Merrion-square.

PUBLICATIONS:

JUST PUBLISHED, Price 12s., 476 pages, cloth, gilt lettered.

LAND ACT CHAPTERS AND REPORTS,
CONTAINING
DISCUSSIONS ON CONTROVERTED POINTS UNDER THE LAND ACT,
AND
FULL REPORTS OF NEARLY ONE HUNDRED LAND CASES.
BY
ROBERT DONNELL, M.A.,
Barrister-at-Law,
Professor of Political Economy, T.C.D.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.
Sold by all Booksellers.

OPINIONS OF THE PRESS.

"A valuable contribution on an important subject, and well worthy of the author's high reputation as a lawyer and political economist."—*Freeman's Journal.*

"This volume is a perfect hand-book both to the general effect and particular bearings of the law as interpreted by the tribunals, and has been edited with the greatest care, and arranged on so simple and clear a plan that no owner of land can mistake the force of the rulings that have been made, or their relation to his own circumstances in regard to the tenants on his property. We commend Mr. Donnell's treatise to the attention of all holders of property, or tenants with valuable interests, as a perfect key to their legal position, and the privileges, restraints, or remedies attaching to it."—*Dublin Evening Mail.*

"The volume forms a sequel to Mr. Donnell's *Practical Guide to the Land Act*, which, on its publication, became the standard work on the subject, and the two volumes now form a complete text-book on those most difficult points of law, raised in the working of the new Irish land system."—*Irish Law Times.* 325

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

QUEEN'S COUNTY.

SALE,
On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of the Estate of Thomas A. Bailey, Esquire, Owner and Petitioner.

TO BE SOLD BY PUBLIC AUCTION, In Three Lots,
(If not previously disposed of by Private Treaty, as mentioned below),
By the Honourable Judge Flanagan,
At his Court,
Landed Estates' Court, Four Courts, Inns'-quay, Dublin,
On FRIDAY, the 12th day of JUNE, 1874,
At Twelve o'clock noon,
The following Valuable Fee-simple Properties, situate in the Barony of Maryboro' West, in the Queen's County:—

LOT 1.

Consists of the Townland of Ockanaroe, containing 108a 3r 23p, stature measure, or thereabouts, and producing a present net profit rent of £70 7s 8d.

LOT 2.

Consists of the Townland of Springfield, containing 214a 0r 14p, statute measure, or thereabouts, and producing a present net rental of £83 10s 8d.

LOT 3.

Consists of the Townland of Camcloon, containing 535a 0r 35p, statute measure, or thereabouts, and producing a present net profit rent of £268 10s 10d.

Dated this 28th day of April, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The lands lie within a few miles of the Railway Stations of Mountrath and Maryborough, and are adjacent to Mountmellick, where fairs, &c., are held.

The tenants are of a superior class, and the land is of excellent quality.

Portions have been lately drained.

It is much underlet.

Messrs. Brassington and Gale have recently, by direction of the Court, made a verified valuation, and they report that the present letting value of the estate is £525 14s 9d, being about one-third more than the actual rental.

The tenants enjoy the right of turbary in the bog upon the adjoining lands of Iry (the property of Sir Charles Coote).

Proposals (in writing) for the purchase of all or any of the Lots will be received by the Owner's Solicitors up to the 25th day of MAY, 1874, and will be submitted to the Judge on the 1st day of JUNE, 1874, at the sitting of the Court (or at the earliest opportunity afterwards) without further notice to any person.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Four Courts, Inn's-quay, Dublin; or to

Mr. CHARLES MOORE, Iry, Ballyfinn, Mountrath (who will point out the Premises); or to

Messrs. MEADE & COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 419

Digitized by Google

IN THE LANDED ESTATES' COURT, IRELAND.

SALE, on SATURDAY, the 27th day of JUNE, 1874.

In the Matter of the Estate of

THE RIGHT HON. WILLIAM FRANCIS COOPER TEMPLE, M.P.,

Owner and Petitioner.

TO BE SOLD, before the Honourable Judge Flanagan,
AT THE LANDED ESTATES' COURT, INNS'-QUAY, DUBLIN,
On SATURDAY, the 27th day of JUNE, 1874, at the hour of Twelve o'clock,
In Forty-nine Lots,
The following Houses and Premises, Ground Rents, Head Rents, and Fee-farm Rents, arising and payable out of
HOUSES and PREMISES in the CITY and COUNTY of DUBLIN.

SUMMARY OF LOTS IN WHICH THE ESTATE WILL BE SOLD.

No of Lots	Denominations	Quantity of Land Statute Measure			Net Yearly Rental			Governm't Valuation		
		A	R	P	£	s	d	£	s	d
1	Nos 1 to 9 Victoria-terrace -	1	0	1	36	0	0	185	0	0
2	Nos 3 and 4 Somerville-terrace, Nos 18, 20, 21, 22, and 23 Cabra-parade, and Nos 13 and 14 Besborough-terrace	0	3	8¼	40	13	0	211	0	0
3	Nos 1 and 2 Somerville-terrace, and Nos 1 to 6 Belfast-terrace	0	2	15¼	34	0	0	240	0	0
4	Nos 7 t › 12 Belfast-terrace -	0	2	23	26	0	0	196	0	0
5	Nos 1 to 4 Loch Lomond-terrace, and Nos 1 to 2 Ben Lomond-terrace	0	2	26¼	28	8	0	218	0	0
6	Nos 1 to 6 St John's-terrace -	0	3	6	32	0	0	243	0	0
7	Nos 1 to 5 Carlisle-terrace -	0	1	34	15	0	0	113	0	0
8	Nos 1 to 12 Besborough-terrace	0	3	23	48	0	0	250	0	0
9	Two Houses adjoining Besborough-terrace	0	1	32	22	16	0	185	0	0
10	Nos 1, 2, and 3 Lorne-terrace	0	1	16¼	15	0	0	120	0	0
11	House and Premises adjoining Lorne-terrace	0	1	30	19	4	0	46	0	0
12	Nos 1 to 8 Eblana-terrace -	0	3	17¼	36	6	0	216	0	0
13	Nos 40, 41, and 42 Finea-terrace, and Nos 43 to 48 Leinster-terrace	0	3	7	27	18	0	152	0	0
14	Nos 49 to 56 Auburn Hill, Aughrim-street	0	2	34¼	25	16	0	128	0	0
15	Nos 60 to 65 Kincaid-terrace -	0	1	38¼	40	10	0	96	0	0
16	Nos 66 to 71 Stewart-terrace -	0	1	30¼	41	10	0	102	0	0
17	Nos 72 to 79 Aughrim-street -	0	1	27¾	20	4	0	79	0	0
18	Nos 80 to 87 Aughrim-street -	0	2	18¼	30	0	0	107	0	0
19	Nos 87½ to 95 Aughrim-street	0	2	31¼	33	17	0	91	0	0
20	Nos 50, 51, and 52 Manor Buildings	0	0	33	14	0	0	47	0	0
21	Nos 53 to 59 Peebles' Buildings	0	1	34	27	16	0	78	0	0
22	Nos 60 to 63 Manor-street -	0	1	6¼	28	0	0	55	0	0
23	Nos 64 to 72 Nixon's Buildings, and No 73 Manor-street	0	3	6¾	41	12	0	106	0	0
24	Nos 74 to 80 Temple-terrace -	0	1	26¾	47	6	0	107	0	0
25	Nos 81 to 86 Kinallen-terrace	0	1	16¾	41	6	6	102	0	0
26	Nos 19 and 24 to 32 Cabra-parade	0	3	6	45	16	0	237	0	0
27	Nos 1 and 2 Montrose, Cabra-road	0	0	26¾	10	16	0	72	0	0
28	No 9 Lower Ormond-quay -	0	0	11¾	85	0	0	70	0	0
29	No 10 do - -	0	0	11¾	85	0	0	70	0	0
30	No 11 do - -	0	0	11¾	7	12	4	70	0	0
31	Nos 10 and 11 Abbey-street, Upper, and Nos 64 and 65 Great Strand-street	0	1	13 33/40	13	16	11	118	0	0
32	Nos 9 and 10 Capel-street -	0	0	12¾	100	0	0	107	0	0
33	Nos 50, 51, and 52 Stafford-st -	0	0	26	6	13	10	76	0	0
34	No 39 Capel-street - - -	0	0	8¼	50	0	0	34	0	0
35	Nos 40 and 41 Capel-street -	0	0	7¾	54	0	0	62	0	0
36	No 42 Capel-street - - -	0	0	2¾	40	0	0	40	0	0
37	No 1 Mary-street - - -	0	0	1¾	20	0	0	18	0	0
38	No 2 Mary-street - - -	0	0	5¼	42	0	0	30	0	0
39	Nos 3, 4, and 5 Mary-street -	0	0	10¼	72	10	0	65	0	0
40	Nos 47 and 48 Capel-street -	0	0	19¼	6	9	3	95	0	0
41	Nos 33 to 47 Mary-street, and Nos 34 to 40 Ꞁenmark-street	1	2	0¾	12	18	6	1306	0	0
42	Part of the North Union Workhouse	5	2	0	36	18	0	1020	0	0
43	Hardwick Fever Hospital and Carmichael School of Medicine	1	0	35	100	16	0	200	0	0
44	A Fee-farm Rent of £110 5s 0d out of part of Grangegorman West, on which portion of the Arbour Hill Barracks are erected	7	1	38	110	5	0	575	0	0
45	Fee-farm Rents of £30 15s 0d and £30, issuing out of parts of Grangegorman West, in the City of Dublin, on which portion of the Arbour Hill Barracks are erected	2	0	32	60	15	0	280	0	0
46	Fee-farm Rent of £38 15s 0d, issuing out of part of the Lands of Cabragh, and part of Grangegorman South	27	1	11	38	15	0	139	0	0
47	Fee-farm Rent of £78 14s 3d, issuing out of parts of the Lands of Grangegorman West, and part of Grangegorman South	58	3	13¼	78	14	3	203	0	0
48	Fee-farm Rent of £73 5s 2d, issuing out of part of Grangegorman South, and part of Grangegorman East, County of the City of Dublin	65	1	14	73	5	2	1005	0	0
49	Fee-farm Rent of £47 6s 2d, issuing out of Premises bounded on the West by Grafton-st., on the North by Nassau-st., on the East by the lane at rear of Dawson-street and Molesworth-place, and on the South by the rear of houses on the North side of St. Stephen's-green	18	1	17	47	6	2	12165	0	0
		199	2	1¼	1972	9	11	21530	0	0

Dated 22nd day of May, 1874.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

Lots 1 to 27, inclusive, consist of well secured Ground Rents payab'e out of excellent Dwelling-houses on the North Circular-road, &c., in the City and County of Dublin. Most of these Houses have been recently built, and the tenants have large interests in them.

Lot 28 consists of No. 9 Lower Ormond-quay, occupied as a Shop by Messrs. Mooney, Gas Fitters. The House is in good repair, and the tenant is bound to keep it in such.

Lot 29, No. 10 Lower Ormond-quay, is occupied by Mr. M. Crooke, the Auctioneer and Valuator. This House is in good repair, and there is a covenant in the Lease to keep it in such.

Lot 31 is a Head Rent of £13 16s 11d, issuing out of Nos. 10 and 11 Upper Abbey-street, and Nos. 64 and 65 Great Strand-street. This rent is well secured, as the Poor Law Valuation is £118 per annum.

Lot 32—Nos. 9 and 10 Capel-street are occupied by Messrs. Elwood, Printers and Booksellers. The Premises are in good repair.

Lot 33 is a Chief Rent of £6 13s 10d, issuing out of Nos. 50, 51, and 52 Stafford-street, occupied by Messrs. Edmundson and Co. The Poor Law Valuation is £82 10s per annum.

Lot 34 is a Rent issuing out of No. 39 Capel-street, occupied by the Standard Tea Company.

Lot 35 is a Rent of £54, payable out of Nos. 40 and 41 Capel-street, occupied by Mr. P. O'Hanlon and Mrs. Jane Mackey.

Lot 36 is the House known as No. 42 Capel-street, occupied by Messrs. Reilly and Sons, Gas Fitters.

Lot 37, No. 1 Mary-street, is occupied by Mr James Lynch, Boot and Shoe Maker.

Lot 38, No 2 Mary-street, is occupied by Mr. John Mooney, Boot and Shoe Maker.

Lot 39 is a Rent of £72 10s. per annum, payable out of Nos. 3, 4, and 5 Mary-street.

Lot 40 is a well secured Chief Rent, payable out of Nos. 47 and 48 Capel-street, occupied respectively by Mr. G. Hudson, Builder, and Mr. S. Knaggs, Chemist.

Lot 41 is a well secure l Chief Rent of £12 18s 6d, issuing out of Premises in the occupa'ion of Messrs. Todd and Burns, and many other Houses and Premises in Mary-street and Denmark-street, the Poor Law Valuation of wh ch is £1,306.

Lot 42 is a well secured Head Rent of £36 18s, issuing out of Premises upon which are situated the greater part of the North Union Workhouse Buildings, the Poor Law Valuation of which is £1,020 per annum. This rent is paid by the Governors of the North Union.

Lot 43 is a well secured Head Rent, payable out of the Hardwicke Fever Hospital and Carmichael School of Medicine, the Poor Law

Digitized by Google

Valuation of which is £200 per annum. This rent is paid by the Corporation of Dublin.

Lot 44 is a well secured Chief Rent, payable by the Board of Ordnance, issuing out of Premises in Arbour Hill, on which are erected the Military Prison, Garrison Chapel and Governor's House, the Poor Law Valuation of which is £575 per annum.

Lot 45 are Chief Rents, also paid by the Board of Ordnance out of Premises in Arbour Hill and Manor-street, and which adjoin Lot 44, and upon which are built the Garrison Schools and other buildings, the Poor Law Valuation of which is £280 per annum.

Lot 47 is a Fee-farm Rent of £78 14s 3d, payable out of Part of the Lands of Grangegorman West and Grangegorman South, the Poor Law Valuation of which is £203 per annum.

Lot 48 is a Fee-farm Rent of £73 5s 3d, payable out of Parts of the Lands of Grangegorman South and Grangegorman East, and Parts of the City of Dublin, the Poor Law Valuation of which is £1,005 per annum.

Lot 49 is a well secured Chief Rent, issuing out of Part of Grafton-street, the greater part of Dawson-street, part of Nassau-street, and part of Molesworth street, Duke street, South Anne-street, &c. The Poor Law Valuation of the Premises erected on this Lot is £12,165 per annum.

Lots 2, 10, 20, 30, and 46 the owner has agreed to sell, and, therefore, will not be offered for public sale.

Proposals for the purchase by private contract of all or any part of the Estates will be received up to the 20th day of June, 1874, by Solicitors having carriage of Sale, and if offer thought sufficient will be submitted to the Honourable Judge FLANAGAN for his approval.

For Rentals and all further information apply at the Office of the Landed Estates Court, Inns-quay, Dublin;

Messrs STEWART and KINCAID, 6, Leinster-street, Dublin; or to

Messrs. S. S. and E. REEVES and SONS, Solicitors having carriage of Sale, 17, Marrion-square East, Dublin. 457

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF LONDONDERRY.

SALE,

On FRIDAY, the 12th day of JUNE, 1874.

In the Matter of George Claudius Beresford Stirling and James Blair Stirling, Esq., surviving trustees of the will of the late Reverend John Blair Stirling, deceased, Owners and Petitioners.

TO BE SOLD, In Eleven Lots, As specified in the Descriptive Particulars, Before the Right Honourable Judge Flanagan, At his Court, At the Landed Estates' Court, Inns'-quay, in the City of Dublin, On FRIDAY, the 12th day of JUNE, 1874, At the Hour of Twelve o'clock noon.

Proposals for all or any of the said premises will be received by the Solicitors having carriage of the proceedings, or by James Blair Stirling, Esq., Oatlands, Ballymoney, County of Londonderry, one of the owners in this Matter, up to the 1st day of June next, and if approved of will be submitted to the Judge for approval.

Dated this 2nd day of May, 1874.

HENRY R. GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

LOT 1.

Comprises part of the townland of Ballydevitt, containing 63a and 28p statute measure, and producing a net yearly rent of £150 16s 11d; on this lot stands one of the finest mansion houses in the County of Londonderry, with first-class out-offices and splendid garden; also an excellent bleach-green, with superior bleaching and beetling works in full working order, with a never-failing water power in the driest season of the year from the Aghadowey River, which bounds this lot on the south; there is also an ample supply of very superior spring water, for bleaching purposes, attached to this lot; it is this water which makes the linen called the Coleraine, which are famed as the best and purest finish in Ireland.

LOT 2.

Comprises part of the townland of Ballydivitt, and part of Ballywillan, containing 105a 1r 15p statute measure, and producing a net yearly rent of £130 4s. 5d; there is a corn mill and flax mill on this lot, also supplied with water from the Aghadowey River; the land is of prime quality, well fenced and beautifully planted.

LOT 3.

Consists of part of the townland of Ballywillan, with a small portion of the bog of Carnrallagh, containing together about 117a 1r 0p statute measure, and producing a net yearly rent of £151 16s 5d; there are two fire proof corn kilns on this lot, composed of metal beams, spars, tiles, &c., which must have cost a large sum in erection, and are now very valuable.

LOT 4.

Consists of part of the lands of Ardreagh, containing about 131a 3r 14p statute measure, and producing a net yearly rent of £118 16s 6d; the lands are of prime quality, chiefly in tillage at present.

LOT 5.

Consists of part of the lands of Carnrallagh, and part of Ardreagh, containing together about 241a 3r 21p statute measure, and producing a net yearly rent of £241 15s 8d.

LOTS 6 and 7.

These lots consist of the town and lands of Moneybrenan, and part of the lands of Crevolea, containing respectively 89a 0r 17p and 100a 0r 25p statute measure, and producing respectively a net yearly rent of £126 8s 0d and £98 12s 6d.

LOT 8.

Consists of town and lands of Kelly, part of Ballydivitt, also part of Ardreagh, containing in the whole 194a 2r 27p, or thereabouts, producing a net yearly rent of £264 11s 11d; Kelly House is a superior gentlemanly residence, with excellent out-offices and walled-in garden and demesne to correspond, stands on this lot; on the townland of Kelly there is a flax mill; there were recently brick and tile works on this lot, for which there is an ample supply of good clay; the mansion house, offices, gardens, and mill premises, with about 101a 2r 19p of land, are in the possession of the owners.

LOTS 9, 10, and 11.

Consists of the lands of Mullan, and part of the lands of Crevolea; lot 9 contains 173a 3r 30p, lot 10 contains 108a 2r 12p, and lot 11 contains 241a 2r 31p statute measure, and producing respectively the net yearly rent of £190 14s 7d, £90 15s 0d, and £204 3s 8½d; there was up to very recently an extensive bleach-green, with houses, &c., on these lands, with an ample supply of water power in the driest season, and also a constant supply of spring water for bleaching purposes, or the buildings and water power are well adapted for a corn or flour mill; about 54 acres of the lands formerly used as a bleach-green, together with the bleach-houses, &c., are now in the owner's possession.

Lots 1, 2, 3, 4, 5, 6, 7, and 8 lie in a ring fence, and 9, 10, and 11 are about half a mile distant, and also lie in a ring fence.

There is a quantity of valuable timber on lots 1, 2, 8, 9, 10, and 11, and of turbary on lots 4, 5, 9 10, and 11, which has now become very valuable, and is to a great extent in the owner's hands.

These lands, which are well fenced, sheltered, and watered, are situate in the best part of the County of Londonderry, within about five miles of Coleraine, on the road from Coleraine to Garvagh, five miles from Ballymoney, on the road from Ballymoney to Garvagh, two miles of Garvagh, and five miles of Kilreagh, and in all of which markets and fairs are regularly held. The bog is now very valuable, and the lands are all of good quality, and well suited for tillage or pasture, and are in the midst of the best flax grown districts in Ulster.

The entire lands are held by a respectable, industrious, and thriving tenantry, who pay their rents punctually.

There is a Presbyterian Meeting House on lot 3 of these lands, and the Church and Post Office are in the immediate neighbourhood.

For Rentals and further particulars apply at the Office of the Landed Estates' Court, Inn's-quay, in the City of Dublin; to

JAMES BLAIR STIRLING, Esq., Aghadowey, Ballymoney, County Londonderry; or to

JAMES SINCLAIR, Esq., Dundarg, Coleraine; or to

Messrs. LEONARD, DOBBIN & CO., Solicitors having carriage of proceedings, No. 27 Gardiner's-place, Dublin.

433

HIGH COURT OF CHANCERY.

Pursuant to an Order of the High Court of Chancery, made in the Matter of the Estate of Josephine de Bode, late of No. 5 Anglesey View, Kingstown, in the County of Dublin, spinster, deceased—the Creditors of the said

JOSEPHINE DE BODE, who died in or about the month of January, 1874—are, on or before the 20th day of JUNE, 1874, to send by post, pre-paid, to Mr. EDWARD H. DE MOLEYNS, of No. 17 Herbert-street, in the City of Dublin, the Solicitor of John Stanford, the executor of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Order.

Every Creditor holding any security is to produce same before the Right Honourable the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 30th day of JUNE, 1874, at Twelve of the Clock noon, being the time appointed for adjudicating on the claims.

Dated this 22nd day of May, 1874.

456 A. T. CHATTERTON, Chief Clerk.

IN THE COURT OF BANKRUPTCY, IRELAND.

JAMES MURRAY, of 87 Harold's Cross, in the County of Dublin, Grocer, who was on the 19th day of May, 1874, adjudged a Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 19th day of JUNE, 1874, and on TUESDAY, the 7th day of JULY, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

HAMILTON & CRAIG, Solicitor, 30 South Frederick-street.

441

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, May* 30, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JUNE 6, 1874. No. 384.

CHANCERY LETTINGS.

SINCE the passing of the Land Act, two appeals have come before the Judges of Assize, and, so far as we are aware, two only, that involve questions as to the right of the tenant under a *Chancery letting pending the cause*, to compensation on quitting his holding. The first is the case of *Ward* v. *Walker* (see "Donnell's Land Act Chapters and Reports," p. 391; and 6 Ir. L. T. R., p. 155), which was heard by Judge Fitzgerald, at the Wicklow Summer Assizes, 1872; the second, that of *Rogers* v. *Fitzgibbon and others* (not reported), which was heard by Baron Deasy at the Cork Summer Assizes, 1873. In the former case the claimant had become tenant under the Receiver Master pending a cause, and, at the termination of the cause, was evicted by the party then admittedly entitled to the lands. He claimed compensation for disturbance and for improvements. Judge Fitzgerald allowed the claim for improvements, and intimated an opinion that the claim for disturbance did not lie; but expressed his willingness to reserve the latter question for the consideration of the Court for Land Cases Reserved. By consent, the arrears of rent were set off against the claim for disturbance, and consequently no point was reserved.

In the latter case the tenant was dispossessed by the Receiver Master, at the termination, by effluxion of time, of a seven years' lease pending a cause, although the cause was still pending; and he claimed for improvements only. The respondents named in the claim were Master Fitzgibbon (the Receiver Master) and all the other parties named in the title of the Chancery cause. Master Fitzgibbon was the only lessor named in the said lease; and, although it appeared on the face of the lease that it was solely in his capacity of Receiver Master that he had made the lease, it did not in any way appear who the parties entitled to the premises were. The claim was served upon the receiver as the known agent of the landlord, resident in the County Cork (*vide* Land Act, sec. 16); and a notice of dispute was served by all the respondents, they all appearing by the same solicitor. At the hearing the lease was proved, and a decree asked against the Receiver Master, as the person in privity with the claimant; and evidence of the alleged improvements was tendered. Baron Deasy, however, after a lengthened argument, declined to hear evidence of the improvements, and dismissed the claim on the ground that the Receiver Master was an officer of the Court of Chancery, and that the letting was made by him in that capacity. So the matter rests, and the immunity of the Receiver Master from land claims is established.

As the authorities now stand, the position of a tenant under the Court, as regards the Land Act, is briefly this: if dispossessed during the continuance of the cause, he is remediless; but if dispossessed by the owner of the lands at the conclusion of the suit, he can sustain a claim for improvements.

In *Rogers* v. *Fitzgibbon* the claimant's lease was in the common form used in the Irish Court of Chancery, the practice here differing from the English practice in this, that the lease is made, not by the receiver, as in England, but by the *Receiver Master*. In *Dancer* v. *Hastings*, 12 Moore, 34, it was long ago decided that a demise by a receiver appointed by the Court of Chancery is a good lease to entitle the receiver, as lessor, to distrain, notwithstanding the fact that it appeared on the face of the lease itself that the receiver was not himself the owner of the premises; see also the recent case of *Jolly* v. *Arbuthnot*, 4 De Gex. F. & J. 224, where *Dancer* v. *Hastings* was explained and acted upon by the Court of Chancery Appeal. But for the rule thus laid down, it would be exceedingly difficult for the Court of Chancery to deal with its tenancies, especially in the numerous class of cases where the object in appointing a receiver is to look after premises the title to which is still in dispute. In *Rogers* v. *Fitzgibbon* both *Dancer* v. *Hastings* and *Jolly* v. *Arbuthnot* were referred to as showing that even if Deasy's Act (23 & 24 Vict., c. 154) and the Irish Land Act (33 & 34 Vict., c. 46) had not been passed, the tenant was entitled to treat the Receiver Master as his landlord for all purposes. By the provisions of the former Act (sec. 3) the relation of landlord and tenant is made to depend "on the express or implied contract of the parties, and not upon tenure or service;" and by the latter (the Land Act) it is enacted that the term "landlord, in relation to a holding, shall include a superior, mesne, or immediate landlord, *or any person for the time being entitled to receive the rents and profits, or to take possession of any holding*."

Baron Deasy did not expressly rule the point; but, having based his judgment upon what may be called the "official immunity" of the Receiver Master, may be assumed to have given an implied assent to the claimant's contention with respect thereto.

The question whether, and to what extent, an ordinary letting by the Receiver Master is exempted from the operation of the Land Act, is manifestly of much importance to the public. It is not alone to readers of Dickens that dilapidated buildings and barren acres suggest the chilling influences of Chancery mismanagement. It is in the nature of things that it should be so, and the fact is proverbial. When, therefore, the Legislature stepped forward to give to the tenant the means of supplementing the neglect or incapacity of the land-owner to improve his own estate, by guaranteeing to the tenant, on quitting his holding, the money value of the improvements which he had effected, men thought that there was no class of holdings more likely to be benefited by the stimulus thus given to industry than those held under the Court of Chancery; because lettings of this kind are always, in form at least, of a temporary character, and expenditure by the Court on *improvements* is rare—even in the case of mere repairs, the matter must be adjudicated on by the Master sitting in Dublin before an order for such expenditure is made. We have already stated the very limited extent to which the statute, as judicially expounded, tends to justify those anticipations.

It is quite possible that the rights at present recognized may be still further curtailed. We have said that Judge Fitzgerald has upheld a claim for improvements against the owner on the determination of the tenancy by the ending of the cause. Mr. Butt, however, is of opinion that tenancies of the class we are considering come within the provisions of section 15 of the Land Act regarding temporary lettings, which are excluded entirely from the benefit of the Act (Butt on the Land Act, p. 454).

Digitized by Google

TESTIMONIAL TO THE LATE RIGHT HON. FRANCIS BLACKBURNE.

A meeting of several members of the Bar was held on Thursday evening in No. 1 Arbitration Room, Four Courts, to make arrangements for subscriptions towards getting painted a full-length portrait, in order to perpetuate the memory of the deceased Lord Chancellor.

SERGEANT ARMSTRONG presided, and Mr. LITTON acted as secretary.

Amongst those present were:—Messrs. Henry Ormsby, Q.C., Solicitor-General; W. F. O'Flaherty, Q.C.; E. F. Litton, Q.C.; C. Kyle; G. Finlayson, Q.C.; F. Johnstone, Q.C.; J. S. Wall, Q.C.; H. H. Hamilton, Q.C.; M. N. Clarke, Q.C.; and R. Shekleton, &c.

Mr. H. H. HAMILTON said that he had received subscriptions from Lord O'Hagan, Chief Justice Whiteside, the Lord Justice of Appeal, the Chief Baron, Sir Joseph Napier, Baron Fitzgerald, Right Hon. Abraham Brewster, the Vice-Chancellor, Judge Warren, Judge Keating, Master Brooke, &c., accompanied by letters referring to the late Chancellor as an ornament to their profession, and expressing their approval of the testimonial Mr. Hamilton intimated that over £100 had been already subscribed. He moved that a committee be appointed to take the necessary steps to obtain a portrait of Lord Chancellor Blackburne in his robes, as Lord Chancellor of Ireland, to be painted by some eminent artist, as a work of high art, worthy of the great lawyer and Judge, whose likeness is to be taken, and of the distinguished position which it is intended it should occupy in the hall of the King's Inns. He referred to Mr. Blackburne's career at the bar, as Attorney-General, Master of the Rolls, Chief Justice of the Queen's Bench, Chief Justice of Appeal, and Lord Chancellor, and said there was no honour which had been so appreciated by the deceased as his selection to fill the office of Vice-Chancellor of the Queen's University in Ireland. Every facility would be given by the members of the family to the artist who would be selected to paint the portrait. He would have, in the first instance, the fine picture by Catterson Smith, representing the late Chancellor in his robes as Chief Justice, and a capital photographic likeness taken recently.

Dr. DARLEY, Q.C., seconded the motion.

SERGEANT ARMSTRONG, in putting the motion, referred to the late Chancellor as one of the most consummate and profound lawyers of our time, and one who in every relation of life, public and private, was an ornament to society in every shape.

Mr. WALL, Q.C., said no one had subscribed more cheerfully to the testimonial than the present Lord Justice of Appeal.

The motion passed unanimously, and the proceedings terminated.

MR. JUSTICE LAWSON'S REPORT ON THE GALWAY ELECTION.

The following is the Report on the Galway election presented to the Speaker of the House of Commons:—

At the trial of the above election petition I determined—1st. That Francis Hugh O'Donnell, whose return at the election was complained of, was not duly returned and elected. 2nd. That the last election for the said borough was void, and in compliance with the directions of the Parliamentary Elections Act, 1868, sec. 2, article 14, I report that it was proved before me that previous to and in anticipation of the day of polling, a system of intimidation was organized by the said Francis Hugh O'Donnell and his agents, by threats and mob violence, to unduly influence the voters, and that such system was on the day of polling carried out with the knowledge and consent of the said Francis Hugh O'Donnell, and the said election, in consequence of such intimidation and undue influence, was rendered void, and I further report that the said Francis Hugh O'Donnell, the Rev. Peter Dooley, Roman Catholic vicar-general, and the Rev. Martin Comyns, R. C. curate, were proved at the trial to have been guilty of the corrupt practice of intimidation and undue influence; and I further report that it appeared in evidence before me that a great number of the voters of the said borough were illiterate persons, and voting as such under the Ballot Act, and many of them unable to understand the English language, and that they were and are peculiarly liable to be coerced and unduly influenced, and I am of opinion, and do accordingly report that, the corrupt practice of undue influence has extensively prevailed in the said borough at the election to which the petition relates.

JAMES A. LAWSON, Election Judge.

PUZZLES OF EVIDENCE.

No meter of evidence has, as yet, been discovered. Gas, and heat, and cold, and other things invisible, have their appropriate meters. There is an instrument by which we can acertain how much milk there really is in the liquid which is sold to us under that name. There is, we believe, another ingenious contrivance by which an egg is made to reveal its goodness or its badness. But no meter of evidence has yet been hit upon, and we are forced to proceed by the rude and not very satisfactory process of weighing by means of a judge and jury, or a magistrate, as the case may be. Sometimes this plan answers well enough; one of the scales of Justice tilts up, the other falls quickly down, and the tribunal has no difficulty in saying there is a heavy weight of perjury in one scale, and nothing but Heaven-born truth in the other. But there are other cases when the truth and the falsehood appear to be of equal weight, and the beam of Justice does not know which way to incline.

One has heard of a judge of some kind—an Indian Civil Servant, if we are not mistaken—who said that but for the evidence of the defendant and his witnesses, there would be no difficulty in deciding cases. As long as the plaintiff and his witnesses had the ear of the Court the case seemed as plain as possible, but then came the defendant and his witnesses, and jumbled the case up, and made it quite impossible to come to a decision one way or other

Mr. Fitzjames Stephen, in the dissertation upon the Law of Evidence which precedes his edition of the Indian Evidence Act, mentions a statement made to him by a barrister who had practised in the Courts of Ceylon. This gentleman said that he could always guess that a Cingalese witness was lying if he observed a peculiar twitch in his toes. We wonder whether the toes of perjurers twitch in this country. A Royal Commission ought surely to be appointed to inquire and report. And perhaps, before long the common "take off your glove," bawled by the usher to every witness who comes into the box may give place to "take off your boot," in which case, upon the theory of Mr. Stephen's informant, we might possibly learn something that might be of advantage to Justice.—*The Echo.*

REVIEW.

An Epitome of Leading Common Law Cases; with some short Notes thereon: chiefly intended as a Guide to "Smith's Leading Cases." By JOHN INDERMAUR, Solicitor (Clifford's Inn Prizeman, Michaelmas Term, 1872). Second Edition. London: Stevens and Haynes. 1874.

THIS little book appears to have been intended for the use of students preparing themselves for the Legal Examinations, and is intended to prepare the way for a further study of Mr. Smith's volumes of "Leading Cases," but it is admirably adapted for the use of those who have not the time or inclination to go through the larger works, and yet wish to acquire some knowledge of cases. It has already reached a second edition, and the author has considerably improved on the first edition by appending, in the shape of notes to each case, the "points" arising on it. Thus he sets out occasional sections of the Statutes of Frauds, the Mercantile Law Amendment Act, and Lord Campbell's Act. So that it is now a really valuable handy-book of the fundamental cases on Common Law. In the probable event of a third edition being soon called for, we would recommend Mr. Indermaur to increase the number of cases by putting in a larger selection of those on "Torts;" this might be done without any increase of size or price, by printing more closely and utilizing the frequent blank spaces throughout the book, which we fear will not be filled up, as the author hopes, by MS. notes of the students.

Digitized by Google

THE JUDICATURE BILL.

Important Meeting of the Irish Bar.

An important and numerously-attended Meeting of the members of the Irish Bar was held at three o'clock on Saturday evening, in the Law Library, Four Courts, for the purpose of receiving the report of the Committee appointed to consider the provisions of the Judicature (Ireland) Bill.

This Committee consisted of Messrs. C. H. Hemphill, Q.C.; W. A. Exham, Q.C.; F. R. Falkiner, Q.C., James Greene, Q.C.; J. F. Elrington, Q.C.; J. H. Monahan, Q.C.; J. A. Byrne, Q.C.; W. D. Andrews, Q.C.; E. M. Kelly, William Hickson, David Ross, R. P. Carton, D. H. Madden, George Keys, D. Le Poer Trench, and William H. Kisbey, Hon. Sec.

The chair was occupied by Thomas M'Donnell, Esq., Q.C., Father of the Bar.

The minutes of the last meeting having been confirmed,

Mr. Kisbey read the Report of the Committee, as follows:—

The Committee appointed by the Bar to consider the provisions of the Judicature (Ireland) Bill beg to submit the following Report:—

Part I.

Constitution and Judges of Court of Judicature.

We are of opinion that no sufficient grounds exist for such a reduction of the Judges of the Superior Courts of Common Law as is proposed by the Bill; and we think the principle of the measure can be carried out without such a reduction. We form this opinion for the following reasons:—

The disproportion of judicial strength to judicial business has hitherto been alleged to exist only in the Court of Common Pleas, the Probate and Matrimonial Court, and the Admiralty Court. It has never been suggested that the Judges of the Queen's Bench and Exchequer have not been fully occupied; the former, even with the aid of frequent sittings out of Term, having been unable to prevent the accumulation of inconvenient arrears; while in the Common Pleas the duties imposed by the Parliamentary and Municipal Elections Act, form an important and increasing department of judicial function. We think that if the business of the Probate and Matrimonial Court, and the Admiralty Court, be now attached to the Common Pleas as an integral portion of that division of the High Court, the time of the Judges of that division will also be fully occupied.

An interchange of judicial duties between the Judge of the Court of Probate and the other members of the High Court is contemplated by the Bill. Three-fourths of the business of the Probate Court at present is essentially that of a judge at Nisi Prius. Very many of the cases now tried in that Court in Dublin would be much more conveniently heard at the Assizes; whilst by comprising its Dublin causes in the Nisi Prius lists of the Common Pleas, a considerable saving of the time of jurors would be effected. To make the Probate Court a permanent portion of the Third Division, would, therefore, only the more completely give effect to what appears to be a main principle of the new measure. In carrying out this suggestion it would be necessary to reduce the number of divisions of the High Court from five to four; and each of the four divisions would consist of not less than four Judges. The necessary alterations in the 6th, 14th, 17th, 34th, and other clauses, would for the most part be merely verbal.

By confining the reduction in the manner we suggest, the Judges of what we may term the Common Law Divisions, would remain of the number which has become almost traditionary in the administration of the law in this country—"the Twelve Judges of the land." We regard it as of special importance that by such an arrangement there would be no need for an alteration in the Circuit system, which has hitherto worked well, and the great public and professional confusion, which would be the inevitable result of the proposed change, would thus be obviated. The business of the Assize Courts has already received a large accession from the appellate jurisdiction given by the Land Act; and must further be considerably increased if an equitable jurisdiction for plaintiffs be conferred on Chairmen of Quarter Sessions, as seems to be contemplated by the Bill. The legal rights acquired by tenants under the Act of 1870 have already introduced questions of difficulty between the persons claiming the tenants' interest, and the adjustment of such questions will necessarily be cast on the Courts of the Chairmen, and by way of Appeal on the Judges of Assize. We therefore protest against the contemplated reduction of the Circuits, and we recommend that sub-division 2 of clause 61 should be struck out of the Bill.

In reference to the proposal to reduce the number of Judges, we cannot fail to recollect that the report of the Common Law Commission (dated July, 1863) was expressly unfavourable to any such change (see pp. xviii. to xxii of First Report). It is no less true now than it was then that a "strong national feeling exists in Ireland against a reduction in the number of the Judges of the Superior Courts of Common Law;" and when at the close of the year 1873, the intention of reducing the number of those Judges was, whether rightly or wrongly, imputed to the late government, it was received by all classes in Ireland with a unanimity of disapproval not often found in the discussion of questions in this country.

We do not think it within our province to offer any opinion as to the propriety of increasing the Puisne Justices and Junior Barons of the High Court, or their staffs; but we are of opinion that, with a view to the efficiency of the Court of Appeal, a marked difference should exist between the salaries of the permanent Judges of that Court, and those of the Puisne Justices and Junior Barons of the High Court. We further consider it highly undesirable that the permanent Judges of the Court of Appeal should in any case be employed in other than appellate business.

Parts II. and III.

Jurisdiction and Law.—Distribution of Business.

The Bar of Ireland having already expressed their opinion that the House of Lords should continue to be the ultimate Court of Appeal for the Three Kingdoms, it is unnecessary for us further to refer to the important clause in reference to the establishment of an Imperial Court of Appeal. The principal other matter calling for attention in this part of the Bill is the extended jurisdiction given by it to the Landed Estates Court.

The clauses which provide for the concurrent administration of law and equity, and declare and amend the law to be administered by the High Court of Justice in Ireland, are identical with those in the English Act, and call for no special observation, with the following exception:—In tranferring to the Irish Act the 8th sub-division of the 28th clause (section 25 in the English Act), a section of an Irish statute appears to have been overlooked (19 & 20 Vic., c. 77, sec. 3), which prohibits the appointment of a receiver in certain cases. It should be, in our opinion, expressly declared whether or not the Legislature intend to repeal this section by the clause of the bill above referred to, which appears to confer a power of appointing a receiver in all cases, limited only by the discretion of the court.

The Judge of the Landed Estates Court will become a judge of the High Court of Justice (s. 34), endowed with the plenary powers of that court, and exercising the special statutory jurisdiction hitherto vested in the Landed Estates Court (s. 7). Having regard to this, we think the wording of the 40th clause of the bill calculated to cause confusion, as it purports to enlarge the jurisdiction, instead of defining and extending the duties of the judge of the Landed Estates Court. In particular, it seems inconsistent to give to that judge the power to appoint a receiver, which power has been already given to every judge of the High Court of Justice (clause 28, 8th sub-clause). Moreover, the 7th clause contemplates that the 40th clause should define the duties of the judge, and we think that it should be so expressed.

The enlarged powers of the Landed Estates Court, taken in connection with the 7th sub-division of the 27th clause (which provides for the complete determination of all matters in controversy between the parties to any cause or should be conferred on inferior courts, it should be conferred and regulated by one and the same statute. To effect the

Digitized by Google

purposes provided for by this part of the bill the constitution matter, and the avoiding of multiplicity of legal proceedings), point to the conclusion that the Landed Estates Court will in future hear and decide most (if not all) of the questions which arise in the progress of a proceeding in that court, and which are now the subject matter of plenary suits in equity. This must considerably increase the business in that court, already too heavy for one judge, and affords an additional reason why a second judge should be appointed.

When questions of the class above referred to arise in the Landed Estates Court we consider it of the highest importance that suitors should have the protection of the ordinary rules of pleading and evidence. We think that proceedings in the Landed Estates Court division of the Court of Chancery should be included in those enumerated in the Schedule to the Bill (Rule 1.) In the great majority of cases, where the application to the Court is unopposed, the plaintiff's statement would supply the place of the present petition, and the subsequent proceedings might follow the existing *cursus curiæ*. In the cases where the right to sell or otherwise deal with land is opposed, there appears to be no reason why the rules of pleading which are to prevail in other branches of the Chancery division should not be adopted.

PART IV.

TRIAL AND PROCEDURE.

We think that rule 18, which requires the several statements of complaint, defence, counter claim, and reply to be printed would work very injuriously in what has hitherto been known as Common Law business, and which will, it is assumed, be transacted in future in the division of the Queen's Bench, Common Pleas, and Exchequer. In business of this nature expedition is of the greatest moment. Should printing be required in every case, it will of necessity involve a considerable extension of the time now allowed for pleading in Common Law actions. The statement is not to be delivered until after appearance, and for appearing a shorter time than a week can hardly be allowed. It would be impossible to prepare and print a statement in a less period than 14 days, as the rule manifestly intends that it is not be prepared by anticipation. A defendant should be allowed at least 14 days more to prepare and furnish his statement of defence or counter claim, and not less than a week should be given to the plaintiff to prepare and print his reply. It will thus be seen that under this rule an action cannot be at issue until six weeks at earliest after the writ of summons is served. Besides the delay which would be thus caused, the expense of printing would press very hardly on suitors, especially in small cases.

We suggest that it should be left to the rules to be made in pursuance of the Act to prescribe in what cases printed statements should be required.

Rule 47 places the subject of costs in all cases entirely at the discretion of the "Court." The interpretation clause does not give any definition of the word "Court," and under the rule as framed it does not seem certain whether it will include a judge conducting a trial in some one or other of the modes pointed out by rules 30 and 31. It is probably so intended, since by clause 32 a commission of assize shall be deemed to constitute a court of the High Court. But apart from this matter of form, we think that the change which this rule will introduce into what has been known as Common Law business is on principle open to grave objections. The relaxation of the strict, well-defined rules as to costs will in our opinion lead to great confusion. It will render it impossible for the profession to advise with any degree of certainty on the prudence or propriety of beginning or carrying on proceedings, and it will lead to dissatisfaction and suspicion in the mind as well of the successful suitor who is denied costs as of the unsuccessful one who is made to pay them. Besides, this absolute power to give or withhold costs would, we feel sure, impose an irksome and unwelcome burthen on the judge; while its tendency would be to strike at the independent and fearless exercise of his profession by counsel.

We think that if any such discretion is to be entrusted to the bench, such a check, at all events, should be provided as is imposed on the judges of the Landed Estates Court, who are required when refusing to make an unsuccessful party pay costs to state on the face of the order the reason why such costs were withheld (21 and 22 Vic., c. 72, s. 78).

We think, too, that if such discretion be given, the granting or withholding costs should be subject to an appeal, which, by the 50th clause of the Bill, is denied to a suitor on a question of costs only.

Rule 48 provides that "a new trial shall not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action." The effect of this rule, together with abolition of Bills of Exception by Rule 49, will be to leave all applications for new trials entirely at the discretion of the Court. We cannot but think that this rule will, in its working, seriously affect the interests of suitors and the independence of the Bar, and should be met by our strong and earnest protest against its adoption. The rules of law and evidence will be replaced by the discretion of the court. Once the wholesome checks which these rules impose against misdirection and judicial mistakes are taken away, the Bench will be practically irresponsible, and general dissatisfaction and suspicion will be created by substituting what Lord Coke has termed "the crooked cord of discretion" for "the straight line of law." The integrity of the Bench will be questioned and its impartiality assailed. Reckless litigation will be encouraged, for a suitor will be under strong temptations to take his chance (1) that the judge may possibly misdirect; (2) that such misdirection may not be set right; and (3) that in the end, and even though beaten, he may manage to escape costs.

PART V.

OFFICERS AND OFFICES.

With reference to the fifth division of the Court of Judicature Ireland Bill, so far as the provisions of this division affect the officers of the future court, their duties, salaries, pensions, and the patronage of their offices, we do not think it necessary to make any report.

We are, however, of opinion that it is highly desirable to appoint shorthand writers or clerks in court to attend every hearing of any civil case before a jury, whether in town or on circuit. Such an office is provided for the Court of Chancery, the Rolls, and the Vice-Chancellor's Court at present (vide 30 and 31 Vic., cap. 129, ss. 20 and 23); for the Probate Court under the General Rule 62 of that court; for the Matrimonial Court under General Rule 46; and for the Court of Admiralty under 30 and 31 Vic., cap. 114, s. 24.

As the proposed High Court of Justice is to be a union of all the present courts (clause 4), it would seem that for this reason alone such an officer should exist in all the divisions of that court, as he will exist according to the proposed arrangements in some of them. The want of such an officer in jury cases to take an accurate note of the evidence and Judge's charge has been long felt, and the value of his services when he is employed, as in the Probate Court and Court of Admiralty, is generally acknowledged. The employment of such an officer in jury cases would introduce a certainty and precision into all proceedings subsequent to the first trial of a cause, which are conspicuously wanting at present, and would get rid of the practice of counsels' certificates and the transcript of the judges' notes on new trial motions.

We think that such clerks in court should be officers of the High Court of Justice at a fixed salary, to be supplemented by an allowance for going circuit. A transcript of his notes would only be required in certain cases and should be paid for when required, by the party requiring them, at a tariff, which might be provided by the rules.

PART VI.

JURISDICTION OF INFERIOR COURTS.

We recommend that the three sections contained in this part be struck out of the bill. They apply only to such inferior courts as now have, or may, after the passing of the Act, have jurisdiction in equity. There are no Courts in Ireland now having any jurisdiction in equity in the sense of a power of enforcing for plaintiffs their equitable rights, and we think it better that if any such equitable jurisdiction of the inferior tribunal should be entirely remodelled.

Digitized by Google

They only sit periodically, and can hardly be said to exist save during their actual sitting. They have no staff of assistant officers to take accounts or deal with details. They have no machinery for enforcing any orders, except those for payment of money; and practically no records to perpetrate evidence of their proceedings. They were originally constituted as small debt courts, and have retained during the extension of their jurisdiction too much of the rudimentary character of such tribunals to be available without reconstruction for the demands of an administrative jurisdiction.

We altogether object to those clauses of the Bill which give to the judges a compulsory power of referring causes. The exercise of such powers would not, in our opinion, effect a saving of expense to the suitor, but, on the contrary, would increase the costs of litigation, and would, in almost all cases, be productive of dissatisfaction.

The short time allowed for the consideration of the Bill has compelled your Committee to confine their report to the most prominent details of the proposed measure; and they must plead this pressure as an excuse for the absence from this report of a more minute consideration of the important provions which the Bill contains.

Sergeant ARMSTRONG, in moving the adoption of the report, discussed the several points mentioned in it, and entered into reasons why the Bill should be amended as suggested. Referring to many points in the Bill it appeared to him that the measure must have been drafted by some person unacquainted with the practice of the courts in Ireland, and the difference between the legislation of the two countries. The result was that many provisions imported by the scissors from the English Act were put into this Irish Bill—provisions totally unsuited to Ireland. Such a state of things rendered it necessary that a representation should be made upon the part of the bar with the object of calling attention to the fact that if the proposed Bill were not amended it would be detrimental to the public interest, and an injury to the profession. Whatever opinions might be entertained as to the desirability of the measure, he was afraid they should assume that a measure would pass, and therefore it was for the public benefit that every effort should be made to have the Bill framed in such a manner as would accord with the habits and feelings of this country and the conduct of affairs generally. He dwelt particularly upon the mischiefs arising from delays in the Landed Estates Court, arising from the overtaxed energies of the able Judge who presided there. It was of the utmost importance that the business of the Landed Estates Court should be carried on efficiently, and nothing could be more ill-advised than to have a Judge engaged one day at Nisi Prius or other legal business and the next day dealing with all the difficulties and complexities of title to land. The learned Sergeant said the statistics of business done on which Lord Cairns had founded his Bill were totally erroneous. As an instance he referred to the business being done in the Court of Exchequer alone to prove that the removal of any of the Judges of the law courts would leave the Judicature without a sufficient staff, and the business of the public would be seriously impeded.

Mr. MONROE seconded the motion which passed unanimously.

Mr. HEMPHILL, Q.C., moved that the Attorney-General for Ireland be requested to introduce a deputation from the Irish bar to the Right Hon. the Lord Chancellor of England, with the object of having the views contained in the report of the committee enforced—such deputation to consist of Sergeant Armstrong, Mr Falkiner, Q.C., Mr. J. P. Hamilton, Q.C., and such other members of the bar as might find it convenient to proceed to London. As the Bill would be considered in committee on Tuesday evening next, it was necessary that the deputation should have an interview with Lord Cairns on the morning of that day, so as to lay their report before him. The deputation would be able to make explanations regarding the matters to which they referred and to the practice in Ireland. They would be able to give information on subjects with which possibly those with whom they would have to deal would be unacquainted, and therefore it was desirable that the members of the Irish bar should see his lordship.

Mr. HOLMES seconded the motion, and also pointed out the inaccuracies on which Lord Cairns had based his Bill. In reality, the business in the Irish courts had increased latterly. It should be borne in mind that the number of cases which absolutely come to judgment in the courts gave no idea whatever of the number of cases for adjudication which never reached that stage. Were the provisions of the new Bill enforced, it would undoubtedly lead many suitors to abandon their claims rather than undergo the expense and delay which would be caused by the system proposed.

At the suggestion of Mr. Samuel Walker, Q.C., that some of the gentlemen from the Equity bar should be nominated to accompany the deputation, Messrs. Dames, Q.C., and Edward Gibson, Q.C., were appointed on the deputation.

The resolution was then put and carried, and the proceedings terminated.

A meeting of the members of the Bar was held in the Library, Four Courts, on the 4th inst., to consider a telegram received from Messrs. Falkiner, Q.C., Hamilton, Q.C., Kaye, LL.D., and Hugh M'Dermott, who happen to be at present in London. It appears that these gentlemen, having regard to the complications that have arisen in reference to the reception by Lord Cairns of a deputation from the Irish Bar to suggest certain amendments in the Judicature Act, telegraphed in the morning to know would they represent the delegation. Some discussion took place on the subject, but it was ultimately resolved that in consequence of the peculiar circumstances surrounding the case, the answer to be telegraphed to the gentlemen in London should be "No."

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

TO THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL IN PARLIAMENT ASSEMBLED.

The Humble Petition of the Incorporated Society of Attorneys and Solicitors of Ireland under their Corporate Seal,

SHEWETH:—That your Petitioners have read and very anxiously considered the Bill recently introduced into your Right Honourable House, entituled "A Bill for the Constitution of One Court of Judicature, and for other purposes relating to the better Administration of Justice in Ireland."

That the changes proposed by that Bill, and the public interests involved in it, affecting the very foundation of the Jurisprudence and whole Legal system of our country, seemed to your Petitioners so momentous, that they felt called upon to convene a General Meeting of their profession to consider the subject.

That such meeting was held, and many very valuable observations and suggestions were made which resulted in a Resolution referring the whole subject to your Petitioners as the representatives of the profession at large, with directions to take action in the matter as they might think best.

That your Petitioners have considered the question not merely as affecting their own interests, or those of any particular class, but directly and vitally affecting the interests of the whole community.

That your Petitioners have been in cordial communication with the Committee of the Bar of Ireland in relation to the Bill, and have had the opportunity of reading and considering the report of that Committee on the subject, and your Petitioners beg to express their concurrence in and approval of the objections, recommendations, and suggestions, so far as they go, which that Committee have made, and which Report will, as your Petitioners believe, be submitted to your Lordship's House for consideration.

That your Petitioners have made a Report to the general body of their own profession upon the subject in question, detailing their views more fully than they would feel at liberty to do in a Petition to your Lordships, and to which Report your Petitioners beg leave to refer.

That your Petitioners humbly, but very confidendly and respectfully submit to your Lordships that there is no class of the community so capable of giving a reliable opinion as to the working and practice of the Landed Estates Court as the members of their profession, and they urge the more

Digitized by Google

strongly the appointment of a Second Judge of that Court because the interests involved are not professional but public.

Your Petitioners, therefore, humbly pray that your Lordships will insert in the Judicature Bill for Ireland a provision for the appointment of a Second Judge of the Landed Estates Court, Ireland, and that your Lordships will take into your consideration the Report of your Petitioners to the members of their profession, as if the same were embodied in this Petition, and that your Lordships will make such alterations in the said Bill, as that Report suggests or as to your Lordships may seem meet.

And your Petitioners, as in duty bound, will ever pray.

RICHARD J. THEO. ORPEN,
President. [Seal.]

JOHN H. GODDARD,
Secretary.

REPORT

Of the Council of the Incorporated Law Society upon the Court of Judicature (Ireland) Bill.

The Council have examined this Bill with much care, and consider it the most important measure respecting Legal Reform in Ireland which has been introduced into Parliament for many years.

PART I.

With regard to the constitution of the Court of Judicature, the Council are of opinion that there is no necessity for the reduction of the Judicial Staff of the Courts of Common Law, and believe that the work to be discharged by these Courts in their altered condition under the present Bill will abundantly occupy the time of at least twelve judges. In confirmation of this opinion, they beg to refer to the Report of the Common Law Commission, dated 1863, which is decidedly adverse to any such change, and no circumstances, that the Committee are aware of, have since occurred to justify an opposite conclusion.

In the opinion of the Council the number of the circuits could not be diminished without a serious injury to the administration of justice, and one which would not be compensated for by the trifling gain in an economical point of view, afforded by the proposed reduction of the Judicial Staff, which to use the language of the Report above referred to, would be (the Council think) "an unwise economy." If, however, such reduction is insisted on, the Council believe that it might be best effected by attaching the contentious business of the Court of Probate to the Court of Common Pleas in the manner suggested by the Report of the Bar, leaving the machinery of the Court of Probate intact for the purpose of discharging the non-contentious business of that Court, which could not properly be discharged by any other Court as at present constituted.

With regard to the Court of Ultimate Appeal, the Council consider that it would be for the advantage of the public that the House of Lords should still be retained as such ultimate Court for England, Ireland, and Scotland, believing it to be of the first importance that there should be a Common Court of Appeal for the three countries, and the decisions of the House of Lords having always been received with such respect in this country, the Council should very much regret the removal of the ultimate appellate jurisdiction from that tribunal. The Council are also of opinion that having regard to the status and position of the Judge of Appeal in the new Court, the remuneration attached to that office should be larger than is provided for by the Bill, it being essential that the position of the Judge of that Court should be rendered more attractive than that of a Judge of the High Court of Justice, whose decisions the Court of Appeal is called on to review.

Upon the question of the reduction of the Judicial Staff of the Landed Estates Court to one Judge, the Council entertain a strong opinion that such reduction would be injurious to the proper discharge of the business of that very important Court, and would therefore urge upon the Government the necessity of filling the office of second Judge in that Court which has been so long left vacant, and which it is the unanimous opinion of the legal profession should be effectively filled.

There seems to be some omission in the 6th Section of the Bill, in which no mention is made of the Judges of the Court of Bankruptcy in the constitution of the High Court of Justice in Ireland. These Judges form a very important branch of the Irish Judiciary, and are entrusted with the administration of the law affecting the entire mercantile interests of this country, and should therefore be included in the constitution of the Court.

PART II.

The Council consider the rules contained in the 28th Section of the Bill, will form a very important and beneficial change in the law, especially that rule relating to the assignment of debts and choses in action, which will be a valuable boon to the mercantile public.

PART III.

While the Council approve of the abolition of terms provided for by the 29th Section, they trust that some definite periods will be fixed for the sittings of the Courts, which may be more consonant with the convenience of suitors and the legal profession, but which will still be defined periods, and prevent surprise or uncertainty in legal proceedings.

The Council would certainly regret that the period hitherto allowed for summer vacation, and commonly known as "the Long Vacation," should be curtailed, and trust that in any future arrangements for the sittings of the Court, in justice both to the Judges and the legal profession, this necessary period of relaxation will not be taken away.

The Council entirely approve of the additional jurisdiction given to the Landed Estates Court by the 40th Section of the Bill, but hope that provision will be made in the Rules for the mode of proceedings in that Court to raise the questions which the Bill gives the Court the power of deciding, as the present forms of procedure in the Landed Estates Court are quite inadequate for the purpose.

PART IV.

The Council cannot but view with apprehension the levelling of all distinctive modes of procedure in the different Courts into one common form, which it is apparently intended to apply to every kind of proceeding. Convenience and necessity have, in a great measure, originated the present distinctive character of such proceedings, and the Council believe that to abolish such distinction will lead to very great inconvenience and confusion in practice. To limit the trial of cases which have been hitherto heard in Courts of Equity to *viva voce* evidence would prove, in the opinion of the Council, very injurious, and lead to much uncertainty of result.

The Council strongly disapprove of the provisions contained in the 56th and 57th Sections, which enables a Judge to compel a suitor, *nolens volens*, to allow the case to be decided by a Referee to be named by the Judge. They consider such a provision a very dangerous one. When Judges are remunerated by the State for the discharge of judicial functions, the Council think it would be a great hardship upon the suitor to be driven to the employment of a Referee at his own expense to discharge the duties which properly belong to the Judge. The experience of the Council enables them to say that the result of references to arbitration is almost invariably unsatisfactory to the parties, and attended with greater expense and delay than the trial of a case before the Court itself. If there are matters of detail, such as accounts which cannot properly or conveniently be discussed and decided before a Judge and Jury, the Council think such matters should be referred to a proper officer of the Court, as has hitherto been the practice. References of this description are constantly held by the Masters of the Common Law Courts, who are duly qualified for the discharge of such duties, and the Council consider that the public are entitled to the advantage of having cases tried, as far as possible, by the Judges themselves, and if not, by the proper officer of the Court, paid by the State for that purpose.

Digitized by Google

PART V.

The Council desire to direct particular attention to the Office of Secretary, which is created by the 78th Sec. of the Bill, and is to be in the gift of the Judge, which Officer is to discharge the duty of Registrar and Clerk of Assizes at Nisi Prius on Circuit in cases where the Judge, to whom he is attached, shall go Circuit. Such officers should, in the opinion of the Council, be legal practitioners qualified to discharge the legal duties devolving upon them, and they consider the Bill should be amended by requiring every officer so appointed to be a Solicitor of not less than five years' standing.

PART VI.

With regard to the equitable jurisdiction given to the inferior Courts by the 80th Section of the Bill, the Council are of opinion that before such power is given, proper machinery should be constructed to carry out the duties which would thus be cast upon the Civil Bill Courts, for which they are at present totally unfit not being Courts of Record, and practically having no existence save during the short period in which the Chairman is sitting.

With regard to the Rules of Procedure in the Schedule to the Bill, one very important and, it seems to the Council, dangerous rule (Rule 7), gives the Plaintiff power by filing an affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, to compel the Defendant to shew cause before the Court why the Plaintiff should not be at liberty to sign final judgment against him, thus obliging the Defendant, in anticipation of the trial, to disclose his whole case.

The Council consider the provision of the 18th Rule respecting the printing of pleadings to be inconvenient and unnecessary. In many cases pleadings are short and trifling, and to put the parties to the expense of printing them seems totally uncalled for. Besides being expensive, the delay in many cases which will be occasioned by the necessity of printing pleadings, will be exceedingly prejudicial to the interests of suitors.

They also consider that the 47th Rule, leaving all costs in the discretion of the Court, is exceedingly objectionable. The rule hitherto prevailing, which as a general principle made the costs follow the result has added certainly to the administration of the law, and the Council believe that to alter that principle, would be highly injurious, and lead to the greatest disappointment to the suitors of the Court, especially as the right to appeal in respect of costs is, by the Bill, absolutely taken away. The Council are of opinion that if the Judge is given absolute discretion in the question of costs, the suitor should at least be entitled to an unconditional right of appeal from any order affecting costs.

The Council feel that much of the success of the measure, should it become law, will depend on the General Orders which the Lord Lieutenant is authorised to make on the recommendation of the Judges, and trust that when the Judges come to prepare such orders, the Council may be allowed an opportunity of considering them before they are promulgated.

The limited time afforded to the Committee for the examination of this Bill, leaves them unable to report in detail upon all its provisions, but while they feel that some of the matters they have referred to are grave causes of objection, they have no doubt that in many respects the Bill may prove beneficial to the administration of justice.

LORD JUSTICE CHRISTIAN AND THE JUDICATURE BILL.

In reference to the strictures of Lord Justice Christian on this Bill, contained in the several letters hitherto published, the *Times* remarks that—

Mr Christian complains of the miscellaneous composition of the Chancery Division of the new Irish High Court, which is to consist of the Lord Chancellor and five other Judges, who, so far as salary and the previous reputation of the offices may be considered to form a test, at present occupy four distinct professional grades. Four of the six Judges have been heretofore regarded as Judges of the Superior Courts, but the remaining two are Bankruptcy Judges, who have received half the pay, and perhaps not more than half the repute, of the Master of the Rolls and Vice-Chancellor. It would seem as if an oversight had crept into some part of the Bill, for the 6th clause excludes the two Bankruptcy Judges from the High Court, while the 34th clause includes them in one of its principal divisions. Lord Justice Christian wishes to abolish these two Judges, and with them to annihilate the Landed Estates' Court, which used to support two Judges of its own, and on their ruins to build up a new Vice-Chancellor, who will transact all their small affairs as an appendage to his Chancery jurisdiction. He quotes from the English Bench with approval the precedent of a Vice-Chancellor who is also Chief Judge in Bankruptcy, and his letter seems to imply a belief that bankruptcy business is now parcelled out in this country between the Chief Judge, who sits one day a week in bankruptcy, and the County Court Judges. But the Lord Justice must be well aware that the bulk of the London business is now performed by the registrars in bankruptcy, who are not Judges at all, and who rather belong to "that lower class of offices" of which he speaks so contemptuously. His statistics of the comparative occupation of the Irish and English Equity Judges furnish an argument rather for extending the number of our Judges than for adding to the Irish; for whereas our Judges have an enormous amount of administrative work in connexion with joint-stock companies and commercial affairs, of which but a faint similitude is found in Dublin, it appears that each of our Chancery Judges has in the cause-list of this term 92 causes, against 20 causes for each of the Irish Chancery Judges. On the ground of existing pressure, there is, therefore, disclosed but little reason for a new Irish Vice Chancellor; but our correspondent's letter raises a question of more practical importance—namely, the best machinery for transacting administrative as opposed to contentious procedure. In the answer to this question England is interested at least as much as Ireland.

There is a vast deal of business, purely administrative, and relating to the management of property, which used in former days to be relegated in this country to the Masters in Chancery, and is still entrusted to the Masters in Lunacy. There is a large amount of other business now confided to the Enclosure Commissioners in England, and to the Charity Commissioners, over which Chancery once had exclusive control. Some recent statutes have added to the powers of the Court of Chancery in what Lord Justice Christian calls "its relations with the territorial property of the kingdom." It is felt to be an evil that family settlements, with the maintenance of which the strongest interests of the country are concerned, should keep out of the market land which, for the sake of every one, would be better sold or made marketable. Accordingly, a power has geen given to the Court of Chancery to sanction sales and the grant of building leases and mining leases of settled lands. This power has been largely exercised, and the only objection to the tribunal is that applications to it are expensive. Lord Justice Christian, as we read his letter, would say the Court of Chancery is the proper tribunal to grant the authority. But is there anything in the training of the Equity Judge which in an especial degree qualifies him for the office? Does he know himself—how can he know—if and how a particular estate requires improvement? He has never seen the estate. He acts, of course, on the evidence supplied by a surveyor's affidavit, and applications under the Act relating to the sale and leasing of settled estates are rarely contested. In this country, which possesses so much that the Irish Lord Justice admires and hopes to emulate, many have been thinking for years that we need such a Court of Landed Estates as Ireland possesses, but our correspondent desires to destroy. Our law reformers would distinguish more and more between contentious and administrative business, leaving to the acumen of the practised advocate the sifting of conflicting evidence and the construction of contested writings, while to the real property lawyers, and to men familiar with the management of land—if we had but the rightly organized tribunal and staff—they would confide questions as to the management and improvement of property. We thought we had somewhat to learn in this matter from Ireland, but the Lord Justice tells us, on the contrary, we have everything to teach. Is he altogether right, and is the English law reformer

Digitized by Google

altogether wrong? Or may both take counsel together, and each find in the experience of the other something that will suit the altering conditions of either land?

In reference to the foregoing, the following letter has been addressed to the editor of *The Times*:—

Sir,—As your leading article of yesterday will be read by hundreds for the one that will look at the letter it comments on, will you permit me to set myself right upon one or two points?

I did not propose "additional Chancery Judges." On the contrary, I proposed a serious diminution of them. Of course, I spoke of things as they would be after the Bill became law. There would then be, as the Bill stands, six Chancery Judges. These I proposed to reduce to four, by substituting for three of them (now of Landed Estates and Bankruptcy) one Vice-Chancellor.

The article implies that I desire to destroy the special Irish jurisdictions for conferring Parliamentary titles and maintaining a record of them which are now exercised by the Landed Estates Court. Nothing could be farther from my intention. My idea was, that which is held here by all who are most competent to form a judgment, that those special powers should be preserved entire; but that, instead of keeping up for them an anomalous Court for which all justification has ceased, they should be made part of the general jurisdiction of the Chancery division. The new Vice-Chancellor would be their natural administrator, aided, whenever he needed aid, by the other Judges of that division, whose time, I gave reasons for believing, would afford a sufficient margin for that purpose. This would be a better way of supplying such aid than appointing a second Landed Estates Judge which is being now so loudly called for.

With respect to bankruptcy, what I recommended was simply assimilation to England. I spared your columns details which I had lately given elsewhere. It is really absurd to keep up for the exiougus bankruptcy matters of Ireland two "Judges" with their followings. In the second Report (the 12th of June, 1873) of the Select Committee on Civil Service Expenditure it is stated that it is "the view of the Treasury that two Judges are not necessary, and that the office should be reviewed." The true review would be, in my opinion, to abolish both and adopt the English system, which would be much more workable here than it is there, by reason of the incalculably smaller amount of that business. Even if a second new Vice-Chancellor were found necessary, which I am slow to believe, there would still be but five in the Chancery division against the six of the present Bill, or rather against seven; for, as matters stand, it will be difficult to resist the demand which is being urged for a second Landed Estates Judge. And every Judge's jurisdiction would pervade every branch of the work of the division; whereas, the severalizing of jurisdictions which is made by the 46th Clause is wholly inconsistent with the main principle of the Bill, and makes the fusion of the Courts into one but an empty name.

I remain, your obedient servant,

Dublin, May 30. J. CHRISTIAN.

DISCLAIMER BY TRUSTEES IN BANKRUPTCY.

The doctrines which now prevail with reference to election and disclaimer by trustees of certain property of bankrupts are the result of gradual growth and development, and as it is a most important branch of the law, we propose shortly to trace its history and consider the effect of recent legislation.

Before legislation was directed to the subject bankrupts continued to be liable to the covenants of leases, notwithstanding their bankruptcy. In the reign of George III. an Act was passed (49 Geo. 3, c. 121), and another Act to the same effect passed in the following reign (6 Geo. 4, c. 116). Writing after the passing of these Acts—which, we may observe, related only to leasehold interests—Cook, in his Bankrupt Laws (p. 484), says: "Tenants entitled to any lease or agreement for a lease becoming bankrupt are not now liable for the future rent, or to be sued in respect or by reason of any subsequent non-observance or non-performance of any covenants, conditions, or agreements therein contained, if the assignees accept such lease or agreement for a lease; and, if the assignees do not determine whether they will or will not accept such lease or agreement for a lease, the lessor or person agreeing to make such lease may petition the Lord Chancellor that they may either accept the same or deliver-up the lease, and his order will be binding on all parties." The Act of Geo. 4 was held to apply only to cases between the lessor and the lessee, or assignee of the lease, and not to cases between the lessee and the assignee of the lease: (*Taylor* v. *Young*, 3 B. & A. 521). The Act of 1849 was identical with the Act of Geo. 4 except in this, the words "as aforesaid," were omitted after the word "liable," that is to say, in the Act of Geo. 4 the bankrupt was not made liable "as aforesaid," namely, to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements contained in the lease. The Act of 1849 simply said he should not be liable. In *Manning* v. *Flight* (3 B. & Ad. 211), Mr. Justice Littledale thought these words not so strong as the words in the former Act. On this Messrs. Griffith and Homes observe (Law and Practice of Bankruptcy, p. 289), "But the main reasons for the judgment"—which was to the effect that the lessee who had assigned a lease was not discharged from subsequent observance of the covenants by the bankruptcy of and delivery up to the landlord by the assignee—"remain as strong under the latter Act as under the former ones, for the statute does not expressly provide for an acceptance of a surrender by the landlord, or for a destruction of the rent, although it provides for a discharge of the bankrupt; and the anomaly, it seems, may still arise of a lessor having the land given up to him by the bankrupt assignee of a lease, and still suing the lessee for the rent, who will have no remedy for his rent against the bankrupt."

Formerly it was a question for the court whether assignees of a bankrupt had by their conduct assumed the liabilities of a bankrupt respecting the possession of premises. For example, assignees who meddled with and assumed the management of a farm belonging to the bankrupt were held to have made a sufficient election to take the farm, thus rendering themselves liable to the landlord for all mismanagement: (*Thomas* v. *Pemberton*, 7 Taunt. 206). In another case assignees who entered upon and took possession of a bankrupt's leasehold property were held liable to the covenants in the lease notwithstanding the bankrupt's effects were upon the premises and the assignees delivered up the key as soon as the effects were sold: (*Hanson* v. *Stevenson*, 1 B. & Ald. 303). The Court of Chancery, in exercise of its discretion, considered ten days sufficient to enable the assignees to determine what course was most beneficial to creditors: (*ex parte Scott*, 1 Rose, 446). The difficulties thus arising were dealt with by the Bankruptcy Act of 1861, which, by its 131st section provided that in every case of a lease or an agreement for a lease it should be lawful for the assignees to elect to take the same and the benefit thereof, and to keep possession of the premises up to some quarter or half-yearly day on which rent was made payable by the same lease or agreement, such day not being more than six months from the adjudication of bankruptcy, and upon such day to decline such lease or agreement for a lease. Where the assignees declined the lease, fourteen days were given by the Act of 1849 to the bankrupt in which to deliver up the lease or agreement to the person entitled and thus rid himself of liability.

We now come to the Act of 1869, which has a wider scope than any of the previous Acts. Sect. 23 of that Act enacts that when any property of the bankrupt consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property; and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and, if the same be a lease, be deemed to have been surrendered

Digitized by Google

at the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on determination of the estate and interest of the bankrupt; but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. The Act also provides that any person interested in any disclaimed property may apply to the court, and that the court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just; and that any person injured by the operation of the clause shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

It has been very justly said that it is difficult to thoroughly comprehend the scope of that section. The difficulty of allowing leasehold property to be disclaimed by trustees of a bankrupt without any supervision by the court made itself apparent soon after the passing of the Act, and in July 1871, one of several rules made under the Act had reference to disclaimer, and is to this effect: Where any property of a bankrupt acquired by a trustee under the Bankruptcy Act shall consist of a leasehold interest, the trustee shall not execute a disclaimer of the same without the leave of the court being first obtained for that purpose; and upon any application to the court for such leave, notice of the desire of the trustee to disclaim such interest shall be given to such person or persons as the court shall direct, and such order shall be made thereon as the court shall think fit.

In this condition of the law it is obviously important that trustees should be careful to ascertain the precise nature of the property with which they have to deal; because, whereas it may be dangerous on the one hand to take the responsibility of disclaiming without application to the court, on the other hand expense may be needlessly cast upon the estate by unnecessary motions. An illustration of what is considered within the meaning of the word lease is afforded by the recent case of *Re Roberts* (30 L. T. Rep. N. S. 232), where an agreement for a lease was held by a registrar to require an application to the court, and from the cases there cited it would seem that a mere agreement to procure a lease could not be safely disclaimed without application to the court, or at any rate would justify a motion for the purpose of obtaining leave.

All cases which throw any light upon this question are interesting, and we may therefore refer to *Re Connor* which came before the Irish Court of Bankruptcy in April, and is reported in the IRISH LAW TIMES of last week. The English and Irish Acts are not precisely identical, and the last Irish Amendment Act refers to the previous Bankrupicy Act, different provisions being contained in those respective Acts with reference to disclaimer. We have not space to refer to the particular sections, but it was held that the assignees having served a notice when called upon to elect under the provisions of the 271st section of 20 & 21 Vict. c. 60, declining to accept the lease, no such vesting of the interest of the bankrupt under the lease mentioned in the notice took place so as to render any disclaimer on their part necessary under the 98th section of the 35 & 36 Vict. c. 58. The learned Judge, Miller, J., made some observations refusing the motion by the assignees for liberty to disclaim which are generally applicable to this matter both in England and Ireland. He said: "If the lessor has any claim in respect of past rent under any special circumstances, he must originate an application for the purpose; and I may add, in reference to such applications generally, that my desire to assist lessors to the utmost in the assertion of their just rights, but if lessors will not co-operate with assignees when desirous of relieving themselves of future liability, so as to enable them to close their accounts, I should feel quite justified in sanctioning assignees taking such immediate steps as would necessarily terminate the liability as far as they were concerned. I will only further add that, when this Bankruptcy (Ireland) Amendment Act, as yet so recent in date, is better known, I will hold assignees, who are obliged to resort to the remedies provided by the 98th section of the 35th & 36th Vict., more strictly to the period of time limited by that section than I am disposed to do at present."—*The Law Times.*

THE RIGHT OF EXECUTION-CREDITORS TO PROCEEDS OF GOODS SOLD.

By reason of some excellent and rapid reporting we are able to lay before our readers the decision of the full Court of Appeal in Chancery in the case of *Ex parte Villars, re Rogers*, which was decided so recently as Friday (May 8). The facts of the case, as shortly put by the Lord Chancellor in his written judgment, were these: The bankrupt was a trader. The appellant, on the 30th June 1873, recovered judgment against him for a debt exceeding £600, and on the same day a *fi. fa.* issued, and the sheriff seized under the judgment. The goods seized were assigned to the appellant, the execution creditor, who paid the sheriff the purchase-money, and the sheriff, after deducting rent and poundage, paid back to the appellant the sum for which the levy was made. All this took place more than fourteen days before the petition in bankruptcy was presented on the 1st Aug. 1873. Under such circumstances, the *bona fides* of the assignment to the execution creditor not being impeached, the simple question was whether the execution creditor was entitled to retain the amount paid to him by the sheriff and the goods seized.

To understand the judgment of the Court of Appeal it will be necessary to look at the judgment of Lord Justice Mellish, which is reported 30 L. T. Rep. N. S. 104. His Lordship proceeded apparently entirely upon the ground of the omission of anything in the Act affirmatively giving the creditor a right to keep the money. He said at the close of his judgment, "If the Legislature intended that the execution creditor should be entitled to keep the money after the expiration of the fourteen days, they ought to have said that what they have previously made an act of bankruptcy should thereupon cease to be one. But it remains an act of bankruptcy, and, as such, it invalidates all subsequent dealings with the debtor's property if a bankruptcy petition is presented against him within twelve months; and it would seem rather absurd to say that the particular act itself should not also be invalid, save as far as it is expressly rendered valid by the subsequent provisions of the Act." This raises the point very distinctly, and the Lord Chancellor, and Lord Justice James were perfectly clear upon it. The fact that Lord Justice Mellish found grounds upon which he could call upon a creditor whose *bona fides* were not impeached to hand back the proceeds of a sale conducted with perfect regularity is sufficient to show that there is a defect in the legislation, and this is the root of the whole difficulty. The matter being *res integra*, we might, of course, discuss it in all its bearings, and weigh the merits of the different judgments. But the most useful course which we can take is to refer to the judgments of the full Court, which have been received with satisfaction by Lord Justice Mellish himself. The primary difficulty is that by the Bankruptcy Act suffering the seizure and sale of his goods by a trader debtor on a judgment for more than £50 is an act of bankruptcy. Do the sections of the Act having this effect avoid be make inoperative the seizure and sale itself? Lord Cairns says emphatically no. His Lordship referred to the two acts which may avoid an assignment of property, and which are themselves acts of bankruptcy—an assignment for the benefit of creditors and a fraudulent preference, and he says, "It is to be observed, that as to one of these acts, namely, a conveyance or assignment by way of fraudulent preference, special provisions have always been made in bankruptcy legislation, making such a conveyance or assignment void by express enactment, and reducing it accordingly; and, as to the other, namely, a conveyance in trust for all creditors, it has been held, from the earliest times of bankruptcy law, that as the effect of such a conveyance must be to delay or defeat creditors, the law will presume an intention to delay or defeat creditors, and the conveyance would therefore be invalid as against, and perhaps even without reference to, the policy of the bankruptcy laws; while, as regards both these acts, it is to be observed that they are the voluntary acts of the bankrupt, and on the same principle that they were originally styled 'acts" of bankruptcy, may be fairly avoided and reduced so as to bring back into the general estate the property affected by them."

Then, contrasting an execution, he says, "An execution,

Digitized by Google

on the other hand, levied against the goods of a trader by his creditors, is the act, not of the trader, but of the creditor; and the creditor, on his part, is doing nothing which is censurable, either morally or legally. He is simply using the process of law which he is entitled to use, and nothing short of express words would, in my opinion, be adequate to cut down or deprive him of the effect of an execution which, *ex concessis*, he was entitled, as of right, to put in force."

Beyond this Lord Cairns distinguishes an execution from a fraudulent assignment in a way which is most convincing as to the absolute right of the execution creditor to the proceeds of sale after a lapse of fourteen days. The fraudulent assignment is absolutely void; it is an act of bankruptcy, and is set aside. In the case of an execution, on the other hand, the creditors can, by reasonable diligence, arrest the proceeds and secure them for the estate. Lord Cairns thinks the convenience of such an arrangement is obvious, and he remarks: "If it had been intended by the Legislature in making seizure and sale of the goods of a trader an act of bankruptcy, to make the seizure and sale always, and *ipso facto*, invalid as against a bankruptcy supervening, it would, in my opinion, have been much better and much more natural, and it would certainly have been much more simple, to have enacted at once that there should be no process by seizure and sale against the goods of a trader in any case whatever." In this we quite concur.

We will simply append Lord Justice Mellish's explanatory judgment, which was as follows:—He said that he was glad that his judgment in this case should have been corrected. Sitting alone he could not consistently with what was said by Baron Martin in *Slater* v. *Pinder* (24 L. T. Rep. N.S. 631; L. Rep. 6 Ex. 228) hold that seizure and sale, which were made an act of bankruptcy by the 5th subsection of the 6th section, were not rendered absolutely void by a subsequent adjudication of bankruptcy by means of the operation of the doctrine of relation back. If that foundation failed, then his Lordship's original judgment fell to the ground. He was glad that a fuller examination of the provisions of the Act justified the conclusion that the seizure and sale were not rendered absolutely void by the provision which made them an act of bankruptcy.—*The Law Times*.

THE LAW CLERKS' ASSOCIATION.

The monthly general meeting was held last evening, at 207, Great Brunswick-street. Among those present were:—Mr. Dowling, vice-president; Messrs. Jervise, M'Dermott, Farrelly, Burke, Crowley, Byrne, Devereux, and Flanagan. The Library committee handed in the following subscriptions:—Mr. Baron Fitzgerald, £3; Mr. Baron Dowse, £2 2s., and 58 volumes of books; A. Houston, LL.D., £1 1s.; James Wilson, Esq., £1 1s., and 4 volumes; Morgan Kavanagh, Esq., £1 1s.; H. P. Jellett, Q.C. £1 1s.; R. Donnell, Esq., £1 1s.; Mark O'Shaughnessy, Esq., £1 1s.; J. G. Gibbon, Esq., £1 1s.; Mr. Ross, a member of the association, eight volumes. The secretary gave notice of motion for the half-yearly meeting in July, to change the rules regulating the annual election of the executive committee, so as to allow of the use of voting papers, and to increase the voting power of the members. Mr. Power also gave notice of a motion to consider the effecti which after-hour work has upon health, the *morale*, and rate of salary now payable to the law clerk, and after an address from the chairman on the progress of the association, the meeting adjourned.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

MARRIAGE SETTLEMENT — REVERSIONARY INTEREST—POLICY OF ASSURANCE—MORTGAGE OF POLICY—PAYMENT OF PREMIUMS BY MORTGAGES—LIEN—INTEREST.—By a marriage settlement a policy of assurance on the life of C. was assigned to trustees for the benefit of the wife, for her separate use, for life, and after her death as she should appoint. The husband covenanted that he would pay the premiums, and in default the trustees were authorised to apply the income for that purpose. Subsequently the wife appointed the reversion in the policy by way of mortgage to secure sums of money advanced to her, with interest at five per cent. The husband and the trustees refused to pay the premiums, and they were paid by the mortgagees. On the death of C. the mortgagees claimed to be repaid out of the policy moneys the sums they had advanced for keeping the policy on foot, with interest at five per cent. Held that they were entitled to immediate payment of the premiums paid by them, with interest at four per cent., and to a charge for the remaining one per cent. upon the reversion of the policy moneys: (*Gill* v. *Dowing*, 30 L. T. Rep. N.S. 157. V.C. H.)

CORRESPONDENCE.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—In your leader of last week you dealt with a very important subject. It is gratifying to know that you, at least, desire to advance the interests of legal education in Ireland. Unfortunately the Council of the Incorporated Law Society do not appear over-anxious on the matter. They appear to have determined to "rest and be thankful." Let gentlemen henceforth confine themselves to the instruction communicated in the Solicitors' Hall, where two members of the Council attend to preserve order and to insure the learned Professor a hearing. University law lectures may be attended, but no privileges shall be accorded in future to the great bulk of the students who may attend such lectures.

It is to be assumed that the Law Society were fully conversant with the terms of the 9th section of the Attorneys and Solicitors Act (Ireland), 1866; that they knew the intention of the Act; and that they were well satisfied with the uniform practice of admitting to the profession gentlemen who had *during* their apprenticeship attended a two years' course of University law lectures, in addition to the two years compulsory attendance on the Law Society's own Professor.

Why, therefore, should not an amendment of the Act be sought, in order to conserve and continue a practice that has worked so well, and has conferred advantages on so many? The judicial construction put upon the section referred to should, in my opinion, have been at once followed by an application to Parliament by the Law Society Since they have declined to do so the friends of legal education should at once take independent action. No opposition can reasonably be expected. The leading Irish legal M.P.'s have promised their support. The Law Society could not consistently oppose a measure proposing simply to continue the practice they themselves have hitherto adopted.

It requires no argument to prove that it is only during apprenticeship that the majority of students can conveniently and with profit attend law lectures.

Your obedient Servant,

X.

[We are glad to have received this letter, and shall be happy to publish the writer's further views on the important subject of which it treats. But our correspondent seems to refer to the construction of the Act in a late case, as if the words admitted of some other decision than that then given. This we think a mistake, and the analogous section in the English Act bears out the judicial construction, and shows, further, that the language inserted in the Irish Act was intentionally, and not accidentally, used.—ED. *I. L. T.*]

LAW STUDENTS' JOURNAL.

We regret that pressure on our space obliges us to hold over until next week the Examination Papers set at the late Preliminary and Final Examinations of the Incorporated Law Society for Trinity Term.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from 8th to 28th April*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
April 8	The Earl of Ranfurly, owner and petitioner	For exchange	Tyrone	—	*Longfield, Davidson, and Kelly*
„ „	Robert James Fisher, owner and petitioner	For partition and sale	Dublin	97 10 0	*P. J. Mayne*
„ „	William Ballantine, owner; *James Hayden, petitioner*	Sale	Londonderry	Not stated	*French & Argles*
„ 10	John Hunt, owner and petitioner	Sale	Limerick	174 0 0	*V. B. Dillon & Co.*
„ „	Trustees Judith Mary O'Donel, owners and petitioners	For appointment of new trustees	—	—	*John R. Colfer*
„ 11	Julia Garvey, owner; *John Jackson, petitioner*	Sale	Mayo	49 16 11	*W. H Peyton*
„ 13	Rev. George Rigg, Rev. William Grady, and John Keegan, trustees for sale under will of John Grady, owners and petitioners	Sale	Roscommon	46 5 10	*L. G. O'Neill*
„ 15	John Reilly, Charles H. James, Lucius H. Deering, or some or one of them, owners; *Peter Noctor, petitioner*	Sale	Wexford	82 12 0	*L. W. Corcoran*
„ 16	John Dolan owner; *Edward Dolan, petitioner*	Sale	Louth	207 17 10	*Joseph Dickie*
„ „	John R. Ormsby owner; *M. E. Colclough, petitioner*	Sale	Sligo	46 8 1	*B. Kernaghan*
„ „	Luke Loftus B. Fox, owner and petitioner	Sale	Meath	488 2 6	*J. E. Tarleton*
„ „	Alfred H. Caulfield, owner and petitioner	Sale	Fermanagh and Tyrone	520 18 9	*Longfield, Davidson, & Kelly*
„ 17	Julia Delany, senior, owner; *Peirse Kelly, petitioner*	Sale	Queen's Co.	140 7 0	*Peirse Kelly*
„ „	Robert Pakenham and Elizabeth Pakenham, otherwise Hayes, owners; *Laura M. Jones, petitioner*	Sale	Dublin	Not stated	*A. Samuels*
„ 18	George Richard Cash, owner and petitioner	Sale	Dublin	1,668 8 10	*H. & W. Stanley.*
„ „	Thomas Lyons Faunt and the assignees in insolvency of said Thomas L. Faunt and Susanna Porter, wife of H. A. Porter, owners; *Sarah Anne Faunt, petitioner*	Sale	Cork	292 2 8	*M. Green & Co.*
„ 22	Margaret Quinn, owner; *Samuel L. Dutch, petitioner*	Sale	Dublin	75 0 0	*Louis Dutch*
„ „	Francis Keegan, owner; *Mark Perrin, petitioner*	Sale	Dublin	80 0 0	*Meade & Colles*
„ „	John Davis and Murdock Green, or either of them, owners; *Rev. James C. Murdock, petitioner*	Sale	Cork	48 6 6	*A. M'Mahon*
„ „	Mathew White, owner; *Joseph Casson, petitioner*	Sale	Meath	600 0 0 annual value	*G. C. Lett*
„ 23	Louis John Nugent, otherwise Nathan, owner; *William F. Richards, petitioner*	Sale	Louth	962 12 10	*J. & W. Twomey*
„ 24	Samuel Holmes, owner; *Edmond Power, petitioner*	Sale	Tipperary	260 0 0 annual value	*William Findlater & Co.*
„ 27	Joseph Barrett, owner; *Thomas Blackwell and another, petitioners*	Sale	Clare	88 0 0	*Michael Macnamara*
„ „	George Fitzmaurice and Eliza, his wife, owners; *Alexander Parker and another, petitioners*	Sale	Waterford	810 16 6	*H. F. Leachman*
„ „	Richard Myles Barry, owner; *Michael Murphy, petitioner*	Sale	Cork	487 4 10	*MacCarthy & Hanrahan*
„ 28	William H. Revell, Robert L. Higgins, Georgina Higgins, otherwise Revell, owners and petitioners	Sale	Wicklow	88 14 9	*J. T. Fox*
„ „	Elizabeth Revell, William H. Revell, Frederick Revell, Edward Revell, Henry Revell, John Revell, and Thomas Revell, owners and petitioners	Sale	Wicklow	70 0 0	*J. T. Fox*

Digitized by Google

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—Trustee Valliley, confirm sale.—Anne Wilme, allocation.—S. Hutchins, do.—P. Lawless, for liberty to proceed.—G. G. Stokes, payment.—H. Stevenson, proposals.

IN COURT.—Hazleton, judgment. — Douglas, do.—Ker do.—Nixon, do.—Assignees Porter, do.—Trustee Kirkaldy examine witness.—J. O'Keefe, from 4th.

Before EXAMINER (Mr. Dobbs).

Rev. G. Bull, proofs.—E. J. Fitzsimons, rental.

Before EXAMINER (Mr. M'Donnell).

N. Hone, vouch.—A. M. Fawcett, ditto.

TUESDAY.

IN CHAMBER.—Motions of course.

IN COURT.—H. White, final schedule.—Trustee Tate, do.—Trustee Hynes, do.—Church Commissioners, from 2nd.—Devisees Donnellan.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

C. Langdale, vouch.—William Quin, rental.—J. B. Daly, for deeds.

THURSDAY.

IN CHAMBER.—W. Elliott, confirm sale. — Assignees Glorney, examine witness.—L. Eastwood, from 4th.

FRIDAY.

SALES AT 12 O'CLOCK.

REV. E. RICHARDS.—1 lot.
R. H. BERESFORD.—1 lot.
M. M'MANUS.—1 lot.
J. BOYCE.—1 lot.
TRUSTEES W. W. CAMPBELL.—2 lots.
J. H. RYAN.—2 lots.
TRUSTEES WALLACE.—2 lots.
TRUSTEES STIRLING.—11 lots.

Before EXAMINER (Mr. M'Donnell).

W. Noble, rental.—Trustees Kirkaldy, do.

SATURDAY.

Before EXAMINER (Mr. Dobbs).

J. H. Ridley, rental.—E. M'Cann, ditto.

LANDED ESTATES COURT.

SALES

May 15—Before the Hon. JUDGE FLANAGAN.

CITIES OF DUBLIN AND LIMERICK.—The estate of John Sherlock, trustee for the sale of the estate of Anna Maria Elizabeth O'Brien, widow, deceased, owner and petitioner.

Lot 1.—4, 5, 6, and 7, Lower Gardiner-street, Dublin, held under a fee-farm grant, subject to the yearly rent of £83 19s., gross yearly rent, £188 19s. 8d. Sold to Mr. Henry C. Harrison, for £320.

Lot 2.—The houses and premises 114, George-street, n the parish of St. Michael, and City of Limerick; held under a fee-farm grant; annual head rent, £54 9s. 1d.; gross yearly rent, £85. Sold in trust for Mrs. Keane, for £300.

Lot 3.—113, George-street, Limerick, fee-farm; gross yearly rent, £64 2s. 4d. Sold in trust for Mrs. Keane, for £730.

Lot 4.—116, George-street, Limerick, fee-farm; profit rent, £38 14s. 4d. Sold to Mr. Joseph Bradley, for £365.

Lot 5.—115, George-street, Limerick, fee-farm; gross yearly rent, £85. Sold to Mr. Bradley, for £900.

Lot 6.—6, 7, and 8, Charlotte-quay, Limerick, lease for 950 years; net annual rent, £25 7s. 7d. Sold in trust for Mr. Stephen Hastings, for £135. Solicitor, *V. B. Dillon, and Co.*

May 22.

COUNTY OF CORK.—The estate of Charles T. Campion, owner; George J. Barry, petitioner.

Lot 1.—Part of the lands of Dromdeer, containing 68a. 3r. 29p., held under fee-farm grant; profit rent, £49 9s. 5d. Sold in trust for George Stawell for £750.

Lot 2.—Part of same lands, containing 139a. 1r. 17p.; profit rent, £98. Sale adjourned. Solicitor, *Jeremiah Hodnett.*

COUNTY OF CARLOW.—The estate of Henry Tudor Parnell, owner and petitioner.

Lots 1 and 2.—Sale adjourned.

Lot 3.—Fee-farm rent of £62 18s. 2d., issuing out of the townlands of Porchavodda and Kilmacart. Sold to Mr. Michael Fenton, for £1,425.

Lots 4, 6, 7, 8, and 9.—Sale adjourned.

Lot 5.—Sold by private contract.

Lot 10.—Fee-farm rent of £1 11s. 11d., issuing out of the lands of Hacketstown, Lower. Sold to Mr. Vanston, for £40.

Lot 11.—Sold by private sale.

Lot 12.—Fee-farm rent of £2 3s. 2d., out of part of Hacketstown Lower. Sold to Mr. Vanston for £60.

Lots 13 and 14.—Sale adjourned.

Lot 15.—Part of the lands of Borough, containing 10a. 2r., held in fee-simple; producing £21 yearly. Sold to Mr. Edward Kealy, for £350.

Lots 16 and 17.—Adjourned.

Lot 18.—Fee-farm rent of £10 1s. 8d., issuing out of part of the lands of Hacketstown Upper. Sold to Mr. Vanston for £240.

Lot 19.—Part of the townland of Woodside, containing 30a. 2r. 21p., held in fee; producing £5 11s. 7d. yearly. Sold to Mr. Robert P. Jones, for £125.

Lots 20, 21, 23, and 24.—Sale adjourned.

Lot 22.—Sold by private contract.

Lot 25.—Townland of Ballyedmond, Rathnagrew Upper, and part of Rathnagrew Lower, containing 943a. 1r. 13p., held in fee-simple; producing £42 16s. 2d. Sold to Mr. Vanston for £1,170.

Lots 26 and 28.—Sold by private contract.

Lot 31.—Fee-farm rent of £27 16s. 3d., issuing out of 161a. 1r. 2p. of the lands of Eagle-hill. Sold in trust for Miss A. Newton for £630.

Lot 32.—Fee-farm rent of £66 1s. 7d., issuing out of the lands of Croneskeagh Upper and Lower. Sold in trust for the Hon. Mr. Stopford for £1,600.

Lots 34, 35, 36, 37, and 39.—Sale adjourned.

Lot 40.—Fee-farm rent issuing out of the lands of Clonmore, and part of Davis-hill, and Oldtown, containing 338a. 1r. 32p.; producing £74 7s. 6d. yearly. Sold to Hon. Mr. Stopford for £1,820.

Lot 42.—The townland of Blackhill, containing 204a. 2r. 11p., held in fee-simple; producing £117 16s. 7d. yearly. Sold to Messrs. Caldbeck, Rooke, and Guinness for £3,600.

Lots 43 and 44.—Sale adjourned.

Lot 45.—Fee-farm rent of £49 1s. 1d., issuing out of townland of Ballyshane, containing 603a.; held in fee. Sold to Mrs. Guise, for £1,150.

Lot 46.—Sale adjourned.

Lot 47.—Sold by contract.

Lot 49.—Lands of Ballyduff, containing 184a. 3r. 9p., held in fee-farm; producing £162 16s. 8d. Sold in trust for Thomas H. Guinness for £4,025.

Lot 50.—Sold.

Digitized by Google

Lot 51.—Part of townland of Raheen, containing 250a. 2r. 27p.; producing £193 16s. 2d. yearly. Sold in trust for Messrs. Caldbeck and Rooke for £4,875.

Lots 52, 53, 54, and 55.—Adjourned.

Lot 56.—Sold by contract. Solicitor, *A. MacDermott*.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Mary Darcy	Vouch account	*Goff*
S. M. J. Richardson	Prove debts and vouch	*Molloy & Watson*
Jeremiah O'Grady	do	*Scallan*

TUESDAY.

Before the Court, at 11 o'clock.

A. W. Labertouche	1st public sitting	*Perry & Co.*
Same matter	1st composition sitting	*Casey & Clay*
Wm. Walker and John Trevor	do	*Perry & Co.*
Same matter	1st public sitting	*Perry & Co.*
James Brennan	do	*Humfrey*
William Dunne	do	*Thompson*
James Quirey	do	*Thompson*
Thomas Coppinger	do	*Hamilton & Craig*
Stephen Rickard	Final examination	*Findlater & Co.*
R. H. Collister	do	*Mathews*
William O'Hara	do	*Donnelly*
Catherine Holland	do	*Gerrard*
Wm Connaghton	Examine witnesses	*Larkin & Co.*
Patrick Monaghan	do	*Perry & Co.*
Daniel Cullen, jun.	do	*Larkin & Co.*
Miles Roland	Charge	*O'Farrell*
Maxwell & Crommelin	Motion	*Beauchamp*
George Blunt	do	*Leachman*

The following at 12 o'clock.

Cochrane & Lyons	Sale	*Orpen & Sweeny*

Before the Chief Registrar, at 12 o'clock.

James Nolan	Reference	*Butler*
Peter Woods	Prove debts and vouch	*Larkin & Co.*
Mary Leahy	Costs	*Molloy & Watson*
Joseph M'Kee	do	*Leachman*
Patrick Byrne	do	*Leachman*

WEDNESDAY.

Before the Chief Registrar, at 12 o'clock.

Walter O'Donnell	Prove debts and vouch	*Oldham & Eaton*
Philip L. Lyster	do	*Perry & Co.*

THURSDAY.

Before the Court, at 11 o'clock.

G. H. Kough and E. H. Kough	Charge & discharge	*Carr & Co.* for charge; *Perry & Co.*, for discharge

Before the Chief Registrar, at 12 o'clock.

Brittain & O'Toole	Prove debts and vouch	*Molloy & Watson*
Patrick Neill	Vouch account	*Benner*
James Smith	do	*Benner*

FRIDAY.

Before the Court, at 11 o'clock.

Thomas J. Curtis	1st composition sitting	*Stewart*
John Davey	1st public sitting	*Hamilton & Craig*
Joseph M'Kee	2nd composition sitting	*Benner*
Same matter	Final examination	*Leachman*
Thomas Singleton	do	*Hamilton & Craig*
Francis Keegan	do	*Boughey*
Ludlow Berkeley	do	*Scallan*
Mary Dolan	do	*Hardman & Son*
M. J. Hetherington	do	*Scallan*
M. Ryan, Kilkenny	do	*Kavanagh*
Same matter	Examine witnesses	*Kavanagh*
M. Ryan, Dublin	Final examination	*Perry & Co.*
Samuel Doyle	do	*Meldon & Sons*
Same matter	Motion	*Meldon & Sons*
John Byrne	Final examination	*Scallan*
John M'Faddin	do	*Larkin & Co.*
Andrew Doyle	Motion	*Hamilton & Craig*
Patrick Pender	do	*Hinson & Belas*
William J. Coyle	Final examination	*Leachman*
Johnston, Broom, and Co.	Audit and dividend	*Larkin & Co.*
Laurence Joyce	do	*Larkin & Co.*

Before the Chief Registrar, at 12 o'clock.

Bridget Walsh	Prove debts	*Mathews*
William Darragh	Costs	*Lawler*

ADJUDICATIONS IN BANKRUPTCY.

Buckley, Timothy, Shandon-street, Cork, butter merchant and grocer. Sittings, *Tuesday, June* 23, and *Friday, July* 10. *Scallan*, solr.

Barton, Folliott, Tullaghan, Sligo, dealer in mines and minerals. Sittings, *Friday, June* 26, and *Tuesday, July* 14. *Larkin and Co.*, solrs.

Hood, Samuel, Newtownstewart, Tyrone, publican and farmer. Sittings, *Tuesday, June* 23, and *Friday, July* 10. *Perry and Co.*, solrs.

Lancashire, John, Bailieboro', Cavan, grocer and hardware merchant. Sittings, *Tuesday, June* 23, and *Friday, July* 10. *Perry and Co.*, solrs.

M'Donnell, Iver, 18, Anglesea-street, in the city of Dublin, printer. Sittings, *Friday, June* 26, and *Tuesday, July* 14. *Forsythe*, solr.

Rutledge, David, Manorhamilton, county Leitrim, draper. Sittings, *Friday, June* 26, and *Tuesday, July* 14. *Larkin and Co.*, solrs.

Slattery, Timothy, late Ballynorig, Kerry, farmer. Sittings, *Friday, June* 26, and *Tuesday, July* 14. *Alma & Hackett*, solrs.

Decision on the Law of Election.—The result of the recent election of guardians for the Baltinglass Union has led to a correspondence between Mr. DeMontmorenzy and the Local Government Board, upon a point of considerable importance respecting the qualification of voters under the poor laws. It appears that Mr. DeMontmorenzy offered himself for re-election, but was defeated, his opponent having a majority of one. The votes for the successful candidate, however, include two given by a Mr. John Farrell, to which Mr. DeMontmorenzy objects upon the grounds that the John Farrell who appears on the rate-book as the rated occupier of the qualifying premises was the father of the present occupier, who died within the past six months, and that no claim to be rated was made by the present occupier since the property was assigned to him. He merely paid the last rate, produced the assignment, and recorded his votes. This appears to be the state of facts as disclosed in the correspondence, and upon them the Local Government Board have decided in favour of the validity of the votes. We confess we are rather surprised at the decision arrived at, which in our opinion is not based on sound legal grounds. The mere accident of the late and present occupiers of the rated property having the same name does not, we should say, render it the less incumbent upon the latter to serve the usual claim to be rated before exercising the rights which such rating would confer upon him. The Local Government Board, however, appear to think otherwise; but as the question is one of considerable importance, we venture to hope that some further steps will be taken to test the validity of the decision arrived at.—*Carlow Sentinel.*

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	MAY Fri 29	MAY Sat. 30	JUNE Mon. 1	JUNE Tues. 2	JUNE Wed. 3	JUNE Thur 4
	Government.						
—	3 p c Consols	92½	—	92⅝	92⅝	92⁹⁄₁₆	92½
—	3 p c Reduced	—	—	—	-	—	—
—	New 3 p c Stock	91¹⁵⁄₁₆	91¾	91⅞¹⁵⁄₁₆	91⅞¾	91⅞¾	91⅞¹⁵⁄₁₆
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	108¼	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	101½	101¼	—	101¼⅝	101⅝	101⅝
	Banks.						
100	Bank of Ireland	—	308½	308	307½	307	306½
25	*Hibernian Banking Co.*	—	59½	59½	57½xd	57½	57½
15	*London Joint Stock*	50	—	50⅛	—	—	—
20	*London and Westminster*	73½	73¼½	73½	73¾⅞	74	74½
3½	*Munster Bank (Limited)*	8⅞	—	—	—	8⅞ 9	
30	*National Bank*	59¾	—	60	59¾	59¾60	59¾ 60
15	*National of Liverp'l (Ltd)*	—	—	—	-	—	14⅞
25	*Provincial Bank*	93½	93⅛⅜	93⅛⅜	93⅜	—	92½
10	Do. New	—	—	37½	37½	37½	--
10	*Royal Bank*	29⅞	29⅞	29⅞	29⅞	--	-
	Steam.						
100	City of Dublin	—	—	—	106½	106½	106½
50	Dublin & Liverpool Steam Ship Building. Co.	—	--	56½	56	—	—
10	Dundalk (Limited)	7	—	—	7	7	7
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	28½	—	—	—	—	—
1	Killaloe Slate Co. (lit'd)	—	—	—	—	16/	- -
7	*Mining Co. of Ireland (lit'd)*	—	4⅞	—	—	—	—
2½	Wicklow Copper	3	—	3	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	9½	9½	9½	9⅜½	—
9-4-7	*Patriotic Assurance*	—	11	11	—	11	—
	Railways.						
10	Athenry and Tuam	—	—	—	-	3	—
20	Cork, Blackrock & Passage	—	—	—	—	11½xd	—
100	Dublin and Belfast Junct.	—	--	—	--	90	—
100	Dublin, W'klow, & W'ford	—	—	74¾⅞	—	—	74
100	Gt. Southern and Western	108⅜	—	108⅜	108⅝	108½	108⅜-8
100	Midland Gt. Western	—	82½	—	—	82½	82⅝
25	Portadown, Dun., &c., 5 p c	15⅞	15⅞	16	—	--	—
50	Waterford and Limerick	—	—	—	—	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	101½	—	101½	-	—
50	D., W., & W., 5 p c (1860)	54	—	—	—	—	54
100	Gt. South'n & West'n 4 p c	—	—	97⅜½	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860-72, 5 p c	—	--	—	—	—	—
50	Do., new red, 1873, 5 p c	49½	—	49½	49½	—	—
	Railway Debentures.		—				
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	99	—	—	—	—	—
—	Dublin & Meath 4½ p c	—	—	89	89	—	—
—	Gt. South'n & West'n, 4 p c	98⅞ f	98⅞ f	-	98	—	98½ f
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	-
—	Do., 4½ p c	--	—	103	-	—	103
—	Waterford & Central 5 p c	—	-	—	—	—	-
—	Waterf'd & Limerick 4½ p c	-	—	—	—	—	—
—	Do., 4½ p c	101½	—	—	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—3½ per cent., 4th June. 1874.
Of Deposit—2 per cent., 28th May, 1874.
Name Days—June 11th and 29th, 1874.
Account Days—June 12th and 30th, 1874.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

BOUGHEY—June 1, at 33 Hardwicke-street, the wife of C. Boughey, Esq., barrister-at-law, of a son.

MARRIAGES.

HANNAGAN and HODNETT—June 2, at the R.C. Church of St. Finn-Barr, Cork, by the Very Rev. Canon Murphy, P.P., of Youghal, James H. Hannagan, Esq., Surgeon, Army Medical Staff, second son of Patrick Hannagan, Esq., Youghal, to Nora, eldest daughter of Jeremiah Hodnett, Esq., solicitor, Youghal.

THORNTON and MOLYNEUX—June 1, at the Metropolitan Church, Marlborough-street, Dublin, by the Rev. Father Purcell, assisted by the Rev. Father Farrell, John Thornton Esq., solicitor, Loughrea, to Henrietta, widow of the late H. M. Molyneux, Esq., and youngest daughter of Joseph Loughnane, Esq., deceased, late Manager National Bank, Mullingar.

DEATHS.

MOLLOY—May 26, at his residence, 3 Ardnagreina, Tivoli-road, Kingstown, Brian Arthur Molloy, Esq., barrister-at-law, second son of the late Major Brian Molloy, formerly of Millicent, County Kildare, in the 63rd year of his age.

WHITESIDE—May 27, at Nynee, Jallin Oude, Frederick James Stanger Whiteside, Captain in the 11th Regiment of Infantry, and Deputy Assistant Adjutant-General on the Staff of the 2nd General Division of the Army of Oude. The event was communicated by telegraphic wire from India. This promising young officer who, it is believed, died suddenly, was second son of the late Rev. Doctor Whiteside, Vicar of Scarborough, and nephew of the Lord Chief Justice.

BINDING "THE IRISH LAW TIMES."—Subscribers are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates.

By JOHN FALCONER,
Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL,
53 Upper Sackville-street, Dublin.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

NOTICE OF WITHDRAWAL OF SALE.

COUNTY OF MONAGHAN.

In the Matter of the Estate of John Jackson, Owner and Petitioner.

NOTICE is hereby Given, pursuant to the directions of the Honourable Judge Flanagan, that all the Lots of this Estate (advertised to be Sold on 12th June instant), have been disposed of by treaty, and the Sale will not, therefore, take place.

Dated this 1st day of June, 1874.

MEADE & COLLES, Solicitors for the Owner and Petitioner, No. 8 Kildare-street, Dublin. 466

IN THE LANDED ESTATES' COURT.

NOTICE OF WITHDRAWAL OF SALE.

In the Matter of the Estate of Thomas Andrew Bailey, Esquire, Owner and Petitioner.

NOTICE is hereby Given, pursuant to the directions of the Honourable Judge Flanagan, that the entire of this Estate has been Sold by Private Treaty, and that the Sale advertised for the 12th June instant, will not take place.

Dated this 1st day of June, 1874.

MEADE & COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No. 8 Kildare-street, Dublin. 467

In the LANDED ESTATES' COURT, IRELAND.

IN THE COUNTY OF WEXFORD.

In the Matter of the Estate of Frederick Richard Phayre and George Annesly Phayre, Owners and Petitioners.

TO BE SOLD BY PUBLIC AUCTION, In Two Lots, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, the 3rd day of JULY, 1874, At Twelve o'clock noon,

LOT 1.

The Lands of Monart West, in the Barony of Scarawalsh, and County of Wexford, containing 252a 2r 9p, statute measure, producing the net annual rent of £73 2s 2d.

LOT 2.

Part of the Lands of Killoughram, in the same barony and county, containing 426a 1r 8p, statute measure, and producing the net annual rent of £144 12s 9d.

Dated this 23rd day of May, 1874.

C. E. DOBBS, Examiner.

Proposals for purchase of Lot 2 will be received by the Solicitors having carriage of the Sale, up to the 22nd day of June, 1874, and if approved of, will be submitted to the Court.

DESCRIPTIVE PARTICULARS.

The lands are within about three miles of the town of Enniscorthy, and the rents are punctually paid by the tenants, who hold under leases at very moderate rents.

For Rentals and further particulars apply at the Landed Estates' Court, Four Courts, Inns'-quay, Dublin.

LAURENCE W. CORCORAN and SON, Solicitors having carriage of the Sale, 23 South Frederick-street, Dublin.
472

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

SALE,

On FRIDAY, the 3rd day of JULY, 1874.

In the Matter of the Estate of George Gaynor, Francis Seymour Gaynor, Constantine William Septimus Gaynor, Charlotte Maria Anne Catherine Gaynor, and the said Constantine William Septimus Gaynor, Trustee for sale under the will of Bryan Gaynor, deceased, Owners and Petitioners;

And in the Matter of the Estate of Bryan Edward Gaynor, by the said Constantine William Septimus Gaynor, his Guardian *ad litem*.

And in the Matter of the Partition Act, 1868.

TO BE SOLD BY PUBLIC AUCTION, In Twenty Lots, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, On FRIDAY, The 3rd day of JULY, 1874, At the Hour of Twelve o'clock noon, The following Property, held in perpetuity, And Situate at Killiney, In the Barony of Rathdown, And County of Dublin,

SUMMARY OF LOTS.

LOT 1.

Part of the Lands of Rocheshill and Killiney, containing 6a 0r 7½p statute measure, held in fee-farm, subject to the yearly rent of £6 8s 5d, and producing a net or estimated annual profit of £118 11s 7d.

LOT 2.

Part of the Lands of Scalpwilliam or Mountmapes, containing 3a 0r 10p statute measure, held in fee-farm, subject to the yearly rent of £7 7s 8d, building ground. The net estimated profit rent is £52 12s 4d.

LOT 3.

Part of the Lands of Killiney, containing 26a 3r 7p statute measure, held in perpetuity, together with a perpetual yearly rent of £158 17s 2d, issuing out of other part thereof, containing 45a 3r 12p statute measure; and also part of the Lands of Rocheshill, containing 27 perches statute measure, held in fee-farm, subject to the yearly rent of £6 8s 5d, but indemnified therefrom by the lands comprised in Lot 1.

This Lot produces a net profit rent of £63 13s 11d, and will be sold subject to the yearly rent of £308 13s 3d, payable out of that part of the lands of Killiney, included in this rental, in indemnification of the remainder thereof, comprised in Lots 4 to 20 inclusive.

LOT 4.

A perpetual yearly rent of £65 18s 10d, issuing out of part of the Lands of Killiney, containing 11a 0r 0½p, statute measure.

LOT 5

A perpetual yearly rent of £56 7s 0d, issuing out of part of the Lands of Killiney, containing 23a 2r 5p statute measure.

LOT 6.

A perpetual yearly rent of £73 0s 10d, issuing out of part of the Lands of Killiney, containing 17a 0r 6p statute measure.

LOT 7.

A perpetual yearly rent of £135 4s 5d, issuing out of part of the Lands of Killiney, containing 42a 2r 12p statute measure.

LOT 8.

A perpetual yearly rent of £88 7s 8d, issuing out of part of the Lands of Killiney, containing 26a 0r. 13p statute measure.

LOT 9.

Part of the Lands of Killiney, containing 5a 3r 36p statute measure, in hands of one tenant under long leases, and producing a net yearly profit rent of £66.

LOT 10.

Part of the Lands of Killiney, containing 3a 2r 2p statute measure, in hands of two tenants under long leases, and producing a net yearly profit rent of £37 15s.

LOT 11.

Has been sold by private contract.

LOT 12

Part of the Lands of Killiney, containing 3a 0r 0p statute measure, building ground. The net profit rent is estimated at £60 per annum.

LOT 13.

Part of the Lands of Killiney, containing 3a 0r 1p statute measure, building ground. The net profit rent is estimated at £60 per annum.

LOT 14.

Part of the Lands of Killiney, containing 3a 0r 0p statute measure, building ground. The net profit rent is estimated at £60 per annum.

LOT 15.

Part of the Lands of Killiney, containing 3a 1r 35p statute measure, building ground. The net profit rent of which is estimated at £70.

LOT 16.

Part of the Lands of Killiney, containing 3a 1r 35p statute measure, building ground. The net annual profit rent is estimated at £70.

LOT 17.

Part of the Lands of Killiney, containing 4a 0r 32p statute measure, building ground. The net annual profit rent is estimated at £80.

LOT 18.

Part of the Lands of Killiney, containing 4a 2r 18p statute measure, building ground. The net annual profit rent is estimated at £80.

LOTS 19 and 20.

These Lots have been sold by private contract.

Private proposals for all or any of the above Lots will be received up to and including the 20th day of June, 1874, and if approved of will be submitted to the Judge without further notice.

Dated this 1st day of June, 1874.

HENRY ROBERT GREENE, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The property is situate about nine miles from Dublin, upon the shores of Killiney Bay, and gradually sloping down from a high eminence at the northern extremity to the sea on one side, and to the lovely valley intervening between Killiney and the range of Wicklow Hills on the south. Commands at every point an extensive view of the most picturesque scenery.

The large and flourishing towns of Bray on the one side and Kingstown on the other, each about three and a half miles distant, with the smaller town of Dalkey and the villages of Ballybrack and Killiney in the immediate vicinity, afford every possible facility for marketing or shopping of any description.

The Dublin, Wicklow, and Wexford Line of Railway bounds the property entirely on one side, and the stations of Killiney and Ballybrack are situate thereon at the northern and southern extremities.

Lot 1.—The House standing upon this Lot has been for many years the residence of the Gaynor family, some of whom at present occupy. The House is for the most part old, but is comfortable and commodious, and in tolerably good preservation. An addition containing four good bed rooms was made in the year 1860. There is a good garden attached, and the pleasure grounds are beautifully planted with fine trees. The House is well shut in from the road, and commands a picturesque view of the coast line to Bray Head.

The Out-offices are well built of stone and mortar, with slated roofs, and are in good repair. They comprise a coach-house, stabling for three or four horses, harness-room, cow-house, store-house, tool and boiling houses respectively, &c. There are two wells which contain a plentiful supply of excellent spring water, used for drinking and house purposes, with force and sucking pumps. A third well, with pump attached, affords an abundant supply of water for the garden.

The field attached, containing about three acres, is at present used for grazing, but it affords a most valuable site for building, commanding a magnificent view, and having an easy means of access from the main road from Bray to Kingstown, upon which it adjoins. This field can be built upon without the slightest injury to Killiney House, or the pleasure grounds attached, and in consequence thereof this lot is very valuable. Immediate possession can be given.

Lot 2—Building Ground. This Lot commands the most lovely aspect in the neighbourhood, and is well adapted for the erection of one or more villas. The upper portion affords a capital site for several smaller houses. It is entirely surrounded by a well-built stone wall, which, to a person intending to build thereon, would cause a considerable saving of expense. Immediate possession will be given.

Lots 3 to 11 inclusive, and Lot 19—These Lots consist of ground-rents paid by tenants, who hold in perpetuity or upon long leases, and who have expended large sums of money in the erection of numerous handsome villa residences and mansions upon the property.

Lots 12 to 18 inclusive—Valuable Building Ground, adjoining the Ballybrack Railway Station. The purchaser respectively will be entitled to possession of said Lots upon the expiration of the occupying tenants' term thereof respectively.

The tenancy of Lots 12, 13, and 14 respectively will expire on the 29th September, 1874, and of Lots 15, 16, 17, and 18 respectively upon the 31st December, 1874.

The Building Ground is valued at £20 per statute acre, the present average letting value of ground in the immediate neighbourhood.

The entire property is situate within the Township of Killiney and Ballybrack, which is supplied with gas and Vartry water.

For Rentals and Maps apply at the Landed Estates Court, Inns'-quay, Dublin; or to

THOMAS JAMESON and SON, Solicitors having carriage of the Sale, 13, Great Brunswick-street, Dublin. 475

LANDED ESTATES' COURT, IRELAND.

GENERAL NOTICE TO CLAIMANTS.

In the Matter of the Estate of Robert Wilson, an owner of Land, and of Andrew Hunter, a tenant; and of The Landlord and Tenant, Ireland, Act, 1870.

THE Court having Ordered that a certain agreement bearing date the 2nd day of May, 1874, and made between the said Robert Wilson and Andrew Hunter, be carried into effect, and a Statutable Conveyance made by the Court under the provisions of the Landlord and Tenant (Ireland) Act, 1870, to the said Andrew Hunter, of that part of the Townland of Ballynashee, containing 23 acres and 37 perches, or thereabouts, held under fee-farm grant dated the 17th day of October, 1873, under the Renewable Leasehold Conversion Act. And another part of the said Lands of Ballynashee, containing 1a 3r 17p, held with other Lands under lease dated the 17th day of January, 1828, for lives renewable for ever, said Premises being situate in the Parish of Rashee, Barony of Upper Antrim, and County of Antrim, and in the tenancy of the said Andrew Hunter, under a certain lease dated the 1st day of November, 1865, upon the terms and conditions in said agreement contained, all parties objecting to such Conveyance of the said Lands are hereby required to take Notice of such Order; and all persons having claims thereon, may file such claims, duly verified, with the Clerk of the Records.

Dated this 4th day of June, 1874.

JOHN MARTLEY, for Examiner.

WM. W. M'NEILL, Solicitor having carriage, 29 Bachelors'-walk. 473

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

IN THE COUNTY OF CAVAN.

In the Matter of the Estate of Charles Langdale, Esq., Sir John Esmond, Bart., and others, Owners and Petitioners. And in the Matter of the Estate of Frances Maria Home and others, Owners. And the Partition Act, 1868.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Dublin, On SATURDAY, The 4th day of JULY, 1874, In Three Lots, The following Valuable Property:—

LOT 2—The Lands of Garranrush, known on the Ordnance Survey as the Lands of Garryross, containing 333 acres and 10 perches statute measure, situate in the Barony of Castlerahan and County of Cavan, held in fee-simple, and producing a net annual rental of £248 11s. The Government Valuation of this Lot is £224.

LOT 4 consists of part of the Lands of Ballycroft, known on the Ordnance Survey as Lower Lackan, containing 70a 3r 25p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a net annual rental (paid by one tenant who holds under a lease) of £73 7s. 10d. The Government Valuation of this Lot is £69.

LOT 5 consists of other part of the aforesaid Lands of Lower Lackan, containing 262a 0r 26p statute measure, situate in the Barony of Clonmahon and County of Cavan, held in fee-simple, and producing a net annual rental of £120 0s. 9d. The Government Valuation of this Lot is £123 12s.

Dated this 6th day of June, 1874.

H. R. GREENE.

For Rentals, Maps, and further particulars apply at the Landed Estates Court; or to

WILLIAM ROCHE and SONS, Solicitors having carriage, of No. 4 Stephen's-green, North, Dublin. 482

LANDED ESTATES' COURT, IRELAND.

COUNTY OF WESTMEATH

SALE,

On SATURDAY, the 4th day of JULY, 1874.

In the Matter of the Estate of Kate Rosalind Day, Elizabeth H. Carter, Elizabeth F. Barnes, Rev. Edward Rigby Beevor, Thomas Beevor, Henry E. Bayley, and Thomas Bridges Horace Day, and Leslie M. Carter, husbands of Kate Rosalind Day and Elizabeth Harriet Carter, respectively, or some or one of them, Owners; *Ex-parte* Rev. Joseph William Hardman, and William Fitzwilliam Carter, Petitioners.

TO BE SOLD BY PUBLIC AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, Inns'-quay, Dublin, On SATURDAY, The 4th day of JULY, 1874, At the Hour of Twelve o'clock noon, In Four Lots, The Lands of Violetstown, otherwise Vilanstown, in the Barony of Fartullagh and County of Westmeath, held under fee-farm grant, dated 31st day of October, 1859, subject to the yearly fee-farm rent of £93 15s 0d, as described in the printed rental, viz.:—

LOT 1.

Part of the said Lands of Violetstown, otherwise Vilanstown, containing 219a 1r 26p, and yielding a profit rent of £144 14s 0d.

LOT 2.

Part of said Lands of Violetstown, and another part of said Lands now known as Clonmoyle, containing 94a 0r 29p, and producing the yearly rent of £76 4s 7d.

LOT 3.

Part of said Lands of Violetstown, containing 183a 3r 25p, and producing a profit rent of £140 8s 11d.

LOT 4.

Part of said Lands of Violetstown, containing 122a 0r 28p, and producing a profit rent of £88 18s 8d.

Dated this 2nd day of June, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

This well-circumstanced Estate is situated within about two miles of the important Town of Mullingar, which is a Junction Station on the Midland Great Western Railway.

Several of the tenants have valuable interests in their holdings, and the rents are paid with punctuality.

There are two Gentlemen's Residences on the Property, with Demesne attached. Violetstown House on Lot 1, and Larkfield House on Lot 2.

For Rentals and further particulars apply at the Registrar's Office, Landed Estates' Court, Inn's-quay, Dublin; or to

ALEXANDER D. KENNEDY, Solicitor having the carriage of the Sale, No. 67 Upper Sackville-street, Dublin. 469

IN THE COURT OF BANKRUPTCY, IRELAND.

MICHAEL HUGHES, of No. 22 Waterloo-street, in the City of Londonderry, in the City and County of Londonderry, Grocer and Spirit Dealer, was on the 5th day of June, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 3rd day of JULY, 1874, and on TUESDAY, the 21st day of JULY, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examinations.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

PERRY & CROSKERRY, Solicitors, 32 Lower Ormond-quay, Dublin. 496

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN JAMES HENNESSY, of Kenmare, in the County of Kerry, Grocer, Spirit, and General Merchant, was on the 23rd day of June, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 17th day of JULY, 1874, and on TUESDAY, the 4th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

BENNETT THOMPSON & JOHN J. FOLEY, Solicitors, 15 Bachelors'-walk, Dublin. 497

IN THE COURT OF BANKRUPTCY, IRELAND.

MARY WILLIAMS, of No. 47 Old George's-street, in the City of Cork, widow, Coach Builder, was on the 26th day of June, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 21st day of JULY, 1874, and on FRIDAY, the 7th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

498 OLDHAM & EATON, Solicitors, 42 Fleet-street, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

RICHARD TREVOR IRWIN, late of Lougheravale, Merrion, in the County of Dublin, formerly of Stockport and of Plymouth, in England, afterwards of Belfast, in Ireland, and of Richmond Barracks, in the County of Dublin, and of Chester, in England aforesaid, Captain in Her Majesty's Second Royal Regiment of Militia (since deceased), an Insolvent.

A Public Sitting will be held before the Court, at the Four Courts, Dublin on TUESDAY, the 7th day of JULY, 1874, at the hour of Eleven o'clock in the forenoon, for Proof of Debts, and for Choice and Appointment of a Creditor's Assignee in this Matter; of which Sitting all Persons concerned are to take Notice.

Dated this 19th day of June, 1874.

THOMAS FARRELL, Chief Clerk.

D. and J. FITZGERALD, Solicitors, 20 St. Andrew-street, Dublin.

C. H. JAMES, Official Assignee, 29 Upper Ormond-quay, Dublin. 495

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price - whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, June* 27, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JULY 4, 1874. No. 388.

THE EFFECT OF THE STATUTE OF FRAUDS UPON SALES BY AUCTION.

THE recent decision of the Court of Queen's Bench in England in *Peirce* v. *Corf*, 43 L. J. (N. S.) Q. B. 52, has thrown some light upon the position in which auctioneers stand towards the public, having regard to the 17th section of the Statute of Frauds, England (sec. 13, Ireland). The general rule as regards auctioneers, as laid down in *Fairbrother* v. *Simmons*, 5 B. & A. 33, is that when an auctioneer sues a purchaser in his own name, an entry made by him in his book is not sufficient to take the case out of the provisions of sec. 17, the auctioneer in such cases falling within the rule which forbids the vendor to be the agent for the purchaser. In practice, however, the harshness of this rule was much mitigated by the decision in *Bird* v. *Boulter*, 4 B. & Ad. 443, in which it was held that if the name was written contemporaneously with the sale, not by the auctioneer but by his clerk, the provisions of the statute were satisfied, and the action lay. It is upon this case of *Bird* v. *Boulter* that the case under consideration—*Pierce* v. *Corf*—will exercise an important influence. The facts of the case were as follows: The plaintiff being the owner of a mare, sent her to the repository of the defendant, an auctioneer, with directions to offer her for public sale. The mare was advertised for sale, with a number of other horses, and prior to the sale the defendant circulated a printed catalogue, which, with the conditions of sale, formed one document, in which the mare was catalogued as Lot 49, grey mare, &c., steady to ride and drive. Prior to the sale the defendant caused to be made in such of the columns in his "sales leger" as were applicable to matters ascertainable before the sale, entries relating to the horses described in the catalogue, the leger and the catalogue following the same numerical order. The sale took place, and the plaintiff's mare was in turn, according to numerical order, put up and knocked down to Thomas Maguire for 33 guineas. Thereupon the defendant's clerk wrote in the columns of the sales leger, left blank for the purpose opposite to the lot in question, the name of the purchaser and the price. Neither the catalogue nor the conditions of sale were annexed or referred to in the sales leger. Immediately after the sale, the purchaser being dissatisfied with the mare, refused to take her, and wrote to the defendant, mentioning the mare as "the grey mare, Lot 49," and refusing to take her, as not being steady in harness. The mare was subsequently sold for a smaller sum, and the plaintiff, having been non-suited in an action against the purchaser, sued the defendant for negligence in not making a binding contract with the purchaser. The question which finally came before the Court for its decision was whether, under these circumstances, there was evidence of a signed note or memorandum in writing sufficient to satisfy the 17th section of the Statute of Frauds. Two questions had to be decided by the Court. The first, which was of minor importance, was whether the letter of the purchaser in which he referred to the mare as Lot 49, had sufficient reference to the sales leger which contained the price and name of the purchaser, or whether it referred only to the catalogue, the Court decided that the reference was only to the catalogue, which did not contain the requisite entries. The other point was, whether there was sufficient connexion, by internal reference, between the sales leger and the conditions of sale, to give them the force of one document. It was contended, on behalf of the defendant, that *Bird* v. *Boulter* is an authority to show that the defendant's clerk, in making the entry in the sales leger, is an agent for a purchaser at a sale. The observations of Blackburn, J., on this point modify to a considerable extent the authority of the case cited:—"The ordinary practice at auctions—a practice so well known that we should take judicial notice of it—is for the auctioneer to sign, and he generally does; still, if the auctioneer had a sales leger in which all the conditions of sale were copied out, and were to sign that, such a signature might be binding. It is, however, quite clear, that such a signature, if made by the auctioneer's clerk, would not, under ordinary circumstances, be binding, although there may be circumstances in which it would, such as those in *Bird* v. *Boulter*, where there was evidence that the clerk was seen by all parties to make the entries. But here there is nothing to show that the sales leger was open or known to the bidders; and upon inspection it would appear that there are ciphers in it which would seem to show that it was not so known. The defendant's clerk was in fact signing for his master's information, not as agent for the bidders." This decision of the Court is the more remarkable, as the fact does not seem to have been raised before the Court below, which based its decision upon the fact that there was not sufficient internal evidence to connect the two documents. This decision the Court of Queen's Bench affirmed, notwithstanding the weighty arguments advanced by the defendant, who distinguished the present case from *Hinde* v. *Whitehouse*, 7 East. 558, where the date alone corresponded, whereas in the present case the date, the number of the lot, the name of the seller and of the thing sold, all alike corresponded. But it is rather to the portion of the judgment which affects the case of *Bird* v. *Boulter* that we would desire to draw the attention of our readers, which will affect not only cases like the present, but will render far harsher the rule in *Fairbrother* v. *Simmons*, which limits those cases in which the auctioneer is himself able to sue a purchaser. It is, of course, necessary that the signature by the clerk should take place contemporaneously with the sale, a necessity, indeed, which equally exists in the case of an auctioneer, as was laid down by Pollock, C.B., in *Mews* v. *Carr*, 1 H. & N. 484, but from the report of the present case there seems to have been no difficulty of this nature arising in the transaction. Blackburn, J., seems to have based his decision as to this point on the ground that there was no evidence to show that the leger was intended to be shown, or was known to the bidders. It seems to us hardly within the spirit of the decision in *Bird* v. *Boulter* to require this stringent proof; it is true that in that case there existed the fact that the bidder was within a very short distance of the clerk who took down the bidding, and had, of course, in consequence, every opportunity of seeing the entry in the leger; but the judgment in *Bird* v. *Boulter* turned on the fact that the clerk was not acting as a mere automaton, but as a person known to all engaged in the sale, and employed by any one who told him to put down his name. It is a matter beyond dispute that, as

Digitized by Google

a matter of fact, when a bid takes place at an auction, the bidder intends, so far as in his power lies, to give authority to the auctioneer, or clerk, to complete the sale at the price offered, so far as the bidder himself personally is concerned. We think it would not be a very violent presumption to assume in such cases an implied authority to take down the name, so as to bring the case within the statute, unless there were evidence to the contrary. Taking the law as laid down by the Queen's Bench to be correct, we fear much that the effect of this decision will be to extend the doctrine laid down in *Fairbrother* v. *Simmons*, which, although it must now be received as settled law, is stated by Mr. Smith, in his treatise on mercantile law (8 ed. 497), to have been regretted.

LEGAL EXAMINATIONS.

THE recent inquiry concerning the status of non-matriculated students of law in the University of Dublin having excited some interest, we feel the greater pleasure in calling attention to the fact that at the recent examination in Trinity College, held by Professor Richey, in English and Feudal Law, the highest places were taken by Messrs. Goddard, Carmichael, and Wilson—these gentlemen defeating the matriculated students to such an extent that the learned Professor announced his opinion that the latter gentlemen were not deserving any prize, while Messrs. Goddard and Carmichael divided (though not in equal shares) the prizes allocated to the non-matriculated students. Mr. Goddard now occupies the distinguished position of having in the two successive years gained the first place (and prize) at the examinations of Law Students of Trinity College, the examiner of the last year being Dr. Webb, and the subjects Civil Law, Jurisprudence, and Equity. Our junior readers will remember that Mr. Wilson in a previous year also took the first place at both examinations, and that it was in consequence of his success the Board of the University gave to the non-matriculated students the position which they have so honourably won and maintained in the Law School.

RIGHTS IN BANKRUPTCY OF EXECUTION-CREDITOR HOLDING GARNISHEE ORDER.

The case of *Emanuel* v. *Bridger* (22 W. R. 404, L. R. 9 Q. B. 286) marks another change in bankruptcy law effected by the new Act, and this time a change so reasonable that we will hope it was designed. By the 184th section of the Bankruptcy Act, 1849, all advantage in the distribution of assets was taken away from secured creditors, except from such as had levied by seizure and sale, or such as had a mortgage or lien. Under the subsequent Act of 1854 (Common Law Procedure Act) ss. 61–67, the proceedings in garnishment were instituted, by which a creditor, having obtained a judgment, was enabled to attach debts due to the execution debtor from the garnishee; and under section 184 of the Bankruptcy Act, 1849, it was held that a creditor who had, previous to the execution debtor's bankruptcy, obtained and served on the garnishee an *ex parte* order under section 61 was a secured creditor (by virtue of section 62), but that, not being a creditor who had levied by seizure and sale, nor a creditor with a mortgage or lien, he was entitled to no priority (*Holmes* v. *Tutton*, 5 E. & B. 65). In *Tilbury* v. *Brown* (9 W. R. 147) it was afterwards decided that the case was not altered by the fact of execution having been ordered under section 63.

But the 184th section has been repealed by the Bankruptcy Act, 1869, and the question as to secured creditors now turns on sections 12 and 16 (subs. 5) of the latter Act. The latter section includes among "secured creditors" any creditor holding any mortgage, *charge*, or lien on the bankrupt's estate; and these words the Court of Queen's Bench has, in *Emanuel* v. *Bridger*, held to include a creditor who has "obtained, served, and made absolute his garnishee order before the bankruptcy," which was the position the plaintiff occupied in that case. The 12th section reserves to "any creditor holding a security upon the property of the bankrupt" the right to "realize or otherwise deal with" the same as he might have done apart from the bankruptcy, and the consequence is that the plaintiff was held entitled as against the trustee to the benefit of his security. The only thing necessary to decide was that the word "charge" included such a right as that which the garnishment order gives to the execution creditor over the attached debt; less than this would not do, and more than this was not needed. But the court intimates a doubt whether, independently of this, the judgment in *Holmes* v. *Tutton* was right in giving to such an order no higher or more binding effect than that which the delivery of a writ of *fi. fa.* to the sheriff has in respect of the goods of the debtor; the reason for the distinction b ing that such an order is more specific in its operation. Whether this is so or not (and it must be remembered that by the words of section 61, and of the form of *ex parte* order, it relates to *all* debts due from the garnishee to the judgment debtor) it was unnecessary to decide; because, with the view now propounded, the court only reached the same result which Lord Campbell had reached with his view—namely, that the execution creditor was a creditor "holding security." Nor is it very material to consider the question.

But it is more important to consider the bearing of the case on *Ex parte Greenway* (21 W.R. 866, L. R. 16 Eq. 619). which seems not to have been cited. In this case an *ex parte* order had been obtained before the bankruptcy, but the debt attached was not a debt due, but only a debt "accruing" (see Common Law Procedure Act, 1854, s. 61); and for that reason no order absolute for payment or execution could be made before the bankruptcy supervened. Whether the same rule would apply to the case of an accruing debt as to the case of a present debt being attached may be a question. It may also be a question, which the present Court of Queen's Bench, as well as the same court in Lord Campbell's time, would apparently answer in the negative, whether there is any difference in this respect between a creditor who has only an *ex parte* order, and one who has made it absolute. But unless one or other of these distinctions prevails, the case of *Emanuel* v. *Bridger* and that of *Ex parte Greenway* are irreconcileable.

It is, then, with some anxiety to find the reasoning on which the Chief Judge based his decision, that we turn to *Ex parte Greenway*. Neither of these distinctions are there adverted to; and unfortunately the reasoning which is afforded is contained in such observations as that "the law of bankruptcy was not extinguished by the proceedings of the Tolzey Court;" that "what took place after the bankruptcy (*i.e.*, the making the order absolute) cannot alter the operation of the law," and so forth; and the only sentence resembling an argument is that which propounds the view that "to *hold* a security" and "to *have* a security" are different things. The conflict of decision, we cannot say of opinion, is unfortunate; at present we can only wait for such light as further judicial consideration of the matter may afford.

The Cour de Cassation of Paris has just given judgment in a somewhat curious case. It is customary in many Oriental courts of justice for the advocates as well as the public to take off their shoes on entering, as a sign of respect to the bench. M. Pannoutombi, a native advocate of Pondicherry, some time ago took upon himself to transgress this custom, and to keep his shoes on in the presence of the judges. For this he was suitably admonished; but M. Pannoutombi rebelled, and maintained that he had a right to appear in court with or without his shoes, according to his convenience or fancy. He was in consequence forbidden to practice. M. Pannoutombi appealed to the French Minister of Justice, who quashed the decision of the court of Pondicherry. The affair was carried before the Cour de Cassation, whose solemn sanction henceforth authorizes M. Pannoutombi to keep his shoes on in the discharge of his professional duties.

Digitized by Google

QUARTERLY INDEX TO SUBJECTS OF CASES.*

Apportionment; salary of Clerk of the Crown. *Treacy* v. *Corcoran.*—R. 65.
  interest on shares in banking companies. *Daly* v. *Attorney-General.*—R. 70.
Arrangement; failure to pay composition; creditors remitted to original rights. *Re J. L.*—R. 106.
  creditor withdrawing proof of debt; costs of proof. *Re E. R.*—Mis. 178.
  proof for premiums on policy of insurance. *Re L.*—R. 92.

Ballot Act; improper rejection of papers; stating special case; jurisdiction of Court to draw inferences of fact. *Shiel* v. *Ennis.*—R. 67.
  inspection of ballot papers; mandamus to Clerk of Crown office to allow. *Stow* v. *Jolliffe.*—Mis. 210.
Bankruptcy: (see *Arrangement: Lease.*)
  liability of married woman to be made bankrupt. *Re Lyons.*—Mis. 180.
  fraudulent conveyance; setting aside. *Re Nolan.* [since affirmed on App.]—R. 55.
  fraudulent preference; pressure; contemplation of bankruptcy. *Re Carew.*—R. 90.
  case vesting in assignees; election; disclaimer. *Re Connor.*—R. 71.
  adjudication; time for showing cause against.—*Re De Serancourt.* R. 60.
  adjudication; petitioning creditor's debt; debt contracted after passing of B. A. Act. *Re M.*—R. 77.
  scale of fees.—Mis. 169, 179.
Breach of promise of marriage; exoneration. *Cock* v. *Cranston.*—Mis. 262.

Carriers by rail; transit beyond own line; reasonableness of condition. *Barry* v. *Cork and Bandon Railway.*—R. 67.
  delay; wilful misconduct. *Russell* v. *G. W. Ry.*—Mis. 210.
  delay; condition, not to be accountable for; traffic impeded by fog. *Clough* v. *L. & Y. Ry.*—Mis. 212.
Certiorari; showing by affidavit question of title arose before magistrates. *R.* v. *Js. of Donegal.*—Mis. 136.
Clerk of Crown; salary of, apportionable. *Treacy* v. *Corcoran.*—R. 65.
County cess: (see *L. & T. Act, 1870.*)
  waterworks; evidence of liability; mode of raising question of exemption. *Alma* v. *Corporation of Dublin.*—Mis. 195.

Debtors Act, 1872, defendant absconding; prejudice to plaintiff; delay in marking judgment; varying order for arrest. *Hester* v. *Byrne.*—R. 53.
  judgment for debts accrued before and after Act; amendment. *Shaw* v. *Dunlop.*—R. 76.
  what constitutes debt accruing after Act; rent accruing after on lease executed before Act. *R. M.*—R. 77.
  judgment on writ of revivor; costs. *Wogan* v. *Chamney.*—Mis. 220.

Easement, apparent and continuous; right of way; partition. *Estate of Henderson.* R. 105.
Ejectment: (see *Lease.*)
  waiver of temporary bars; jurisdiction to order in Consolidated Chamber. *Lord Castletown* v. *Wingate.*—Mis. 179.
Election (see *Ballot Act*).
Evidence; motion of decree; answer of defendant. *Nolan* v. *Nolan.*—R. 104.

* Continued from p. 166 *ante.* The numerals with R. prefixed refer to the pages of the IRISH LAW TIMES REPORTS. The numerals with Mis. prefixed refer to the pages of the miscellaneous portion of the Journal.

Fee-farm grant (see *Renewable Leasehold Conversion Act*).
Fraudulent conveyance; setting aside in bankruptcy. *Re Nolan.*—R. 55.
  retaining in L. E. Court money due to incumbrancer, pending suit in Chancery to set aside. *Tierney's Estate.*—R. 62.

Garnishee order; judgment entered for amount of verdict; costs untaxed. *Johnston* v. *Graves.*—R. 76.
Game, trespass in pursuit of; reservation in lease; complainant. *Bourke* v. *Head.*—Mis. 221.
Guardian (see *Renewable L. C. Act*).

Habeas corpus; supplemental affidavit in support of. *Re Kearse.*—Mis. 54.

Landed Estates Court: (see *Record of Title Act.*)
  misdescription in rental; discharge of purchaser. *Greer's Estate.*—R. 87.
  retaining money due to incumbrancer, pending suit in Chancery to set aside conveyance. *Tierney's Estate.*—R. 62.
Landlord and Tenant Act, 1870; compensation for disturbance; tenant refusing to continue in occupation; contracting out of benefit of Act.—*Connolly* v. *Lord Digby.*—R. 68.
  compensation for disturbance; unreasonable conduct; town-parks. *Taylor* v. *Dowden.*—R. 83.
  compensation for disturbance; Ulster custom; purchaser of tenant's interest; reasonable objection to purchaser. *Lappin* v. *Coote.*—R. 92.
  compensation for disturbance; Ulster custom; sale of tenant's interest; reasonable objection to purchaser; unwarrantable conduct of tenant. *Bolland* v. *Porter.*—R. 93.
  compensation for disturbance; Ulster custom; increase of rent. *Bennett* v. *Jones.*—R. 94.
  compensation for disturbance and improvements; tenant under a Chancery letting, pending the cause. *Rogers* v. *Fitzgibbon.*—Mis. 297.
  tenant's right to deduct half county cess; holding agricultural or pastoral. *Doyne* v. *Campbell.*—R. 101.
  registration of improvements; suitableness to holding. *Connor* v. *Sweetman.*—R. 103.
Lease, vesting of, in assignees of bankrupt; election. *Hanway* v. *Taylor.*—R. 98.
Licensing Act; *bona fide* traveller; onus of proof. *Cantwell's* case.—Mis. 167.
Lodgment of money in court; new trial pending; drawing out, when new trial directed. *Cosgrave* v. *Trade Auxiliary Co.*—Mis. 221.
  petition to draw out money; suppression of facts. *Ex p. Knott.*—R. 81.

Motion for decree [see *Evidence*].

Perjury; statutable declaration. *R* v. *O'Hare.*—Mis, 220.
Pleading; action for negligence; duplicity in plaint. *Parsons* v. *O'Toole.*—R. 72.
  money had and received, where it lies. *Treacy* v. *Corcoran.*—R. 65.

Railway (see *Carrier*).
Record of Title Act; land certificate; lien. *Matter of P. Rooney.*—R. 88.
  equitable mortgage of lease; subsequent acquisition of lessor's interest, and title recorded. *Re O'Keeffe.*—Mis. 178.
Remittal of action to inferior court; striking out count in detinue. *Keogh* v. *Alleyne.*—R. 73: *Casey* v. *Galway.*—R. 90.
  trover, remitting action of. *Chapman* v. *Obin.*—Mis. 240.
  visible means, what constitutes.—*Torkington* v. *Connor.*—R. 89: *Hunter* v. *D'Arcy.*—R. 95.
  remittal by consent after time for moving; appeal from chairman.—*Rodgers* v. *Larmour.*—Mis. 220.

Digitized by Google

Renewable Leasehold Conversion Act; lessee out of jurisdiction; petition by receiver to have grant executed by master; title of petition. *Ex p. Harrison.*—R. 82.
execution of grant for minor by guardian; appointment of, by master, in 15 sec. petition. *Palmer* v. *Smyth.*—R. 108.

Security for costs; plaintiff out of jurisdiction; defence filed without prejudice; special circumstances. *Spaide* v. *Grainger.*—R. 53.
affidavit of merits, what sufficient. *Chaigneau* v. *O'Gorman.*—Mis. 179.
plaintiff resident in England or Scotland. *White* v. *Carroll.*—R. 63: *Coleman* v. *Fayle.*—R. 88: *Clarke* v. *Croker.*—R. 96.
Service of bill out of jurisdiction; form of order; forum. *Phospho Guano Co.* v. *Guild.*—Mis. 173.
Solicitor; suppression of facts in petition to draw money; suspension. *Ex p. Knott.*—R. 81.
Specific performance; laches; acquiescence. *Lydon* v. *Lydon.*—R. 85.

Temporary bar (see *Ejectment*).

Way, right of (see *Easement*).

MARKING BALLOT PAPERS.

It will be remembered that during the recent General Election a controversy arose as to whether a ballot paper marked with any other mark than the statutory "cross" ought to be rejected by the presiding officer. It was strongly urged that the provisions in the Ballot Act and schedule on this matter were merely directory and that any mark would do. We ventured to point out that, having regard to the test provided in section 2 of the Ballot Act—is the mark one by which the voter may be afterwards identified?—there was a clear distinction between any peculiarity, such as the substitution of two crosses for one or of a tick for a cross, and mere irregularities in the shape or size of a cross; that the former might enable a vote to be identified, while from the multitude of variations in shape, &c., of the cross which were certain to occur, a mere irregularity of the latter kind would not afford any means of identification.

This view has been adopted by the first court which has had to adjudicate on the matter. The point came before the Second Division of the Court of Session in Scotland a few days ago on a special case relating to the Wigtown Burghs Election Petition. The judge who tried the petition reserved for the opinion of the Court (*inter alia*) a voting paper marked with two crosses; another not marked with a cross but with a single stroke; another marked with a cross on the left of the candidate's name; another marked with a cross containing slight horizontal marks, as in the printed letter X; and another, which was not marked with the materials provided by the returning officer—viz., black lead pencils—but with ink. The Court held the three voting papers first mentioned invalid. Lord Neaves "thought it essential to a good vote that the voter should make the cross thus pointed out [in the statutory directions], and that any mark materially different would be a deviation from what the statute described, and one not fulfilling the requirements of the Act." "Any peculiarity in the marking would be fatal to the vote." "There were ballot papers in which a cross was made, certainly attempted to be made, but it was not very well made. Whether through unsteadiness of hand, or through an accidental disturbance, the cross lines were not clear or steady, but seemed shaky and irregular. He was not of opinion that such imperfections and defects were wilful, and he considered it would be harsh and unjust to disfranchise the voter for such failings. Nor was he inclined to punish one voter here, who had made a very respectable cross, but had thought it not to be the worse of small feet or claws to support it, and to make it like the printed letter X. This seemed to his Lordship to be unnecessary; but yet it was not such a sufficiently serious or suspicious addition as to make the vote bad." As to the position of the cross, his Lordship thought "some latitude must be allowed, and if the mark was beside the candidate's name, and towards the right of the name, it should be sustained, but not if it was decidedly on the left side, which raised the suspicion of an evasion of the statute." As regarded the marking with ink, his Lordship was of opinion that "the directions as to the voter marking his paper with a pencil to be provided him were not expressed in imperative words." A good vote under the Act would be made if the cross were made with the pencil "or with ink, or with anything not peculiar."—*Solicitors' Journal.*

CONTRACTS BY INFANTS.

Viscount Middleton has appeared in the character of Protector of the Innocents. His lordship is eager to rescue the *aurea juventus* of this country from the clutches of the money lender, the allurements of the jeweller and the clothier, and the grosser temptations of the purveyor A bill destined to achieve this feat was read a second time last week in the House of Lords without debate, the Lord Chancellor merely recommending that the opinion of the common law judges should be taken before the bill was advanced a further stage.

The question how far youth should be protected from the craft of age, and from its own follies, is one that has never received proper, or indeed any, treatment from moralists or philosophers. It is really extraordinary how little consideration has been bestowed on a subject as important as it is complex as concerns the young. There is on the one side the manifest necessity of some sort of protection, and on the other side the manifest expediency of some familiarity with the world. The authority of parents, of guardians, and of the Court of Chancery, over children and wards, the theory of the Court of Chancery in giving relief against unconscionable bargains in the sale of reversions and in the acceptance of bills of exchange, are examples of the recognition of the first principle; while the whole system of public school and university education, and the rule of law that an infant can bind himself to pay for necessaries, constitute recognitions of the second principle. As concerns those who have transactions with the young there is a fair claim against the fraud of those whose cunning is beyond their years; there is an equity to be paid for what is supplied of a nature and to an extent in all respects suitable to the infant purchaser; and there is the uncontested propriety of such contracts as apprenticeships, marriage settlements, and funerals.

These various matters offer immense scope for speculation, and yet no one has ever attempted to deal with them as a whole. Law and equity have their doctrines concerning some of them; but there is nothing to be proud of in those doctrines. One of the most ancient and esteemed notions of equity as to the sale of reversions was upset by the Legislature; another, as to the cancellation of negotiable instruments given by persons after attaining majority in renewal of like instruments given during minority, has not been allowed to pass without strenuous objection outside of Lincoln's Inn; while the common law doctrine as to 'necessaries' has become a bone of contention to the judges, and a source of infinite uncertainty and embarrassment to traders.

In the famous case of *Ryder* v. *Wombwell*, 37 Law J. Rep. (N.S.) Exch. 48, 38 Law J. Rep. (N.S.) Exch 8, the Lord Chief Baron asked the jury to decide whether ruby and diamond sleeve-links, and presentation goblets, were necessaries for the infant son of a baronet of wealth; and the jury, naturally thinking it better for the young man to pay than for the goldsmith to lose, said they were. The judges of the Court of Exchequer were at loggerheads as to whether the case ought to have gone to the jury, and upon divers other points; and the list of authorities cited, and the contents of those authorities, afforded a strange variety of judicial ideas on the subject. In the Exchequer Chamber five judges were of opinion that the Lord Chief Baron ought to have directed a nonsuit.

Viscount Middleton is anxious to put an end to these inconsistencies. The general purport of his bill is to protect infants against liability for goods supplied, and

Digitized by Google

money lent, except for 'necessaries;' that the judge and not the jury shall decide the question of necessaries; and that an infant shall not be competent to ratify on his majority such contracts of his infancy as the bill avoids. This last provision seems a very proper corollary to the first. The proposition to remit the consideration of what are 'necessaries' to the judge, sounds well; but those who are familiar with the history of 'reasonable and probable cause' will hesitate as to its policy. The chief result of the rule that 'reasonable and probable cause' is for the judge, has been to carry up the question what is 'reasonable and probable cause' to the House of Lords; and the probable outcome of this bill would be a series of decisions of the Imperial Court of Appeal on 'necessaries.' Lord Middleton has adopted the Lord Chancellor's suggestion, and taken counsel of the common law judges. Their lordships have expressed their general approbation of the bill. We should have thought that the judges would have been chary of doing what juries can do. A wise man never goes out of his way to seek new responsibilities.

So much for the general character of the bill. The verbiage of the first section must not pass unnoticed. It is as follows: 'All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent, or to be lent, or for goods supplied, or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.'

This proviso would afford an excellent puzzle to candidates in the Final Examination, and we doubt whether any one, except of course the draftsman of the bill, can explain its meaning fully and satisfactorily. The declaratory part of the section makes certain contracts, which are now only voidable, absolutely void. The proviso protects certain contracts so long as they are not now voidable. If this section becomes law, then the Courts will fifty years hence have to ascertain exactly what was the law on a given day in 1874. But even six months hence how is this proviso to be construed? It is by no means easy to say what are the contracts alluded to in this proviso. Such contracts as indentures of apprenticeship, marriage settlements, agreements of partnership, leases, and admittances to copyholds fall within it; for though some of these are voidable, yet the new bill would leave them capable of ratification. But the proviso is altogether too obscure to be allowed to stand; and we would suggest that more lucid language should be employed to explain what the section is intended to provide.—*The Law Journal.*

RECENT DECISIONS.

COURT OF COMMON PLEAS, June 22.

(Sittings in Banco, before Lord Chief Justice Coleridge, and Justices Keating and Grove.)

DRINKWATER *v.* DEAKIN.

The Launceston Election Petition.

The Court delivered judgment in this case, which was argued on the 4th and 5th of June, by Mr. Manisty, Q.C., Mr. Lereschc, and Mr. Batten, for the petitioner; and Sir John Karslake, Mr. Serjeant Parry, and Mr. Edwards for the respondent.

The facts of the case were as follows:—The nomination for the borough of Launceston was held on the 30th of January, when the petitioner and Colonel Deakin were duly nominated. The poll was held on the 2nd of February, when Colonel Deakin obtained 457 votes, and Mr. Drinkwater 216 votes. Colonel Deakin was thereupon declared duly returned; but upon petition, tried before Mr Justice Mellor, on May 4, it was held that Colonel Deakin was guilty of a corrupt practice in giving at a public meeting the day after the nomination, to his tenants, voters for the borough, a right to shoot and trap rabbits, for the purpose, it was held, of influencing voters, and inducing voters to vote. After the commission of the offence, and before the poll, the following printed notice was issued, which it was found, as a fact, had been brought to the notice of the voters before they voted:—

"To the electors of the borough of Launceston,—Colonel Deakin, having for the purpose of influencing voters at this election given to all his tenants on the Werrington estate and voters in this borough a right to trap and shoot rabbits, has, I believe, been guilty of a corrupt practice, and as agent of Herbert Charles Drinkwater, Esq., a candidate at this election, I hereby give you and each of you notice that under these circumstances the said Colonel Deakin is disqualified from being a candidate, and that all votes given for him will be thrown away.

"I am, yours obediently,

"John Gurney."

It was contended for the petitioner that the status of the respondent as a qualified candidate was destroyed by the corrupt practice found by the Judge to have been committed, and that the petitioner, being the only candidate before the constituency eligible to receive their votes, was duly elected. Mr. Justice Mellor postponed his certificate, and referred the question of the right to the seat to the Court.

Lord Chief Justice Coleridge delivered a written judgment. After setting out the above facts, he said that in order to seat Mr. Drinkwater the Court must be satisfied of three things:—1, that the other candidate was in law disqualified at the time of the election; 2, that notice of that fact having been conveyed to the voters in a sufficiently definite form, votes afterwards given for him were thrown away; and 3, that the uncertainty and obscurity of the legal fact upon which the disqualification depended made no difference in the result. The law as to these points was to be derived from the decisions of committees, from common law, from statute, and from the decisions of Election Judges and the Court of Common Pleas. If, however, Colonel Deakin was not disqualified at the time of the election, it would be unnecessary to decide the other points. This depended upon the meaning of the word "disqualified," which might be used in two senses at least, either to signify a person disqualified so that if a great majority of the electors voted for him his election would be void, or a person so disqualified to be a candidate that his election would not only be void, but electors voting for him would be held to have wilfully thrown away their votes and acquiesced in the choice of the other candidate. Unless Colonel Deakin was disqualified in the latter sense, Mr. Drinkwater was not entitled to the seat. There were, no doubt, some disqualifications which, if they had existed, would, upon notice, have had the effect contended for. At Common Law it had been held that not having taken the Sacrament was, by the operation of the Test Act, such a disqualification—it destroyed the status of a candidate. Election Committees had come to a similar decision in cases of infant aliens and the like, in which cases something was wanting in the candidate himself which could not be supplied, the existence or non existence of which did not depend upon agreement. Bribery, however, stood on a different footing. The Bribery Act, 17 & 18 Vic., cap. 102, after providing for the punishment of certain acts, which included the present case, enacted that if any candidate should be declared guilty of bribery by any Election Committee, he should be incapable of being elected during the existing Parliament. The Act which gave the Judges jurisdiction over election petitions inflicted still greater disqualifications upon candidates found personally guilty, but the incapacity of a candidate to sit for seven years was expressly limited to begin after the date of his being found guilty. The conclusion, therefore, was that neither by statute nor apart from it was a candidate disqualified from the moment of his committing bribery, so as to prevent his being a candidate at the then election and to cause votes given for him to be thrown away. Such were invalid for the purpose of seating him, but not thrown away for the purpose of seating his opponent. He did not think any of the decisions of Election Committees, if accurately considered, were inconsistent with this conclusion. There

Digitized by Google

was, however, one decision which he admitted to be in point, but which he could not follow. This was the Galway case, decided by the Court of Common Pleas in Ireland in 1872, where it was held that certain corrupt practices by Captain Nolan destroyed his status as a candidate, and that his disqualification existed previous to the day of nomination. The judgment of Mr. Justice Lawson was in some measure founded on a misconception of some words by Baron Martin, by an inaccurate report of which he was probably misled. He was of opinion that Colonel Deakin was not disqualified from being a candidate at the time of election, although his conduct had properly avoided his election, and subjected him to consequences under the Bribery Act. This being his decision, it was unnecessary to decide the other points raised. As at present advised, however, he thought the notice was sufficient in its terms, but that in a Parliamentary election, in order to give effect to such a notice, the disqualification must be founded on some positive and definite fact existing at the time of the election, so as to lead to the fair inference of wilful perverseness on the part of the electors.

Mr. Justice BRETT delivered judgment to the same effect, in which Mr. Justice GROVE concurred.

EQUITY.

[From the *Solicitors' Journal.*]

GAINSFORD *v.* DUNN, M.R., 22 W. R. 499, L. R. 17 Eq. 405.

Non-Exclusive Power of Appointment—Legacies followed by a Gift of Residue of Personalty and Fund Subject to the Power.

Mr. Vaughan Hawkins, in his book on the Construction of Wills (p. 294), states the rule which was finally established by *Greville* v. *Browne* (7 W. R. 673, 7 H. L. Cas. 689) in the following terms:—"If legacies are given generally, and the *residue* of real and personal estate is afterwards given in one mass, the legacies are a charge on the residuary real as well as the personal estate." The reasoning on which this rule is based is very evident. "Residue" must mean something after something has been deducted. In the recent case the Master of the Rolls pointed out that "the question has generally arisen when the personal estate has failed; when it is said the legacy is payable out of the real estate." "But in truth," his Honour continued, "it is payable out of both funds by force of the word residue."

In *Gainsford* v. *Dunn* the rule in *Greville* v. *Browne*, or rather the reasoning on which that rule is founded was applied to a gift of the residue of a testatrix's own property and property over which she had a testamentary power of appointment. The power was non-exclusive, being a power to appoint among five brothers and sisters or their issue. All the brothers and sisters were living at the death of the testatrix. By her will testatrix gave a legacy of £5 each to three of the five objects of the power, and then proceeded as follows:—"All the rest and residue of my property, of whatever kind and wheresoever situate, and over which I have any power of appointment or disposition, I give, devise, and bequeath unto and to the use of my sisters" [naming the other two out of the five objects of the power] "for their own absolute use and benefit as tenants in common. It was contended that the power being non-exclusive was not well exercised; but, as we have said, the Master of the Rolls applied the reasoning in *Greville* v. *Browne*, and held that the legacies of £5 must be considered as payable partly out of the testatrix's own property, and partly out of the property subject to her power. As, therefore, no one of the objects of the power could deny that a fraction of the property subject to the power had been appointed to him or her, the power was well executed.

ARNES *v.* ADDY, L.C. & L.J., 22 W. R. 505, L. R. 9 Ch. 244.

Solicitor made a defendant as having aided a breach of Trust—Costs

In noticing (17 S. J. 555) the recent case of *Baker* v. *Loader* (21 W. R. 167), we commented on the practice of making a solicitor, who has been employed in improper transactions, a party to a suit arising out of them, in order that the plaintiff may obtain discovery from him and may pray costs against him; and in noticing (17 S. J. 611) the judgment of Wickens, V.C., in the above-mentioned case of *Barnes* v. *Addy* (21 W. R. 324), we called attention to the fact that the Vice-Chancellor drew a distinction between that case, where, in his opinion, the prayer for costs against the solicitor was founded on the supposition that relief could be given against him in the way of replacing the fund, and the class of cases applicable to *Baker* v. *Loader*, where the solicitor was made a party merely for discovery and costs. On the appeal Lord Selborne upheld the decision of the court below, dismissing the bill with costs as against the defendants, the solicitors. He did not, however, rely on the distinction drawn by the Vice-Chancellor; and expressed his disapproval of the practice of making solicitors parties for the purpose of charging them with costs. "I have been under the impression," said his Lordship, "and I hope the impression will go abroad, that of late years the court has set its face against making solicitors or others, who are properly witnesses, and who are not chargeable with any part of the relief prayed, parties to suits with a view of charging them with costs alone. I know no principle on which they can be charged and made parties for that purpose, unless other and further relief might also be given against them. In this case we have held that these gentlemen are not so chargeable."

The facts in *Barnes* v. *Addy* were that the solicitors had been employed in the preparation and approval of deeds whereby Addy, the sole trustee of a will, appointed Barnes to be the sole trustee of that part of the testator's property which was settled upon Barnes's wife for her separate use without power of anticipation, with remainder to her children, and whereby Barnes covenanted to indemnify Addy in respect of the transaction. The part of the trust funds in question was transferred to Barnes and used by him in his business and lost. It was contended that the appointment of Barnes as sole trustee of his wife's share of the fund, and the transfer of that share to him, were clear breaches of trust, and that the solicitors were parties to and assisted in the perpetration of the breaches of trust, and ought to be made liable accordingly. The following extract from Lord Selborne's judgment will indicate how he dealt with the case so made:—"Strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps, of which a court of equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustee."

COMMON LAW.

Trover—Conversion.

HIORT *v.* BOTT, EX., 22 W. R. 414, L. R. 9 EX. 86.

Whatever may be the result of *Fowler* v. *Hollins* (20 W. R. 868, L. R. 7 Q. B. 616) in the House of Lords, there can be little doubt about the correctness of the decision in this case. The plaintiff had forwarded barley by railway to the defendant, who had never ordered it, with a delivery order making it deliverable to "consignor *or* consignee." By the persuasion of the plaintiff's broker, through whose fraudulent trick the whole transaction was brought about, the defendant endorsed the order to the broker, with a view to its being (as the broker pretended) returned to the plaintiff; but the broker, having got the order so endorsed, made away with the barley. The intention was no doubt an innocent one on the part of the defendant; but if ever an action can be maintained for conversion where there is not an assertion by the defendant of some title contrary to the plaintiff's, this surely is the case. It is observed by Bramwell, B., (1) that the defendant's act was wholly unnecessary and gratuitous; if he had done nothing the barley would have been safe; (2) that this act enabled a third person to deprive the plaintiffs wholly of their barley; and it may be added, in the third place, that the defendant knew that the broker was only broker—knew therefore that as such the broker had no right to the custody of the goods, and had no reason to assume that any larger authority had

Digitized by Google

been given to him by the plaintiff. Cleasby, B., seems to make the question turn very much on the circumstance that the defendant had, by endorsing the delivery order, transferred the "*indicia* of title"; but we cannot see that this makes the matter any clearer. If the defendant had voluntarily taken possession of the goods and handed them over to the broker, the result must have been the same; the act he did was in fact equivalent to this. If, indeed, he had found himself against his will in possession of the goods, a different question would have arisen; because he would at least have been entitled to rid himself of their possession; but even in that case we must confess that we should have thought the course he adopted would have rendered him liable, for it was obviously an unreasonable and incautious one.

MODIFICATION OF CONTRACTS WITHIN THE STATUTE OF FRAUDS.

It is consistent with the policy of the common law that parties should be allowed to alter agreements previously entered into, whether written or oral. It is even competent to alter a written contract by a subsequent oral agreement. This rule is thus stated by Lord Denman in *Goss* v. *Lord Nugent*, 5 Barn. & Adol. 65: "After the agreement has been reduced into writing, it is competent to the parties, at any time before breach of it, by a new contract, not in writing, either altogether to waive, dissolve, or annul the former agreement, or in any manner to add to, subtract from, or vary, or qualify the terms of it, and thus to make a new contract, which is to be proved, partly by the written agreement, and partly by the subsequent verbal terms engrafted upon what will thus be left of the written agreement." And again, in *Stead* v. *Dawber*, 10 A. & E. 65: "Independent of the statute, there is nothing to prevent the total waiver, or the partial alteration, of a written contract, not under seal, by parol agreement." The question for present consideration is, has the statute of frauds changed this rule?

It is perfectly well settled that a parol agreement, invalid for want of the observance of the statutory formalities, is made effective by a subsequent performance of the requirements of the statute. The meeting of the minds of the parties, and the observance of the statutory formalities need not be simultaneous. Thus, the delivery, payment, or execution of the memorandum may be made on a day subsequent to the original negotiation. *Boutwell* v. *O'Keefe*, 32 Barb. 434; *MacKnight* v. *Dunlop*, 5 N. Y. 537; *Bissell* v. *Balcom*, 39 id. 284; *Allis* v. *Read*, 45 id. 142; *Damon* v. *Osborn*, 1 Pick. 480; *Thompson* v. *Alger*, 12 Met. 451.

Now, is it any more difficult, by subsequent acts, to alter or modify a parol agreement *valid* under the statute of frauds, than to render valid and lawful a parol agreement originally *invalid* under the statute? Is it any harder to change than to create?

This question has been somewhat mooted on the other side of the ocean. *Cuff* v. *Penn*, 1 M. & S. 21, was an action of assumpsit for not accepting a quantity of bacon, which by a written contract the defendant agreed to purchase of the plaintiff, to be delivered at certain fixed times. After a part delivery, the plaintiff, at the request of the defendant, agreed not to press the delivery of the residue. The defendant afterward refused to accept the residue, and set up the statute of frauds as a defence, but the court *held* that there had been a parol dispensation of the performance of the written contract as to the times of delivery, which was not effected by the statute of frauds. Lord Ellenborough, in pronouncing judgment, said: "It is admitted that there was an agreed substitution of other days than those originally specified for the performance of the contract; still, the contract remains. Suppose a delivery of live hogs instead of bacon had been substituted and accepted; might not that have been given in evidence as an accord and satisfaction? So here the parties have chosen to take a substituted performance." "The principal design of the statute of frauds was that parties should not have imposed on them burdensome contracts which they never made, and be fixed with goods which they never contemplated to urchase."

This case has not been followed in England, and indeed has been subsequently disapproved. *Goss* v. *Lord Nugent*, *supra; Stowell* v. *Robinson*, 3 Bing. N. R. 928; *Stead* v. *Dawber*, *supra; Noble* v. *Ward*, 2 L. R. Ex. 135; *Marshall* v. *Lynn*, 6 M. & W. 109. In *Stowell* v. *Robinson*, it was held that the time for the performance of a written contract for the sale of lands could not be enlarged by a subsequent oral agreement. In *Goss* v. *Nugent*, it was held that where there was a written contract for the sale of several lots of land, a subsequent oral agreement to waive the obligation to make title to one of the lots was invalid. *Stead* v. *Dawber*, *Noble* v. *Ward*, and *Marshall* v. *Lynn*, were cases of agreements to sell goods with subsequent agreements to enlarge the time for delivery. These were all cases in which the original contract was in writing, and none of the formalities prescribed by the statute were observed in connexion with the provision agreed to be substituted. The English courts seem to shrink from the idea of enforcing a contract partly in writing and partly by parol.

The doctrine of *Cuff* v. *Penn*, however, received the authoritative approval of the Supreme Court of Massachusetts in *Cummings* v. *Arnold*, 3 Metc. 486, and was there preferred to the doctrine of *Goss* v. *Nugent* and *Stowell* v. *Robinson*. In this case it was *held*, that in a suit upon a written contract falling within the statute of frauds, a subsequent parol agreement might be shown by which the terms of payment were varied. Wilde, J., says: "The statute requires a memorandum of the bargain to be in writing, that it may be made certain; but it does not undertake to regulate its performance. It does not say that such a contract shall not be varied by a subsequent oral agreement for a substituted performance. This is left to be decided by the rules and principles of law in relation to the admission of parol evidence to vary the terms of written contracts." The objection that to allow a party to sue partly on a written and partly on an oral agreement would be in direct opposition to the statute, he meets by saying: "No party having a right of action can be compelled to sue in this form. He may always declare on the written contract, and unless the defendant can prove performance according to the terms of the contract, or according to the agreement for a substituted performance, the plaintiff would be entitled to judgment." He thinks that "*Stowell* v. *Robinson* was decided on a mistaken construction and application of the statute of frauds, and that the distinction between the contract of sale, which is required to be in writing, and its subsequent performance, as to which the statute is silent, was overlooked, or not sufficiently considered by the Court;" and "that the principle on which *Cuff* v. *Penn* was decided, is more satisfactory and better adapted to the administration of justice in this and similar cases."

The doctrine of *Cuff* v. *Penn* and *Cummings* v. *Arnold* has been adopted in this State in the case of *Blanchard* v. *Trim*, 38 N. Y. 227. In that case the Court of Appeals say of *Cummings* v. *Arnold:* "The holding is sound, and is supported by numerous authorities. The statute requires the making of the contract to be by writing, but it does not undertake to regulate its performance, nor does it say that it shall not be varied by parol. That is left to be decided by the general rules of law and evidence. Thus, in the present case, I doubt not that the terms of payment by Calkins to Blanchard could have been modified at the pleasure of the parties, and the original sale would have "furnished a sufficient consideration for such arrangement." Where the same contract in its essentials is altered in its details, we at once appreciate the proposition of a modification."

It should be noted that even the English cases which disagree with *Cuff* v. *Penn* concede that a new contract may be substituted in place of the original agreement, provided the new agreement is evidenced by some one of the statutory formalities.

We, therefore, conclude that the rule in this country makes it competent for the parties to any contract within the purview of the statute, whether written or oral, subsequently to change any of its terms by oral agreement; and provided the change is not of such a nature as to constitute a new contract, this may be done without the observance of any of the statutory formalities.—*Albany Law Journal.*

Digitized by Google

GARNISHEE ORDERS IN CASES OF BANKRUPTCY.

The case of *Emanuel* v. *Bridger* (30 L. T. Rep. N. S. 194; L. Rep. 9 Q.B. 286) decides that "a creditor who has obtained and made absolute a garnishee order before the bankruptcy of his debtor is a creditor holding 'a charge' on the bankrupt's estate as a security for a debt due to him within the Bankruptcy Act, 1869, s. 16, subs. 5." The Chief Judge in Bankruptcy, however, does not appear to coincide with this view of the law, so distinctly laid down by the Court of Queen's Bench. In *Ex parte Greenway; Re Adams* (29 L. T. Rep. N. S. 75; 42 L. J., N. S., 16, Bank.), Bacon, C.J., says: "The order of attachment, in order to make the creditor a 'secured creditor' within the meaning of sect. 16, sub-sect. 5, of the Act of 1869, and to give him protection under sect. 95, ought to have been executed by seizure and sale before the petition for adjudication was presented." The question is one of importance, and the present state of the decisions can scarcely be considered satisfactory. It is, therefore, worth while to examine the subject somewhat in detail. We venture to think the decision of the Chief Judge would not have been precisely the same had *Emanuel* v. *Bridger* (*ubi sup.*) been decided when *ex parte Greenway, re Adams* (*ubi sup.*) was before him. It is, doubtless, of importance that property of the bankrupt should reach the trustee's hands, so as to be equally divided among the creditors generally; but there is danger lest an over-anxiety to secure everything for the trustee should deal harshly with the clear rights of such creditors as by special diligence have obtained security for their debts. In *ex parte Rocke; re Hall* (25 L. T. Rep. N. S. 287; L. Rep. 6 Ch. 795), the sheriff, acting under a writ of *fi. fa.*, had seized the goods of a debtor, after which the debtor presented to the County Court a petition for liquidation by arrangement, thereby committing an act of bankruptcy; and, on the same day, obtained an injunction restraining the sheriff from proceeding to a sale. The sheriff, however, sold the goods, and paid the balance of the proceeds of the sale into the county court. The County Court Judge ordered payment of the sum in court to the trustee; and Sir James Bacon dismissed the execution creditor's appeal, saying the object of the law of bankruptcy was to secure a fair and equal distribution of the assets among the creditors. But Lord Hatherley and the Lords Justices reversed this decision of the Chief Judge, and, taking a broader view of the rights of *execution* creditors, held that the execution creditor, and not the trustee under the liquidation, was entitled to the money in court. Lord Hatherley, in his judgment, points out (L. Rep. 6 Ch. 798) that whereas under the Act of 1849, both seizure and sale were necessary to perfect the title of the execution creditor, the Act of 1869 does not render a sale necessary for that purpose. Mr. Justice Quain, in *Emanuel* v. *Bridger* (*ubi sup.*), delivering the judgment of Cockburn, C.J., Mellor, J., and himself, says (L. Rep. 9 Q. B. 290): "It appears to us that the attachment, or seizure by way of execution for a debt due from a specific person named in the order, resembles an actual seizure of goods by the sheriff, much more than the delivery of the writ to the sheriff, which binds no specific goods, but merely the property of the debtor in general. The execution creditor can do no further act, as regards the debt attached, than to obtain his garnishee order, serve it, and make it absolute." From this it follows that the attachment order needs not a subsequent sale prior to the presentation of a petition for liquidation to override the trustee's claim. Sect. 12 of the Act of 1869 enacts that where a debtor shall be adjudicated bankrupt, no creditor, whose debt is provable under the bankruptcy, shall have any remedy against the person or property of the bankrupt, except in manner directed by that Act. But it adds that, notwithstanding this, the power of any creditor holding a security upon the property of the bankrupt, to realize, or otherwise deal with such security, shall remain the same as if this section had not been passed. Then sect. 16, sub-sect 5, provides that a "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for a debt due to him. The Court of Queen's Bench has now decided that certainly where the creditor who has obtained the garnishee order has made it absolute before the bankruptcy of his debtor, he holds a charge on the bankrupt's estate, and may realize or otherwise deal with his security within the reservation contained in sect. 12. Mr. Justice Quain seemed rather inclined to hold that the order *nisi*, when served, constituted a "charge," for he says (L. Rep. 9 Q. B. 290): "We think that the garnishee order, especially when, as in this case, it was made absolute before the bankruptcy, does constitute the execution creditor, a creditor holding security on the property of the bankrupt within sect. 12 of the Bankruptcy Act 1869." Such, certainly, would seem a consequence of the words of sect. 62 of the Common Law Procedure Act 1854, which enacts that service of the order shall bind such debts in the garnishee's hands. The difficulty appears to have arisen from the wording of the old Bankruptcy Act of 1849, sect. 184, and the cases decided under it. Under that Act the creditor might realize if he had a "mortgage or lien" but not necessarily if he had *a charge*. Then the cases *Holmes* v. *Tutton* (24 L. J. 346, Q. B.), and *Tilbury* v. *Brown* (30 L. J. 46, Q. B.), settled the law to be that service of an attachment order, even when made absolute before bankruptcy, did not constitute either a mortgage or a lien. Hence, under the Act of 1849, the assignees of the bankrupt were able to disregard the garnishee order, and the diligent creditor was deprived of all the benefit of his perseverance, just as he supposed he was to reap the fruits of his verdict and judgment. The Act of 1869, however, contains different provisions, and it does not follow precisely the wording of sect. 184 of the Act of 1849, for under the present Act the execution creditor may realize if he has a "charge" on the debtor's property. This word "charge," the Court of Queen's Bench, holds to be of wider significance than the words "mortgage" or "lien," and the rights of the judgment creditor are therefore enlarged by the present Act. The result of the cases is therefore this: Just as seizure by the sheriff makes the execution creditor a "secured creditor," and gives him a better claim than the trustee under the bankruptcy occurring after such seizure, though before sale; so service of a garnishee order *nisi*, at all events if the order be made absolute before the act of bankruptcy, will enable the judgment creditor to realize his security or "charge," and give him a better title than the trustee in bankruptcy. Such, at least, is the law as laid down by the Court of Queen's Bench; and we venture to think that such an exposition of the law is sounder and more consistent with the principles expressed by the Court of Chancery Appeals in *ex parte Rocke* (*ubi sup.*), than the decision arrived at by the Chief Judge in Bankruptcy in *ex parte Greenway; re Adams* (*ubi sup.*) While it is true that the object of the bankruptcy legislator should be to secure to all creditors their rights, there is no reason why the principle of depriving a diligent creditor of an advantageous position he has taken up before the act of bankruptcy should be extended farther than is absolutely necessary.—*Law Times.*

TACKING IN A REGISTER COUNTY AS AGAINST A SUBSEQUENT REGISTERED INCUMBRANCE.

Referring to our notice in last week's impression of the decision of Bacon, V.C., in *Credland* v. *Potter* (30 L. T. Rep. N. S. 356), we have received the following communication from a contributor who dissents from the conclusion of the Vice-Chancellor in that case, and from our inference that the cases of *Bedford* v. *Bacchus*, or *Backhouse* and *Wrightson* v. *Hudson*, must be treated as overruled.

SIR,—I have the misfortune to differ from the view expressed in your number of last week, that the cases of *Bedford* v. *Backhouse*, and *Wrightson* v. *Hudson* must be considered as overruled by the recent decision of Bacon, V.C., in *Credland* v. *Potter*. I at once concede that *Credland* v. *Potter* is incompatible with the early cases, and that if the matter were *res integra*, the decision in *Credland* v. *Potter*, as giving comprehensive effect to a system of registration might perhaps be a politic one. My own strong impression however is, that the law is firmly settled the other way, and that if a corrective is required, legislative action will be found necessary. In the early cases the registered second mortgage preceded the further advance.

Digitized by Google

In *Credland* v. *Potter* the registered second mortgage followed it. A distinction might be taken, therefore, on the ground, that in *Credland* v. *Potter* there was a memorandum of further advance which could have been registered so as to give notice to a subsequent lender searching the register. This, however, would scarcely be a satisfactory reason for postponing the further advance, since it would not be a little incongruous to allow a mortgagee to take a further advance only when it was subsequent in date to the second mortgage. I arrive at the conclusion that the early cases cited cannot be deemed to be overruled from the following considerations, viz.:—1st. It does not appear from the report of *Credland* v. *Potter*, either in *The Law Times Reports* or *The Weekly Reporter*, that the early cases were pressed or even cited in argument. 2nd. The case of *Bedford* v. *Backhouse* was a decision of Lord Chancellor King, in the year 1730, and it does not appear how his decision can, after being acquiesced in for more than 140 years, be overruled by the decision of a Vice-Chancellor, or indeed of any number of judges of first instance. 3rd. The decision in 1737, of Sir John Jekyll, in *Wrightson* v. *Hudson*, is precisely to the same effect as Lord King's in *Bedford* v. *Backhouse*. 4th. The decisions in both these cases have, without dissent, been adopted by Lord St. Leonards (V. & P. 728, 14th edit.), and by Mr. Dart (V. & P. 780, 4th edit.), together with the conclusion of Lord Camden in *Morecock* v. *Dickens*, in the year 1768 (Ambler, 678), founded on *Bedford* v. *Backhouse*, that registration in a county register is not *per se* notice. The Lord Chancellor in giving judgment said, "If this was a new point it might admit of difficulty, but the determination in *Bedford* v. *Backhouse* seems to have settled it, and it would be mischievous to disturb it. The Act provides for one single case only, that is, to make unregistered deeds void against registered deeds, but there is no provision by the Act in a case when all the deeds are registered. And yet it becomes a serious question whether a court of equity should not say that in all cases of registry, which is a public depository for deeds, and to which any person may resort, a subsequent purchaser ought not to search or be bound by notice of the registry as he would of a decree in equity or judgment at law? It is a point in which a great deal of property is concerned, and is a matter of consequence. Much property has been settled, and conveyances have proceeded on the ground of that determination. . . . A thousand neglects to search have been occasioned by that determination, and therefore I cannot take upon me to alter it. If it was a new case I should have my doubts; but the point is closed by that determination, which has been acquiesced in ever since. Lord Camden accordingly decided that a prior equitable charge, though registered, could not, through the mere fact of registration, prevail against a subsequent legal mortgage." 5th. The decision of the House of Lords in *Mill* v. *Hill* (3 H. L. Cases 828), on a similar question arising under the Irish Registry Acts, and in which a different result was arrived at, founded itself entirely on the peculiar wording of the Irish Act, following therein the decision of Lord Redesdale in *Bushell* v. *Bushell* (1 Scho. & Lef. 91). Lord Redesdale emphatically denied that registry was notice to all intents, and pointed out the mischievous results which would flow from the admission of such a doctrine. He also speaks with respect and approbation of the decisions of Sir Joseph Jekyll and Lord King. Lord Truro, in delivering the judgment of the House of Lords in *Mill* v. *Hill*, said, "In *Bushell* v. *Bushell* Lord Redesdale took time to consider the question, and delivered an elaborate judgment upon the subject, marked by all the intelligence and soundness of law for which that learned judge was conspicuous, and he came to the conclusion that upon the true construction of this section (the 4th in the Irish Act), differing in its language from the section in the English Act, the equity in the grant which was registered would prevail as an equity against any subsequent grant by the same party inconsistent with it."

The forcible language of Lord Truro in speaking of the necessity of adhering to settled rules in supporting Lord Redesdale's decision on the construction of the Irish Act, applies, *mutatis mutandis*, to Lord King's and Sir Joseph Jekyll's decisions on the English Acts. "It is now fifty years since Lord Redesdale came to that decision, and between six and seven years since the present Lord Chancellor (Lord St. Leonard's), then holding the seals of Ireland, confirmed and adopted it. If the rules of law applicable to the settlement of property, which have been solemnly decided and acted upon during a period of fifty years, which have governed professional men in that country in advising and in arranging their clients' interests in respect of property are to be called in question, and if at the end of that time, that which might have been at one time doubtful, but has long since been settled, is to be reopened and reconsidered and an alteration takes place, I confess it appears to me that the courts would become rather a snare than a protection. The opinion of Lord Redesdale was by itself entitled to great weight as an authority, and it is entitled to still greater weight, when the length of time is considered during which I must suppose it to have been acquiesced in and to have been acted upon in regulating the disposition of property. . . . I should therefore submit to your Lordships, that that should be taken as settled law, not subject to any doubt or question, and not now again open to argument," &c., &c.

On these grounds I must continue to hold that a first mortgagee of land in a register county, who takes the legal estate and has registered may tack a further advance as against a subsequent registered incumbrancer, and that the registration of the subsequent incumbrance is not, *per se*, notice to the first mortgagee.

It is not difficult to trace the process by which Vice-Chancellor Bacon has come to differ from Lord Chancellor King. Until the decision of Lord (then Sir J.) Romilly in *Moore* v. *Culverhouse* (27 Beav. 369), followed by that of Lord Hatherley (then Sir W. P. Wood, Vice-Chancellor) in *Neve* v. *Pennell* (9 L. T. Rep. N. S. 285; 2 Hem. & M. 170), the prevailing opinion among conveyancers was that the Middlesex and Yorkshire Registry Acts did not require the registration of mere agreements not under seal, and incapable as such of operating on the legal, as distinguished from the equitable interest. This opinion was supposed to be confirmed by the dictum of Lord Tenterden in *Sumpter* v. *Cooper* (3 B. & Adol. 226), that the Middlesex Act applied only to deeds. When, however, it came to be held (perhaps wrongly) that no document, if unregistered, could affect the land, then inasmuch as a further charge extending a mortgage under seal could not be constituted by an oral agreement (*Ex parte Hooper*, 19 Vesey 467; 1 Meriv. 7), and a written instrument of further charge was actually made, it is not surprising that the Vice-Chancellor should consider it altogether inoperative as against a registered incumbrancer, where the advance preceded the registration. It is not to my mind absolutely clear that the doctrine of *Moore* v. *Culverhouse* and *Neve* v. *Pennell* would be upheld on appeal—that doctrine, which requires the registration of every document affecting the land, whether at law or in equity, is not without its inconveniences, *e.g.*, a person contracting to purchase land in a register county must by force of it, if he thinks the contract beneficial, and wishes to make himself safe against a second contract by the vendor, have his contract registered. Admitting, however, that the decisions in *Moore* v. *Culverhouse* and *Neve* v. *Pennell* will probably be sustained, I cannot think that a Court of Appeal would consider it a necessary consequence that the decisions of Sir Joseph Jekyll and Lord King should be disregarded. It would surely be enough to say that a person who as mortgagee on the register had the entire legal fee vested in him, subject to redemption, was entitled, as against subsequent incumbrancers who might have inquired into the state of the account and other equities of the first mortgagee, but did not, to tack any further advance. Suppose the mortgage had been effected thus: First, a deed on the register purporting to be an absolute conveyance; second, an unregistered deed declaring the mortgagor's equity of redemption; third, an unregistered memorandum of further advance. In such a case the right of the first mortgagee to tack would be beyond dispute. Yet where is the substantial difference?

Again, it appears to me that a real distinction exists between a contest as to whether a registered mortgagee of the legal fee, may tack an unregistered charge, and a contest between mere equitable incumbrancers, in which the nature of the respective equities as appearing on the

Digitized by Google

register would be the only thing that could be regarded. I look upon the decisions in *Bedford* v. *Backhouse*, *Wrightson* v. *Hudson*, and *Morecock* v. *Dickens*, as ancient landmarks, which a court of appeal without some urgent and manifest necessity would refuse to disturb, and would if necessary sacrifice a large measure of logical consistency in order to maintain. As some of your readers may not have ready access to the reports of the two first named cases in The Equity Cases Abridged, I subjoin the same.

2 Eq. Cas. Abridged p. 615, pl. 12. "A. lent money on a mortgage of lands in Middlesex, and the mortgage was duly registered. Afterwards B. lent money on the same security and his mortgage was registered. Then A. advanced a further sum upon the same lands without notice of the second mortgage. And it was held by Lord Chancellor King that the registry of the second mortgage was not constructive notice to the first mortgagee, before his advancement of the latter sum, for, though the statute avoids deeds not registered as against purchasers, yet it gives no greater efficacy to deeds that are registered than they had before; and the constant rule of equity is that if a first mortgagee lends a further sum of money, without notice of a second mortgage, his whole money shall be paid in the first place. Nov. 26, 1730, *Bedford* and *Backhouse*, vel. *Bacchus*. M.S. Rep."

2 Eq. Cas. Abridged, p. 609, pl. 7. "Wrightson advanced £800 on a mortgage in Yorkshire and registered his mortgage, and afterwards Hudson lent a sum of money and took a judgment for it, which was registered; and then Wrightson advanced £270 more, but without any express notice of Hudson's judgment, though it was argued on a bill brought by Wrightson to foreclose, that Hudson ought to redeem on paying the first mortgage; for that when such registers prevail, every incumbrancer should be satisfied according to the priority of his registry, and that the registering Hudson's judgment was constructive notice to Wrightson sufficient to deprive him of the common benefit of a court of equity, whereby a first mortgagee, without notice, is to hold till all subsequent incumbrances are discharged. Yet it was resolved that these statutes avoid only prior charges not registered, but did not give subsequent conveyances any further force against prior ones registered than they had before; that to have affected Mr. Wrightson, Hudson ought to have given him notice when he advanced his money, and that though Wrightson might have searched the register, yet he was not bound to do it. And, therefore, it was decreed that Hudson and the mortgagor should be foreclosed unless they paid off both plaintiff's securities. *Wrightson et al* v. *Hudson et al*, 16 Feb., 1737, at the Rolls before Sir Joseph Jekyll. M. S. Rep."—*Law Times*.

THE BASTARDY LAWS.—A curious point, but not one of much difficulty, was before the Court of Queen's Bench, Westminster, lately. The question was whether a bastardy order could (under 35 & 36 Vict. c. 65, s. 3) be made on an Irishman, the birth having taken place in England, but the act of intercourse in Ireland. As far as we can gather from the short report of the case which has appeared, the court seem to have thought it unnecessary to travel beyond the words of the Act, and their decision seems open to no question. But in effect they must in deciding have refused to entertain the question of whether in such matters any weight is to be given to the law of the domicile of the person charged, or of the place where the act in respect of which the charge is imposed was done. It is well known that among writers on i ternational law this question has been a matter of some controversy with respect to what are known as "alimentary obligations," whether arising out of legal relationships or out of illicit intercourse. Some have maintained that such questions are to be determined altogether by the "personal statute" of the persons in question —*i.e.*, the law governing their *status;* but others have regarded them rather as matters of police, that is, of public order, and to be governed therefore by the *lex fori*, and there can be no doubt that the latter is the sounder view. In the *Journal de Droit International Privé* a case occurs where a French tribunal had ordered a father-in-law, an American citizen, resident in Paris, to contribute to the support of his son-in-law, and it was afterwards sought to enforce this judgment in a court of the United States. The latter court refused its assistance, on the ground that the matter was one affecting the private relations of American citizens, and that their law recognized no such obligation. A better reason would have been the same reason which justified the French tribunal in making the order—namely, that it was a matter of police, and that one State does not renforce regulations of this description prevailing in anoth State.—*Solicitors' Journal*.

THE APPORTIONMENT OF LEGACIES.—It is satisfactory to find that recent decisions are giving due effect to the comprehensive language of the Apportionment Act 1870, and that there is now no reasonable doubt that the income of a specific legacy is apportionable between the specific legatee and the general estate of the testator, the specific legatee being entitled to a part only of such income apportioned as from the death of the testator. This was the point determined by Vice-Chancellor Malins on the 3rd inst., in a case of *Pollock* v. *Pollock*, in which the Vice-Chancellor expressed dissatisfaction with his own judgment to the contrary in *Whitehead* v. *Whitehead* (29 L. T. Rep. N. S. 289), which can no longer be considered as of authority. Such apportionment is a necessary consequence of the same Vice-Chancellor's decision in *Capron* v. *Capron* (29 L. T. Rep. N. S. 826; L. Rep. 17 Eq. 288), where the rent of land comprised in a devise was held to be similarly apportionable, since it is obvious that no reasonable distinction can be taken in this respect between a specific devise and a specific bequest. The only exception to the universality of the rule, that we are aware of, is to be found in those cases where the subject of gift is a share or interest in a private partnership or company, as was decided in *Jones* v. *Ogle* (28 L. T. Rep. N. S. 245). That the Act applies to wills and other instruments made before it passed, see *Re Cracker* (28 L. T. Rep. N. S. 289), *Re Cline's Trusts* (30 L. T. Rep. N. S. 249).—*Law Times*.

CONTEMPT OF COURT.—Turning on too much gas has been held a contempt of court in England: wearing shoes and stockings has been held a contempt of court in Pondicherry. The *Gazette des Tribunaux* for July 12th contains the report of an appeal from a decision of the local tribunal at that settlement, recently heard by the *Cour de Cassation* at Paris, from which we gather the following remarkable narrative:—M. Ponnoutamby is a native pleader in the court at Pondicherry. On the 8th January last he appeared in court wearing shoes and stockings. The judge at once drew his attention to the circumstance, and informed him that this modification of his costume was entirely contrary to regulation. M. Ponnoutamby pleaded that the state of his health required the indulgence, and promised to procure a doctor's certificate to that effect. He did not do so, however, but on the 15th January again appeared in the objectionable costume, and this time claimed the right to do so. The judge promptly forbade him to plead, and prepared a formal complaint on the subject to the president of the tribunal. The president called a meeting of all the judges to consider the case, and to weigh the question, "*le conseil Ponnoutamby a-t-il le droit de porter des bas et des souliers Européens?*" Without deciding this point, the court were clearly of opinion that M. Ponnoutamby's persistence in wearing shoes and stockings in the face of the repeated observations of the judge was a departure from the respect due to a court of justice, and that they could not overlook these disrespectful acts (*actes irrévérencieux*), and they accordingly sentenced him to be suspended from practice for ten days. He appealed to the court at Paris, and the case was heard on the 10th inst. It appeared that a law passed in 1842 provided that native pleaders shall wear in court "the costume commonly adopted in their respective castes." Now the native costume has been gradually superseded by the European, and when a native adopts the latter garb he no longer takes off his shoes when he enters a house. Moreover, the colonial minister, in a despatch dated 3rd June, 1873, had expressly stated that in his opinion it was lawful at Pondicherry for a native pleader to wear shoes and stockings in court. The Court of Appeal took this view, and decided in favour of the appellant; so when the next mail reaches India, M. Ponnoutamby will be able to resume his shoes and stockings.

Digitized by Google

NEW BOOKS.

We have to acknowledge having received from Messrs. Eyre and Spottiswoode, Her Majesty's Printers, London, *The Revised Statutes and Index*, 6 vols.

NOTES OF ENGLISH DECISIONS.

[From the *Law Times*.]

WILL—SPECIFIC AND RESIDUARY DEVISES AND BEQUESTS —PERSONALTY INSUFFICIENT FOR PAYMENT OF DEBTS—ADMINISTRATION — CLAIM DISALLOWED — COSTS. — Where the personal estate is insufficient for the payment of debts, real estates comprised in a residuary devise are chargeable with the payment of debts in priority, to real estates specifically devised. *Hensman* v. *Fryer* (17 L. T. Rep. N. S. 394; L. Rep. 3 Ch. 420) not followed. The court refused to make any order as to the costs of an unsuccessful claim made by the plaintiff against the testator's estate: (*Lancefield* v. *Iggulden*, 30 L. T. Rep. N. S. 156. V.C. B.)

PRACTICE—MONEY ADVANCED BY TRUSTEE—INTEREST.— A trustee will be allowed interest upon money advanced by him, and applied in payment of his testator's debts, or otherwise on account of his personal estate: (*Finch* v. *Prescott*, 30 L. T. Rep. N. S. 156. V.C. B.)

INJUNCTION—TRESPASS—WASTE.—The defendant to an action of ejectment to recover a piece of woodland, adduced evidence of adverse possession for more than twenty years, and the action was discontinued. Subsequently the plaintiff in the action from time to time walked in the wood, and turned his cattle into it, in order to assert his alleged right, and to bar the Statute of Limitations. At length he cut down a tree in the wood, whereupon the defendant to the action filed his bill for an injunction. Held (affirming the decision of the Master of the Rolls) that as the result of the action of ejectment showed the defendant to that action to be in possession of the wood, he was entitled to the injunction. *Lowndes* v. *Bettle* (10 L. T. Rep. N. S. 55; 33 L. J. 431 Ch.) approved and followed: (*Stanford* v. *Hurlstone*, 30 L. T. Rep. N. S. 140. Chan.)

WILL—GIFT OVER ON BANKRUPTCY—PERSONAL ENJOYMENT—FORFEITURE OF LIFE ESTATE.—Testator gave specific legacies, and gave all his residuary real and personal estate to S. and C. upon trust for conversion and investment, and to pay thereout an annuity of £250 to S. and also an annuity to E., and subject thereto and to his debts, the remainder of his real and personal estate to be held in trust for C. for life, or until he should become bankrupt or insolvent, or do or suffer anything which but for that provision would deprive him of the personal enjoyment, in which case there was a gift over. S. and C. were appointed executors. Testator died in June, 1870, considerably indebted. His personal estate not specifically bequeathed was under £20. C. was adjudicated bankrupt in July, 1871. In January, 1872, a scheme for arrangement of the bankrupt's affairs, by paying 20s. in the pound, was made, and the bankruptcy was annulled, and an order was made vesting his property in S. In Jan., 1873, the order vesting the bankrupt's property in S. was rescinded. Prior to his bankruptcy C. had received the rents of the testator's real estate, but since then S. had received them. The rents had been applied towards paying the testator's debts, and the annuities so far as they would extend, but S.'s own annuity was in arrear, as the rents were not sufficient to pay it in full. C. had received nothing for his own use. Held that as C. had not been deprived of the personal enjoyment of the residuary estate, there had been no forfeiture of his life interest: (*Robins* v. *Rose*, 30 L. T. Rep. N. S. 152. V.C. B.)

WILL—DEVISE OF ALL LANDS AND HEREDITAMENTS—STRICT SETTLEMENT—LEASEHOLDS—CONTRARY INTENTION. —The 26th section of the Wills Act throws the *onus probandi* upon those who assert that a devise of "lands" does not include leasehold estates in land, but that onus is satisfied by showing from the whole will sufficient grounds to satisfy a reasonable man that the testator did not intend by the word "lands" to pass leasehold estates. A testator, by his will made in 1861, devised all his messuages, lands, and hereditaments in the county of Middlesex, and all other lands and hereditaments in England belonging to him, to the use of his eldest son for life, with remainder to his eldest son's issue in tail male, with an ultimate remainder to his own right heirs. He also bequeathed all his money, securities for money, goods, chattels, and personal estate to trustees upon trusts corresponding with the trusts of the hereditaments thereinbefore devised in strict settlement, but so that the same should not vest absolutely in any person thereby made tenant in tail by purchase unless such person should attain twenty-one. As to the devised realty, the will contained a power of sale, empowering the trustees to invest the proceeds of any sale in the purchase of freeholds or leaseholds convenient to be held therewith. The will also contained a bequest of certain chattels and heirlooms in strict settlement, so far as the rules of law and equity would permit. The testator, both as to any leaseholds to be purchased under the power, and as to the chattels, repeated the proviso that the same should not vest absolutely in any person thereby made tenant in tail by purchase, unless such person should attain twenty-one. At the time of his death, the testator was possessed of both freehold and leasehold estates in the county of Middlesex: Held (affirming the decision of Malins, V.C.) that the leaseholds did not pass under the devise of lands and hereditaments by virtue of the 26th section of the Wills Act, inasmuch as there was sufficient indication of a contrary intention appearing on the face of the will; but that they passed under the ultimate bequest of personal estate: (*Prescott* v. *Barker*, 30 L. T. Rep. N. S. 149. Chan.)

WILL—CONSTRUCTION—BEQUEST OF RESIDUE TO CHARITIES—PURE AND IMPURE PERSONALTY—MARSHALLING—MORTMAIN ACT.—J. M., who died in March, 1866, by will, in July, 1855, after appointing executors and trustees, and bequeathing legacies specific and pecuniary, and giving certain annuities, said, "as to all the residue and remainder of my personal estate and effects whatsoever and wheresoever, which I may be possessed of or entitled to at the time of my decease, I give and bequeath the same as follows: namely, one equal third part or share thereof to St. Mary's Hospital, Paddington, aforesaid, one other equal third part or share thereof to the Society for the Propagation of the Gospel in Foreign Parts, and the remaining one equal third part or share thereof to the Society for Promoting Christian Knowledge, and my will is, and I expressly direct, that the three last-mentioned legacies or bequests shall respectively be paid and satisfied out of such part of my personal estate as can lawfully be applied to the payment thereof, and which shall be reserved by my trustees or trustee for the time being for that purpose, and that such legacies and shares of residue shall respectively be applied to the purposes of the said hospital and societies respectively, and the receipts of the respective treasurers of the said hospital and societies respectively shall be sufficient discharges for the same respectively." The suit was one for administration, and the question raised was as to the marshalling of debts, legacies, and annuities. Held, that the direction that the charitable bequests were to be satisfied out of such part of the testator's personal estate as could lawfully be applied to the payment thereof, and which should be reserved for that purpose, was a plain direction to marshal the assets, so as to give the charities the fullest benefit they were capable of taking: (*Miles* v. *Harrison*, 30 L. T. Rep. N. S. 152. Chan.)

COUNTY COURTS—REMITTING CAUSE FOR TRIAL TO—APPEAL FROM DECISION OF A JUDGE AT CHAMBERS—THE GROUND UPON WHICH THE COURT WILL REVERSE SUCH DECISION.—Upon an order made by a judge at chambers under sect. 10 of the 30 & 31 Vict., c. 142, directing a cause to be tried in a County Court in default of security being given for the defendant's costs, or of satisfying the judge that the plaintiff has a cause of action fit to be prosecuted in the Superior Court, an appeal lies to the Superior Court. But such court, although entertaining an opinion that the cause is one which might be fit to be tried in the Superior Court, will not interfere with the decision of the judge at chambers unless it is of opinion that such decision is obviously wrong: (*Jennings and Wife* v. *The London General Omnibus Company*, 30 L. T. Rep. N. S. 266. Ex.)

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—J. Merrick, confirm sale. — William Moorehead, allocation.—D. J. Cruice, examine delay.

IN COURT.—H. M'Adam, judgment.—M. O'Connor, re-entry final schedule.—H. H. Jones, do.—W. Carroll, payment.—J. L. Mason, final schedule.—R. H. Graves, compensation.—R. Scallan, from 30th.—Anne Reynolds, absolute credit.

Before EXAMINER (Mr. Dobbs).

S. Craig, proofs.

Before EXAMINER (Mr. M'Donnell).

J. Thornton, vouch.—Rev. E. Richards, do.—J. Lemass, do.—A. Beatty, do.—Right Hon. W. C. F. Temple, do.—A. Sotheran, ditto.

TUESDAY.

IN COURT.—J. Gaggin, final schedule.—W. Elliott, do.—A. P. Stewart, do.—W. Acton, do.—Sir H. V. Goold, do.—Trustees Wilberforce, do.—William M'Cormick, do.—F. R. Phayre, do.—Executor Mullins, do.—Assignees Leadbetter, do.—Church Commissioners, do.—E. S. Nicholson, do.—D. Davenport, payment.—F. P. Rowley, do.—A. M. E. O'Brien, from 2nd.

WEDNESDAY.

IN CHAMBER.—Elliott and Patton, confirm sale.

IN COURT.—M. Dooley, final schedule.—E. R. Mahony, do.—G. Gaynor, do.—R. Blackhall, do.—E. A. Greene, do.—M. Gage, do.—M. M'Manus, do.—J. A. Gandon, do.—Trustees Hutton, do.—Trustees Jones, do.—Jane Bellingham, do.—A. Warnock, do.—Same, compensation.—J. P. Carleton, from 2nd.—T. Bell, re-entry final schedule.

Before EXAMINER (Mr. M'Donnell).

James Anthony, rental.—Trustees Butcher, do.—D. J. O'Connor, do.—J. E. E. Dooley, do.—Rev. T. Townsend, do.—Right Hon. W. C. F. Temple, to re-settle a lot.

Before EXAMINER (Mr. Dobbs).

J. Smith and another, rental.

THURSDAY.

IN CHAMBER.—W. N. Comyn and others, proposal.

IN COURT.—D. J. Bingham, re-entry final schedule.—Sir H. Bruce, order for re-sale.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

A. J. B. Bourke, rental.—G. K. Browne, do.—Rev. W. Gorman, do.—H. E. Jones, do.—J. M. Domville, do.—Owen Wynne, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Sylvester Wallace	Prove debts and vouch	*Molloy & Watson*
S. Law and Son	do	*Beauchamp*
G. and R. Ferguson	do	*Larkin & Co.*
John O'Donnell	do	*Hamilton & Craig*
Walter O'Donnell	Title, conditions, and posting	*Maxwell & Weldon*

TUESDAY.

Before the COURT, at 11 o'clock.

John Farrell	1st public sitting	*Larkin & Co.*
William Cannon	do	*Rynd*
John Kennedy	do	*Roe*
Alexander Baillie	Final examination	*Wallace & Co.*
Mary Anne Boyton	do	*Oldham & Eaton*
James Murray	do	*Hamilton & Craig*
Mary Leahy	do	*Larkin & Co.*
John Callaghan	do	*Mathews*
Patrick O'Shea	do	*Oldham & Eaton*
Mary Dolan	do	*Hardman & Son*
Michael Ryan	do	*Kavanagh*
Francis Keegan	do	*Boughey*
Thomas Coppinger	Examine witnesses	*Hamilton & Craig*
William Holmes	Prove charge of National Bank	*Larkin & Co.*
John Kirwan	Prove charge	*Malcomson*
Patrick Hanlon	Audit and dividend	*Scallan*
John H. Sweet	do	*Maxwell & Weldon*
John M'Hugh	do	*Perry & Co.*
Robert Grogan	do	*Perry & Co.*
Hugh C. Walsh	Motion	*Cronhelm & Tobias*
George Deacon	Audit assignee's acct.	*Tincler & Son*

Before the CHIEF REGISTRAR, at 12 o'clock.

W. and S. Law	Costs	*Beauchamp*
Patrick Nolan	Reference	*Stephens*
Philip Brown	Prove debts and vouch	*Forsythe*
Nash and Harty	Costs	*Noblett & Son*
Dublin Cattle Market Co.	do	*D. & T. Fitzgerald*
John Nolan	Reference order of 19th May	*Orpen & Sweeny*
James Fortune	Costs	*Lett*
Catherine Kennedy	do	*Lett*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Hugh C. Walsh	Prove debts and vouch	*Beauchamp*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Peter Miller	Prove debts and vouch	*Oldham & Eaton*
O'Reardon and Murphy	Vouch account	*Larkin & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

Walton and Nolan	1st composition sitting	*Leachman*
John M'Crory	1st public sitting	*Fottrell & Son*
Patrick Roche	do	*Lett*
James M'Aleenan	do	*Molloy & Watson*
Samuel Hood	Final examination	*Perry & Co.*
Timothy Buckley	do	*Scallan*
John Lancashire	do	*Perry & Co.*
M. Bradshaw	do	*Larkin & Co.*
Thomas Bailey	do	*Scallan*
Arthur G. Hay	do	*Mathews*
Same matter	1st composition sitting	*Mathews*
Maurice Cassidy	Audit assignee's acct.	*Fay & M'Gough*
Nash and Harty	do	*Noblett & Son*

Before the CHIEF REGISTRAR, at 12 o'clock.

Archibald Meikle	Costs	*Molloy & Watson*
Wm. Walker and John Trevor	Prove debts	*Perry & Co.*
William Cresswell	Costs	*Lett*
Joseph Cresswell	do	*Lett*

ADJUDICATIONS IN BANKRUPTCY.

Courtney, Robert, Dundrum, builder. Sittings, *Tuesday, July* 21, and *Friday, August* 7. *Goff*, solr.

Creswell, William, Ramelton, Donegal, farmer. Sittings, *Friday, July* 24, and *Tuesday, August* 11. *Mathews*, solr.

Kelly, John, Rathfragan, Fintona, county Tyrone. Sittings, *Tuesday, July* 21, and *Friday, August* 7. *Beauchamp*, solr.

Digitized by Google

Kilbride, Daniel, Tomaline, Limerick, gentleman-farmer. Sittings, *Tuesday, July* 21, and *Friday, August* 7. *Beauchamp*, solr.

M'Cusker, Philip, Enniskillen, Fermanagh, grocer and spirit dealer. Sittings, *Tuesday, July* 21, and *Friday, August* 7. *Perry and Co.*, solr.

Wallace, Hugh, of Leighnmohr, and Magill, Thomas S., Greenfield, county Antrim, linen bleachers and merchants, trading as Wallace, Magill, and Co. Sittings, *Friday, July* 24, and *Tuesday, August* 11. *Neilson*, solr.

Williams, Mary, Old George's-street, Cork, widow, coachbuilder. Sittings, *Tuesday, July* 24, and *Friday, August* 7. *Oldham and Eaton*, solrs.

DIVIDENDS IN BANKRUPTCY.

Bloomfield, David, York-street, Belfast, watchmaker and jeweller. 1st dividend 8s 2d. in the £. C. H. James, official assignee. *Rosenthal*, solr.

Midgeley, Robert, Kilroe Cottage, Mayo, gentleman. 1st and final dividend 20s. in the £. L. H. Deering, official assignee. *Neilson*, solr.

Neill, Patrick, Ballybeg, Ferns, Wexford, farmer. 1st and final dividend 4s. 2½d. in the £. L. H. Deering, official assignee. *Benner*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	June Fri. 26	Sat. 27	Mon. 29	Tues. 30	July Wed. 1	Thur 2
	Government.						
—	3 p c Consols	92⅜	95⅜	92⅜	—	92⅜	92⅜⅝
—	3 p c Reduced	—	—	—	—	—	—
—	New 3 p c Stock ..	91⅜⅝	91⅜	91⅜⅝	91⅜⅝	91⅜⅝½	91⅜⅝
	INDIA STOCK.						
—	5 p c July '80 } Trafble. at	—	—	107⅝	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	101⅜	—
	Banks.						
100	Bank of Ireland ..	—	—	301⅜⅝	301⅜	301⅜	301⅜
25	*Hibernian Banking Co.* ..	57⅜⅝	—	—	57	57⅜	57⅜⅝
20	*London and County* ..	—	—	—	60⅜	—	—
15	*London Joint Stock* ..	—	50¼	—	—	50⅜	50⅜
20	*London and Westminster* ..	—	—	—	73⅜	73⅜	73⅜
3½	*Munster Bank (Limited)*	—	—	8⅜	—	—	8⅜ 9
30	*National Bank*	60⅜⅝	—	60⅜⅝	60⅜	60	60⅜
15	*National of Liverp'l (Ltd)*	—	—	14⅜	—	—	—
25	*Provincial Bank* ..	—	—	x d	—	—	—
10	Do. New ..	—	—	x d	—	—	—
10	*Royal Bank*	29⅜	—	—	—	29⅜	29⅜
	Steam.						
50	British & Irish	—	—	52	52	—	—
100	City of Dublin	—	—	105	—	—	—
10	Dundalk (Limited) ..	—	—	—	—	7	7
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	2/	—
7	*Cape Copper M. Co. (lit'd)*	—	—	x d	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	4⅜	—	4⅜ 5	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	9⅜⅝	—	9⅜	9⅜	9⅜	—
9½	*Dublin Tramways* ..	7⅜	—	—	—	—	—
25	*National Assurance* ..	—	—	—	—	—	—
9-4-7	*Patriotic Assurance* ..	10⅜	—	10⅜	—	10⅜	10⅜
	Railways.						
10	Athenry and Tuam ..	—	—	—	-	—	—
50	Belfast and Northern Cos.	—	—	—	67⅜	67⅜⅝	67⅜⅝
100	Dublin and Belfast Junct.	—	—	—	—	—	—
100	Dublin and Drogheda	—	—	—	—	112	—
100	Dublin, W'klow, & W'ford	—	—	74⅜	—	—	—
100	Gt. Northern and Western	—	—	—	—	—	—
100	Gt. Southern and Western	107	—	107	107	107	-
100	Do. do. free of Stamp	107⅜	—	107⅜	—	—	108
100	Midland Gt. Western ..	—	—	81⅜	—	—	81⅜
25	Portadown, Dun., &c., 5 p c	—	15	15	—	—	—
50	Waterford and Limerick ..	—	—	—	—	—	—
	Railway Preference.						
100	Dublin & Meath - 1st, 5 p c	—	—	—	—	—	—
100	D., W., & W., 6 per cent ..	130	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	53⅜	—	—
100	Grand Trunk of Canada, 2	—	—	—	—	—	—
100	Do. do. 3	—	—	—	—	—	28¼
100	Gt. South'n & West'n 4 p c	—	—	99	—	—	99
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
—	Do., 4½ p c	—	—	96¼	—	—	—
	Railway Debentures.						
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	99⅜	—	—	—	—	—
—	D., W., & W., 4½ p c ..	—	—	—	99	—	—
—	Gt. South'n & West'n, 4 p c	98⅜	—	98⅜ f	98⅜ f	—	98⅜ f

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 4th June, 1874.
Of Deposit—2 per cent., 28th May, 1874.

Name Days—July 15th and 29th, 1874.
Account Days—July 16th and 30th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

A JUDGE'S NONSUIT FOR HIS SON.—At Lewes County Court, on Tuesday last, Judge Furner heard a case "Thomas Edward Beard and William Beard *v.* William Campbell Furner;" a claim of £5 14s. for goods sold. Mr. Jones appeared for plaintiffs, who are wine and spirit merchants in Lewes; and Mr. Goodman for defendant, who is the judge's son. Mr. Jones asked his Honour what he preferred doing with the action. His Honour—I can't try it. Mr. Goodman—I take it that the case will go to the Tunbridge-wells Court. His Honour—What is the defence? I see that the Statute of Limitations is pleaded. Mr. Goodman—That is so, sir; but also that the goods were returned. His Honour—Are you prepared, Mr. Jones, to prove that the debt is not within the statute? Mr. Jones—My information is that the plea is informal. His Honour—The first plea is the statute, and the second, never indebted. Mr. Goodman said the proper notice had been given in pleading the statute. His Honour—I see this was in 1861, and unless you, Mr. Jones, can take it out of the statute, it will be folly to send it to another Court. Mr. Jones—I must take exception to the statement that there is a good defence to the case on its merits. His Honour decided that the plea of the Statute of Limitation was a good plea, and directed a nonsuit in favour of his son.

LITERARY LAWYERS.—It is curious to observe that even to this day when the hard and fast barriers which separated one profession from another, and confined a man through life to one particular groove, have in so many respects been broken down and abolished, there is still a feeling in existence that a lawyer should be a lawyer and nothing else. Mr. Forsyth referred to this yesterday in his speech at the luncheon at King's College Commemoration, saying that he "regretted that the chairman had referred to literature, for there was nothing so fatal to a lawyer as to receive credit for literary work," and he went on to hope that it would be supposed that some one else of the same name had "been guilty of such a perpetration." The theory, we suppose, is that the law is a science so complicated that the whole of a man's mind must be employed to master it. But this is a theory certainly not borne out by experience, for it is scarcely possible to point to a man who has attained the first-class place in the legal profession, whose success has not been in great part due to mental qualities and accomplishments which were certainly not acquired by the study of law books.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

MORRIS—June 27, at 22 Lower Fitzwilliam-street, the wife of the Right Hon. Mr. Justice Morris, of a daughter.

ROBINSON—June, 23, at 2 Margaret-place, the wife of William Robinson, Esq., solicitor, of a daughter.

MARRIAGES.

BINGHAM and WHITE—July 1, at Monkstown Church, by the Rev. Abraham H. Palmer, A.B., Henry Harvey, second son of Colonel Bingham, of Wolverton, Dalkey, to Bessie, third daughter of the late Joseph William White, Esq., of this city, solicitor.

SYMES and GEOGHEGAN—July 2, at St. Peter's Church, Dublin, by the Rev. Achilles Daunt, B.D., assisted by the Rev. James Keane, A.B., William J. Symes, Esq., Architect, C.E., youngest son of Glascott Symes, Esq., M.D., of 2 Gresham-terrace, Kingstown, in the County of Dublin, to Emma Helena, second daughter of Thomas Geoghegan, Esq., A.M., solicitor, of 55 Stephen's-green, East, Dublin.

TOMLINSON and LEDWICH—June 30, at Donnybrook Church, by the Rev. William M'Gennett, Edward, second son of John Tomlinson, Esq., of this city, to Sarah, youngest daughter of the late James Ledwich, Esq., solicitor, Dublin, and granddaughter of the late Rev. Edward Ledwich, LL.D., author of "The Antiquities of Ireland."

DEATH.

WATT—June 27, at Alexandra-terrace, Rockferry, Sarah, relict of the late James Watt, Esq., solicitor and Queen's Proctor, aged 77 years.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Digitized by Google

ACCOUNTANTS:

AUDIT OFFICE,
4, COLLEGE-GREEN,
HENRY BROWN & CO.,
420 AUDITORS AND ACCOUNTANTS.

N. PETERSON & SON,
PUBLIC ACCOUNTANTS, AUDITORS, AND EXPERTS,
ULSTER CHAMBERS,
18, FLEET-STREET, DUBLIN.

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A MONTHLY JOURNAL OF JURISPRUDENCE AND INTERNATIONAL LAW for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

REEVES & TURNER, Law Booksellers, 100 Chancery-lane, London. 455

WANTS:

WANTED, Nos. 53, 54, 55, 56, 57, 58, 59, 62, 67, 68, 78, and 98, of THE IRISH LAW TIMES, for which full price (6*d.*) will be given.
454 Office, 53, Upper Sackville-street, Dublin.

T. KILMARTIN and SON,
SCRIVENERS AND LAW STATIONERS,
ESTABLISHED 1867,
21, KING-STREET, BELFAST.

LEGAL POSTINGS:

DECLARATION OF TITLE.—FIRST NOTICE.

LANDED ESTATES' COURT, IRELAND.

In the Matter of the Estate of The Rev. Robert Walter Maxwell, of Birdstown, in the County of Donegal, Clerk, an Owner of Land.

THIS IS TO GIVE NOTICE TO ALL WHOM IT MAY CONCERN, that Robert Walter Maxwell, of Birdstown, in the County of Donegal, on the 6th day of June, 1874, presented his petition to the Landed Estates' Court, Ireland, praying that the Title—Firstly, to the Lands of the Quarterland of Kilmonaster Middle, otherwise Kirkminster, otherwise Kirkminister, containing 257a 3r 26p, statute measure; the Quarterland of Kilmonaster Lower, otherwise Kirkminster, otherwise Kirkminister, containing 213a 3r 24p, statute measure; the Quarterland of Gortin South, otherwise Gortin, containing 183a 2r 12p, statute measure; and the Quarterland of Legnabraid, otherwise Cunninghamstown, containing 100a 0r 20p, statute measure; and which said Lands are described in a settlement of the 15th of November, 1775, and another of the 9th of June, 1809, as the Town and Lands of Kirkminster, Legnabread, Gortin, and Tubinabrock, and now commonly known as the Quarterlands of Kilmonaster Middle and Lower, Gortin South, and Legnabraid, or Cunninghamstown, and all situate in the Barony of Raphoe and County of Donegal. Secondly, to the Lands of the Quarterland of Donnygowen, otherwise Hunterstown, containing 92a 0r 5p; the Quarterland of Iniscian, otherwise Iniscian, otherwise Enniskiln, otherwise Enniskian, containing 359a 0r 19p, statute measure; the Quarterland of Lisdoo, otherwise Lisdoe, containing 385a 3r 27p, statute measure; the Quarterland of Skerryglass, containing 87a 0r 7p, statute measure; and the Quarterland of Tullymoan, containing 375a 1r 39p, statute measure; and described in said settlements as the Towns and Lands of Tullymoan, Enniskiin Upper and Lower, Lisdoe, Skerryglass, and Hunterstown; Tenements in and near Claudy and the Mill of Claudy, and now commonly known as the Quarterlands of Donnygowen, Hunterstown, Inniscian, Lisdoo, Skerryglass, and Tullymoan, all situate in the Barony of Strabane and County of Tyrone; and one undivided moiety of the Salmon Fishery in the River Finn, between Castlefin and Claudy, and described in said settlements as the moiety of the Salmon Fishery in the part of the River Finn between Castlefin and Claudy. And, thirdly, to the Lands of the Quarterland of Garvrey, otherwise Garvery, otherwise Garvary, except 37a thereof, and except 9a and 1r plantation measure thereof, held with the Corn Mill, containing 495a 3r 9p, statute measure; part of the Mountain Bar, called Skelp, containing 217a, statute measure, situate in the Barony of Ennishowen and County of Donegal. Fourthly, to that part of said Quarterland of Garvrey, otherwise Garvery—9a 1r, Cunningham measure, excepted out of the last denomination—with the Corn Mill, thereon, containing 12a 3r 10p, statute measure, situate in said Barony and County. Fifthly, to the Quarterland of Gortnasky, otherwise Gortnaskey, otherwise Gortnaskea, and the Mountain Bar thereof, containing 996a 0r 4p, with the House and Demesne of Birdstown, and situate in said Barony and County. And, sixthly, to the Quarterland of Drimaduay, otherwise Drimadooey, otherwise Drimaduey, containing 21'a 1r, statute measure, and situate in said Barony and County. Seventhly, to the Quarterland of Dundrain, otherwise Dundrean, containing 571a 3r 11p, statute measure and situate in said Barony and County. And, eighthly, to the Quarterland of Coolagh, otherwise Cooley, otherwise Callow, otherwise Goolagh, otherwise Cooly, otherwise Collon, being part of the Termon or Errenagh Lands of Faughanvale, containing 329a 1r 35p, statute measure; the Quarterland of Legavannon, being part of same Lands, containing 375a 3r 15p, statute measure; the Quarterland of Bolie, being part of same Lands, containing 733a 1r 10p, statute measure; the Quarterland of Faughanvale, being part of the same Lands, containing 222a 2r 17p, statute measure, the Quarterland of Tullyverry, otherwise Tullulerly, otherwise Tallulerley, otherwise Tullybarley, being part of same Lands, containing 298a 2r 61p, statute measure; the Quarterland of Killywool, otherwise Killyweel, otherwise Killywill, otherwise Killiweel, being part of same Lands, containing 1,457a 1r 31p, statute measure, and all situate in the Half-Barony of Tirkeeran, and County Londonderry, and described in said settlement of 15th November, 1775, as Cooley, otherwise Callow, otherwise Goolagh; Kinletter, otherwise Killeter, Ballyorny, Templekelly, Rossan, Tallulerly, and Killyweel, and in the said settlement, 9th June, 1809, as Cooly, otherwise Collan, otherwise Goolagh, Kinlitter, otherwise Killeter, Ballyorney, Temple-kelly, Rossan, Tallulerley, and Killiweel, and in a Fee-farm Grant of 26th May, 1871, as Cooley, otherwise Coolue, otherwise Goolagh; Kinletter, otherwise Killiter, Ballygoorney, Rossan, Tullybarley, Killywill, and Templekelly, and now commonly known as Coolagh, Legavannon, Bolie, Faughanvale, Tullyverry, Killywool, might be investigated, and a judicial declaration made thereon by the Court, that he, the said Robert Walter Maxwell, had a good and sufficient title in fee-simple to the said first-mentioned lands, and a good and sufficient title in fee-farm in the said secondly, thirdly, fourthly, fifthly, sixthly, seventhly, and eighthly mentioned Lands and Premises, subject as to the said secondly mentioned Lands and Premises to the fee-farm rent of £8 0s 0d per annum, created by an ancient fee-farm grant made in the reign of His Majesty King James the 1st, and now payable to the Duke of Abercorn; and subject, as to the thirdly mentioned Lands and Premises, to the fee-farm rent of £83 8s 8d per annum, created by a fee-farm grant, dated the 31st of January, 1873, and made by the Most Honourable George Hamilton, Marquis of Donegall, to the said Robert Walter Maxwell; and subject, as to the fourthly mentioned Lands and Premises, to the fee-farm rent of £9 7s 4d per annum, created by a fee-farm grant of the same date, and between the same parties as last mentioned; and subject, as to the fifthly mentioned Lands and Premises, to the fee-farm rent of £60 11s 10d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the sixthly mentioned Lands and Premises, to the fee-farm rent of £32 13s 4d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the seventhly mentioned Lands and Premises, to the fee-farm rent of £65 0s 8d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the eighthly mentioned Lands and Premises, to the fee-farm rent of £268 2s 10d per annum, created by a fee-farm grant, bearing date the 26th day of May, 1871, and made by the Right Rev. William, Lord Bishop of Derry and Raphoe, with the consent of the Commissioners of Church Temporalities in Ireland, to the said Robert Walter Maxwell; and subject, as to all the said Lands and Premises, to the Leases, Tenancies, Rights, Easements, and Incumbrances specified in the said Petition.

Now, the Court will, after twenty-one days from the date hereof, proceed to investigate the Title to the said Lands, and if such investigation prove satisfactory, will make a Declaration of Title pursuant to the prayer of said petition and all persons objecting to such Declaration of Title being made, are hereby required to enter an appearance in the Matter of the said Estate within the time aforesaid, and to show such cause as they may be advised against such Declaration of Title as aforesaid being made.

Dated this 30th day of June, 1874.

JAMES M'DONNELL, Examiner.

HENRY M'CAY, LL.D., Solicitor having the carriage of Order, 43 Dame-street, Dublin. 505

IN THE COURT OF BANKRUPTCY, IRELAND.

DANIEL KILBRIDE, of Tomaline, in the County of Limerick, Gentleman Farmer, was on the 23rd day of June, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 21st day of JULY, 1874, and on FRIDAY, the 7th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

ROBERT H. BEAUCHAMP, Solicitor, 116 Grafton-street, Dublin. 503

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, July* 4, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, JULY 11, 1874. No. 389.

THE IRISH JUDICATURE BILL BETWEEN "THE HOUSES."

LORD JUSTICE CHRISTIAN has again treated the public to his views on the subject of the Irish Judicature Bill, and we confess to a feeling of regret at the attitude thus assumed by him in descending into what has now become, practically, the arena of politics. Our readers are all familiar with the views previously expressed by the learned Judge on matters perfectly within his province, as to the manner of carrying on the business of the Court of Chancery. In his former pamphlets and in his frequent judgments he advocated certain changes of procedure and denounced certain rules which appeared to him bad or erroneously interpreted; and in this he was perfectly justified, from his position as the permanent Judge of the Court of Appeal, though we may remark that the event has proved that the distinguished persons, whose conduct was chiefly impugned, were perfectly right in showing an unwillingness to unsettle what had been previously settled with, at least, the silent consent of Mr. Christian himself. In the expectation of the great and complete change of system introduced by the Judicature Bill, and foreshadowed by the Report of the Commissioners, would it not have been highly injudicious to have commenced a course of "meddling and muddling" with the veriest minutiæ of procedure, even though such a course were recommended by the highest authority and proposed with the extremest propriety of language. In his former contributions to what we may call our legal literature, too, the same distinguished person was remarkable for the style of his language about his judicial superior, and the *ex cathedra* manner in which he laid down his opinions, as being the only correct ones, under the circumstances. In the present instance, he seems to have changed the object of his attack and dislike from the particular to the universal; for, instead of finding fault with the character, acquirements, and law, of an individual Irish lawyer, he, in the most deliberate manner, and at the end of his present pamphlet, as if to give his expressions more weight, directly charges all Irish lawyers with a degrading inferiority, where he says, with reference to the proposal contained in Lord Selborne's measure for amending the Judicature of the United Kingdom, that there should be a certain proportion of Scotch and Irish lawyers appointed to seats in the Court of Appeal, as constituted by the Act of 1873:—

"The incredible short-sightedness with which this plan was not merely approved, but even grasped at, from the then opposition side, ought to have made Lord Cairns chary of putting faith in Irish counsels. From that danger we have been happily rescued by his foresight and firmness. But I trust the lesson will not be lost sight of hereafter, when nominating members to the 'First Divisional Court of the Imperial Court of Appeal,' which First Divisional Court will be the *only* truly *Imperial* Court of Appeal. I earnestly hope that the mistake will not be fallen into of thinking it sufficient qualification that men are holding or have held some Scotch or Irish office. I go farther than that. I think this First Division should be jealously guarded as the very innermost sanctuary of approved judicial excellence; and that as there are certain of Her Majesty's regiments which are recruited only in England, so this *corps d'elite* of the law, this *creme de la creme* of the whole judiciary of the Empire, should be manned exclusively from that quarter *where alone there ever have been* or *ever can be found* the authoritative masters and expositors of the English Law."

What a contrast to the language used with reference to the legal abilities of Irishmen by the Prime Minister on a late occasion in the House of Commons. What a contrast to the opinion of all competent persons since the time of Sir John Davies, and how thoroughly refuted by the instance of the Right Hon. J. Christian himself, who, in England as well as in Ireland, has always been esteemed as "an authoritative master and expositor of the English law." Further, we are at a loss to see how a knowledge of English law should be an exclusive product of English soil, like the coal or iron which it produces so plentifully, inasmuch as the law is reduced to writing, is published in books, and is capable of being understood and expounded only in one way, and that equally open to all men who understand the English language—viz., by applying to its rules the force of reason. Does Mr. Christian mean to convey that Irish minds are not capable of the same exertions as English minds, or does he mean to convey that there is still in use in England an esoteric source of legal knowledge to which the Irish have not yet gained access?

The Lord Justice is good enough to admit that, on the whole, "in what the Bill proposes to *take from* the Irish establishments, it has been decidedly improved;" but unfortunately he fears that it will not be sufficiently criticised in its progress through the Lower House, because, forsooth, "English Members will be indifferent—Irish, probably, unregarded. For, setting aside the official who will have charge of the Bill, and who, as regards its most grievous shortcoming, can hardly be said to be quite impartial, there is but one other Irish lawyer of commanding note in the House, and he has already, quite recently, favoured it with his own peculiar views as to the source from which to draw purification for the Irish Bench." Is it likely, judging from the experience of late debates on Irish subjects, that English Members will be indifferent? Or is it true that, "setting aside the official who will have charge of the Bill" (not a very polite style, by the way, to write of Her Majesty's Attorney-General for Ireland, most certain immediate Lord Chancellor), "there is but one other Irish lawyer"—Mr. Christian, of course, refers to Mr. Butt—"of commanding note in the House?" If the commanding note means, as was probably intended, legal knowledge, we think there are others, one of whom, too, is said to have been a coeval and successful rival of Lord Cairns in his earlier days in Dublin and in chambers in London. It may also be pertinent to remind the Lord Justice that there are several eminent Irish solicitors in the House, and that as the Bill most decidedly affects their interests, they are as well entitled to be heard as they are capable of giving good advice. As for Irish newspaper and journalistic criticism, the Lord Justice naturally makes small account of that, as its points have frequently been directed to the weaker plates of his Lordship's armour of argument. However, the main charge made against the Bill is that it leaves the office

Digitized by Google

of Lord Chancellor quasi-political and governmental, instead of making it purely legal and permanent, and this is the reason why the "official who will have charge of the Bill . . . can hardly be said to be quite impartial." Why, if the distinguished man referred to were capable of being biassed in his conduct by any personal motives, it would surely be his interest to make the office, which he is expected to fill with so much dignity and satisfaction to his country, permanent, even on the supposition that the salary were reduced to £6,000 a year, as is proposed. But the very fact that it is a purely political question renders the treatment of it by Mr. Justice Christian the more open to animadversion. He seems to forget that his proposal to remove its political functions would be to change completely the method of government in this country, and he does not propose a substitutionary method. He also seems to forget that another point of attack against the Bill—viz., the number of Equity Judges still to be left us—is really a defence of the quasi-political and temporary nature of the highest office, save one, in the kingdom. For the work cannot be likely to be neglected for lack of attention if there be, as Mr. Christian thinks, more than a sufficient number of judges, who are to be permanent; and, on the other hand, as the Lord Chancellor cannot give his undivided attention to his strictly legal duties, this apparent exuberance of judicial power is requisite to make up for his enforced attention to other and equally important State duties. It is strange that Mr. Christian should think the Equity Bench is likely to be overmanned, unless he forgets that, under the new system of "Fusion," the Equity Judges will be also Judges of Law, and have thus to transact some of what is now Common Law business. While, on the other hand, Mr. Law, who speaks with the responsibility of an ex-law officer, said in the House of Commons, on Tuesday evening, that he feared the *Chancery Division* of the Bill was *very weak*, and thought that the constitution of the Court of Appeal might be made stronger with advantage. The salaries of the Lord Chancellor and apparently of all the other judges, except those of Appeal, are, according to the Pamphleteer, too high! With reference to this, we find at page 10 that—

"The salaries of Judges should bear a just proportion to the earnings of the Bar from which those judges are taken. They should be large enough to insure at all times the command of the best men, but not so large as to suggest the idea of some sinister consideration. The English scale is certainly not in excess of that standard. It is well known that, there, barristers often lose in income by accepting the Bench. Even the Chancellorship itself, if nothing but income were thought of, would be no temptation to a Bethell or a Cairns or a Palmer. But how is it in Ireland? I do not believe that there is at this moment at the Irish Bar more than one, if there be even one, who is realizing by private practice £3,000 a-year, or that there are half-a-dozen who are making so much as £2,000. The consequence is that a puisne judge's salary of less than £3,700 has never failed to command the services of the very foremost men in the profession. The Irish Bench is crowded with ex-Attorney-Generals. Of the nine existing puisnes there are only two who did not pass direct from the first law office, and so did the Master of the Rolls, the Vice-Chancellor, and the Judge of Probate. Among all these the highest salary is £4,000, and as to all save two it is under £3,700. How then is it to be accounted for, that there is one legal office so out of all keeping and proportion with the National Bench and Bar as that it is endowed with a salary much more than twice as great as that which the very first man of the day will always gladly accept, with a personal following costing £4,500 more, a retiring pension of £4,000 (three or four of them usually co-existing), and other allowances; making altogether, for that one office, a cost to the public treasury of some £25,000 a-year?

"The origin of the anomaly is not far to seek. The Chancellor was formerly the Speaker of the Irish House of Lords; and after his deposition from that station, the office was made to serve a much more useful purpose—that of consolidating the Union by attracting eminent English lawyers to the head of the Irish Bench. But, with that object, the English standard of Bar incomes, not the Irish, was the one that must be had regard to.

"By two statutes passed in 1832, the remunerations of all the great judicial officers in both kingdoms were, in lieu of all other emoluments, commuted to fixed annuities—the English Chancellor to £14,000, the Chief Justice, £10,000, the Chief Justice of the Common Pleas, £8,000, and the Chief Baron, £7,000. The Irish Chancellor was fixed at £8,000. Nor was that excessive so long as the great object which had justified the original scheme was kept in view. But when that wise policy was finally abandoned on the retirement of Sir E. Sugden and the appointment of Mr. Brady in 1846, the retention of that salary, with the other proportionate appanages, became what it has been increasingly ever since, an utterly indefensible abuse and anachronism."

Now, the conclusions to be deduced from this passage are most extraordinary, and we submit that the whole reasoning is based on a mistake of facts. The salaries of ordinary judges should, doubtless, bear "a just proportion to the earnings of the Bar from which those judges are taken;" but is the estimate of Mr. Christian correct when he says that he does not "believe that there is at this moment at the Irish Bar more than one, if there be even one, who is realizing by private practice £3,000 a-year, or that there are half a dozen who are making so much as £2,000?" And, if it were correct, who can be expected to find fault with a system which fills the Bench with ex-Attorney-Generals? But we are inclined to take a more sanguine view of the pecuniary results of leadership at the Irish Bar, and we say it is a fallacy to strike an average on the *private* practice of the Bar in arriving at a just proportion for the judges' salaries, because, according to the statement quoted, the Bench is filled with ex-law officers, whose professional incomes, though variable, are understood to be considerably higher than even the highest judicial salary. It is idle to argue against the office of Lord Chancellor as it exists, because the salary happens to be £2,000 higher than Mr. Christian thinks the discharge of its duties are worth, for the simple reason that the Lord High Chancellor of Ireland ought to be made a British peer, as was almost the invariable practice in those former times which our author so much lauds, when we got our Lord Chancellors from England, because the law was the same, but when the English Bar refused to acknowledge the obligation of reciprocity by objecting to the appointment of the great Plunket to the office of Master of the Rolls in England. We shall, perhaps, best please our readers by giving them quotations from this extraordinary pamphlet without further criticism, leaving each person to form his own conclusions as to its merits. On page 14 the learned author asks:—

"Were the Peers of England still under the spell of that same unaccountable apathy which caused them to let slip away, almost silently, one of the main anchors of their own order, when, in an assembly containing not only great lawyers but constitutional statesmen, it

Digitized by Google

passed unnoticed that this Bill invades one of the fundamental principles of the Revolution Settlement? By the Act of Settlement it is laid down as a main bulwark of 'the rights and liberties of the subject' that 'Judges Commissions be made *quamdiu se bene gesserint*,' and that they be irremovable save on the address of both Houses of Parliament. The Chancellor was not then within the meaning of that law, for he was hardly a judicial officer at all, the vast bulk of Equity being the growth of later times; and the Judges understood to be dealt with were those familiarly known as the 'Judges of the Land.' But how will it be with the Irish Chancellor after this Bill shall have become law? He will have stepped into the place of the 'Judges of the Land' as to some of the most delicate, responsible, and critical of their functions, civil and criminal. You may go on calling such a Judge Lord Chancellor, but there is no magic in a name. To every substantial intent he will be within both the spirit and the letter of the Act of Settlement; and I maintain that that great fundamental law of the constitution will be invaded, unless in tenure and permanence he be assimilated to all the others of the order whose independence it so anxiously guards, and to whom he is now about to be annexed.

"It is true that the judicial integrity is no longer menaced from the quarter against which that enactment was directed. But its protection is as much needed as ever, and against influences all the more dangerous that they are more insidious and self-deceptive. Instead of dependence upon the Crown, dependence upon Party—interested self-deception—temptation to show oneself worthy of past favour, and deserving of future patronage. Fancy in that position some man of the sort of invertebrate pliancy of nature, which is not uncommon in Ireland, which for want of stable notions about anything, takes up with the pressure, the expediency, the interest, the party-cry of the moment, adopts them as the substitute for independent opinion, and persuades himself that in obeying them he is acting upon beliefs his own. Nothing will keep such a man safe from his own weakness but the consciousness of absolute independence—the knowledge that there is nothing left for him further to hope or to fear."

"Not much harm has as yet been done, because, it being known that those Judges were raised by their tenure above the reach of all undue influence, no one ever dreamt of imputing to them anything worse than an unconscious yielding to prepossession. But fancy some possible Chancellor of the future hearing land questions which inflame the passions of classes, or registry questions, which will turn the scale in a borough or a county, and knowing that he is closely watched, and that just as he shall demean himself, so will he win or lose the favour of some anti-English faction or sect to whom his own official existence may be owing, and by whose tolerance he may be then holding it! Well, he may rise superior to that ordeal. But will he get credit for doing so?"

We feel unwilling to use words adequate to express our opinion of the latter passage, for we are proud in believing that our judges are incapable, as they have always shown themselves, of acting in any way but as their conscience and sense of duty direct in the discharge of their functions. We can only say, in conclusion, that we regret still to find in this *brochure* the same suspicion and contempt for his countrymen which disfigured his former public statements—the same objection to the only *ratio vivendi* possible in this latter half of the nineteenth century—and, worst of all, an expression of egotism in arrogating to himself this right of criticism, for want of other censors, which casts an implied reproach even on his brethren of the Bench, because they have not thought right to thus express their opinions.

COSTS UNDER THE JUDICATURE (IRELAND) BILL.

Now that the Judicature (Ireland) Bill is about to enter on its Committee-stage, the case of *Hammond* v. *Hammond*, recently decided by Lords Commissioners Lawson and Brooke, in Chancery, deserves notice upon several grounds, but especially as regards the subject of *costs* which, by one of the clauses of that Bill, is placed in all cases at the discretion of the Court, and in respect of which, by another of its clauses, the suitors are denied all right of appeal. In that case the Bill was filed by William and Thomas Hammond against their brother John, for the purpose of compelling specific performance by him of a contract, which was contained in a Consent entered into between the same parties in a contentious suit in the Court of Probate, relating to the will of their deceased father, in which all three had been named executors.

That will was propounded by the plaintiffs, and grant of probate was resisted by the defendant on the grounds of incompetency of the testator, and of undue influence exercised over him by the plaintiff (Thomas). Upon the trial it appeared that, for some years before the testator's death—if not with his sanction, certainly without any expression of disapprobation on his part—the plaintiff (Thomas), who was living with his father, had been receiving the rents of his Irish property, and the defendant, who was his eldest son and heir-at-law, had been in receipt of his English rents, and that they were respectively liable to account with the testator's assets on foot of such rents: the plaintiff (Thomas) alleging that, upon the taking of that account, he would not be found indebted to those assets at all, but that the defendant would be found largely so indebted, and that he was in fact opposing the will merely with the object of avoiding his obligation to account and pay the balance to be found against him.

Under these circumstances, after the defendant's case had been opened and some of his witnesses examined, upon a suggestion from the Court and jury, the case was compromised, by the "consent in question," whereby it was provided "that the will should be established, and that probate thereof should be granted to the plaintiffs, the defendant renouncing and undertaking to execute a mortgage to the plaintiffs for £100, in lieu and full discharge of all rents received by the defendant during testator's lifetime, and that no account should be required by either of said parties, plaintiffs or defendant, the one from the other, for any rents or cash received by him or them out of the English property of the testator or out of his Irish property, or otherwise in his lifetime." The plaintiffs were represented by Mr. Jellett, Q.C., Mr. Charles Leech, Q.C., and Mr. Raymond, instructed by Mr. Arthur Ellis, whose case was, that the intention of the parties to the consent and its meaning was that the mortgage deed was to be executed, so as to secure payment of the £100 to themselves, in their individual, and not in their executorial capacity, and that the draft deed, prepared in that form, had been returned altered by the defendant, so as to correspond with his interpretation of the consent. On the other hand, the defendant, who was represented by Mr. E. M. Kelly and Mr. John Murray, instructed by Messrs. Williamson and Hobson, contended that, according to the true construction of the consent, the £100 was to form part of the testator's assets, and was to be paid to the plaintiff as his executor; and, therefore, as the defendant was always

Digitized by Google

ready and willing to perform the contract in that sense, a fact which was not controverted by the plaintiffs, their bill should be dismissed with costs. The Court, without any difficulty, adopted the defendant's construction, and, seeing that the basis of his liability to pay the £100 was his receipt of the testator's rents in his lifetime, the wonder is how any other construction could have been for a moment relied upon. Accordingly, we should have expected that the well-established course and practice of the Court would have been followed, and that the plaintiff's bill would have been dismissed with costs, *sed Dis aliter visum est*, and their Lordships pronounced a decree directing specific performance of the contract, in the sense contended for by the defendant, and that the parties respectively should bear their own costs.

Now, with all the respect due to the learned Lords Commissioners this seems a simple case—a plain case—about as plain a case as ever was presented to a Court of Justice. The only thing difficult about it is to understand, or even to make a rational guess at, the principle upon which it was decided. There appears to have been no allegation or pretence that either party had been guilty of misconduct or bad faith. Both were *agreed* from the start as to the only point of *difference* between them, and that was, whether the plaintiffs or the defendant had put the proper construction upon a consent, far from being ambiguous in its terms? And the Court, without any difficulty, held that the defendant's view was the correct one; but they, nevertheless, visited him with the payment of his own costs of a suit, which he had no earthly means of avoiding or averting, except by doing what the Court itself decided he was not bound to do—namely, perform the contract in the sense attributed to it by the plaintiffs! The course of the Court in such cases is pointed out by Lord St. Leonards, in his work on Vendors and Purchasers, citing the well-known case of *Clowes* v. *Higginson*, 1 Ves. in B. 524, and it is this:—"If the plaintiff insist upon a particular construction of a contract, and the Court decides against him, he will not be allowed a specific performance, according to the construction against which he has contended." Not to have dismissed the Bill, then, seems a manifest departure from established practice, and fixing the defendant with the costs of successfully, as well as unavoidably, resisting a suit for a claim, which the Court itself pronounced untenable, seems to us a further mistake. Upon the whole, we regard this case as one very forcibly showing the mischief likely to arise from substituting what Lord Coke has termed "the crooked cord of discretion" for "the straight line of law," and illustrating the practical importance of the following observations, which we extract from the Report of the Committee appointed by the Bar to consider the provisions of the Judicature Bill, and which we commend to the attention of the Irish legal members of the House of Commons:—

"Rule 47 places the subject of costs in all cases entirely at the discretion of the 'Court.' The interpretation clause does not give any definition of the word 'Court,' and under the rule as framed it does not seem certain whether it will include a judge conducting a trial in some one or other of the modes pointed out by Rules 30 and 31. It is probably so intended, since by clause 32 a commission of assize shall be deemed to constitute a Court of the High Court. But apart from this matter of form, we think that the change which this rule will introduce into what has been known as common law business is on principle open to grave objections. The relaxation of the strict, well-defined rules as to costs will, in our opinion, lead to great confusion. It will render it impossible for the profession to advise with any degree of certainty on the prudence or propriety of beginning or carrying on proceedings, and it will lead to dissatisfaction and suspicion in the mind as well of the successful suitor who is denied costs as of the unsuccessful one who is made to pay them. Besides, this absolute power to give or withhold costs would, we feel sure, impose an irksome and unwelcome burthen on the judge; while its tendency would be to strike at the independent and fearless exercise of his profession by counsel.

"We think that if any such discretion is to be entrusted to the Bench, such a check, at all events, should be provided as is imposed on the Judges of the Landed Estates' Court, who are required when refusing to make an unsuccessful party pay costs to state on the face of the order the reason why such costs were withheld (21 and 22 Vic., c. 72, s. 78).

"We think, too, that if such discretion be given, the granting or withholding costs should be subject to an appeal, which, by the 50th clause of the Bill, is denied to a suitor on a question of costs only."

THE CHAIRMEN AND THE LAND ACT.

IN another column we publish some remarks of Mr. Blake, Chairman of the County of Fermanagh, with reference to the duties of Chairmen under the Act. The tone of these remarks is admirable, but there was not the slightest necessity for any defence of the decisions of these judges. The Act, apparently with intention, refrained from laying down strict rules for the guidance of the judges who were to administer it. Much, possibly too much, was left to their discretion by the generality of the terms of the first, second, and eighteenth sections. But the fact that the extreme partisans alone of the two interested classes of landlords and tenants express dissatisfaction, is the best proof that the judges have attained the *juste milieu* in their decisions to have carried out the Act in the intention of the Legislature. Few of the County Court decisions have been overruled, and in certain cases the Court for Land Cases Reserved, overruling the intermediate decisions, have upheld the opinions of the primary judges. It is not likely that the present Government will make any effort to materially increase the jurisdiction of our County Courts; but when the inevitable time arrives, the promoters of the extended jurisdiction will certainly be enabled to point to the admirable manner in which the judges of these so-called Inferior Courts have elucidated the provisions of a most tortuous and crabbed enactment, as a proof that they and the machinery of their Courts are fully capable of sustaining the *onus* of a much extended jurisdiction. It was not to be expected that every decision in matters so nearly affecting long-cherished rights on one side, and half-conceived hopes on the other, would escape criticism; but there are some kinds of censure which, to rightly constituted minds, are more satisfactory than praise. As regards the learned Chairman of the county Fermanagh, no laudatory expressions of ours would probably carry such weight as does the public opinion of the county over which he presides, and this, as will be seen by the report, is completely in his favour.

LEGAL EDUCATION.

LORD SELBORNE has delivered an important address on his election to the presidency of the Legal Education Association. The leading principles, he said, upon which the association were acting in their efforts for a reform in the system of legal education were these:—First, that such education should be conducted upon a footing of public authority and public responsibility under the safeguard and guarantees of public regulation; secondly, that it should be conducted upon a comprehensive plan, so as to extend to both branches

Digitized by Google

of the legal profession, and not only so, but to all her Majesty's subjects who may be willing to take advantage of it; and lastly, that the organization should be such that the governing body of the new school would not give an undue preponderance of power to any particular branch of the legal profession, and such as to insure responsibility and fairness in the examinations.

Lord Selborne went on to congratulate the association on the progress made by them in securing the acceptance of their principles by the Inns of Court. These bodies have now accepted the principle that no man should be admitted to practise without first having proved his fitness by passing a compulsory examination; and they have also conceded that those who are not students or members of their inns may be admitted to the benefit of instruction given by the professors and lecturers of the Inns of Court. What they have at present done, however, falls short with respect to two of the principles maintained by the association—the principle of comprehensiveness, and the principle of public responsibility—and the experience of one year must have shown these learned bodies how utterly inadequate are the provisions they have at present made, and must have prepared them for that next step which sooner or later it will be necessary to take.

NOTANDA.

Costs; short-hand report; construction of model; sheriff's fee for jury panel; briefs for new trial motion.—Motion that the Taxing Master's certificate, disallowing certain items charged in plaintiff's bill of costs, be remitted to him for revision. The action, which was brought on foot of a policy of insurance, was tried before Barry, J., and a special jury, when a verdict was had for the plaintiffs. *Exham*, Q.C. (with him *Robertson*), in support of the motion.—The hearing of the case occupied three days, and the inquiry turned almost wholly on a question whether the risk on the policy had been increased by the construction of certain coils, towards the elucidation of which a model had been obtained by the plaintiffs, at a cost of £10. That was disallowed on taxation; together with £21 6s. 2d., half the short-hand writer's bill, £40 19s., incurred in the preparation of briefs to resist a new trial motion; and £1 3s. 6d. sheriff's fees. The plaintiff's attorney had agreed with the attorney for the defendants as to the necessity of having a short-hand report of the evidence, and upon that report Mr. Serjeant Armstrong grounded a certificate, upon which a conditional order for a new trial issued, rendering it necessary to have the whole briefed for the motion. Four days after the conditional order issued the matter was settled. The sheriff's fee disallowed was one of £1 3s. 6d. for the jury panel, which was the amount always paid, though the Master never allowed more than 10s. 6d. *A. M. Porter*, Q.C. (with him *Holmes*), *contra.*—It has been the uniform practice never to allow for models, which are manifestly only for the convenience of counsel. The charge for the short-hand writer's report was a matter of arrangement between the parties, whereby each was to pay half the expense, £42 12s. 4d., and the plaintiffs cannot now fairly seek to surcharge their share on the defendant. Then, the brief for the new trial motion was prepared, not after the conditional order issued, but by anticipation during the long vacation. Whiteside, C.J., said that the Court were of opinion that the short-hand writer's bill, and the sheriff's fee should be disallowed, but that the other items for the construction of a model—thought by his brother Barry, who tried the case, to be material and necessary—and the preparation of briefs should be allowed, and they would make a rule accordingly (*Jameson & Co.* v. *Royal Insurance Co.*; Q.B., Jan. 27, 1874).

Debtors Act, s. 6; order for payment; costs of motion.—*Ryland* moved, on behalf of the defendant, for an order that the plaintiff do pay £56 18s. 8d., the costs of a judgment of non-suit, and for the costs of the motion. The motion was grounded on an affidavit of defendant's attorney, stating that the defendant had obtained a judgment of non-suit on April 10, 1874, and a writ of *fi. fa.* issued against the plaintiff for £56 18s. 8d., amount of defendant's taxed costs; and that the sheriff had returned *nulla bona*, a sister of the plaintiff's having claimed certain furniture which had been seized under the writ; that the plaintiff was a professor of music, and that he had heard and believed that he was still in receipt of a pension from Government of £75 per annum, and at the trial of the action plaintiff swore that he was in receipt of such pension; and that the plaintiff was, also, organist of a Roman Catholic chapel, at a salary of £30 per annum. There was no appearance *contra*. Morris, J.—I shall make an order that the plaintiff do pay the whole amount within one month. In this case I shall say nothing about the costs of the motion. I lay down no general rule that the costs should not or cannot be given, but it is a question which I should wish to hear discussed on both sides (*White* v. *Power*; C. P. June 3, 1874, before Morris, J. sitting *solus*).

Change of venue; county where cause of action arose.—Motion to change venue. *H. H. Macdermot*, in support of the motion. *Keogh*, *contra*. Palles, C.B.—In this case I confess that I have been surprised to hear it argued that the fact of the cause of action having arisen in the county to which it is sought to change the venue is, in itself, sufficient ground for the change. The Act of Parliament expressly provides, that the venue is not to be changed merely because the cause of action accrued in any particular place or county. The plaintiff is given a *prima facie* right to select his own venue, subject to its being displaced on special grounds of preponderance of convenience or propriety in favour of a different venue, irrespective of the accruing of the cause of action in a particular place. Here the question is whether the venue should be Dublin or Roscommon. On the one hand, three witnesses would have to be brought from Dublin to Roscommon; on the other hand, three witnesses would have to be brought from Roscommon to Dublin. And there is nothing to displace the plaintiff's *prima facie* right to select his own venue (*O'Toole* v. *Mulhall*, Exch., May 29, 1874).

Temporary bars; ejectment on the title; jurisdiction of judge on circuit.—Motion, on behalf of the plaintiff, that the defendant in ejectment on the title be restrained from setting up a certain outstanding legal estate, and that all temporary bars be waived. *Robinson*, Q.C. (with him *Monahan*, Q.C.), in support of the motion, before Monahan, C.J., at the sitting of the Court, at Castlebar Assizes. *H. H. Macdermot*, *contra*, objected *in limine* to the jurisdiction. Monahan, C.J., held that he had full jurisdiction to hear the motion under C. L. P. Act, 1853, s. 238; C. L. P. A. Act, 1856, s. 89; and that he could equally so hear it either sitting, as then, in Court, or *in camera*. The motion was then fully heard, and (in consequence of other reasons exclusively) it was "ordered that no rule whatsoever as to costs, or otherwise, be made on this motion, and that same be saved for the Court of Queen's Bench" (*Comyn* v. *Comyn*, Castlebar Assizes, March 10, 1874. *See* 7 Ir. L. T. 513, 547; 8 Ir. L. T. 179; and 7 Ir. L. T. R. 191).

Coroner's inquest; death of inmate of workhouse; fee to medical officer; grand jury presentment.—*Nicholls* applied that the grand jury be directed to fiat a presentment of a fee to the medical officer of the union workhouse at Navan, for evidence given by him at an

Digitized by Google

inquest. It appeared that the deceased had been an inmate of the workhouse until his death. About a week after the funeral the body was exhumed, and removed to the county court-house. An inquest was there held, but upon the medical evidence a *post-mortam* examination was deemed unnecessary. The coroner refused to give a fee to the medical officer, on account of the death having occurred in the hospital. It was admitted that, if the inquest had been held in that building no fee could be claimed. PALLES, C.B., affirmed the decision of the coroner, disallowing the fee claimed (Trim Assizes, July 2, 1874).

Presentment; county printing; lowest tender; discretion of grand jury as to acceptance.—Application to reverse presentment of grand jury. *A. M. Porter*, Q.C. (*Frazer* with him), on behalf of James Reed, in support of the application.—There were two tenders sent into the grand jury for the contract for the county printing. James Reed sent in one tender at £230 14s. 5d. The second tender was sent in in the name of Joseph Clarke, and it amounted up to £247 8s. 2d., or about £18 higher than Reed's. The grand jury, however, gave the contract to Clarke. The grand jury had no power to make the order accepting the tender of Clarke, which was higher than that of Reed. The tenders were made out in the most particular and precise form. They contained one hundred and six distinct and separate items, opposite to each of which there was a blank for the price, and the estimated number of copies of each article required was stated. If it could be said that Reed was not able to do the county printing, there might be some reasons for the grand jury deciding against him, although, even then, as the contractor was obliged to give security for the performance of his contract, this objection would not hold. But, Reed has had the printing for two years without any fault being found against him, and he had also received the contract on seven other different occasions. As regards Clarke, he is the sub-editor of the *Downpatrick Recorder;* he has no printing establishment of his own, and it is perfectly well known that he is only the nominal contractor, and that Mr. Conway Pilson, the proprietor of the *Downpatrick Recorder*, is the real contractor. The legal position of the contract is regulated by the Grand Jury Act. The 4th section of the Act provides that the printing for the county should be done by contract, and the contracts must be dealt with as defined by the 23rd section, which provides that the lowest proposal should be accepted. The words of the Act are mandatory and peremptory, and the grand jury were bound to accept the lowest tender. [KEOGH, J.—Section 23 goes on to say that the lowest proposal should be accepted, if presented by the grand jury.] Such a discretion might be exercised where the grand jury doubted the skilfulness of the contractor. And the grand jury have the power of not accepting any contract if they were all too high. *Monroe*, on behalf of Clarke, *contra*.—The grand jury may exercise a discretion in the selection of the contractor, independent of the amounts of the tenders. The words of the 23rd section of the Act are peculiar, and a discretion is given by them to the grand jury as to which of the tenders shall be accepted. There is an absolute discretion vested in the grand jury. This question was discussed before Chief Justice Dogherty, who decided that the grand jury had a discretion; and at Tralee Mr. Justice Perrin decided that they had a discretion; and Mr. Justice Lawson decided in the same way, at the County Antrim Assizes, in a case in which Mr. Reed was concerned. But moreover, Clarke's tender was in reality the lowest. Reed was the contractor for last year, and he knew the amount of the different items of work in the tender in hand, and in his tender put a merely nominal sum on the articles of which he knew there was plenty in hand, and then put a larger price on the actual work which would have to be done. The grand jury, however, got a statement from one of its officers as to the number of copies of each article which would be required, and calculated the relative prices of the various contractors with reference to the prices set opposite the articles which would be required. Analyzing the tenders in this way, Clarke's was the lowest, and was accepted. KEOGH, J.—This case has been very fully argued, and the question involved has been considered, on former occasions, before many members of the Bench in this county, and in the neighbouring county of Antrim. As far as I can find any authority on it, the tendency of the decisions has been to say that the grand jury have a discretion, and the section of the Act certainly appeared to contain words giving that discretion. The words of the Act are these:—"If presented by the grand jury, the lowest tender should be accepted, and shall be the contract for the printing of the county." "If presented by the grand jury." I do not know what these words mean, if they do not mean to give the grand jury a discretion, and there is the best reason why the grand jury should have a discretion. This was called a tender for printing the county printing. In this particular tender there were 106 items. The gross sum was £247 8s. 2d. on the tender of Mr. Clarke, while that of Mr. Reed was £230 14s. 5d. The difference between the two tenders was some £17 and some shillings on the whole. Now, let us see how the very object for which Mr. Fraser and Mr. Porter so ably contended could be, in substance and reality, defeated by a skilful man seeking to defeat it within the letter, but not in the spirit of the Act. Turning to the 106 items, and selecting some of the items at random, I find that the first item on the third page was number 68, for forms of abstracts at three shillings per sheet. Suppose seventy-eight sheets and five copies were required. For this article Mr. Clarke put down £11 14s. Take the same item in Mr. Reed's contract, and he tenders for it for £1 19s. On that item alone there is a difference of £9. I do not know who printed this tender form. I suppose it was Reed's for last year. Well, now, I take item 88, and certainly it is a most extraordinary item, for it is for assistant-surveyor's "dairies"—I presume "diaries" is intended. In respect of this item there is a difference in the tenders of £6 10s. Now, I shall select a third item—number 105—the last but one—for the county surveyor's baronial books, as per specimens. Between these two items on the two tenders there is a difference of £17 10s., which is more than the difference between the two tenders on the aggregate. Now, if a person tendering was aware that the articles mentioned in these three items were in stock, he would put a nominal sum on them, as he knew they would not be required, and then he would put a large sum on the articles he knew would be required. Now, if we take the other side of the tender, I can show how completely this method of preparing the tender was carried out. [His Lordship then selected several items with the view of showing the difference in the amounts in the tenders, and the necessity of the Grand Jury comparing the tenders with a reference to the work which would be required.] I am, on the whole, of opinion that, as a matter of fact, the lowest tender was that of Mr. Clarke. I am further of opinion that the Grand Jury had a discretion under the circumstances. That is my construction of the Act; and I am fortified in that opinion by the decisions of Chief-Justice Dogherty, Mr. Justice O'Brien, and Mr. Justice Lawson. (*Downpatrick Assizes*, March 2, 1874).

Digitized by Google

MR. BLAKE, Q.C., AND THE LAND ACT.

At the opening of the Enniskillen Land Sessions, the County Chairman referred to some charges which have been made against himself and others, reflecting on their administration of the Land Act. We subjoin a full report of the observations of Mr. Blake, than whom, says the *Enniskillen Advertiser*, "we know no more honest, fearless and conscientious man administering law in Ireland."

His Worship said:—

The constantly recurring attacks made periodically on the Irish judicial functionaries of all grades, have induced me to investigate the subject closely in its relation to this county, especially as regards the proceedings connected with the Land Act. Aware that my own judicial acts, in carrying into effect the provisions of that law, have not been permitted to pass without critical though not harsh comments, it occurred to me that I might further the ends of truth were I to examine carefully the question in relation to myself, and see how far established facts sustained or justified even the moderate expressions of discontent uttered against me, and thus afford a fare sample of the slender grounds on which those general imputations and aspersions frequently rest. With this object I have caused investigations to be made, the results of which I shall now proceed to state.

In August, 1870, the Land Act came into operation: the first claim in this county was lodged in December following, and the first sessions at which a land claim was ripe and came on for hearing was Easter, 1871. In the interval between December, 1870, and last Easter sessions, 219 land claims were lodged with the Clerk of the Peace of this county. Of those 187 were entered on the books for hearing, and against the claims so entered 183 defences were lodged. Those 187 claims were somehow disposed of in court; some were abandoned and nilled, neither party appearing; in many of them decrees for compensation were pronounced; in others the claims were dismissed; in some instances, after the cases had been partially heard and witnesses examined, the parties were brought to agree upon terms, and the proceedings were nilled; and finally, four cases, not being earlier ripe for hearing, stood for these sessions. Against the adjudications made in my court, 12 appeals were taken—viz., 4 against dismissals, all by the tenants; and 8 against decrees for compensation, 3 of those by the landlords and 5 by the tenants; 19 of the claims were dismissed absolutely, and in 15 of those dismissals the tenants acquiesced; they felt, one must assume, that they could not better themselves on appeal, and therefore they spared themselves the expense. Of the four appeals taken against dismissals, one stands for hearing next Assizes; in the other three cases my dismissals were affirmed. Of the five appeals taken by the claimants against decrees for compensation, in three cases my decrees were affirmed absolutely, the fourth (an appeal from my deputy) was by consent of the parties, referred to arbitration and in the fifth, that of *Irvine* v. *the Earl of Enniskillen*, a case under Section Three, the judge added one year's rent (£11 10s.) to the two years' rent which I had awarded as compensation. In one of the 5 cases of appeals taken by the tenants against my decrees for compensation—viz., the case of *Maguire* v. *L'Estrange*—Mr. Timony was examined and gave his remarkable evidence on which I declined to act. In that case I gave £100 compensation for six acres of land. The claimant Maguire being dissatisfied appealed, and at the assizes, grown wiser, Timony's evidence notwithstanding, he abandoned his appeal. Thus it appears that of 9 appeals taken by the claimants, 4 against dismisses and 5 against decrees, 6 were wholly unsuccessful. One was referred by consent to arbitration; 1 still stands for hearing next assizes, and in 1 solitary case only (*Irvine* v. *Enniskillen*) did the tenant succeed in varying my adjudication. If I unreasonably refused to act on Mr. Timony's evidence, or if "by my decrees for compensation the tenants in this county rarely get more than half the compensation which the Act allows them" (*i.e.* in claimant phraseology *entitles* them to) or if under Sec. 3 the proper measure of compensation in every case, for each class of tenant, be the full amount allowed by the Act for the class to which the tenancy belongs, as the tenants and their indirectly interested allies seem to maintain, why did Maguire abandon his appeal? why were there not more than 5 appeals by claimants against my decrees for compensation, of the 9 appeals taken by tenants against dismissals and decrees? why does 1 solitary case of success to the extent of £11 10s. only stand in its loneliness on the records of my court? And finally, why in that case did the judge give only 3 years' rent, as compensation and stop short of the full 7 years, in that case allowable under the act. Now, let us see what became of the 3 appeals by landlords against decrees for compensation. In 1 case my adjudication was reversed in toto—in another my decree was varied and the compensation I awarded was *diminished*. Both these cases were decided by the same judge, and they turned mainly on the fashionable, and to us very convenient point, that the tenant had failed to establish satisfactorily the existence of Tenant-right on the expiration of a lease. In the third case, *Dane* v. *the Earl of Erne*, at the assizes, a reversal without costs was by consent of the parties formally entered of record. the tenant by arrangement, with the privity of the landlord's agent, being paid in full out of court by the incoming tenant the exact amount which I had awarded by my decree.

In the presence of those facts, all carefully gleaned from the records of my court, am I not entitled to say that the proceedings in my court, and on appeal from it, prove that neither Landlord nor Tenant has just grounds of complaint against my administration of the law—that in administering it, I have not on the one hand, to please the landlords, so interpreted the act as to nullify it; nor on the other hand, to humour the tenants and their allies, have I so construed it as, by extravagant mulcting of the landlords, to make the Act indirectly what by their agonised cries for its amendment the tenants and their allies proclaim the legislature has not made it, a law to establish and ensure fixity of tenure.

I have confined this statement to the details of the proceedings connected with my own court, simply because with those alone am I sufficiently familiar. I do not claim for myself any special distinction, and I know enough of the actions of my confreres to satisfy me that there is not one of the other 32 Chairmen on whom the duty of administering this law, detested by the Landlords for its, in their view, extravagant excesses, and by the Tenants and their allies for its, in their view, unjust insufficiency, who could not give as satisfactory an account of his stewardship as the foregoing narrative gives of mine. Of that I am persuaded, notwithstanding the groundless and unjust but, considering the objects aimed at by its originators, politic outcry at one time craftily excited against us, and still occasionally attempted to be revived.

As a body, or individually, the Chairmen do not need any apologists for the mode in which they have administered this law, and had they to face any renewed enquiries or investigations, even though originated and conducted by individuals as little inclined to lean favourably towards them as were their former accusers and judges, the result, I am persuaded, would be to them as satisfactory as was the former report wrung by the facts from the hostile and reluctant committee of the Lords. But if we did need such defence, surely, as judges of inferior tribunals, we are entitled to have extended to us the indulgence and protection fairly claimed for the election judges of the superior courts by the present Solicitor-General for England, when defending Judge Lawson, when he urged on their behalf the principle "that if there may have been at the commencement some want of harmony amongst them that was almost a necessary consequence when a new tribunal was formed;" or, I will add, when strange and very perplexing duties are cast upon the judges of pre existing tribunals without a guiding light to direct them or a chart to steer by.

Any person who watches with moderate attention the current of public events in Ireland, cannot fail to see the trying position in which all classes of judicial functionaries are placed. Class interests and party politics engrossingly engage the public attention, and are urged on with such unscrupulous zeal by their advocates on all sides, by all classes, and in all quarters, that the utmost purity of intention does not constitute any shield to protect one from ungenerous, if not unjust assaults. Does a judge of a superior court sitting alone or in banco decide according to his oath and to what he believes to be justice, in a case involving

Digitized by Google

class or party interests?—forthwith he is assailed by the political partizans, traders and adventurers in politics, whose objects and interests his decision is supposed to have crossed. Does a Chairman decide as he believes according to justice and his oath, a case under this Land Act?—forthwith he is assailed with imputations of incompetency or corruption, perhaps both. From whatsoever rank or class, Peer, Priest, Patriot, or Peasant, the cry may proceed, the course adopted and the remedy suggested are still the same—disparage and malign the judges, and demand a transfer of jurisdictions to some other more pliant tribunal. How far good sense guided the councils of those who set an example of such courses, who originated and concocted the former groundless, unworthy, and in the end humiliatingly abortive onslaughts upon us, I shall not stop to consider, neither shall I speculate with what destructive results to some existing landlord political perquisites their humbler antagonists, the tenant farmers, might copy the precedent of conference and combination and even better the instruction. These, though questions of moment, are not within the scope of my present task. Future elections may perhaps answer them. Be the consequence of such examples what they may, they cannot hurt, and shall not fret me, but this I will say, that in a condiction of things such as I have truly sketched, not portrayed, no one can gainsay the oft repeated proposition that the Irish Judges of all ranks, superior and inferior, need an ample store of courage, moral and physical, to sustain them in the honest discharge of their duty.

THE SUPREME COURT OF JUDICATURE ACT (1873) AMENDMENT BILL.

The Attorney-General, in the House of Commons on Tuesday, in moving the second reading of this Bill, said that it was necessary that it should be passed before the new Rules framed under the Act of last year could be promulgated. The Bill would extend the jurisdiction of the appellate power of the Imperial Court of Appeal to Scotland and Ireland as well as to England. Another main object of the Bill was to provide in certain specified cases for a second appeal. With a view to make the Court of Appeal as important as possible it was proposed that it should be divided into two or more divisions, that the first division should be composed of a larger number of members, and that five at least should sit to hear appeals, so as to give greater weight and authority to their decisions. That division was to have three *ex officio* Judges, who were to be the Lord Chancellor, the Lord Chief Justice of England, and the Master of the Rolls or Chief Baron of the Exchequer, the latter two alternately. He begged to move the second reading of the Bill.

Sir G. Bowyer said that he would not move that the Bill be read a second time this day three months on the understanding that any opportunity of discussing the measure would be given on going into Committee.

COURT OF JUDICATURE (IRELAND) BILL.

The Attorney-General for Ireland, in the House of Commons on Tuesday, in moving the second reading of this Bill, said that it had precisely the same object as the English Bill on the same subject. It would be quite impossible to have the law different in England and Ireland. If it was right that in England one tribunal should decide every portion of a case, it was quite plain that the improvement should be extended to Ireland. There were, however, certain differences in the nature of the tribunals of the two countries. For instance, in Ireland there was a court totally unknown in England, the Landed Estates Court; and the business of the Irish Court of Bankruptcy was administered, not, as in England, chiefly by the registrars, but by the Judge of the Court, to the great satisfaction of the mercantile community. While in England, too, the Court of Admiralty had a very large business, in Ireland it had scarcely any business, and, therefore, the Government came to the conclusion that they would not be justified in keeping it up at an expense of upwards of £3,000 a year, taking into account all the officials. In dealing with the three law courts, the Government had decided that it was not necessary to retain as many as 12 Common Law Judges if they were only to discharge the duties devolving upon them by reason of their office. It was proposed that the number of Judges should ultimately be 16, and complaints were made, on the one hand, that they would be too few, and on the other that they would be too many; but it was a matter that could not be settled by rule of three. The Judges would be fully employed, and perhaps the judicial strength might be economized by having motions heard by two instead of four judges. The power of dealing with the circuits would be left with the Lord Lieutenant, assisted by the Council of Judges. Some critics of the Bill seemed to overlook the fact that under the Bill every Judge would be a Judge both of law and equity. Coercion was avoided not only with respect to the circuits, but also with respect to the Courts of Probate and Bankruptcy. It was proposed to raise the salaries of the Judges from £4,000 Irish to £4,000 British money. In England there was no intermediate Court of Appeal; but a Bill had been introduced to give the power of re-hearing; and it would be impossible to work the judicial system of Ireland without a second appeal. The cases were not of a magnitude to bear the expense of being brought at once to England, and to deny a re-hearing in Ireland would make a Court of First Instance absolute. Accordingly, the Bill would create an intermediate Court, with special Judges—the Lord Chancellor, the Lord Justice of Appeal, and a Lord Justice to be appointed, and, in addition, the three Chiefs of the Queen's Bench, Common Pleas, and Exchequer would be *ex officio* members of the Appellate Tribunal. By the intervention of this court many cases would be settled without incurring the expense of bringing them to England. As for the objection which had been urged against the Lord Chancellor sitting in the Court of Criminal Appeal when political cases were being heard, he did not think much weight ought to be attached to them. However, he was not so wedded to particular provisions of the Bill as to refuse to consider any suggestions that might be made, but matters of detail could be best dealt with in committee. In conclusion the hon. and learned gentleman moved the second reading of the Bill.

Mr. Law thought a judicious course had been taken in adopting the language of the English Bill as far as possible. He feared, however, that the Chancery division of the Bill was very weak, and thought that the constitution of the Court of Appeal might be made stronger with advantage.

Sir C. O'Loghlen regretted that the number of Common Law Judges was about to be reduced.

After some further discussion the Bill was read a second time.

WARRANTY OF CARE.

Within the last few years the question has been discussed in three cases, what responsibility, with respect to a thing let for hire or furnished for reward, is undertaken by the person who supplies it? In the first two it seemed that important progress had been made towards settling a point which had long been regarded as one of much difficulty; but the third has thrown us into great doubt and perplexity.

In *Redhead* v. *Midland Railway Company* (17 W. R. 737, L. R. 4 Q. B. 379) the question arose, whether a contract to carry included, on the part of the carrier, an implied warranty (as Blackburn, J., put it) of "road-worthiness" in the vehicle, and the majority of the Court (Mellor and Lush, JJ.,) held that it did not. The case arose out of a railway accident; the accident was caused by the breaking of a tyre through a latent defect, that is, a defect neither attributable to any negligence in the manufacturer, nor able to be detected by the carrier. In the Court below (15 W. R. 831, L. R. 2 Q. B. 412) Blackburn, J., had held that there was an absolute obligation on the carrier of passengers (the liability of a carrier of goods stands, as is well known, on its own special grounds) "to provide a vehicle reasonably fit for the journey," or a "reasonably safe vehicle," or one "reasonably sufficient." But, says the learned judge, "I do not think that the duty to supply a seaworthy ship or a sufficient vehicle by land is equivalent to a duty to provide one perfect, and such as never can, without some extraordinary peril, break down;" and he refers to the opinion expressed by him in *Burges* v. *Wickham* (11 W. R.

Digitized by Google

992, 3 B. & S. 693) that "seaworthiness" in a ship "means no more than that degree of fitness which it would be usual and prudent to require at the commencement of the adventure," an opinion which he "sees no reason to change" and the principle of which he applies to a land journey. This expresses such a degree of fitness as a prudent owner with such knowledge and experience as is usual, or as may be ordinarily expected, would require before sending his ship on a voyage; and this corresponds with what follows the definition already quoted, which is to the effect that the owner who "*does his utmost* to fit the vessel" for her voyage fulfils his duty "to the co-adventurers who risk their goods and the crew who risk their lives on board the vessel." The question then is, whether no man is "prudent" unless he prevents the existence of defects which neither his own skill nor the skill of others will enable him to guard against, or whether a man can be said to do "*his utmost*" when he fails to do that which is beyond his power. But if this question is an absurdity, then it is plain that if the warranty of seaworthiness does include a warranty against latent and unavoidable defects, the above definition of it is inaccurate. If it does not include it, the definition is right, but then, being applied to the case in hand, it leads to a conclusion contrary to that stated by the learned judge. In fact, the definition of the words "reasonably fit," "reasonably safe," "reasonably sufficient," which, in reading the judgment, we naturally wait for with impatience, results, when it comes, in a conclusion identical with that of the rest of the court. That view was that the warranty extended no farther than to the exercise of "due care and diligence," to the avoidance of "that which might be avoided by the exercise of care, skill, and foresight;" but, strictly, the decision of the court was only negative, that the warranty did not extend to latent and unavoidable defects. This decision was affirmed by the Court of Exchequer Chamber.

The distinction just made between what was said affirmatively and the negative proposition that was decided upon, is not idle, because the question next arises, whether the carrier, or letter, warrants the exercise of due care on his own part only, or on the part also of those from whom he receives the article which he uses or lets for reward. That a carrier was liable for the negligence of the manufacturer of his vehicle had been held in *Burns* v. *Cork and Bandon Railway Company* (13 Ir. C. L. R. 543), and for the negligence of the contractor who had built a bridge upon his line, in *Grote* v. *Chester and Holyhead Railway Company* (2 Ex. 257); but the question arose in a more general form in *Francis* v. *Cockerell* (18 W. R. 668, L. R. 5 Q. B. 182, 501). In that case the defendant was sued for injuries caused to the plaintiff through the insecurity of a race stand, erected for the defendant by a independent contractor, and in which the defendant, as one of a committee, let out standings to the public, and, amongst others, to the plaintiff. The court below state the question thus—"whether the contract by the defendant to be implied from the relation which existed between him and the plaintiff was that *due care had been used*, not only by the defendant and his servants, but by the persons whom he employed as independent contractors to erect the stand," and this question they answer in the affirmative. The Exchequer Chamber affirmed the decision, but their grounds of decision were not uniform. Montague Smith, J., is the only judge who puts the matter clearly and unequivocally in the way stated in the court below. "I think, in conformity with the decision in *Redhead* v. *Midland Railway Company* (15 W. R. 831, L. R. 2 Q. B. 412, 17 W. R. 737, L. R. 4 Q. B. 379), that there was no warranty or insurance that the stand was absolutely safe; but I think that there was an implied undertaking on the part of the defendant that due care had been used in the construction of it. It seems to me that in cases of this kind, which relate to things, and not to personal services, the undertaking or promise to use due care may be more correctly stated in an impersonal than a personal form, and the proper mode of stating it is, the defendant promised that due care and skill had been used in the construction of the building; or the obligation may be put in the other form, that the building was reasonably fit for the use for which it was let, *so far as the exercise of reasonable care and skill could make it so*." This is also the form in which Keating, J., "prefers" to state the obligation; and though in a vacillating way he also states it as a contract that the stand "*was reasonably fit* for the purpose for which it was held out to the public," he evidently means the same by this as by the other way of stating it. Cleasby, B., arguing towards a different conclusion, reaches, by a sudden somersault, the same result. What people rely upon, he says, "is the thing itself,"or "the security of the thing itself," "*and* I think," he adds, "that the duty on the part of those who provide the building *is co-extensive with that, and the duty* of the defendant was to *take care* that the stand should be erected so as to be reasonably fit and proper for the purpose." The argument is that people are entitled to have what they rely on. The words would most naturally mean that they rely on the thing and not on the person; but that cannot be the meaning, because then no action would lie at all. It must therefore mean that they rely not on the personal qualities of the person letting, such as his care or diligence, but on having the very thing such as it appears to be; and the only obligation commensurate with that reliance would be a warranty of safety; the inference, therefore, would be that the person letting was an insurer. But instead of this inference we find it only concluded that it is his duty to *take care* that the thing is safe. That, however, falls so much short of what the judgment requires that there must be more in the words than meets the eye. All we can say certainly is, first, that the learned judge must at least have consented to the narrowest proposition that would sustain the judgment—namely, that there was a warranty by the defendant of care on the part of those who erected the building; and, secondly (since he expressly says so), that "the liability does not apply to latent defects."

It is equally impossible to know what view was entertained by Channell, B., not because of the obscurity of his reasoning, but because he gives no reasoning at all, and what he says is equally consistent with the view that the implied contract is a warranty of care or a warranty of fitness or soundness. On the other hand, Kelly C. B., and Martin, B., appear, at first sight, to express a view differing from that of the Queen's Bench and of Montague Smith and Keating, JJ., in this, that it throws on the person letting, the liability to answer absolutely for fitness. Kelly, C B., lays it down "as a general proposition of law, that when a man engages with another to supply him with a particular article or thing, to be applied to a certain use and purpose, in consideration of a pecuniary payment, he enters into an implied contract that the article or thing shall be *reasonably fit* for the purpose for which it is to be used and to which it is to be applied." Martin, B., puts the matter in the same way; he holds "that there is in such cases an implied contract that the building is *reasonably fit and proper* for the purpose; or, if you choose to put it in another form, that it is the duty of a person who so holds out a building of this sort *to have it* in a fit and proper state for the safe reception of the persons who are admitted." But we must see whether these statements really do mean any more than those first cited, and, if so, how much more. Now, although Kelly, C.B., lays down that the person letting the thing "does impliedly contract that the article or thing is reasonably fit for the purpose to which it is to be applied," yet "he does not contract against any unseen and unknown defects which cannot be discovered, or which may be said to be undiscoverable by any ordinary or reasonable means of inquiry or examination." And Martin, B., emphatically denies that "the defendant was in any sense an insurer, and responsible for anything beyond what a man would reasonably be responsible for." This latter utterance is not very distinct, because it may pretty nearly be said that the whole question in the case was, for what might the defendant "be reasonably responsible." But it probably means no more than what was expressed by Kelly, C.B., in conformity with *Redhead* v. *Midland Railway Company*, that the defendant would not be responsible for latent defects; that is, defects which diligence could not have discovered.

Now, there is no logical, hardly any conceivable, middle point between warranting fitness and warranting care. A warranty of fitness is a complete insurance against every defect or failure, whatever its cause; a warranty of care is an insurance against every defect or failure against which care could have guarded. If liability for latent defects is excluded, the contract at once ceases to be a complete

Digitized by Google

insurance. But why is liability for latent defects excluded except because care could not have guarded against them? Therefore, to exclude liability for latent defects is to reduce the contract to a warranty of care. In the result, then, the judgments of Kelly, C.B., and Martin, B., come to the same thing as the judgment of the Queen's Bench, and the result of the two cases must be taken to be that a person letting out or affording the use of a thing for reward, impliedly warrants that it is fit for the purpose for which it is let or furnished, "so far as the exercise of reasonable care and skill," whether on his own part or on the part of those from whom he receives it, "can make it so;" but that his liability extends no further.

As the result of the two cases of *Redhead* v. *Midland Railway Company* (17 W. R. 737, L. R. 4 Q. B. 379) and *Francis* v. *Cockerell* (18 W. R. 668, L. R. 5 Q. B. 184, 501), the law seems to be clearly laid down that, on the one hand, a person letting a thing for hire, or receiving hire for its use, is not an insurer against all defects, but, on the other hand, that he is an insurer in respect of defects which reasonable care might have prevented—whether his own care or that of the maker; and further, the last-named case seems to warrant the statement that nothing here turns on whether the thing let is movable or immovable. As these are decisions of the Court of Exchequer Chamber we might have looked upon them as practically final.

But in *Searle* v. *Laverick* (22 W. R. 367, L. R. 9 Q. B. 122) the Court of Queen's Bench was called on to apply these principles to the following facts:—A livery-stable keeper had placed a carriage entrusted to his care in an unfinished building in his yard, which was still in the contractor's hands. While there, the carriage was injured by the fall of the building, which was blown down, owing (as it must be taken) to the neglect of the contractor's workmen. That the building was unfinished was considered by the Court to be, under the circumstances, immaterial; the question therefore simply was, whether the defendant, the livery-stable keeper, was to be considered as having (like the carrier and the owner of the race-stand) warranted that the building, for the use of which he received reward, was safe, so far as "the exercise of reasonable care and skill could make it;" or whether his duty only was to "*take reasonable care* that any building in which the carriage was deposited was in a proper state, so that it might be reasonably safe there." The Court (consisting of Blackburn, Mellor, and Lush, JJ.), after reserving judgment, held that the duty was only of the latter kind. The judgment is evidently prepared with much care, and after a full consideration of *Redhead* v. *Midland Railway Company* and *Francis* v. *Cockerell*; it is, therefore, of course, probable that it is right; but we must confess to some difficulty in following the reasoning of the learned judges, and a hesitation which is not diminished by observing that they candidly admit the *ratio decidendi* to be somewhat vague and indefinite. They apply as the touchstone Lord Holt's famous judgment in *Coggs* v. *Bernard* (Lord Raym. 909); they exclude the case from the first class mentioned by him, where the bailee is an insurer—namely, the class of innkeepers and carriers of goods; they say, therefore, that it falls within the second class, the class of bailees for reward not exercising a "public employment," and that the rule applicable, according to Lord Holt, is that such bailees are only bound to take reasonable care, because "it would be unreasonable to charge them with a trust farther than the nature of the thing puts it in their power to perform it."

In the first place it is to be observed that this is the class under which the defendants in *Redhead* v. *Midland Railway Company* and *Francis* v. *Cockerell* fell, unless the bailee of a person is in a different position from a bailee of a thing (and the reason for limiting the duty to that of taking reasonable care is as strong in the one case as in the other), yet a much greater duty was certainly imposed on those defendants. However, the Court seem not to intend to draw any distinction of this kind, but they say, "Where the matter is not already decided by authority, the principle by which the Court is to be guided in determining what is the obligation implied by law is that given by Lord Holt in *Coggs* v. *Bernard*—that it would be unreasonable to charge the bailee with a trust further than the nature of the thing puts it into his power to perform it." Now, in substance this amounts to saying that the liability of the carrier of passengers, which was recognized, and of the letter of places on a stand, which was decided upon, in *Francis* v. *Cockerell*, are exceptional cases, not, as would be supposed from the language there used, illustrations of a rule; and from the context of the passage just quoted it is evident that this is what is really meant. It is true the Court substitute for Lord Holt's rule, that the duty of the bailee is only to take reasonable care, the *reason* of his rule, that the duty is not to exceed what the nature of the thing puts in the bailee's power to do; but inasmuch as the exercise of care by another person (namely, by the manufacturer or the builder) is certainly a thing not in the bailee's power to secure, by making him answerable for its neglect you are certainly just as much exceeding the reason of the rule as the rule itself. The case of *Francis* v. *Cockerell* is therefore clearly treated as exceptional, unless indeed the reading given to this reason by the Queen's Bench is (as we rather suspect it to be) that it is "unreasonable to charge the bailee with a more than reasonable obligation;" and that consequently the rule is, that he shall be charged with such an obligation as it is reasonable to charge him with; in which case *Francis* v. *Cockerell* would certainly not be exceptional, provided only the decision is reasonable. The passage quoted is followed by a reference to Pothier, and an illustration given by him of a cooper supplying wine casks, which is not the case of a bailee at all, and throws, so far as we can see, no light on the subject.

But then comes what seems to show the basis on which the judgment rests, and that basis is the reading of the rule which we have just described. The Court say that unless there is a real distinction between the case in hand and *Francis* v. *Cockerell*, the same contract ought to be implied; that nice distinctions ought not to be drawn; that it is very difficult to draw the precise line between cases where the warranty should be implied and where it should not; but that the present case is on a different side of the line from *Francis* v. *Cockerell*. The first reason seems to be that there is no decision to the contrary, a reason which does not go far. The second is, that a livery-stable keeper or a warehouseman is usually tenant of the building in which he stores the goods entrusted to him, and that a tenant gets no implied covenant from his landlord that the building is fit for the purpose for which it is let. The logic of this is obscure; it appears to mean that because when an owner parts with the possession of his house to a tenant the maxim of *caveat emptor* applies, *therefore*, where the owner of a chattel parts with the possession of it to some one else for safe custody in a house, some similar or analogous rule applies against the bailor who parts with the possession, and in favour of the bailee who takes it. If the suggestion is that the bailee ought not to be held to give a warranty as to another's care, because he does not get one from that person, the argument implies that in every case where he does get such a warranty he would be able to recover over against the original defaulter the same damages which he would, if liable himself, have to pay—a proposition which it would, we think, be hard to establish.

Now, the question arises, are we to look upon *Francis* v. *Cockerell* as law, or are we not? That the case went a great way we do not deny; but it was the unanimous decision of the Queen's Bench and the Exchequer Chamber; and the learned judges who decided it certainly did not think they were deciding upon an exceptional case or making a rule only for the benefit of the occupants of race-stands. But if it is law, what is the rule it establishes? and is that rule consistent or inconsistent with *Searle* v. *Laverick*? If inconsistent, what is the real ground of distinction between the cases? For an intelligible answer to these questions, we can only look to some further decision in the Exchequer Chamber itself.—*Solicitors' Journal.*

COLONIAL OFFICE.—In consequence of the increase in legal and general business at this office, it has been found necessary to appoint a new Assistant Under Secretary; Mr. Malcolm, late head of the railway branch of the Board of Trade, has been selected. Mr. Malcolm will be succeeded in the office he vacates by Mr. Henry Calcraft, long known as an efficient servant of the public.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from* 1*st to* 21*st May*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
May 1	Thomas Walsh, owner; *Archibald Robinson, petitioner*	Sale	Tipperary and Dublin	198 7 11	*Archibald Robinson*
" 2	John Elliott, owner; *John A. Wood and another, petitioners*	Sale	Fermanagh	179 4 8	*John Collum & Son*
" "	Margaret Flin, owner and petitioner	Sale	Tipperary	In owner's possession	*T. F. O'Connell*
" 4	Anster Fitzgerald Walker and several others, owners; *John Fitzgerald Anster, petitioner*	Sale	Limerick & Kildare	439 4 5	*Orpen, Sons, & Sweeney*
" "	Stephen G. Wilson, owner; *H. H. Roberts and another, petitioners*	Sale	Wicklow	393 0 11	*John D. Rosenthal*
" 6	John Mulqnin, owner and petitioner	Sale	Clare	550 1 7	*Francis Kearney*
" 7	Patrick Balfe and others, owners and petitioners	Sale	Roscommon	279 11 10	*Benjamin Whitney*
" 8	Maurice Harnett and several others, owners; *Michael Leahy, petitioner*	Sale	Limerick	120 0 0 the letting value	*Maurice T. Leahy*
" "	Rev. Edward O'Donohoe, owner; *Christopher Nolan, petitioner*	Sale	Dublin	Not stated	*W. Lyndon*
" "	Edward Thomas Solly Flood, owner and petitioner	Sale	Kilkenny	488 17 8	*Flood & Russell*
" 9	Deane C. Taylor, owner; *Patrick R. Webb and another, petitioners*	Sale	Dublin	802 17 0	*Davis & Montfort*
" "	Rev. James J. O'Brien and Michael O'Meara, trustees for sale and executors of Michael Macnamara, owners; *Hibernian Bank, petitioners*	Sale	Clare and Meath	767 5 0 Tenement valuation	*D. and T. Fitzgerald*
" "	Helena M'Ternan, owner; *Alexander Hamilton, petitioner*	Sale	Roscommon	279 8 3	*Longfield & Co.*
" "	Richard Dane, owner and petitioner	Declaration of title	Fermanagh	—	*Wm. Jameson*
" 12	Thomas M'Caffrey, owner; *James Riordan and another, petitioners*	Sale	Donegal	In owner's possession	*James W. Hanrahan*
" "	Samuel Tuckwell and others, owners; *William R. Duff and another, petitioners*	Sale	Dublin	76 7 8	*James Dwyer*
" 13	Louis John Nugent, owner and petitioner	Sale	Louth	927 12 1	*William Lewis*
" "	Bernard V. Blake, owner; *John C. Neligan, petitioner*	Sale	Dublin	270 16 1	*Barrington & Co.*
" "	Andrew Fitzwilliam Welsh, owner and petitioner	Supplemental petition for appointment of new trustees	—	—	*John Julian*
" "	Nicholas G. Carr, owner; *Edward Carr, petitioner*	Sale	Wexford	162 0 7	*E. Carr & Son*
" 14	George Vesey Stewart, owner and petitioner	Sale	Tyrone	126 6 11 and part in owner's possessn.	*Edward Hudson*
" 15	Bryan Sheehy, owner and petitioner	—	—	—	*B. Gallwey*
" "	Elizabeth Revell and others, owners and petitioners, and Partition Act of 1868	Sale	Wicklow	842 0 0	*J. T. Fox*
" 16	Samuel Anderson, owner; *Thomas Hill and another, petitioners*	Sale	Londonderry	In owner's possession	*Alexander M'Cully*
" 18	Robert Wood, owner; *Arthur Webb, petitioner*	Sale	Cavan	In owner's possession	*W. J. M'Coy*
" "	Robert Glynn, owner; *Todd & Burns, petitioners*	Sale	Galway	In owner's possession	*William Findlater*
" "	George Edward Gorham and others, owners; *Benjamin Smith, petitioner*	Sale	Kerry	388 11 4	*D. D. M'Gillycuddy*
" 19	Daniel Mahoney and another, owners; *John Daly, petitioner*	Sale	Cork	In owner's possession	*C. J. Daly*
" 20	Maurice Wilson Knox, owner; *Francis Chennery, petitioner*	Sale	Wexford	In owner's possession	*W. H. Peyton*
" "	James Stapleton, owner; *F. G. Tincler, petitioner*	Sale	Dublin	70 0 0	*F. G. Tincler*
" "	Joseph Cunningham and John Cunningham, owners; *William Blount and others, petitioners*	Sale	Galway	154 16 4	*Fay & M'Gough*
" "	Joseph Fulton, owner and petitioner	For declaration of title	—	—	*Michael Buckley*
" 21	Edmond Sweeny, owner; *Johnston Holland, petitioner*	Sale	Dublin	290 0 0	*M. C. Bentley*
" "	John Kilbride and another, owners and petitioners	Sale	Limerick	In owner's possession	*M. C. Bentley*
" "	Rose Murray, owner and petitioner	Sale	King's Co.	70 0 0	*Ford & Doherty*
" "	Frederick John Sandys Lindesay, owner and petitioner	Sale	Tyrone	2,053 12 5	*William Lewis*

Digitized by Google

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—R. A. Denny, proposals.—F. Geary, do.—F. Keegan, do.—Sir H. Goold, allocation.—C. Irwin, examine delay. — Trustees MacDonnell, allocation. — Executor Litton, as to costs.—T. S. Eyre, allocation.—J. Davidson, do.—J. W. Browne, payment.—M. H. Smith, allocation.

IN COURT.—R. W. Falkiner, payment.—W. Cox, do.—F. D. Butler, do.—F. Geary, final schedule.—J. Rooney, do.—G. Gaynor, do.—R. A. Denny, from 9th.

Before EXAMINER (Mr. Dobbs).

M. O'Connor, proofs.—H. T. Parnell, do.—F. R. Phayre, do.—Lord Donoghmore, ditto.

Before EXAMINER (Mr. M'Donnell).

R. Blackhall, vouch.—J. Rowan, do.—M. M'Manus, do.—Trustee Jones, do.—Trustee Hutton, do.

TUESDAY.

IN CHAMBER.—C. T. Campion, confirm sale.—Executor Wilkin, do.—C. Crawford, do.—J. Collins, proposal.—R. C. Lawrenson, do.—A. L. Milward, amend rental.

IN COURT.—E. S. Nicholson, amend rental.—S. Hutchins, payment.—T. Murphy, final schedule.– E. J. Howley, re-entry motion of February.—J. Nolan and others, for carriage.—Jane Green, for re-sale.—E. Rowan, to dismiss.—E. M. Davies, for carriage.—R. Blackhall, compensation.—W. Johnston, final schedule.—S. Tierney, do.—T. Irwin, objections.

Before EXAMINER (Mr. Dobbs).

S. Crowe, to take account.

Before EXAMINER (Mr. M'Donnell).

M. Gage, vouch.—Rev. H. Stipney, do.—Trustees French, for deeds.—T. S. Eyre, to take account.

WEDNESDAY.

IN CHAMBER.—B. Kelly, payment.

IN COURT.—Trustees Kirkaldy, objections.—C. Mackay, do.—Assignees Elliott, payment.—E. K. Sweetman, do.—Devisees Donnellan, for carriage.—S. Poe and others, payment. — Executrix O'Keefe, amend order. — Trustees Stirling, settle conveyance.—A. M. Nicholson, for liberty to proceed.—R. J. M. St. George, apportion rent.—Assignees Skelton, reference.

Before EXAMINER (Mr. Dobbs).

E. Morgan, rental.

Before EXAMINER (Mr. M'Donnell).

Trustees O'Brien.

THURSDAY.

IN CHAMBER.—W. H. Wilberforce, proposal.

IN COURT.—Stretch, from 9th.—Rev. L. E. Berkeley, allocation.—J. Spencer, final schedule.—A. J. B. Bourke, objection.

Before EXAMINER (Mr. Dobbs).

H. Benner, rental.—A. R. Meurant, ditto.

Before EXAMINER (Mr. M'Donnell).

J. O. Evans, vouch.—J. N. Ferrall, ditto.

SUPERIOR COURTS OF COMMON LAW.

List of Days to Plead, and Mark Judgment.

JULY, 1874.

FRIDAY, 17th July—Last day for serving Writs of Summons and Plaint (*other than those under the Bills of Exchange Act*) to be entitled to Judgment before the Vacation.

This List applies to Writs under the Bills of Exchange Act, and to those Writs served on or before the 17th July, on which Judgment can be entered before Vacation.

Plaint Served on		Filed not later than	Last Day to Plead	Entitled to Judgment
Wednesday,	.. 1 July	10 July	15 July	16 July
Thursday,	.. 2 "	11 "	16 "	17 "
Friday,	.. 3 "	13 "	17 "	18 "
Saturday,	.. 4 "	14 "	18 "	20 "
Monday,	.. 6 "	15 "	20 "	21 "
Tuesday,	.. 7 "	16 "	21 "	22 "
Wednesday,	.. 8 "	17 "	22 "	23 "
Thursday,	.. 9 "	18 "	23 "	24 "
Friday,	.. 10 "	20 "	24 "	25 "
Saturday,	.. 11 "	21 "	25 "	27 "
Monday,	.. 13 "	22 "	27 "	28 "
Tuesday,	.. 14 "	23 "	28 "	29 "
Wednesday,	.. 15 "	24 "	29 "	30 "
Thursday,	.. 16 "	25 "	30 "	31 "
Friday.	.. 17 "	27 "	31 "	1 Aug.
Saturday,	.. 18 "	28 "	1 Aug.	3 "
Monday,	.. 20 "	29 "	3 "	4 "
Tuesday,	.. 21 "	30 "	4 "	5 "
Wednesday,	.. 22 "	31 "	5 "	6 "
Thursday,	.. 23 "	1 Aug.	6 "	7 "
Friday,	.. 24 "	3 "	7 "	8 "
Saturday,	.. 25 "	4 "	8 "	10 "
Monday,	.. 27 "	5 "	10 "	11 "
Tuesday,	.. 28 "	6 "	11 "	12 "
Wednesday,	.. 29 "	7 "	12 "	13 "
Thursday,	.. 30 "	8 "	13 "	14 "
Friday,	.. 31 "	10 "	14 "	15 "

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas Singleton	Prove debts and vouch	*Hamilton & Craig*
John O'Donnell	do	*Hamilton & Craig*
Hugh C. Walsh	do	*Beauchamp*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
William Cannon	1st composition sitting	*Rynd*
Samuel Hood	do	*Leachman*
George P. Magrath	do	*Hickie*
Same matter	1st public sitting	*Casey & Clay*
Richard M. Sadlier	do	*Scallan*
John Brooks	do	*Persse*
Joseph Creswell	do	*Mathews*
Aaron Boak	do	*Stewart*
Timothy Slattery	Final examination	*Neligan*
Folliott Barton	do	*Larkin & Co.*
David Rutledge	do	*Larkin & Co.*
Iver M'Donnell	do	*Forsythe*
Ludlow Berkeley	do	*Scallan*
Same matter	Examine witnesses	*Scallan*
Michael Ryan	Final examination	*Perry & Co.*
Catherine Holland	do	*Gerrard*
Thomas Scott	do	*Larkin & Co.*
Patrick O'Shea	do	*Oldham & Eaton*
William J. Coyne	do	*Leachman*
S. P. Armstrong	do	*Perry & Co.*
John J. Kelly	Audit and dividend	*Molloy & Watson*
John H. Sweet	do	*Maxwell & Weldon*
Robert Grogan	do	*Perry & Co.*
Robert Baird	Motion	*Larkin & Co.*
William Foxall	do	*Oldham & Eaton*
Same matter	do	*Oldham & Eaton*

Digitized by Google

Before the CHIEF REGISTRAR, at 12 o'clock.

B. M'Lenegan	Prove debts and vouch	*Mathews*
Philip Brown	do	*Forsythe*
G. and R. Ferguson	do	*Larkin & Co.*

FRIDAY.
Before the COURT, at 11 o'clock.

James Hegarty	2nd composition sitting	*Scallan*
James Lynam	1st public sitting	*Maxwell & Weldon*
John J. Hennessy	do	*Thompson*
George Marshall	do	*Carey*
Wm. Connaghton	Final examination	*Larkin & Co.*
William Dunne	do	*Fay & M'Gough*
Thomas J. Curtis	do	*Stewart*
Same matter	1st composition sitting	*Jones*
Hugh John Hall	Final examination	*Cronhelm & Co.*
G. and R. Ferguson	do	*Larkin & Co.*
Patrick J. Keniry	Audit and dividend	*Slattery and O'Callaghan*

Before the CHIEF REGISTRAR, at 12 o'clock.

Charles Owens	Prove debts and vouch	*Bradley & Son*
John M'Fadden	do	*Larkin & Co.*
Thomas Bailey	do	*Scallan*
Richard O'Connor	do	*Hewart*

ADJUDICATIONS IN BANKRUPTCY.

Bergin, William, 42, Wentworth-place, Dublin, grocer. Sittings, *Friday, July* 30, and *Tuesday, August* 18. *Rynd*, solr.

Carnegie, Mary E., 1, Charleville-road, Rathmines, Dublin, widow. Sittings, *Tuesday, July* 28, and *Friday, August* 14. *Beauchamp*, solr.

Clarke, Thomas, Ballaghaderreen, county Mayo, shopkeeper, grocer, and general provision dealer. Sittings, *Friday, July* 30, and *Tuesday, August* 18. *Casey and Clay*, solrs.

Crone, Robert, trading as Crone, Brothers, Newry, Armagh, grocer. Sittings, *Tuesday, July* 28, and *Friday, August* 14.

Domville, Sir Charles Compton William, Santry Court, Dublin, baronet. Sittings, *Tuesday, July* 28, and *Friday, August* 14. *Molloy and Watson*, solrs.

Dwen, Joseph, Naas, Kildare, grocer. Sittings, *Tuesday, July* 28, and *Friday, August* 14. *Molloy and Watson*, solrs.

Farrar, Joseph, Eden-quay, Dublin, shipbroker and commission agent. Sittings, *Friday, July* 30, and *Tuesday, August* 18. *MacSheehy*, solr.

M'Donnell, George, Whitegate, Galway, farmer and flour dealer. Sittings, *Friday, July* 30, and *Tuesday, August* 18. *Mathews*, solr.

Silk, Eyre, Upper Mountpleasant-avenue, Dublin, solicitor. Sittings, *Friday, July* 30, and *Tuesday, August* 18. *Hartigan*, solr.

Thompson, Robert Kirkpatrick, late Douglas, Isle-of-Man, now in Downpatrick Gaol, superannuated inspecting officer of coast-guards. Sittings, *Tuesday, July* 28, and *Friday, August* 14. *Sinnott*, solr.

DIVIDENDS IN BANKRUPTCY.

Johnston, David, and Michael Brown, trading as Johnston, Brown & Co., Limerick, drapers. 2nd dividend 7d. in the £, making with 1st dividend 3s. 11½d. in the £. L. H. Deering, official assignee. *Larkin and Co.*, solrs.

Rickard, Stephen, Howth, Dublin, grocer, baker, and farmer. 1st dividend 5s. 6d. in the £. C. H. James, official assignee. *Findlater and Co.*, solrs.

CHILDREN OF DIVORCED PARENTS.—The New York *Times* says that the lawyers of Indianapolis are torturing their brains over an extraordinary problem. Some years ago a lady of that city was married, and four months thereafter separated from her husband, was divorced and re-married in a month, and four months thereafter gave birth to a child by her first husband. Quite recently the second husband procured a divorce, and the custody of the child was awarded to him. Now comes the first husband, and claims the child, and the lawyers are asking who is entitled to its possession!

As our lay papers are fond of objecting to legal candidates at elections, we recommend to them the following paragraph:—The Milwaukee *Journal of Commerce*, having published a "double-leaded" editorial on the subject of "the too much lawyer" element in the government, in which the lawyer was represented as an embodiment of corruptibility, self-debasement, and cupidity, Mr. J. A. Cartwright, of Nashville, writes to that paper a very vigorous and straightforward letter, calling attention, among other things, to the fact that lawyers have occupied more positions of honour and emolument in our government than any other class of people, and taking into consideration the advantages and opportunities for fraud, dishonesty, and corruption, have, as a class, come out with clean hands and *less money*. It might be an interesting and profitable occupation for some of these editors, who are so fond of assailing the legal profession, to make a list of the embezzlers of public and private moneys and the defrauders of the government during the last few years, and to note how many of them are lawyers.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JULY Fri. 3	Sat. 4	Mon. 6	Tues. 7	Wed. 8	Thur 9
	Government.						
—	3 p c Consols	92¼	95⅝	92⅝	92⅝	92¼	92⅝
—	New 3 p c Stock ..	91⅝¾	91⅝¾	91⅝¾	91⅝¾	91⅝¾	91⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	107⅜⅝	—
—	4 p c Oct. '88 { Bk. of Irel.	101⅜	—	—	—	101⅜	101⅜⅝
	Banks.						
100	Bank of Ireland ..	—	301½	301½	302	—	302⅜
25	*Hibernian Banking Co.* ..	57½	57½	—	57	57½	—
15	*London Joint Stock* ..	—	—	—	—	—	50⅛
20	*London and Westminster* ..	—	—	74⅝⅞	—	—	74⅜
3½	*Munster Bank (Limited)*	8⅞	—	—	—	9	—
30	*National Bank*	60¼	—	60⅝	60½	60⅝	60⅜⅝
15	*National of Liverp'l (Ltd)*	—	—	14⅞	—	—	—
25	*Provincial Bank* ..	—	85	85-½	—	86	87
10	Do. New ..	—	35	—	—	35	34⅞ 35
10	*Royal Bank*	29⅝⅞	—	—	30	30	30
	Steam.						
100	City of Dublin	—	105½	105½	—	105	105-½
20	Drogheda (limited) ..	—	—	—	—	24½	—
50	Dublin and Glasgow ..	—	—	—	—	62¾½	62½
10	Dundalk (Limited) ..	7	—	—	—	—	
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	2/	—	
1	Killaloe Slate Co. (lit'd) ..	—	—	—	—	16/	—
7	*Mining Co. of Ireland (lit'd)*	—	—	5⅛	—	—	5⅛
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	9⅝⅞	—	9⅝⅞	9⅞	—	—
25	*National Assurance* ..	—	—	—	—	—	50
9-4-7	*Patriotic Assurance* ..	—	—	—	10⅛	—	—
	Railways.						
20	Cork, Blackrock & Passage	—	—	11⅛	—	—	—
100	Dublin and Belfast Junct.	—	—	91⅜	92	—	92½
100	Dublin and Kingstown ..	—	211	211	—	—	211
100	Dublin, W'klow, & W'ford	—	75	—	—	—	75⅛
100	Gt. Southern and Western	107⅛	—	108	108⅛	—	108⅜
100	Midland Gt. Western ..	81⅞	82	82⅛	82¼	—	82⅜
25	Portadown, Dun., &c., 5 p c	—	—	15	—	—	—
50	Ulster	—	—	—	—	—	67½
50	Waterford and Limerick ..	—	—	33⅞	33⅞	—	—
	Railway Preference.						
100	Dublin & Meath 1st, 5 p c	—	45	—	—	—	—
100	D., W., & W., 6 per cent ..	—	130	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	53⅛	—	—	54	—
50	Do. do. (1864)	53⅛	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	99	99½	—	—
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do., B 5 p c	—	—	—	100⅛	—	—
50	Watfd. & Limerick, 5 p c rd	—	50½	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	96⅛
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	95½	95⅛	—	—
—	Dublin & Drogheda 4½ p c	—	—	—	—	—	99⅜
—	D., W., & W., 4½ p c ..	—	99½	99½	—	—	—
—	Gt. South'n & West'n, 4 p c	98⅛	98⅛	—	98⅛	98⅛	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 4th June, 1874.
Of Deposit—2 per cent., 28th May, 1874.

Name Days—July 15th and 29th, 1874.

Account Days—July 16th and 30th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

WHITE—July 2, at St. George's-place, the wife of P. A. White, Esq., solicitor, of a daughter.

Digitized by Google

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A MONTHLY JOURNAL OF JURISPRUDENCE AND INTERNATIONAL LAW for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

REEVES & TURNER, Law Booksellers, 100 Chancery-lane, London. 455

T. KILMARTIN and SON, SCRIVENERS AND LAW STATIONERS, ESTABLISHED 1867, 21, KING-STREET, BELFAST.

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

ADVERTISEMENT FOR CREDITORS.

Pursuant to an Order of the High Court of Chancery, made in the Matter of Robert Harden, Annie Harden, Sophia Catherine Harden, Mary Frances Harden, and Margaret Elizabeth Harden, minors—the Creditors of the

REV. ARCHIBALD HARDEN, late of Harrybrook, in the County of Armagh, Clerk—who died in or about the month of November, 1868—are, on or before the 1st day of AUGUST, 1874, to send by post, pre-paid, to Mess.s GREEN and Co., of No. 52 Lower Sackville-street, in the City of Dublin, the Solicitors of Mrs. Margaret Hopps, the widow and administratrix of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or, in default thereof, they will be peremptorily excluded from the benefit of the said order.

Every Creditor holding any security is to produce the same before the LORD CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 3rd day of NOVEMBER, 1874, at Twelve of the clock at noon, being the time appointed for adjudicating on the claims.

Dated this 25th of June, 1874.

R. O. ARMSTRONG, Chief Clerk.

M. GREEN & CO., Solicitors for said Margaret Hopps, 52 Lower Sackville-street, Dublin. 510

LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE OF DECLARATION OF TITLE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of William Harvey Pim, Owner and Petitioner.

WHEREAS the said William Harvey Pim has made application to the Landed Estates' Court, Ireland, for a Declaration that he has a good and sufficient Title in fee-farm to the lot of Ground, being part of the Lands of Stillorgan Deer Park, formerly in the possession of James Bamber, with the Dwelling-house thereon, called Elmgrove, and containing 11 acres, 3 roods, and 17 perches, statute measure, bounded on the north by a holding in the possession of Baron Deasy, on the west by the wall of the Demesne of Stillorgan Mansion-house, on the south by a private road leading from the high road to Stillorgan Demesne, and on the east by the high road leading through Stillorgan park, called Carysfort-avenue, situate in the Parish of Monkstown, Barony of Rathdown, and County of Dublin. Now this is to give notice that the Court has investigated the Title to the said Lands, and has decided that the said William Harvey Pim, has a good and sufficient Title in fee-farm to the said Lands and Premises, subject only to the fee-farm rent of £92 6s 2d, created by an Indenture dated the 2nd day of May, 1861, under the Renewable Leasehold Conversion Act, and the reservations therein, and to the leases and tenancies, and easements, set forth in the Rental; and to the Incumbrances set forth in the Schedule of Incumbrances, which Rental and Schedule of Incumbrances are now lodged in my office, and may be inspected by any person. And further take notice, that a draft Declaration of such Title has been settled, and may be inspected in my office; and that on the expiration of one month from the publication hereof, the Court will proceed to sign such Declaration, subject only as aforesaid. And all persons objecting to such Declaration, or having any Tenancy, Claim, or Incumbrance, not admitted in said Rental and Schedule, are hereby required, within the said period of one month, to show cause as they may be advised against the signing thereof; and no appeal against such Declaration of Title on behalf of any person, will lie after the signature and registration of the same.

Dated this 7th day of July, 1874.

JAMES M'DONNELL, Examiner.

MOLLOY & WATSON, Solicitors, 18 Eustace-street, Dublin. 512

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MONAGHAN

SALE,

On FRIDAY, the 20th day of NOVEMBER, 1874.

In the Matter of the Estate of The Right Honourable The Earl of Dartrey, Owner and Petitioner.

TO BE SOLD, In Twelve Lots, BY PUBLIC AUCTION, At the Landed Estates' Court, Four Courts, Inns'-quay, Dublin,

On FRIDAY, the 20th day of NOVEMBER, 1874, At Twelve o'clock noon, Before the Honourable Judge Flanagan, (If not previously disposed of by Private Treaty, as mentioned below),

The following Valuable Fee-simple Lands, all situate in the Barony of Trough, in the County of Monaghan: –

No. of Lot	Denominations	Quantity Statute Measure			Net Rental			Ordnance Valuation		
		A	R	P	£	s	d	£	s	d
1	Cavan Cope - -	87	3	16	69	10	0	73	10	0
2	Dernahinch - -	106	2	8	54	3	0	75	15	0
3	Drumcondra - -	82	0	10	55	13	0	59	15	0
4	Figullar - -	264	3	11	168	1	0	193	10	0
5	Killyrean Upper (part of)	172	3	28	118	4	2	137	16	0
6	Killydonagh - -	78	1	35	58	15	0	60	0	0
7	Killeanly - -	112	2	36	74	5	0	74	0	0
8	Killybrone (part of) -	134	0	15	79	18	5	83	10	0
9	Ralaghan - -	163	1	26	115	3	5	126	5	0
10	Urlish - - -	46	2	14	32	16	0	32	5	0
11	Drumanell - -	94	1	12	69	10	6	67	15	0
12	Astrish Beg - -	37	2	5	30	0	0	31	15	0
	Total -	1,381	1	16	925	19	6	1,015	10	0

Private proposals (in writing) for the purchase of all or any of the Lots, will be received by the Owner's Solicitors, up to the 24th day of October, 1874, and if approved will be submitted to the Judge for confirmation on the 2nd day of November, 1874, at the sitting of the Court, or at the earliest opportunity afterwards, without further notice.

Dated this 2nd day of May, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The above lands (occupied almost exclusively by yearly tenants) are of excellent quality for grazing and agricultural purposes. The tenants are peaceable and prosperous, and pay their rents punctually.

Lots 1, 2, 3, 4, 6, 7, 9, 11, and 12 (forming a ring fence) lie within two miles of Aughnacloy, six of Monaghan, three of Glasslough, and one of Emyvale. Glasslough and Monaghan are both stations on the Ulster Railway, and fairs and markets are held there and at Aughnacloy.

Lot 5 is within two miles of Glasslough and Caledon, six of Monaghan, and 5 of Killyleagh, all of which are Railway Stations.

Lots 8 and 10 lie together, within two miles of Aughnacloy and six of Clogher. At almost all these towns fairs and markets are frequently held.

The lands are let at moderate rents, the valuation being in excess of the rental.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates Court, Four Courts, Inns'-quay, Dublin; to

Mr. JOHN STEEN, Dublin-street, Monaghan, who will point out the premises; or to

Messrs. MEADE and COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No 3 Kildare-street, Dublin. 500

IN THE COURT OF BANKRUPTCY, IRELAND.

WILLIAM BERGIN, of Number 42 Wentworth-place, in the City of Dublin, Grocer and Spirit Dealer, was on the 7th day of July, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 31st day of JULY, 1874, and on TUESDAY, the 18th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

JAMES G. RYND, Solicitor, No. 1 Lower Ormond-quay, Dublin. 514

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, July* 11, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, JULY 18, 1874. No. 390.

GARNISHEE ORDERS.

The recent decision of the Court of Exchequer in *Johnston* v. *Graves*, 8 Ir. L. T. R. 76 (not elsewhere reported), is one of great practical interest to the profession, and all the more so in that it is still a matter of uncertainty as regards what view may be entertained, on the question involved, by the Courts of Queen's Bench and Common Pleas. In *Johnston* v. *Graves* the plaintiff had obtained a judgment against the defendant, in the Court of Exchequer, for £23 4s. 2d, and £7 4s. 11d. costs, on the 22nd April, 1874. The defendant, in an action in respect of an unliquidated claim, obtained a verdict against the Midland Railway Company for the sum of £78 17s. 6d., and 6d. costs, on which a judgment was entered in the Court of Queen's Bench on the 27th March, 1874, for the sum of £78 17s. 6d., and 6d. costs, and —— (*sic*) costs. The costs of the trial had not yet been taxed, and had not, consequently, been added to the judgment roll. This was what is technically called "a judgment on the *postea*;" and the plaintiff now sought for a garnishee order against this judgment. The cases cited by counsel, in support of the motion, were *Russell* v. *Ferguson*, 2 Ir. L. T. 137; *Shaw* v. *Shaw*, 2 Ir. L. T. 243; *M'Craith* v. *Quinn*, Ir. R. 7 Eq. 324; on app., 7 Ir. L. T. R. 161; *Bennett* v. *Heron*, 8 Ir. C. L. R. App. 19; *Sparks* v. *Young*, 8 Ir. C. L. R. 251; *Daniel* v. *M'Carthy*, 7 Ir. C. L. R. 261. Such being the facts and such the cases cited, the full Court of Exchequer refused the motion, the Lord Chief Baron giving as his reason that "the abandonment of the costs by the garnishee is an act necessary before judgment can be considered final—you cannot do that for him. We must refuse the application—the amount has not yet become a debt, and therefore cannot be attached." Deasy, B., observed, "There are only two kinds of judgments—one interlocutory, and the other final. The judgment obtained by Graves is neither." We must confess that the law touching this subject has coerced us to a conclusion diametrically opposed to the decision of the Exchequer. But, in expressing so decided an opinion, it is but common justice to that very learned Court to observe that, had we had before our eyes merely the lights that guided them, we would most certainly have followed them in the same path. For the argument of counsel in *Johnston* v. *Graves* was merely *ex parte*, and some decisions were not cited which were completely *ad rem* and of leading authority. *Shaw* v. *Shaw* is wholly inapplicable, because there the verdict only was sought to be attached, and there was no judgment whatsoever marked. In the subsequent case of *Webb* v. *Graves* and *Reynolds* v. *Graves*, the question again arose, and the law was far more fully brought before the Court of Common Pleas and argued by counsel on both sides. The leading authority of *Peirce* v. *Derry*, 4 Q. B. 635, was relied upon in support of the view taken by the Exchequer. But, on the other hand, it was argued that in *Newton* v. *The Grand Junction Railway Company*, 16 M. & W. 139, it was laid down that interest runs on a judgment debt from the time of the entry of the *incipitur*, and not merely from the final completion of the judgment after the taxation of costs. There Pollock, C.B., observes at p. 144:—"The giving of interest is not by way of a penalty, but is merely doing the plaintiff full justice by having his debt with all the advantages properly belonging to it." *Fewins* v. *Lethbridge*, 4 H. & N., 418, decides that the mere entry of judgment is sufficient within section 139 of the Common Law Procedure Act (England), 1852, which enacts "that the death of either party between verdict and *judgment* shall not hereafter be alleged for error, so as such judgment be entered within two terms after the verdict." And it was, moreover, held that it was not necessary to perfect the judgment by taxation of costs. In the same case, Pollock, C.B., observes at p. 420:—"Mr. Coleridge attempted to make a distinction between 'entering up judgment' and 'entering judgment,' and he argued that the former meant an inchoate, the latter a perfect judgment. If there is any difference, I should have thought it was the other way." At p. 421, Bramwell, B., thus expresses himself as regards *Peirce* v. *Derry*, the leading authority *e contra*:—"On the other hand, the case of *Peirce* v. *Derry* is relied on as an authority that there is no entry of judgment until the costs have been taxed; but, if they meant to lay down a positive rule that for all purposes there is no judgment until the costs are taxed, it is opposed to the authorities." Now, it is clear from *M'Craith* v. *Quinn*, that a judgment on the *postea* can be registered; from *Newton* v. *The Grand Junction Railway Company*, that it bears interest; and from *Fewins* v. *Lethbridge* that it is a *debt*, and that for some purpose at least it is a judgment—Mr. Baron Bramwell there clearly dissenting from the proposition laid down by Deasy, B., in *Johnston* v. *Graves*. Surely, a debt is an ascertained sum. How can an unascertained sum bear interest at law? And, as the process of registration of a judgment is prior to the issuing of execution, does not that fact completely answer the reasoning of Palles, C.B., in *Johnston* v. *Graves*, founded on the inability of the judgment creditor to waive costs on behalf of the judgment debtor? It is said that the issuing of execution operates as a waiver of costs, and so converts the judgment on the *postea* into a debt or ascertained sum, but that the judgment creditor is not entitled to waive costs on behalf of the judgment-debtor. But, surely, the fact that such a judgment can be registered before execution issued shows that it is a sum liquidated and ascertained, before the performance of that very act which, it is contended, is necessary to ascertain it. In *Webb* v. *Graves*, *Reynolds* v. *Graves*, the facts before the Common Pleas were identical with the facts in *Johnston* v. *Graves* before the Exchequer; indeed, it was the very same judgment debt which it was sought to affect. Garnishee orders had been obtained attaching the moneys due by the Railway Company to Graves, and against making the orders absolute for payment cause was shown. Not only were the cases to which we have referred cited, together with *Dresser* v. *Johns*, 6 C. B. N. S. 429, and *Jones* v. *Thompson*, E. B. & E. 63, but the decision also of the Court of Exchequer in *Johnston* v. *Graves*, having been expeditiously reported (8 Ir. L. T. R. 76), was fully brought under the notice of the Court of Common Pleas. If that decision were approved, of course the case was concluded by it. However, the Court of Common Pleas having heard full arguments, invited counsel to communicate with the Master of the Common Pleas in England as to the practice in that country.

Digitized by Google

That courteous functionary, after consulting the Masters of the other Common Law Courts in England, replied that the point had never precisely arisen in England; and his reply was submitted to the Court of Common Pleas on May 23rd, ultimo. The Court of Common Pleas appear to have given no decision as yet. The order for attachment still stands, there having been no motion to set it aside; but the order for payment has not been made absolute; and so the matter practically remains *in statu quo*, the funds being protected meantime, pending whatever steps may be taken by the judgment creditor as regards the costs. Unquestionably, the Common Pleas hesitated strongly to follow the Exchequer decision, and, *de facto*, it has not been followed. Indeed, the negative result arrived at, so far, leads us to surmise that it was disapproved of, but we can only so surmise; and it is pertinent to notice that the judgment creditor has not since ventured to move to set aside the order of attachment. The matter has never been before the Queen's Bench. As the law now standss, our Court of Exchequer will not grant an order under section 63 of the Common Law Procedure Act, 1856, to attach a judgment on the *postea*, holding that it is not a debt within the meaning of the section. The views of the Common Pleas and Queen's Bench are unknown. If the law of the Exchequer is to obtain, the practical result will be that, in cases requiring such a line of action, the taxation of costs may be conveniently postponed, and judgment creditors baulked and baffled with impunity. We submit, with very great respect, that, for the reasons above given, the view taken by the learned barons of the Exchequer is erroneous, and that a judgment on the *postea* is a debt within the meaning of the 63rd section of the C. L. P. Act, 1856; and we submit, moreover, that this view is not only legally correct but practically advantageous to the public, and in accordance with the dictates of common sense. Let us hope that the question will soon be fully examined by our other Courts, and no longer left in uncertainty.

CHAMBER PRACTICE IN CHANCERY.

What is Chamber practice, and what is the difference between business before a Judge in Chamber and a Judge in Court? We should be sorry to be a candidate for admission as a Solicitor of the High Court of Chancery in Ireland, if this were one of the questions which we were expected to answer at the final examination in the Solicitors' Hall. A Judge hearing causes argued by able counsel of the inner and outer bar, today is said to be sitting in Court; the same judge, sitting in the same Court, hearing able arguments by the same learned counsel of the inner and outer bar, to-morrow is said to be sitting in Chamber. What it is which constitutes the distinction between those two occasions and relegates one to the region of Chamber practice it is, certainly, very difficult to understand. We remember one Judge, in another Court, who, in order to mark the distinction between his sittings in Court and in Chamber, wore his wig in Court, but sat without that appendage in Chamber, and we really think there was good reason for the change of costume in order to create a distinction not otherwise apparent.

It may be instructive to Chancery practitioners to inquire what is the necessity for sittings at Chambers at all, and how the practice was originated.

Previous to the year 1852, the practice of a Chancery Judge sitting in Chamber was unknown. The Chancellor, Vice-Chancellor, or Master of the Rolls could only hear cases in Court, and up to that period it would have been held *infra dig.* for them to sit except with the usual judicial paraphernalia. A report was, however, made in January, 1852, by the Commissioners appointed to inquire into the practice of the Court of Chancery in England, in which it was suggested that Judges in Chancery should sit in Chambers to *dispose of matters that could be better disposed of in that way than in open Court.* That reasonable suggestion was acted on in the English Chancery Act (15 & 16 Vict. cap. 80), which prescribed a system of Chamber sittings, leaving it to the Judges to determine and order what the business should be to be so considered. This they did by general orders or regulations, in which they defined the business to be transacted at Chambers. In the same report, the Commissioners give it as their opinion that it is plainly impracticable to take an account in open Court, and hence such business would belong to Chamber practice, and has so been treated by the English Chancery Judges. But, the point of difference is utterly lost unless there is to be some greater distinction in the manner of conducting business in Court and in Chamber than exists at present in Ireland. In England a Judge at Chambers means what the words express—a Judge sitting in his room, where he can be spoken to by men of business on matters of business, which is a very different thing from a Judge sitting on the Bench in Court, before whom learned counsel make learned arguments, and weighty matters of law are discussed with all the solemnity befitting such discussions. If the Chamber sittings are held *in Court*, with the same formalities as Court sittings, while arguments as long and learned as occupy the attention of the Judge in Court occupy his time at Chambers, what is the distinction between Court and Chamber? That the Royal Commissioners, to whose report we have referred, never contemplated such Chamber sittings is evident, or they would not have alleged that certain matters could be better disposed of in that way than in *open Court.* We do not mean to say for a moment, that matters may not arise in the course of Chamber business calling for legal argument. Anyone with experience of such business must be aware that many such legal questions will arise at Chambers; but we maintain that, when they assume such magnitude as to require time for legal advocacy, they should be adjourned into Court, as anyone who is familiar with the English law lists knows it is the practice to do in England.

It is strange that in no Court here do the Judges sit to hear Chamber business as they do in England—namely, in a private room, to which no one is admitted save those engaged in the case before the Judge. The Irish Chancery Act of 1867 was almost a transcript of the English Act of 1852, and was, according to its preamble, passed for the purpose of assimilating the practice of the Court of Chancery in Ireland to the practice of the Court of Chancery in England, yet the Chamber practice here has really no resemblance to English Chamber practice, and is simply a sitting in open Court. Thus, it seems to us, one of the advantages of the English Chancery system, by which business is divided in the most convenient manner for professional men engaged in it, is lost, and a distinction in name only is preserved, while the utility which the distinction was intended to subserve is lost sight of.

DR. KENEALY.

The conduct of Dr. Kenealy, Q.C., at the late Tichbourne trial, will be investigated on this day (Saturday) by the Benchers of Gray's inn, of which inn he is a member. Certain articles subsequently published in the *Englishman*, the journal edited by him, will, it is understood, be also brought under the consideration of the Benchers.

Digitized by Google

THE INNS OF COURT AND LEGAL EDUCATION.

Lord Selborne has introduced two bills relating to legal education and the reconstruction of the London Inns of Court. By one of these bills it is proposed to incorporate all the existing Inns of Court, and to fix a certain number of benchers for each of the four inns. Hitherto these governing bodies have been self-elected, but the bill proposes that until the number of benchers which it fixes is completed, the benchers shall be elected by barristers of five years' standing, and that after this number has been completed the right of appointment to vacancies as they occur shall be exercised alternately by the benchers themselves, and by "practising barristers" of five years' standing. As regards the property of the Corporation, the bill proposes to retain the existing powers of the governing bodies, but, subject to necessary charges and outgoings, all surplus or residue is to be appropriated for the purposes of legal education. The other of the two bills proposes the establisment of a teaching institution, to be known as the "General School of Law," the governing body of which is to consist of a senate of elective and ex-officio members, presided over by the Lord Chancellor. The heads of the principal divisions of the high court of justice, the law officers of the Crown, and the President of the Incorporated Law Society are to be ex officio members. Besides these, there are to be ten members nominated by the Crown, who are not to be practising barristers or solicitors, "but to represent the general interests of society." There are besides to be ten barrister members of the Senate—four elected by the Inns of Court, and six others by barristers of five years' standing; and ten solicitor members—four elected by the Incorporated Law Society, and six by solicitors of five years' standing. The funds for teaching would be provided from the fees paid to the Inns of Court and the Incorporated Law Society.

TWO LEGAL CURIOSITIES.

"About the year 1632," says Webster in his work on Witchcraft, "near unto Chester in the street, there lived one Walker, a yeoman of good estate, and a widower, who had a young woman to his kinswoman, that kept his house, who was by the neighbours suspected of indiscretion, and was toward the dark of the evening one night, sent away with one Mark Sharp, who was a collier, or one that digged coals under ground, and one that had been born in Blakeburn Hundred in Lancashire; and so she was not heard of a long time, and no noise, or little, was made about it. In the winter time, one James Grahame, or Grime (for so in that country they called them), being a miller, and living about two miles from the place where Walker lived, was one night alone very late in the mill, grinding corn, and about twelve or one o'clock at night he came down the stairs from having been putting corn in the hopper; the mill doors being shut, there stood a woman upon the midst of the floor, with her hair about her head hanging down, and all bloody, with five large wounds upon her head. He being much affrighted and amazed began to bless himself; and at last asked her who she was and what she wanted? To which she said: I am the spirit of such a woman, who lived with Walker, and being seduced by him, he promised to send me to a private place, where I should be well looked to, until I could come again and keep his house. And accordingly, said the apparition, I was one night late sent away with one Mark Sharp, who upon a moor, naming a place that the miller knew, slew me with a pick such as men dig coals withal, and gave me these five wounds, and after threw my body into a coal-pit hard by, and hid the pick under a bank; and his stockings and shoes being bloody, he endeavoured to wash 'em, but seeing the blood would not forth, he hid them there. And the apparition further told the miller, that he must be the man to reveal it, or else she must still appear and haunt him. The miller returned home very sad and heavy, but spoke not one word of what he had seen, but eschewed as much as he could to stay in the mill at night without company, thinking thereby to escape the seeing again of that frightful apparition. But notwithstanding, one night when it began to be dark, the apparition met him again, and seemed very fierce and cruel, and threatened him, that if he did not reveal the murder, she would continually pursue and haunt him; yet for all this he concealed it till St. Thomas' eve before Christmas, when being soon after sunset, walking in his garden, she appeared again, and then so threatened him, and affrighted him, that he faithfully promised to reveal it next morning. In the morning he went to a magistrate, and made the whole matter known, with all the circumstances; and diligent search being made, the body was found in a coal-pit, with the five wounds in the head, and the pick, and the shoes and stockings yet bloody, in every circumstance as the apparition had related to the miller; whereupon Walker and Mark Sharp were both apprehended, but would confess nothing. At the following assizes, I think it was at Durham, they were arraigned, found guilty, condemned, and executed."

This story is not only related by Webster, who says he saw the letter of the judge before whom the case was tried, to Sergeant Hutton, in Yorkshire, in which he relates the whole affair. Moreover, Dr. Henry More not only mentions this singular circumstance, in his "Volumen Philosophicum," tom. ii., but communicated it to Dr. Glanvil, for his *Sadducismus Triumphatus*, with the additional testimony of Mr. Shepherdson, and of Mr. Lumley, of Lumley, an ancient gentleman, who knew all the parties well, and was at the trial. Mr. James Smart, also of the city of Durham, was at the trial, where a Mr. Fairhair gave it in evidence upon oath, that he saw the likeness of the child stand upon Walker's shoulders during the time of the trial! From the evidence of these parties, it appears that the name of the girl was Anne Walker, that of the judge, Davenport, who was so much troubled on the trial that he gave sentence the same night, a thing never done before or afterwards in Durham; and Surtees adds that the deposition of Grime, the miller, is deposited in the Bodleian Library, in Tanner's MSS. The parties represent the affair as well known to hundreds, and more talked about in that neighbourhood in those days, than any other thing ever was, and that this determined apparition not only persecuted Grime in his mill, but in his house night by night, dragging the clothes off his bed, and giving him no peace until he gave information of the murder, so that well might Master Webster declare it to be "one of those apparitions and strange accidents which cannot be solved by the supposed principles of matter and motion, but which do evidently require some other cause above or different from the ordinary course of nature, effects that do strangely exceed the power of natural causes, and may for ever convince all atheistical minds." The oddest thing of all in this strange story is, that nobody seemed to have the slightest suspicion that Grime, the miller, himself might possibly be the real murderer, and had trumped up this story of a ghost to turn all idea of the fact from himself, and probably upon those to whom he entertained a hatred. The condemned parties steadily to the last persisted in their innocence, and it was entirely on the evidence of Grime and his ghost that they were arrested, tried, and executed.

One of the most remarkable facts in the history of highwaymen, who, a century ago, played a bold and very prominent part on the roads around London for a dozen miles or so, is a bill filed in the Court of Exchequer, by William Wreathock, of Hatton Garden, attorney, between John Everett and Joseph Williams, two notorious robbers, the former of whom was afterwards executed at Tyburn, and the latter at Maidstone, in Kent; for which insult and affront on the court Wreathock was committed prisoner to the Fleet, where he remained six months. The bill opens as follows: "Humbly complaining, showeth unto your honours, your orator, John Everett, of the parish of St. James, Clerkenwell, in the county of Middlesex, gent., debtor and accountant to Her Majesty, as by the record of this honourable court it doth appear; that your orator being skilled in dealing and in buying and selling several sorts of commodities, such as corn, hay, straw, horses, cows, sheep, oxen, hogs, wool, lambs, butter, cheese, plate, rings, watches, canes, swords, and other commodities, whereby your orator had acquired to himself a very considerable sum of money, to the amount of £1,000 and upwards; and Joseph Williams, of the parish of ——, in the said county of Middlesex, gent., being acquainted therewith, and know-

Digitized by Google

ing your orator's great care, diligence and industry in managing the said dealing, he the said Williams, in or about the year of our Lord 1720, applied himself to your orator, in order to become your orator's partner therein ; and after several such applications and meetings between him and your orator for that purpose, your orator agreed that the said Joseph Williams should become his partner," The depositions showed that Williams was to enter into this "trade," and to pay half the expenses of it on the roads, at inns, ale-houses, markets, and fairs, and to furnish his share of necessaries, such as horses, bridles, saddles, assistants, and servants. The partnership was only for one year, and to terminate at Michaelmas, 1721. The "trade" was to be plied on Hounslow, Hampstead, and Black Heaths, at Finchley Common, Bagshot, and Wimbledon in Surrey, Salisbury in Wiltshire, and elsewhere; in which places they dealt with gentlemen for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles, and other things (purses, doubtless, though not mentioned). In this "trade" they were so successful that they soon were in possession of £2,000. But when said Everett called on said Williams to render a full and fair account, and to divide the proceeds (for Williams is made to appear to have been "the Judas and carried the bag"), instead of so dividing he made similar claims on Everett, and these being refused, commenced an action at law against him in the Court of Common Pleas, and actually obtained a verdict for £20; on which account, and also because the said Williams threatened said Everett with fresh lawsuits, and moreover maligned his character, denied the receipts of money attributed to him, and even denied the contract of partnership (which the plaintiff admits was not in writing, but merely oral), the complainant seeks redress from the Court of Exchequer, and prays that the defendant may be cited and compelled to show a fair account, by the production of all the necessary books, papers, writings, memorandums, and accounts; that he may be compelled to make a fair division of profits on the accounts so proved, and may be restrained from any further action at law against the said complainant. This bill was filed October 3, 1725: *"Int. Joh'em Everit, quer. Josephum Williams, deft. P. Bill Anglicum."* Immediately on the filing of the bill, Mr. Sergeant Girdler, counsel for defendant, moved that it be referred to John Harding, Esq., D. R. of the court, as scandalous and impertinent, which was done, and on his report the bill being pronounced both scandalous and impertinent, Everitt was sentenced to pay costs, and the solicitors, White and Wreathock, were summoned into court by the tipstaff, and each of them fined £50 or to be committed to the Fleet till the fines were paid. Wreathock was imprisoned accordingly six months. John Collins, Esq., whose name appeared upon the bill, was also sentenced to pay such costs as the deputy should state. Wreathock was afterwards tried at the Old Bailey, for being concerned with robbing Dr. Lancaster, in company with several others, and transported for life.—*Albany Law Journal.*

SUPREME COURT OF JUDICATURE ACT (187-) AMENDMENT BILL.

In the House of Commons on Thursday, on the Order of the Day for going into Committee on this Bill,

Sir G. BOWYER rose to move the following amendment :— "That as it is admitted that the House of Lords is preferred by Ireland and Scotland as their final Court of Appeal to any other that has been proposed, and as a satisfactory Court of Appeal has not yet been established nor proposed for England, it will be expedient, instead of proceeding to create a new Court for all the three kingdoms, that the provisions of the Supreme Court of Judicature Act of last Session which prohibit appeal to the House of Lords be repealed, and that time be thereby allowed for the adoption of such improvements in the constitution and practices of the House of Lords in the discharge of its judicial functions as may remove the objections which have been taken to it as a Court of Judicature."

To the abolition of the Appellate functions of the House of Lords, Sir GEORGE was strongly opposed, both on constitutional and practical grounds, contending that the change would deprive the House of Lords of its ancient character, and that the "new Mushroom Court" would not give the same satisfaction as the House of Lords. The re-hearing proposed by this Bill entirely changed the circumstances of the case, and, therefore, allowed the question to be considered, and he showed how the Appellate Tribunal of the House of Lords could be strengthened so as to meet all the objections taken to it. Mr. Charley seconded the motion, but Mr. O. Morgan objected that it was too late. Mr. Gregory was of the same opinion, as was also Mr. W. Williams, who criticised the delay in the production of the New Rules, although he admitted, having seen a copy of them, that they would be found very generally satisfactory.

The ATTORNEY-GENERAL and the ATTORNEY-GENERAL for IRELAND, though they admitted that they had opposed the transfer, urged that it was impossible now to reverse the legislation of last year. Mr. BUTT thought it was not too late, and Mr. C. LEWIS censured the manner in which the Bill of last year was driven through Committee, as well as the haste now shown to bring the Act into operation before the profession had an opportunity of considering the Rules.

Mr. Serjeant SHERLOCK and Mr. M. LLOYD protested against the transfer of the Appellate Jurisdiction from the House of Lords, which Mr. Serjeant SIMON approved, though admitting that he now saw the wisdom of giving a second appeal as proposed by the present Bill. The SOLICITOR-GENERAL repeated the arguments against re-opening the question, and Mr. HENRY and Sir E. WILMOT spoke; Mr. HOPWOOD made some disparaging observations on the House of Lords, which drew from Sir J. KARSLAKE a warm eulogium of the learning and courtesy of the Tribunal.

Sir G. BOWYER withdrew the motion, and the House then went into Committee.

On Clause 2 an attempt was made by Mr. BUTT to put back until next year the date at which the new system of Judicature should come into operation, chiefly on the ground that in the short time remaining between now and Michaelmas Term it will be impossible for the profession to master the New Rules, which even yet have not been published. Mr. Lloyd, Mr. O. Morgan, Serjeant Spinks, and others supported the suggestion of postponement, though to different periods ; but it was resisted by the Attorney-General and Sir J. Karslake, and, on a division, was negatived by 123 to 38.

On clause 4 Sir H. JAMES moved an amendment intended to retain the number of Judges at 24, but as the Act of last yeor contemplates a reduction to 21, the Chairman held it to be out of order, as involving an increased charge. The clause was negatived, in order that the question may be raised in a different form at a future stage.

Clause 5, which relates to the qualification of Judges, was amended so as to provide that only English barristers shall be eligible for the High Court of Justice; and to Clause 7 an addition was made requiring future Judges of the Probate, Divorce, and Admiralty Division to go on circuit whenever business in their own Division admits of it.

On clause 9 the controversy as to the House of Lords' jurisdiction was again revived by Mr. BUTT, who moved to omit from the list of appeals to be heard by the new Appeal Court all those coming from the Irish Courts. He was beaten on a division by 191 to 29, whereupon he gave notice that he should raise the question again on the Report by moving the omission of clause 10, which provides for the discontinuance of all appeals to the House of Lords or the Judicial Committee. The case of Scotland was argued by Mr. M'Laren, who, on clause 12, moved that a Scotch judge or a Scotch barrister of 15 years' standing shall always be one of the members of the First Division of the Imperial Appeal Court.

Mr. CROSS opposed the amendment, which, he pointed out, rested on the fallacy that it was intended to exclude Scotch Judges. On the contrary, it was to be hoped that there would always be more than one Scotch Judge in the Court; but he objected to making nationality and not merit the qualification.

Mr. Leith, Sir E. Colebrooke, Colonel Mure, Mr. Ramsay, and Mr. Whalley supported the amendment, which was opposed by Mr. Stewart, Sir H. James, and Sir G. Montgomery, and on a division it was negatived by 125 to 61. The Committee then adjourned.

Digitized by Google

DUTIES PAYABLE BY REASON OF DEATH.

Another case has recently been decided which more than ever convinces us of the necessity for the amendment of the laws relating to the succession duties. We refer to the case of *The Commissioners of Inland Revenue* v. *Harrison* (30 L. T. Rep. N. S. 274), recently decided by the House of Lords.

The facts are fully set out in the report of the proceedings in the Court of Exchequer (*Re William Harrison's Succession Duty*, 26 L. T. Rep. N. S. 73), and for our present purpose may be summarized as follows: Under a deed and will A. was tenant for life of certain estates with remainder to his first son in tail male. In 1862, A. and B., his eldest son, concurred in barring the entail limiting the estates to the uses of their joint appointment. In 1863, A. and B. appointed that B. should, during their joint lives, receive an annuity of £400, and, subject thereto, the estates were to vest in A. for life, with remainder in B. for life, with remainders over. In 1866, A. died, and B. in getting his succession duty assessed in respect of his life estate, claimed a deduction of £400 a year, on the ground that his case came within sect. 38 of the Succession Duty Act. The Court of Exchequer decided that the claim was correct, and the House of Lords has confirmed that decision. With great deference, we think that the contention on behalf of the Crown was morally and legally the correct one. Sect. 38 provides that where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property. We quite concur in the view taken by Mr. Hanson in his valuable book upon the Probate, Legacy, and Succession Duties Acts, that the section was only intended to apply to those cases in which, by reason of the successor's taking of the property, he was deprived of another property which did not altogether cease to exist, but went over to some other person, as, for instance, in the case of an election or a shifting use; but we cannot say that we think that a successor who was entitled to an annuity during the joint lives of himself and the tenant for life should in all cases have to pay duty upon the whole rental as if he had previously had no interest in it, our impression being that if the annuity was vested in the successor previously to the commencement of the Act it and the reversion should be deemed to coalesce, so that upon the death of the tenant for life the successor should be considered as succeeding to that part only of the rental in which before he had no immediate interest, and if this construction, which is both fair and reasonable, were given to the Act, no question could in future arise.

It appears to us that the words "taking a succession" do not relate solely to the time of entering into the beneficial enjoyment of the property, but may either relate to the time when it becomes vested in the successor, that is the reversioner, or to the time when the property falls into possession as the case may require.

Two cases immediately bearing upon the point have been decided by the House of Lords, viz: *Lord Braybrooke* v. *Attorney-General* (4 L. T. Rep. N. S. 218), and *Attorney-General* v. *Floyer* (9 H. of L. Cas. 477), in the former the annuity taken by the successor was vested in him before the passing of the Succession Duty Act, but in the latter the annuity was vested in the successor after the passing of the Act; but it would appear that no point had been made of the time of vesting in that case, hence the appeal in the present case to the House of Lords.

The contention of the Crown, which we conceive was correct, was in effect this: In 1853, at the commencement of the Act, B. was entitled to an estate tail expectant upon the death of A., and by force of sect. 2, B. became a successor, and his estate a succession in respect of the whole of which duty was payable, and that a successor can do no act by which his liability to duty is taken away, for if he re-settle, he is liable under sect. 12 as if he had not done so, and if he sell, the purchaser is liable under sect. 15, as if no sale had taken place. If A. had not concurred in dealing with the property, B. must have paid upon the value of the whole rental, because that liability had already attached. If the decision of the court below were correct, a reversioner liable to a heavy rate of duty will have but to purchase an annuity from the tenant for life, or an annuity upon his life, the cesser of which will have to be taken into account, and he will be entitled to claim a large deduction upon the assessment of his duty. Again, a purchaser should not be placed in a worse position than the reversioner himself, and would therefore be entitled to claim the benefit of a deduction on account of any allowance which the reversioner received from, or dependent upon the life of the tenant for life, because the duty is to be assessed as if no sale had taken place.

The most conclusive argument against the decision appears to us to be raised by the words at the end of the 15th section, which, by the way, were referred to on behalf of the Crown, and which are as follows: "And where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place." If a tenant for life conveyed his estate to the remainderman, the latter would undoubtedly, under the last section, be liable to pay the duty upon his remainder at the same rate and time, and in the same manner—viz., upon the death of the tenant for life, and upon the whole of the property, as if the conveyance had never taken place; and it seems absurd to hold that although the duty payable by the remainderman will not be affected if he obtain the whole of the tenant for life's estate, yet if he only obtain a portion of it he will be able to obtain a reduction in the amount of duty; in other words, the man who actually gains less pays most. The result of the decision is this, if a reversion expectant on the death of A. is given, say by will, to B., who already has obtained from an entirely different source an annuity payable during A.'s life, B. would not have to pay so much duty as if he had not had the annuity. The annuity and reversion are in no way connected, and if the reversion had been given to C., D., or E., he must have paid duty upon the whole rental, and B. must have equally lost his annuity. The property is entirely different, liable to duty, and upon which duty should be paid, unless, as a condition for accepting the gift, the person to whom it was given has to give up or is deprived of some other property which he would have retained had he disclaimed the gift. The reason is obvious, the property given up will pass to some one else by reason of death, and that person will have to pay duty in respect of it

The best test of the correctness of the decision is to take a suppositious case. In 1860 a man died, having by will given his real estate to the use that A. should during the joint lives of himself and B. take an annuity of £400, and subject thereto to the use of B. for life with remainder to the use of A for life. Here A. would have to pay duty upon the annuity calculated upon the value of the joint lives, and B. would pay duty upon the estate (less £400) upon the value of his life, but in no case would the two duties exceed the duty which B. would have paid had the whole property been given to him for life, so that really duty has only been paid for the duration of the joint lives, and undoubtedly upon the death of A., B. would have to pay duty upon the increase, viz., £400 a year only, because the full extent of his life had previously been taken as regards the residue of the estate; but, upon the death of B., A. should pay upon the whole estate, as the period for which he had paid duty upon the £400 had elapsed, the latter having been calculated upon a portion only of his life which had passed away. Here A. having paid duty upon his annuity cannot deduct it when paying the duty upon his life estate, but the result of the decision is that he could claim a deduction for any further annuity given to him by B. upon which of course he would never have paid any duty at all.

Perhaps, as the decision appealed against was in favour of the subject, and was supported by a previous decision of their lordships, they were right in giving the subject the benefit of the former decision; but we cannot refrain from saying that the Act should at once be amended and explained to mean that a reversioner who was, previously to the commencement of the Act, entitled to an annuity which ceased when his estate fell into possession, should in

Digitized by Google

his assessment be entitled to deduct the amount of the annuity from the annual value of the property, but that such should not be the case where the annuity was granted since the commencement of the Act, unless the annuity and reversion were created at the same time, and by the same document or set of documents.

The present Government seem desirous of amending laws; we commend those relating to probate, legacy, and succession duties to their notice, and we should be glad to hear that a consolidating Act was being prepared, as such an Act would be most beneficial.—*The Law Times.*

RIGHTS OF LANDLORDS TO DISTRAIN.

A point of some importance relating to the construction of a statute passed more than a century and a half ago was first definitely settled in the case of *Cox* v. *Leigh*, reported in last week's issue of the *Weekly Reporter* (p. 730). A well-known Act of Anne (8 Anne c. 14) renders illegal the removal of goods taken in execution without paying to the landlord the sum due for rent, not exceeding one year's arrears. In the recent case a tenant had held over after the determination of a tenancy by notice to quit, and within six months from such determination the sheriff seized his goods under an execution. The landlord gave notice that rent was in arrear, and the question was whether, under these circumstances, the sheriff could remove the goods without paying the rent.

The contention that he could not do so appears to have been founded upon two steps, first, a principle attempted to be derived from *Hodgson* v. *Gascoigne* (5 B. & Ald. 88). next, a deduction attempted to be made from that principle, The principle supposed to be established by *Hodgson* v. *Gascoigne* was that the statute could not apply where the landlord had no right to distrain. Now in that case the execution was levied more than six months after the determination of a tenancy, the tenant having since remained in possession, but not having paid rent. The counsel for the execution creditors broached the theory that the object of the Act being to make the landlord amends for taking away his power of distress, the remedy given by it applied only where the landlord had this power. As the claim for the year's rent was, however, abandoned, the point was not fully discussed, and the court gave no reasons for their decision against the landlord's claim. It is not necessary to suppose that they acceded to the argument of counsel, or held that the obligation to pay over the rent was in any way connected with or dependent upon the right to distrain. It was sufficient that there was no tenancy at a rent certain subsisting at the time of the execution.

But even supposing that *Hodgson* v. *Gascoigne* was decided on the ground that where there was no right to distrain the statute did not apply, it is difficult to see how this could support the inference that in every case where there is a right to distrain the statute is applicable. There is nothing whatever said in section 1 about the right to distrain. "Neither by that statute," said Blackburn, J., in the recent case, "nor by any subsequent one has it been enacted that in all cases where there is a power of distress, concurrently with it there shall be the obligation on the sheriff to pay a year's rent, if due, before removing goods in execution." That might have been a very reasonable provision to make, but there is nothing to show that it was in fact intended to be made.

The general understanding has been that in all cases there must be a subsisting tenancy at a rent certain in order to render section 1 applicable. This is the reason given in *Riseley* v. *Ryle* (11 M. & W. 16) for holding that in the case of entry under an agreement for a lease under which no rent was proved to have been paid, the statute did not apply, and this is the test established by the decision of the Queen's Bench in the recent case. Of course where there is no tenancy at a rent certain there can be no distress, but this is a very different thing from saying that the application of section 1 of the statute depends on the existence of a right to distrain. Mr. Justice Patteson remarked, in *Riseley* v. *Ryle* (11 M. & W. at p. 22), that he was not aware that it had ever been decided that section 1 of the statute is confined to goods which are distrainable in point of law.—*Solicitors' Journal.*

GENERAL WORDS IN A CONVEYANCE.

The decision of the Lords Justices in the case of *Bulley* v. *Bulley*, on the 26th of last May, which confirmed the previous judgment of Bacon, V.C., is one which involves singular hardship, and is in our opinion scarcely consonant with moral principle or the current of judicial decisions on the same subject. The case, as reported in the W. N. of 14th March, was shortly as follows: Richard Bulley, by a disentailing deed dated 22nd Oct. 1841, conveyed the freehold part of an estate in Essex for the purpose of barring the estate tail; but the deed was not enrolled in due time. He died in 1852, after making a will by which he devised the property to his four children and a granddaughter, Emily Elizabeth Bulley, his heir-at-law and a minor, who was the plaintiff in the case. In Aug. 1867, when Miss Bulley was only just of age, she conveyed, without taking independent professional advice, her fifth "and all other the estates, parts, shares, and interests of her the said E. E. Bulley" in the freehold to her uncle, John Bulley, for £250. Immediately afterwards John Bulley mortgaged "the one-fifth part or share and premises" for £250. In Feb. 1869 he mortgaged the same property to the South Essex Investment Company for £150. Two further charges were made to the company in Dec. 1869 and May 1871, and in June 1871 they got in the first mortgage. In the course of the year it was discovered that the disentailing assurance of 1841 had not been enrolled. John Bulley then proposed to the niece to execute a disentailing deed, which she declined to do. And on making inquiry, she was told that all her estates and interest had passed under the general words of the conveyance of Aug. 1867. She then filed her bill to set aside that conveyance, so far as it might affect her title as tenant in tail to the freeholds. The Vice-Chancellor dismissed the bill, on the ground that that deed passed all such estate as the plaintiff could grant, and that its operation was to pass a legal estate in the freeholds to John Bulley, which legal estate was afterwards conveyed to the company, who became purchasers for valuable consideration without notice of the legal estate. Upon the appeal the Lords Justices dismissed the bill with costs, observing that they did not think it right to leave the plaintiff to proceed at law as to the other four-fifths.

It is exceedingly difficult to discover the justice of this decision. The plaintiff, a young and inexperienced girl, acting without advice, and doubtless reposing full confidence in her uncle, sells her supposed share in certain property at what, to judge from the mortgages effected upon it, seems to have been a very inadequate price. That uncle, becoming apparently more and more involved, raises far more upon the property than he originally gave for it. His largest creditors, getting in the legal estate, find they have, according to the technicalities of law, a considerable larger security than they imagined, or had any reason to expect, and that, too, at the cost of a person with whom they had had no transaction. It is true that they were purchasers for valuable consideration, and without notice; but they can scarcely be said to be purchasers of what is not explicitly conveyed to them by the purchase deed. They needed no protection; they received what they bargained for; and it seems scarcely reasonable that mere general words, put in, as of course, by the conveyancer, should benefit a purchaser so as practically to overturn the old maxim, "*Caveat emptor,*" to the detriment of the vendor whose youth and inexperience ought, as generally would be the case, to have entitled her to the special protection of a court of equity. And the general rule certainly is, as was admitted by the Vice-Chancellor in the present case, that according to the cases of *Doungsworth* v. *Blair* (1 Keen, 795) and *Francis* v. *Minton* (16 L. T. Rep. N. S. 352), "general words in a deed, however comprehensive in terms, are not to be read in a sense contrary to the intention of the parties." The law is expressed in similar terms in Sugden's Vendors and Purchasers, 14th Edit. p. 172. And we are so far from agreeing with the Vice-Chancellor and the Lords Justices that other circumstances neutralised in the present case the applicability of that rule, that we incline to think there was more than usually cogent reasons for following the general principle of law.—*The Law Times.*

Digitized by Google

THE IRISH JURY SYSTEM.

The report of the Select Committee of the House of Commons on the jury system in Ireland is as follows :—

That the Juries (Ireland) Act, 1871, should be amended, but that it is indispensable to the proper administration of justice in Ireland that the system of providing juries should be such as to ensure absolute impartiality in the formation of the panels of jurors. That in some instances the rating qualification of jurors fixed by the Jurors Act (Ireland) 1871, is too low; and that it should be raised, and should in some instances be higher than the qualification fixed in the temporary Act amending the said Act. That it is desirable to add to the number of persons qualified to serve on juries by qualifving some persons who may not have a rating qualification, such as the sons of peers, of baronets, of grand jurors, and of magistrates, officers of either the army or navy while not on actual service, freeholders and leaseholders. The collectors of rates and stamp distributors should cease to be exempt. The publicans should be exempt from service on juries. That all persons who have been convicted of perjury should be disqualified. That the lists of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions. That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the jurors' book has not worked well, and requires alteration. That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books—having regard (*a*) To the convenience of jurors as to the locality to which they shall be summoned, so that as far as may be the jurors shall be summoned from within the jurisdiction of the court in which they shall be required to serve: (*b*) The number of names in the jurors' books; and (*c*) The number of previous attendances of the jurors; and that the sheriff should enter against the name of each juror summoned the date of each summons, and the jurors' attendance, and should, as far as possible, not summon any juror a second time who had served on a jury until he had first summoned all those whose names were on the jurors' book. That summonses for the attendances of jurors should be served by the constabulary, but with power to the judge of assize, by order, to substitute service by post in any particular venue. That a right of peremptory challenges in civil cases in the superior courts, and in all trials of indictments for misdemeanours and *ex officio* informations be allowed to each party to the extent of six challenges. That the judge should have power, in criminal as well as civil cases, to order a view. That all paid officials should be remunerated for the duties performed by them in relation to the jury lists according to a fixed rate. That it is desirable to amalgamate the jury lists of counties of cities with those of the counties. That the occupation of a house, or house and buildings without land, when rated to a certain value, should be a qualification of a juror in counties; such value to be defined for each locality, according to the circumstances of the same. That it is desirable to abolish the market juries. That it is desirable that juries should be selected by ballot from the panel in criminal as in civil trials.

EASEMENTS; AND COVENANTS FOR QUIET ENJOYMENT.

An important point has been recently decided by the Lords Justices on appeal from the Master of the Rolls. The question at issue was one that involved a discussion of the value of the covenant for quiet enjoyment on a demise of premises "with all lights, easements, advantages, and appurtenances whatsoever thereto belonging or in anywise appertaining." The Master of the Rolls assuming that such covenant gave to the grantee of the easement a different right from that which may be acquired by twenty years' user, granted a decree without investigating the extent of damage, on suit being brought by the grantee of the term to restrain any interference with his lights. "The moment," says Sir G. Jessel, "the court finds that there has been a breach of the covenant, that is an injury, and the court has no right to measure it, and no right to refuse the plaintiff the specific performance of his contract." Lord Justice Mellish, in reviewing this decision, classes easements in three divisions :

(1.) Easements granted by covenants where there is a grant at law.

(2.) Easements acquired by prescription.

If in 1 and 2 the legal right is not interfered with, or if such damage has not been occasioned as would sustain an action at law, then there is no right in a court of equity.

(3.) Easements which come into existence by covenant, the burthen not running at law with the servient tenement at all. Here a court of equity says that a person who takes the tenement, with notice that such a covenant has been made, shall be compelled to observe it.

Such a division makes clear at once the result of the appeal. The easement interfered with was one of first class above-named; hence both the Lords Justices decided contrary to the Master of the Rolls. Lord Justice James makes a pertinent remark respecting the efficacy of the covenant for quiet enjoyment. "I never," he says, "understood that it was the object or effect of a covenant for quiet enjoyment to enlarge the rights of the grantee, or to increase the liabilities of the grantor." With such a result of the appeal, the above classification of easements, and of the corresponding rights, must be accepted as the true division, and it certainly seems only reasonable that a merely protective covenant should not have the double effect of both increasing and protecting the rights.

NON-ASSIGNABILITY OF STIPULATIONS ANNEXED TO A PAROL DEMISE.

A case of *Smith* v. *Eggington*, in the Common Pleas, reported 30 L. T. Rep. N. S. 521, shows two things very distinctly. First, that common law is not always a synonyme for common sense; and secondly, that our ancestors of the era of the eighth Henry, when they undertook by statutory doctoring to import common sense into common law, did so, in one instance at least, after a singularly halting and incomplete manner.

The particular absurdity thrown into strong relief by the case of *Smith* v. *Eggington* is the rule of the common law that stimulations in a lease not under seal do not run with the reversion, although they may be such as touch and concern the land demised. The particular statutory defect is the partial character of the remedy applied by the 32 Hen. 8, c. 34, which, as between landlord and tenant, rendered covenants, properly so called, assignable both as to the burden and the benefit, but, as appears from *Brydges* v. *Lewis* (3 Q. B. 603), and *Standen* v. *Christmas* (10 Q. B. 135), left stipulations not under seal, though precisely to the same purport as covenants, in the same unassignable and unhappy position as before.

Another absurdity of the common law which we may here incidentally allude to in connexion with this subject, was, that in regard to covenants they ran, as it was said, with the land, but not with the reversion, the effect being that the assignee of a lessee might bring or be liable to an action of covenant where the assignee of the reversion could not : (See the judgment of Lefroy, C.J., in *Butler* v. *Archer*, 12 Ir. Com. L. Rep. 104.) This, however, is now matter merely of antiquarian curiosity, as the statute of Henry rendered the incidence of the burden and benefit of covenants mutual as between the tenant and the reversioner. The questions raised and decided in *Smith* v. *Eggington* are very succinctly and, with an exception hereafter referred to, accurately stated in the head note, from which we cite : "A. became tenant to B. under a demise not under seal of a part of a factory, one of the terms being that B. was to supply steam power to work certain machines. At the time of the demise B. had really mortgaged his interest in the factory to a building society, who soon after intervened, and gave notice to A. to pay rent to them. They also though disclaiming his right to notice, gave him notice to quit at the expiration of three months. They then sold to C., who opened negociations with A., for granting him a tenancy on new tew terms, but while those were pending, permitted him

Digitized by Google

to continue possession and supplied him with steam power for five months after the term mentioned in the notice to quit. He then suddenly cut off the steam power. C. had received no rent from A., but the latter had paid two quarters as they became due to the building society, which were in respect of the time previous to the conveyance of the factory to C. Held, that neither the mortgagees nor C. were liable to perform the conditions in the demise from B. to A., because it was not under seal, and therefore not within 32 Hen. 8, c. 34. Held, also, that it was a question for the jury if C. had adopted the terms of the old tenancy or made a new contract with A.; and that if he had done neither, C. was not bound by the acts of either the mortgagor or mortgagees. *Semble*, that the mortgagees by receipt and waiver of rent in accordance with the terms of the demise granted by B. had recognised the contract and might have been liable in a similar action, had they continued in possession of the factory."

The exception to which we refer relates to that part of the headnote which states the court to have held that "neither the mortgagees nor C. were liable." We do not find anything in the judgment *in extenso* to warrant the statement that the mortgagees were not liable after the assignment. Such an opinion, if given, would be merely *obiter*, as the mortgagees were not defendants. Moreover, it is perfectly clear that the privity of contract, not being affected by the assignment, was still operative between the original parties, as was decided in *Bickford* v. *Parsons*, hereafter cited.

What then is the net result of this exclusion of stipulations in contracts not under seal from the quality of assignability which the statute of Henry conferred on covenants? In the particular case we have been considering, it is manifest that if the jury had entertained the view expressed by Mr. Justice Keating—viz., that there was strong evidence that the mortgagee, though not originally bound by the mortgagor's demise, had adopted the plaintiffs as their tenants on the terms, and subject to the stipulations in the original demise, then the stipulation as to the supply of steam power was one which the justice of the case required that the plaintiff should be enabled by *some* mode of procedure to enforce, as against the defendant, the assignee of the reversion; unless, indeed, such a stipulation could be considered one which, from its nature and purport, was so entirely collateral to the demise that it would not, even if the demise had been under seal, have run with the land at law, so as to bind the assignee of the reversion in favour of a tenant.

There was some suggestion that if the contract had been under seal, the stipulation, promoted to the rank of a covenant, it would not have been binding on the assignee of the reversion. We assume, for the purpose of this discussion, that the burden of the stipulation did not pass to the plaintiff for the reason pure and simple that the stipulation was not contained in a contract under seal. In this view of the case the decision is doubtless correct. Yet, though it may be, and is, good law, it is at the same time great nonsense, to say, that the presence or the absence of a bit of wax should make all the difference whether a plaintiff is to be left with or without remedy. Our forefathers appear to have considered that nothing important could be transacted without great expenditure of parchment and sealing wax; but as we have changed all that, and plain paper and ordinary signatures are now recognised as adequate to govern transactions of the greatest moment, it is time that the technical distinction between covenant and simple contract should not be allowed to obstruct any longer the course of justice. In the administration of assets the priority of covenants over simple contracts has already been removed. We hope to see the preference given to a covenantee in making twenty years the period necessary to bar his action instead of six years allowed to a contractee on simple contract, also removed. It will be quite sufficient that the distinction should be maintained only for the purpose of excluding a covenantor from setting up *nudum pactum* as a plea. It would be inconvenient if voluntary covenants could not be sued on, and it would never do to uphold the doctrine that *every* voluntary promise, whether written or oral, would support an action.

In the case of *Smith* v. *Egginton* we cannot think that the plaintiffs are left wholly without remedy, for there can be no reasonable doubt that the liability and burden of the stipulation would in equity be treated as attached to the demise so as to pass to the plaintiff by the assignment. The Court of Common Pleas might have repeated the advice once before given to an unsuccessful plaintiff in a court of law, "*abi in malam rem.*"

The tenants under the parol demise could clearly have maintained an action on the stipulation against the persons immediately contracting with them, notwithstanding the assignment of the reversion (see *Bickford* v. *Parsons*, 5 C. B. 921); and it seems equally clear that the assignors of the reversion would be entitled in equity, if not at law, to indemnity from the assignee. A landlord in selling and conveying his reversion expectant on, or subject to, a parol demise to which benefits or liabilities of the nature we are considering are attached, invariably expects and intends that these benefits and liabilities shall pass to his assignee. The question is not by any means one merely of theoretical or abstract interest; it is one of constant occurrence. In these days of locomotion, vast numbers of persons refuse to be bound by a formal lease in accepting a tenancy, and in the letting of houses of the smaller class, agreements for tenancies not exceeding three years appear to be the rule, not the exception.

These agreements generally contain a variety of stipulations, almost universally a stipulation as to keeping the property in repair. It cannot for a moment be supposed that on an assignment of these tenancies, or of the reversion expectant on them, the respective assignees do not take the benefit or are freed from the liabilities which these stipulations were intended to confer or impose, and which in reality form part of the conditions of the holding. *Bickford* v. *Parsons*, as we have seen, decides that in such cases actions cannot be brought *by* an assignee, but must be brought in the name of the original stipulator, who would no doubt be bound in equity on a proper indemnity being offered to allow his name to be used. *Smith* v. *Egginton* is the converse case, showing that an action cannot be brought *against* the assignee of the reversion. The action must be brought against the original stipulator who, in general, would in equity, if not also at law, have a remedy over against the assignee on principles of natural justice, or on an implied contract for indemnity. Whether it be deemed advisable or not to alter the general rule that a *chose in action* is not assignable at law, it seems clear that wherever a stipulation both in burden and benefit would, if it constituted a covenant, run with the land and with the reversion at law, then also a similar assignability should be conceded to a stipulation.

The resort to equity which appears at present to be the only remedy in these cases is cumbersome and circuitous, and the sooner the necessity for it is removed the better. On this point there can hardly be two opinions. The provisions of the Judicature Act, 1873, ss. 24, 25, for the concurrent administration of law and equity, and for making *choses in action* assignable at law by mere writing under the hand of the assignor, may probably be sufficient to remove the difficulties we have pointed out, without the necessity of further special legislation.—*The Law Times.*

RECENT DECISIONS.

COURT OF CHANCERY, JULY 10.

(Before the LORDS JUSTICES OF APPEAL.)

EX PARTE JAMES, IN RE CONDON.

(From the *Times*.)

This was an appeal from a decision of Mr. Registrar Roche, acting as Chief Judge in Bankruptcy, and it raised a question of considerable importance as to the right of an execution creditor of a trader, under section 87 of the Bankruptcy Act, 1869, and the application of the recent decision of the full Court of Appeal in "*Ex parte Villars*," a case in which the original decision of Lord Justice Mellish was, as our readers will remember, afterwards reversed on a re-hearing by the full Court. In the present case, on the 14th of November, 1873, judgment for £274 was signed by Henry Bradshaw against John Condon, a coal merchant at

Digitized by Google

Millwall. Execution was issued, and on the 17th of November the sheriff seized Condon's goods. On the 18th of November Condon filed a liquidation petition. On the 22nd of November the sheriff sold the goods, realizing by the sale £142 15s. 6d. On the 3rd of December notice of the petition was served on the sheriff. On the 5th of December the first meeting of the creditors was held, and was adjourned to the 16th. On that day the debtor failed to attend, and the creditors separated without passing any resolutions. On the 17th of December the sheriff paid the £142 15s. 6d. to Bradshaw. On the 19th of December a petition in bankruptcy was presented against Condon, founded on the act of bankruptcy committed by the filing of the liquidation petition, and notice was given to the sheriff and to Bradshaw. On the 10th of January, 1874, an adjudication was made. On the 23rd of February, three days after the decision of Lord Justice Mellish in *Ex parte Villars*, Bradshaw being advised that it governed his case, repaid the £142 15s. 6d. to the trustee in the bankruptcy. Upon the subsequent reversal of this decision by the full Court, Bradshaw claimed to have the money returned to him. The Registrar decided that he was entitled to it, and ordered the trustee to repay it. The trustee appealed.

Mr. Thesiger, Q.C., and *Mr. E. C. Willis*, for the trustee, argued that the proceedings and the liquidation petition were not finally at an end when the creditors failed to pass any resolution, especially having regard to the provisions of the 267th Rule of 1870. A bankruptcy might supervene, and actually did supervene in this case, and the adjudication must be taken to have been made upon the liquidation petition, of which the sheriff had notice within the fourteen days after the sale. At any rate, as the money was voluntarily paid by the execution creditor to the trustee under a mistake of law, the trustee could not be called on to refund it.

Mr. De Gex, Q.C., and *Mr. Finlay Knight*, for the execution creditor, argued that the liquidation proceedings were at an end when the creditors failed to pass any resolutions. It was impossible that a trustee could then be appointed under the liquidation, and the appointment of a trustee was in a liquidation the equivalent to an adjudication in a bankruptcy. The subsequent bankruptcy petition was a wholly independent proceeding, not commenced till after the sheriff had properly paid away the money. Its only connexion with the liquidation petition was that it was founded on the declaration of insolvency contained in it. As to the other point, the trustee was an officer of the Court, bound to pay the money to the person who was properly entitled to it.

Mr. Thesiger, Q.C., was heard in reply.

Lord Justice JAMES thought that the order of the Registrar ought to be affirmed. He adhered to the opinion he had expressed in *Ex parte Villars*, that the legal rights of the execution creditor ought to be respected except so far as they are interfered with by the provisions of the Bankruptcy Act. The *onus* was clearly on the person who said that the creditor ought not to take the fruits of his execution. In this case, looking at section 87 and the rules, he thought it was impossible to say that the adjudication of bankruptcy was made on the petition, of which the sheriff had notice before he paid away the money. The result of what occurred at the meeting on the 16th of December was that the whole thing came to an end. There was nothing in the nature of a resolution, nothing which could result in the appointment of a trustee. Any of the creditors might have presented a bankruptcy petition within the fourteen days. His Lordship, therefore, thought that the execution creditor was entitled to the proceeds of the sale. As to the other point, he thought that a trustee in bankruptcy was in truth an officer of the Court, and the Court, finding that money in the trustee's hands really in equity belonged to some one else, ought to do equity just as any one else would be bound to do it, and to direct the money to be paid to the person entitled to it. The appeal must be dismissed, but without costs.

Lord Justice MELLISH was of the same opinion. The case was not to be distinguished from *Ex parte Villars*. When the sheriff had notice of the liquidation petition no doubt he was bound to keep the proceeds of the sale in his hands until he knew whether the proceedings on the petition had come to an end or not. In a liquidation petition the appointment of the trustee corresponded to an adjudication in bankruptcy, and his Lordship was of opinion that, when the creditors came to the meeting, and dispersed without any resolution being put, all the proceedings under the petition at once came to an end. It was then impossible that a trustee could ever be appointed. But it was argued that as the debtor could be, and in substance was, in this case, adjudicated a bankrupt on the declaration of insolvency contained in the petition, the sheriff ought to have kept the proceeds of sale till he knew whether this was done or not. This would be a very inconvenient construction of section 87, for the consequence would be that the sheriff might have to keep the money for six months. Moreover, as to the argument founded on Rule 267, his Lordship did not think it was competent to apply the rule so as to take away from the execution creditor any rights secured to him on the true construction of the Act. As soon as it became impossible that a trustee could be appointed under the liquidation petition, as it did when the creditors dispersed on the 16th of December, his Lordship thought that the sheriff was authorized in paying the money to the execution creditor. His Lordship agreed, also, in what Lord Justice James had said as to the other point.

Lord Justice JAMES added that it was a very proper case for the trustee to have his costs out of the estate, but it was not the practice of the Appeal Court to make an order that he should have them.

PROBATE.

Execution of Will.

IN THE GOODS OF E. WOTTON, Pr., 22 W. R. 352.

Lord St. Leonards' Act for curing informal signatures to wills (15 & 16 Vict. c. 24, s. 1) provided that a will should be valid if the signature of the testator were placed "at, or after, or following, or under, or beside, or opposite to the *end* of the will," that it shall be apparent on the face of the will that the testator intended to give effect by his signature to the writing signed as his will, and then, after enumerating a number of positions coming within this description in which the signature might be placed so as to be valid, added that "the enumeration of the above circumstances shall not restrict the generality of the above enactment, *but* no signature under the said Act (1 Vict. c. 26, s. 2) or this Act shall be operative to give effect to any disposition or direction *which is underneath or which follows it, nor* shall it give effect to any disposition or direction inserted after the signature shall be made." It appears from this that the signature must be somewhere at the end of the will, that the learned author of the Act by follow meant follow, and that he drew a distinction between a provision following the signature on the paper and being inserted after it in point of time. In the present case, however, the statute seems to be read otherwise. The first page of the will contained the appointment of executors and the attestation clause with the signature of the testatrix, the rest of a printed form upon that page being struck out. The next two pages contained the body of the will, and the fourth page had only an indorsement. It was in evidence that the whole of the will was written before the attestation clause. The learned judge held that "treating page 1 as the last sheet, as he should hold that the testatrix treated it," the will was properly executed; and the will was accordingly admitted to probate. This seems a rather strong decision in favour of testamentary disposition.—*Solicitors' Journal.*

MANCHESTER COUNTY COURT.

From the *Law Times.*

(Before J. A. RUSSELL, Q.C., Judge.)

M'QUEEN *v.* QUIRK.

Trade Union—Claim by a member for the payment of a sick allowance.

M., a member of the National Association of Plasterers, sued the secretary of the Manchester district for £5, being the amount due to him for accident allowance. The case came within the provisions of the Trade Union Act, 1871, *the*

Digitized by Google

4th section of which is as follows:—"Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements—namely (*3rd sub-section*), *any agreement for the application for the funds of a trade union;* (a) *to provide benefits to members.*"

Held, *that the plaintiff could not recover.*

J. B. Edge (barrister), for the plaintiff.

The defendant was represented by the general secretary of the society, Mr. Williams.

Edge said:—This is a case which was adjourned by your Honour to enable the plaintiff (who was unrepresented at the first hearing) to consider his position, as your Honour had expressed a doubt as to your jurisdiction. I have since been instructed in the matter, but, after carefully considering the various Acts of Parliament bearing upon it, I feel that I ought at once to say that I do not think I could successfully argue the case.

His HONOUR, in giving judgment, said that, owing to the importance and novelty of the case, he had looked into the matter carefully, and the impression he had formed at the time the case was before him had been strengthened. As it was an important and novel case, he had thought it desirable to go into it minutely, and to deliver a detailed judgment for the purpose of showing that there really was reason in the provisions of the statute which he must confess surprised him at the time they were brought before him. The case was that of *Alexander M'Queen* v. *William Quirk*, the defendant being the secretary of the National Association of Plasterers of the Manchester district, and it was a claim of £5 against the society for accident allowance. The allowance was claimed under one of the by-laws of the society, which by-laws had been registered by Mr. William Stevenson, the registrar of trade unions. The merits of the case had not been gone into, the objection taken on behalf of the society being that under the provisions of the Trade Union Act of 1871 neither that nor any other court had power to deal with the question. The impression he at first formed was against the right of the plaintiff to enforce his claim, but the question being one perfectly new to him, and one which he thought was of some public importance, on account of the prevalence of trade union societies in this district, he thought it his duty to take some time to examine the statute. The Trade Union Act of 1871 was a statute the effect of which he thought could hardly be understood without going into the history of the legislation which culminated in that statute. In the year 1867 the case of *Hornby* v. *Close*, reported in the Law Reports 2nd Queen's Bench, p. 53, was brought before the Court of Queen's Bench under the following circumstances:—Close was a member of a society which was registered under the Friendly Societies Act of 1855, and an information under sect. 24 of that Act was laid against him, charging him with wrongfully withholding the money of the society. The society, however, though registered under the Friendly Societies Act, was in fact a trade union, and when the case came before the magistrates, the objection was taken that being a trade union it was for a purpose which was illegal within the 44th section of the Friendly Societies Act. The magistrates held that the objection was valid, and dismissed the information. The parties appealed to the Court of Queen's Bench, and the court unanimously affirmed the decision of the magistrates, holding that this trade union being a society, formed for an illegal purpose, it was therefore not within the protection of the Friendly Societies Act. This case was followed in the year 1869 by another, that of *Farrar* v. *Close*, which was a case arising under precisely similar circumstances; the same society was concerned in it, and the same objection was taken which was upheld by the magistrates. An appeal was again made to the Court of Queen's Bench (L. Rep. 4, Q.B. 602), and the court, not for a moment disputing the correctness of the former ruling, so far as the law went, were equally divided as to whether the facts of the case brought it within the decision in the former case or not. The court being thus equally divided, the decision of the magistrates remained valid. The result of those two cases was to establish as a fact that a trade union, though registered under the Friendly Societies Act, was not a legal society within the purview of that Act. These decisions created great excitement at the time, and the matter having been brought before parliament in the year 1869, the statute 32 and 33 Vic., c. 61, was passed, the object of which was to protect the funds of trade unions from embezzlement or misappropriation, and that was done merely by enacting that for the purpose of the Friendly Societies Act of 1855, section 24, for the punishment of frauds and impositions, a trade union should not be deemed illegal within section 44 of that Act: so that the effect of the statute was to establish the legality of trade unions so far as to give them a right, under section 28 of the Friendly Societies Act, to proceed against anyone who might embezzle or otherwise make away with their funds. That Act expired on the 31st August, 1870, and was followed by the Trade Union Act of 1871, upon which the present question arose. At the time that the Act was passed, excepting so far as the legality of trade unions had been restored by the expired Act, they were still illegal societies within the purview of the Friendly Societies Act; and it might, therefore, be fairly presumed that the object of the Trade Union Act was to restore them to their status of legality. The question then was whether that Act was intended to do more, or whether it did more than that. He was of opinion that that was almost the entire purpose of the Act of 1871. The second section enacted that the purposes of any trade union should not, by reason merely that they were in restraint of trade, be deemed unlawful as to render any member liable to prosecution for conspiracy or otherwise; and the third section enacted that the purposes of a trade union should not, by reason that they were in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. In point of fact, those two sections did away altogether with the illegality of trade unions so far as they had been previously rendered illegal by their constitution being in restraint of trade; and it gave the parties connected with them the right, except so far as that right was limited by the terms of the Act itself, to come into any court to deal with them as legal societies. Section 12 was expressly provided for the purpose of meeting such cases as *Hornby* v. *Close* and *Farrar* v. *Close*, and to meet a crime by any person who had charge of the books, papers, or funds belonging to the society, whether he was a member of the society or not. Then came the important section upon which the question before him arose—section 4. So far the sections were enabling sections, but section 4 was a disabling section. The terms of that section were to the effect that nothing in the Act should enable any court to entertain any legal proceedings instituted for the enforcement or recovery of damages for certain breaches which were set forth, and one of these was the breach of an agreement to appropriate any of the funds of a trade union to providing benefits for the members. Now the claim in the present case was under a rule of the society providing benefits to a certain extent in case of accidents to men while pursuing their trade. Inasmuch as section 4 prohibited any court from entertaining a suit, the object of which was either to force such an agreement or to recover damages for the breach of it, it appeared to him that that disabling section completely took it out of the power of that or any other court to enforce such agreement. The reason of that was manifest from the history of the legislation he had sketched out, because it was abundantly clear that the Act was passed for a particular and specific object, having reference to previous legislation and previous decisions. The purpose of the statute was therefore answered by removing the previous disabilities, and by extending the benefits of legislation, so as to make those societies legal to a certain extent, and to protect their funds; but it was not the intention of the statute to give the members any status before any court of justice for the purpose of enforcing an agreement come to between themselves, the object of which, amongst others, was to provide benefits for any members of the society. That was rendered more clear still by the 5th section of the Act. When the question was considered it would be seen that there was really no hardship in that, because it put trade unions on the same footing as friendly societies under the arbitration clause. Upon the whole he

Digitized by Google

was clearly of opinion that he had no jurisdiction to deal with the case, and it must therefore be struck out, but he would strike it out without costs.

CONFESSIONS OF GUILT.

Very little confidence ought, as a rule, to be placed in confessions of guilt. Some persons are so dishonest by nature that rather than throw away the opportunity they will confess the commission of crimes and offences of which they are perfectly innocent. Others, again, when convicted of crimes they have not committed, are so worried to acknowledge the justice of their sentence, that they will confess anything for the sake of a few minutes' peace. Confessions also are, it is to be feared, not unfrequently made by persons unjustly accused of crimes under promises of pardon "if they tell the truth," it being understood that nothing short of an admission of guilt will be received as a token of veracity. An instance of this latter kind of confession is afforded by the case of a boy named Rumacher, aged thirteen, who was on Wednesday last charged at the Westminster Police Court with stealing a purse containing £1, and remanded for a week. When given into custody the boy acknowledged the theft, having been told that he had better tell the truth and he would be forgiven. He subsequently, however, retracted his confession, and yesterday application was made to the magistrate for his discharge, the purse and its contents having been found and his innocence proved beyond a doubt. An order was, of course, immediately given for his release, and the magistrate remarked that it was his practice seldom or never to take notice of what prisoners said when charged. Many of them were frightened and did not know what they said, and it was afterwards sought to be used against them in evidence. This is very true, and confessions even by prisoners sentenced to death are often utterly untrustworthy. Some few years ago a foreigner, found guilty and hanged in this country for an atrocious murder, made a full confession before his execution. Everybody was satisfied but a priest who attended him to the last, and who remarked that the man was such an inveterate liar that his very confession convinced him that he was innocent of the crime for which he was executed.—*Pall Mall Gazette.*

DIGEST OF RECENT ENGLISH DECISIONS.

AGENT.

Set-off against principal of a debt due from agent: pleading: means of knowledge.—In order to constitute a valid defence within the rule in *George* v. *Clagett*, 7 T. R. 359, the plea should show that the contract was made by a person whom the plaintiff had entrusted with the possession of the goods; that the person sold them as his own goods, in his own name, as principal, with the authority of the plaintiff; that the defendant dealt with him as, and believed him to be, the principal in the transaction; and that before the defendant was undeceived in that respect the set-off accrued. It is not necessary in such a plea, to negative "means of knowledge," that the seller was dealing as an agent. To a count for goods sold and delivered, the defendants pleaded that the goods were sold and delivered to them by S., then being the agent of the plaintiffs, and entrusted by them with the possession of the goods as apparent owner thereof; that S. sold the goods in his own name, and as his own goods, with the consent of the plaintiffs; that at the time of the sale, the defendants believed S. to be the owner of the goods, and did not know that the plaintiffs were the owners of or interested therein, or that S. was agent; and that, before the defendants knew that the plaintiffs were the owners of the goods or that S. was agent in the sale thereof, S. became indebted to the defendants, etc., claiming a set-off. Replication, that, before the sale by S., the defendants had the *means of knowing* that he was merely apparent owner of the goods and that the same were entrusted to him as agent, and that S. was agent, and as such sold the goods to defendants. *Held*, that the plea was good, and the replication no answer to it. *Borries* v. *The Imperial Ottoman Bank*, L. R. 9 C. P. 38.

REVOCATION.

Will lost or destroyed: question of revocation: evidence: admissibility of declarations of testator.—In order to rebut the presumption of revocation arising from a will which was in a testator's possession not being found after his death, evidence was produced of declarations by the testator, showing an intention to adhere to the will. The court held that evidences of declarations of an intention not to adhere to the will, produced by the opponents of the will, was admissible to contradict the evidence of adherence, whatever might be the form of words in which such intention was expressed; and therefore that a declaration by the testator that he had burnt his will was admissible, not as evidence of the fact of destruction, but as evidence of intention. *Keen* v. *Keen*, L. R., 3 Prob. and Div. 105.

SHIP.

Bill of lading: "quantity and quality unknown."—The defendant chartered the ship "Avoca" to carry a cargo of grain from Ibraila to a port in the United Kingdom for a freight of "7s. per imperial quarter delivered;" and the charter-party provided that, in the event of the cargo or any part thereof being delivered in a damaged or heated condition, the freight should be payable "on the invoice quantity taken on board as per bill of lading, or half-freight upon the damaged or heated portion, at the captain's option." Under this charter-party, 1,021 kilos. of barley, equal to 2,368 imperial quarters, were shipped at Ibraila, and the captain signed a bill of lading with the following words written at the foot, which was proved to be usual in the grain-carrying trade: "Quantity and quality unknown." The "Avoca" experienced bad weather on her homeward voyage, and when she arrived at Ramsgate, where the cargo was discharged, it was agreed that 80 quarters of the barley had been damaged by heating; and the master claimed to be paid freight *on the invoice quantity* taken on board. *Held*, that he was entitled to be so paid, notwithstanding the memorandum at the foot of the bill of lading. *Tully* v. *Terry*, L. R., 8 C. P. 679.

SHIPPING.

Charter party: lump freight: loss of part of cargo by fire without default of shipowner.—By charter-party a ship was to load at Colombo, or Cochin, from the charterer's agents, a full and complete lading, and proceed to London and discharge there, fire and other dangers of the sea excepted, a lump sum freight of £5,000 to be paid after entire discharge and right delivery of cargo, in cash, two months after date of the ship's report inwards at the custom-house. Part of the cargo loaded in accordance with the charter-party was lost by fire, without any default of the master or crew, and the remainder was delivered in London. *Held*, that the shipowner was entitled under the charter-party to the full sum of £5,000. *Robinson* v. *Knights*, L. R., 8 C. P. 465; *The Norway*, 3 Moo. P. C., N. S. 245, approved. *The Merchant Shipping Company, Limited* v. *Armitage*, L. R. (Ex. Ch.) 9 Q. B. 99.

BAILEE.

Livery-stable keeper, liability of, for care of carriage for customer; fall of coach-house.—Where a livery-stable keeper undertakes for reward to receive a carriage and lodge it in a coach-house, the case comes within the second case of the fifth sort of bailment mentioned by Holt, C.J., in *Coggs* v. *Bernard*, 2 Ld. Raym. at pp. 917, 918, viz., a delivery to carry or otherwise manage for reward, to a private person, not exercising a public employment; and he is bound to take reasonable care. The obligation to take reasonable care of a thing entrusted to a bailee of this class, involves in it an obligation to take reasonable care that any building in which it is deposited is in a proper state, so that the thing deposited may be reasonably safe in it; but no warranty or obligation is to be implied by law on his part that the building is absolutely safe. The fact that the building has been erected for the bailee on his own ground makes no difference in his liability. The plaintiff brought his horses and two carriages to defendant, a livery-stable keeper; the carriages were placed under a shed on defendant's premises, a charge being made by defendant in respect of each. The

Digitized by Google

shed had just been erected, the upper part being still in the hands of workmen. Defendant had employed a builder to erect the shed for him, as an independent contractor, not as defendant's servant, and he was a competent and proper person to be so employed. The shed was blown down by a high wind, defendant being ignorant of any defect in it, and the carriages were injured; upon which plaintiff brought an action against defendant. At the trial, the above facts having been admitted. the judge rejected evidence to prove that the fall of the shed was owing to its being unskilfully built through the negligence of the contractor and his men; and he nonsuited the plaintiff, ruling that the defendant's liability was that of an ordinary bailee for hire, and that he was only bound to take ordinary care in the keeping of plaintiff's carriages, and that if he had exercised in the employment of the builder such care as an ordinary careful man would use, he was not liable for damage caused by the carelessness of the builder, of which he, defendant, had no notice. *Held*, that the nonsuit and ruling were right. *Readhead* v. *Midland Railway Company*, Law Rep., 4 Q. B. 379, and *Francis* v. *Cockrell*, Law Rep., 5 Q. B. 184, 501, distinguished. *Searle* v. *Laverick*, Law Rep., 9 Q. B. 122.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to The Editor, *58, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

FINAL EXAMINATION—MICHAELMAS, 1875.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—Will you, or some of your readers, please say whether the Questions on Practice at this Examination will be on the present, or on that to be introduced under the Judicature Act?

The new Rules, I should think, will be issued about that time.

Your obedient servant,

An Apprentice.

APPOINTMENTS.

The grand jury of the County of Kerry have unanimously appointed Messrs. Huggard and Denny, Tralee, Solicitors to the grand jury, and to the board of superintendence, in place of Edward DeMoleyns, Esq., of Dublin, lately appointed Solicitor to the Bank of Ireland.

The London correspondent of the *Liverpool Post* affirms that "Six young ladies are at this moment 'studying for the bar.' They are reading in chambers under competent direction, and are working through the same course as the students of the other sex. One of the young ladies was a 'prizeman' in political economy under Professor Cairnes. Their aptitude for law studies is said to be astonishing.

Powers of Appointment.—The effect of the alteration effected by Lord St. Leonards, in the 1 Will. 4, c. 46, relating to illusory appointments, is that, when a power is non-exclusive, an appointment is not illusory if only a farthing is appointed to each object of the power; but if the nominal sum is omitted to be appointed, the appointment is bad. A short Bill, introduced by Lord Selborne, and which has passed the Lords, proposes to enact that no appointment which after the passing of the Act shall be made in exercise of any power to appoint among several objects, shall be invalid on the ground that any object of such power has been altogether excluded; but nothing in the Act is to affect any provision in the instrument creating the power, declaring the amount or share from which no object of the power shall be excluded, or some one or more object or objects of the power shall not be excluded.

COURT PAPERS.

CONSOLIDATED CHAMBER.

A Judge will sit in Chamber either on Thursday, the 23rd July, or Friday, the 24th July, inst., at eleven o'clock, to hear Motions for the three Law Courts.

VACATION SITTINGS.

The Right Hon. Mr. Justice Fitzgerald will preside.

The Vacation Chamber Sittings will commence on Friday, the 7th August next, and will be held on that day, and on every succeeding Friday up to and including Friday, the 16th October next.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. Judge Flanagan.

MONDAY.

In Chamber.—T. Murray and others, allocation.—Jane Green, do.—D. Bingham, do.—W. Acton, do.—Henry Green, do.—J. O. Evans, do.—J. A. Gandon, do.—Trustee O'Brien, do.—S. Tierney, do.—H. T. Parnell, do.—Hon. W. Wingfield, do.—M. Gage, do.—J. L. Mason, do.—Rev. E. Richards, do.—G. Gaynor, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
J. and H. Brett	Prove debts and vouch	*Larkin & Co.*
Jeremiah O'Grady	do	*Scallan*
Catherine Kennedy	do	*Kernan*
James W. Knott	do	*Casey & Clay*
James Hegarty	do	*Scallan*
John O'Donnell	do	*Hamilton & Craig*
Patrick Dee	Vouch account	*Dix*
James M'Guirk	do	*Perry & Co.*
Daniel M'Nulty	do	*Perry & Co.*
Robert Gilman	do	*Larkin & Co.*

TUESDAY.

Before the Court, at 11 o'clock.

Robert Courtney	1st public sitting	*Goff*
Mary Williams	do	*Oldham & Eaton*
Daniel Kilbride	do	*Beauchamp*
Philip M'Cusker	do	*Perry & Co.*
Same matter	Motion	*Lynch*
John Kelly	1st public sitting	*Beauchamp*
Same matter	Examine witnesses	*Beauchamp*
Joseph Hanna	Final examination	*Cronhelm & Co.*
P. Walton and R. Nolan	do	*Larkin & Co.*
Philip Doyle	do	*Perry & Co.*
Patrick Donegan	do	*Perry & Co.*
Thomas Cooke	do	*Perry & Co.*
Michael Hughes	do	*Perry & Co.*
James O'Beirne	do	*Perry & Co.*
Neal Keeney	do	*Cronhelm & Co.*
L. De Savigney and Ashe	do	*Robinson*
Michael Ryan	do	*Kavanagh*
Owen Conny	Audit and dividend	*Casey & Clay*
Maurice Cassidy	do	*Fay & M'Gough*
James Armstrong	Examine witnesses	*Larkin & Co.*

Digitized by Google

Before the Chief Registrar, at 12 o'clock.

William Foxall	Prove debts and vouch	*Oldham & Eaton*
G. and R. Ferguson	do	*Larkin & Co.*
John Nolan	Vouch account	*Orpen & Sweeny*
James Nolan	Costs	*Davis & Montford*
Same matter	Reference	*Davis & Montford*
Bridget Walsh	Costs	*Smith*
Maurice Cassidy	do	*Fay & M'Gough*

WEDNESDAY.
Before the Chief Registrar, at 12 o'clock.

Walter O'Donnell	Prove debts	*Oldham & Eaton*
Patrick Nolan	Reference	*Stephens*

THURSDAY.
Before the Chief Registrar, at 12 o'clock.

Peter Graham	Prove debts and vouch	*Carey*
Neal Keany	do	*Cronhelm & Co.*
Same matter	Reference	*Cronhelm & Co.*

FRIDAY.
Before the Court, at 11 o'clock.

A. W. Labertouche	2nd composition sitting	*Perry & Co.*
John Lancashire	do	*Perry & Co.*
Same matter	Final examination	*Perry & Co.*
Thomas Clarke	1st composition sitting	*M Govern*
William Cresswell	1st public sitting	*Mathews*
Wallace & Magill	do	*Neilson*
Hazelton and Sheppard	do	*Neilson*
John Farrell	Final examination	*Larkin & Co.*
William Cannon	do	*Rynd*
John Kennedy	do	*Roe*
Samuel Doyle	do	*Meldon & Sons*
Same matter	Take charge as proved	*Meldon & Sons*
Timothy Buckley	Final examination	*Scallan*
M. Bradshaw	do	*Larkin & Co.*
Arthur G. Hay	do	*Mathews*
Same matter	1st composition sitting	*Mathews*
Thomas Bailey	Final examination	*Scallan*
Thomas Coppinger	do	*Hamilton & Craig*
Same matter	Examine witnesses	*Hamilton & Craig*
M. & T. Donnelly	Audit and dividend	*Perry & Co.*
Hugh C. Walsh	do	*Beauchamp*
Patrick Flood	Take charge as proved	*Maxwell & Weldon*

The following at 12 o'clock.

Michael Fegan	Sale	*Oldham & Eaton*

Before the Chief Registrar, at 12 o'clock.

John Lancashire	Prove debts	*Perry & Co.*
A. W. Labertouche	do	*Perry & Co.*
Philip Browne	Prove debts and vouch	*Forsythe*

ADJUDICATIONS IN BANKRUPTCY.

Bell, Richard, Loughbawn, Newbridge, county Kildare, trainer of horses. Sittings, *Friday, August* 7, and *Tuesday, August* 25. *Scallan*, solr.

Brady, Bernard, 15 and 16, Brennan's-terrace, Bray, county Wicklow, builder and grocer. Sittings, *Friday, August* 7, and *Tuesday, August* 25. *Casey and Clay*, solrs.

Stewart, Alexander D., 44, Upper George's-street, Kingstown, Dublin, grocer. Sittings, *Friday, August* 7, and *Tuesday, August* 25. *Fay and M'Gough*, solrs.

DIVIDENDS IN BANKRUPTCY.

Cummings, Bernard, Sligo, grocer. 1st dividend 4s. in the £. L. H. Deering, official assignee. *Bradley and Son*, solrs.

Hanlon, Patrick, Walkerstown and Murney, Kildare, farmer, miller, grocer, and dealer. 1st dividend 1s. 9½d. in the £. C. H. James, official assignee. *Scallan*, solr.

Rocke, John, and Charles Hogan, Cecil-street, Limerick, tailors. 2nd and final dividend 3d., making with 1st dividend 8s. 3d. in the £. L. H. Deering, official assignee. *Russell*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	July Fri 10	Sat. 11	Mon. 13	Tues. 14	Wed. 15	Thur 16
	Government.						
—	3 p c Consols	92⅝	92⅝	92⅝	92½	92⅝	92½
—	New 3 p c Stock	91⅞	91⅞	91⅞	92	91⅞	91⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	107⅝	—	107⅝	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	102	—	—	—
	Banks.						
100	Bank of Ireland	—	—	303–4	304½	305½	—
25	*Hibernian Banking Co.*	57⅞	58	58⅛	58⅛	—	57⅞
15	*London Joint Stock*	50½	—	—	—	—	—
20	*London and Westminster*	—	—	—	—	—	—
3½	*Munster Bank (Limited)*	—	—	—	8⅞	8⅞	8⅞ 9
30	*National Bank*	60½	—	—	—	—	61⅛
15	*National of Liverp'l (Ltd)*	—	—	—	—	—	14½
25	*Provincial Bank*	88	88½	88½	88⅞–9	89	89–8⅞
10	Do. New	—	—	—	—	—	35½
10	*Royal Bank*	—	—	30½	30½	30½	30½
	Steam.						
100	City of Dublin	105⅝	106½	—	—	—	—
50	Dublin and Glasgow	—	—	62½	—	x d	60½
50	Dublin & Liverpool Steam Ship Building. Co	—	—	—	—	x d	—
10	National S. S. Co. (lit'd)	—	—	—	—	x d	—
	Mines.						
1	Killaloe Slate Co. (lit'd)	—	—	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	5½	5½	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	9⅞	—	—	9⅞	—	9⅞
100	Grand Canal	—	—	—	—	—	52
25	*National Assurance*	50	—	—	—	—	—
9-4-7	*Patriotic Assurance*	—	—	10⅝	—	10½	—
	Railways.						
100	Dublin and Belfast Junct.	—	—	92½	92½	—	—
100	Dublin and Drogheda	113	—	—	—	—	—
100	Dublin and Kingstown	—	—	211	113	—	—
100	Dublin, W'klow, & W'ford	—	—	76	211	—	—
100	Gt. Southern and Western	109	109⅝	—	109½	109⅞	109½
100	Midland Gt. Western	82½	82½	82⅛	81⅞	81	81⅞
100	Midland	—	—	—	127½	—	—
50	Ulster	—	—	—	65	65½	—
12½	Do, Quarters	—	—	—	—	16½	16½
50	Waterford and Limerick	—	—	—	33	—	33
10	Waterford and Tramore	—	—	7½	—	—	—
	Railway Preference.						
100	D., W., & W., 6 per cent	130	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	99	—	99
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	—
100	Do., B 5 p c	100½	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	50½	—	50½	51	51
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	95⅞	95½	—	—	—	95⅝
—	Dublin & Drogheda 4 p c	—	—	—	—	96	96
—	Do., 4½ p c	—	—	—	99½ f	—	—
—	D., W., & W., 4½ p c	—	—	—	99½	—	—
—	Gt. South'n & West'n, 4 p c	—	—	98⅝ f	—	98½	98½
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	100½	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 4th June, 1874.
Of Deposit—2 per cent., 28th May, 1874.
Name Days—July 29th, and August 13th, 1874.
Account Days—July 30th, and August 14th, 1874.
On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BRODERICK—July 3, at Edward-street, Tralee, the wife of John P. Broderick, Esq., solicitor, of a daughter.

DEATH.

EGAN—July 15th, at Newtown, Moate, Patrick Egan, Esq., solicitor, in his 78th year.

ACCOUNTANTS:

A U D I T O F F I C E,
4, COLLEGE-GREEN,
HENRY BROWN & CO.,
AUDITORS AND ACCOUNTANTS.
420

N. PETERSON & SON,
PUBLIC ACCOUNTANTS, AUDITORS, AND EXPERTS,
ULSTER CHAMBERS,
18, FLEET-STREET, DUBLIN.

Digitized by Google

LEGAL POSTINGS:

DECLARATION OF TITLE.—FIRST NOTICE.

LANDED ESTATES' COURT, IRELAND.

In the Matter of the Estate of The Rev. Robert Walter Maxwell, of Birdstown, in the County of Donegal, Clerk, an Owner of Land.

THIS IS TO GIVE NOTICE TO ALL WHOM IT MAY CONCERN, that Robert Walter Maxwell, of Birdstown, in the County of Donegal, on the 6th day of June, 1874, presented his petition to the Landed Estates' Court, Ireland, praying that the Title—Firstly, to the Lands of the Quarterland of Kilmonaster Middle, otherwise Kirkminster, otherwise Kirkminister, containing 257a 3r 26p, statute measure; the Quarterland of Kilmonaster Lower, otherwise Kirkminster, otherwise Kirkminister, containing 213a 3r 24p, statute measure; the Quarterland of Gortin South, otherwise Gortin, containing 183a 2r 12p, statute measure; and the Quarterland of Legnabraid, otherwise Cunninghamstown, containing 100a 0r 20p, statute measure; and which said Lands are described in a settlement of the 15th of November, 1775, and another of the 9th of June, 1809, as the Town and Lands of Kirkminster, Legnabread, Gortin, and Tubinabrock, and now commonly known as the Quarterlands of Kilmonaster Middle and Lower, Gortin South, and Legnabraid, or Cunninghamstown, and all situate in the Barony of Raphoe and County of Donegal. Secondly, to the Lands of the Quarterland of Donnygowen, otherwise Hunterstown, containing 92a 0r 5p; the Quarterland of Inniscian, otherwise Iniscian, otherwise Enniskiln, otherwise Enniskian, containing 359a 0r 19p, statute measure; the Quarterland of Lisdoo, otherwise Lisdoe, containing 335a 3r 27p, statute measure; the Quarterland of Skerryglass, containing 87a 0r 7p, statute measure; and the Quarterland of Tullymoan, containing 375a 1r 39p, statute measure; and described in said settlements as the Towns and Lands of Tullymoan, Enniskiin Upper and Lower, Lisdoe, Skerryglass, and Hunterstown; Tenements in and near Claudy and the Mill of Claudy, and now commonly known as the Quarterlands of Donnygowen, Hunterstown, Inniscian, Lisdoo, Skerryglass, and Tullymoan, all situate in the Barony of Strabane and County of Tyrone; and one undivided moiety of the Salmon Fishery in the River Finn, between Castlefin and Claudy, and described in said settlements as the moiety of the Salmon Fishery in the part of the River Finn between Castlefin and Claudy. And, thirdly, to the Lands of the Quarterland of Garvrey, otherwise Garvery, otherwise Garvary, except 37a thereof, and except 9a and 1r plantation measure thereof, held with the Corn Mill, containing 495a 3r 9p, statute measure; part of the Mountain Bar, called Skelp, containing 217a, statute measure, situate in the Barony of Ennishowen and County of Donegal. Fourthly, to that part of said Quarterland of Garvrey, otherwise Garvery—9a 1r, Cunningham measure, excepted out of the last denomination—with the Corn Mill, thereon, containing 12a 3r 10p, statute measure, situate in said Barony and County. Fifthly, to the Quarterland of Gortnasky, otherwise Gortnaskey, otherwise Gortnaskea, and the Mountain Bar thereof, containing 996a 0r 4p, with the House and Demesne of Birdstown, and situate in said Barony and County. And, sixthly, to the Quarterland of Drimaduay, otherwise Drimadooey, otherwise Drimaduey, containing 212a 1r, statute measure, and situate in said Barony and County. Seventhly, to the Quarterland of Dundrain, otherwise Dundrean, containing 571a 3r 11p, statute measure, and situate in said Barony and County. And, eighthly, to the Quarterland of Coolagh, otherwise Cooley, otherwise Callow, otherwise Goolagh, otherwise Cooly, otherwise Collon, being part of the Termon or Erenagh Lands of Faughanvale, containing 329a 1r 35p, statute measure; the Quarterland of Legavannon, being part of same Lands, containing 375a 3r 15p, statute measure; the Quarterland of Bolie, being part of same Lands, containing 733a 1r 10p, statute measure; the Quarterland of Faughanvale, being part of the same Lands, containing 222a 2r 17p, statute measure, the Quarterland of Tullyverry, otherwise Tullulerly, otherwise Tallulerley, otherwise Tullybarley, being part of same Lands, containing 298a 2r 61p, statute measure; the Quarterland of Killywool, otherwise Killyweel, otherwise Killywill, otherwise Killiweel, being part of same Lands, containing 1,457a 1r 31p, statute measure, and all situate in the Half-Barony of Tirkeeran, and County Londonderry, and described in said settlement of 15th November, 1775, as Cooley, otherwise Callow, otherwise Goolagh; Kinletter, otherwise Killeter, Ballyorny, Templekelly, Rossan, Tallulerly, and Killyweel, and in the said settlement 9th June, 1809, as Cooly, otherwise Collan, otherwise Goolagh, Kinlitter, otherwise Killeter, Ballyorney, Temple-kelly, Rossan, Tallulerley, and Killiweel, and in a Fee-farm Grant of 26th May, 1871, as Cooley, otherwise Coolue, otherwise Goolagh; Kinletter, otherwise Killiter, Ballygoorney, Rossan, Tullybarley, Killywill, and Templekelly, and now commonly known as Coolagh Legavannon, Bolie, Faughanvale, Tullyverry, Killywoo, might be investigated, and a judicial declaration made thereon by the Court, that he, the said Robert Walter Maxwell, had a good and sufficient title in fee-simple to the said first-mentioned lands, and a good and sufficient title in fee-farm in the said secondly, thirdly, fourthly, fifthly, sixthly, seventhly, and eighthly mentioned Lands and Premises, subject as to the said secondly mentioned Lands and Premises to the fee-farm rent of £8 0s 0d per annum, created by an ancient fee-farm grant made in the reign of His Majesty King James the 1st, and now payable to the Duke of Abercorn; and subject, as to the thirdly mentioned Lands and Premises, to the fee-farm rent of £83 8s 8d per annum, created by a fee-farm grant, dated the 31st of January, 1873, and made by the Most Honourable George Hamilton, Marquis of Donegall, to the said Robert Walter Maxwell; and subject, as to the fourthly mentioned Lands and Premises, to the fee-farm rent of £9 7s 4d per annum, created by a fee-farm grant of the same date, and between the same parties as last mentioned; and subject, as to the fifthly mentioned Lands and Premises to the fee-farm rent of £60 11s 10d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the sixthly mentioned Lands and Premises, to the fee-farm rent of £32 13s 4d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the seventhly mentioned Lands and Premises, to the fee-farm rent of £65 0s 8d per annum, created by a fee-farm grant of the same date, and between the same parties; and subject, as to the eighthly mentioned Lands and Premises, to the fee-farm rent of £268 2s 10d per annum, created by a fee-farm grant, bearing date the 26th day of May, 1871, and made by the Right Rev. William, Lord Bishop of Derry and Raphoe, with the consent of the Commissioners of Church Temporalities in Ireland, to the said Robert Walter Maxwell; and subject as to all the said Lands and Premises, to the Leases, Tenancies, Rights, Easements, and Incumbrances specified in the said Petition.

Now, the Court will, after twenty-one days from the date hereof, proceed to investigate the Title to the said Lands, and if such investigation prove satisfactory, will make a Declaration of Title pursuant to the prayer of said petition and all persons objecting to such Declaration of Title being made, are hereby required to enter an appearance in the Matter of the said Estate within the time aforesaid, and to show such cause as they may be advised against such Declaration of Title as aforesaid being made.

Dated this 30th day of June, 1874.

JAMES M'DONNELL, Examiner.

HENRY M'CAY, LL.D., Solicitor having the carriage of Order, 43 Dame-street, Dublin. 505

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

SAML. MARSHALL JOSEPH RICHARDSON, of Stephen's-green and Great Brunswick-street, Dublin, Draper, Bankrupt.

A Public Sitting will be held before the Court, at the Four Courts, Dublin, on FRIDAY, the 31st day of JULY, 1874, at the hour of Eleven o'clock in the forenoon, to Audit the Assignee's Account, and make a Final Dividend in this Matter.

Dated this 16th day of July, 1874.

WILLIAM PERRIN, Chief Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

MOLLOY & WATSON, Solicitors for the Assignees, 18 Eustace-street, Dublin. 518

IN THE COURT OF BANKRUPTCY, IRELAND.

RICHARD BELL, of Lough Brown, Newbridge, in the County of Kildare, Trainer of Horses, was on the 14th day of July, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 7th day of AUGUST, 1874, and on TUESDAY, the 25th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

JOHN L. SCALLAN, Solicitor, 29 Bachelors'-walk, Dublin. 519

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN ROBERT DUGGAN, of Christ Church-place, in the City of Dublin, Commission Agent, was on the 17th day of July, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 11th day of AUGUST, 1874, and on FRIDAY, the 28th day of AUGUST, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to the Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

WM. PERRIN, Chief Registrar.

MICHAEL LARKIN & CO., Solicitors, 51 Dame-street, Dublin. 521

T. KILMARTIN and SON, SCRIVENERS AND LAW STATIONERS, ESTABLISHED 1867, 21, KING-STREET, BELFAST.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, July* 18, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, JULY 25, 1874. No. 391.

LIFE INSURANCE FRAUDS.—I.

In the year 1800 there were but six or seven Life Insurance Companies in the United Kingdom; in 1859 they had increased to nearly 200; and in the present year we gather, from the report of the Board of Trade, that there are 125 Life Insurance Companies existing in the United Kingdom, excluding the branch establishments of four American Companies. The extent of the business done by the American Companies with residents in the United Kingdom is not known at present. But the picture, which the report of Messrs. Malcolm and Harrison supplies, of the magnitude of the financial operations of the companies registered under the Act of 1870 is, certainly, very striking. The total sum assured in those 125 companies is £338,882,752; the total of the accumulated life funds is £94,260,592; and the average gross interest made by them is at the rate of 4·41 per cent. The present premium income is almost £11,000,000 per annum. That is to say, the companies owe against time to the insurers an amount nearly equal to one half of the National Debt. The funds accumulated exceed by nearly twenty millions, sterling, the entire sum raised in Great Britain in any year by taxation; and the premium income is, in itself, between a sixth and a seventh of our annual revenue. The total of the annuities of all kinds granted by them is £502,718, of which about £413,631 yearly is now in actual payment. In each of the 21 companies in the United Kingdom the sums assured exceed £5,000,000. Of these, in 5 cases the sums assured exceed £10,000,000, and in 1 case, the Standard, exceed £15,000,000. Yet with all this gross prosperity, it is quite clear, from the data presented in other passages of the report, that many Assurance Companies are in a condition to excite alarm as regards their future prospects. And although the Act of 1870 imposes many salutary obstacles to the transformation of Montague Tigg into Tigg Montague, Chairman of "The Anglo-Bengalee Disinterested Loan and Life Insurance Company," there appears to be, still, room for reform. There is, still, room for the adoption of sounder business principles. Jobling, moreover, is still, as in the days of "Martin Chuzzlewit," a possible medical officer to the Board.

It sometimes happens, however, that, instead of thousands of families being cruelly defrauded by Life Insurance Companies, the companies are themselves the victims of fraud. For while, beyond any other invention or institution, they have capabilities for correcting improvidence and inculcating self-restraint, their opulence, the nature of their transactions, and the immensity of the interests involved, present many temptations and opportunities to the dishonest. There was, once, a company which altogether omitted the suicide clause; and it is said that on one occasion a man, after opening a policy with the company, invited the directors to dinner, and after the removal of the cloth addressed them:—"Gentlemen, it is right that you should be acquainted with the company you have been invited to meet. These honest men are tradesmen to whom I am in debt without means of payment, save through your assistance. And now, I am your humble servant." So saying, he shot himself. Passing over such well-known cases in the history of crime as that of Palmer, or of Wainright—the Gabriel Varney of "Lucretia," and whose story, as "The Hunted Man," it was reputed was written by Dickens—we may recal the first notorious fraud perpetrated against a Life Insurance Company. One night, in 1730, the daughter of a man resident in St. Giles's was taken suddenly ill, and before the doctor arrived was dead, to all appearance. "Heart disease," said the doctor. The body was placed in a coffin, and buried. The man claimed the amount of a policy, and thereupon vanished. The same man and woman afterwards re-appeared, residing as a fashionable couple in another quarter of London. Another sudden dissolution, another burial took place, and another policy paid was the result. A third time they re-appeared. The actors were now a merchant and his niece residing in Liverpool, and the performance was repeated with equal success. But whether the medical men and undertakers were bribed, or whether the lady possessed an extraordinary power of simulating death, or had discovered the secret of the draught compounded by Friar Laurence for Juliet is unknown. Some five or six years ago a remarkable case occurred in Dublin, but our readers are already familiar with the circumstances as to the burial of the supposed dead wife in Glasnevin, and the discovery that, after all, the coffin contained nothing but stones. We turn to a much more extraordinary case which occurred in America, which, as is also happens to be a very singular case of circumstantial evidence, we shall mention in detail. In December, 1873, Udderzook was indicted for the murder of W. S. Goss, before Butler, J., at the Court of Oyer and Terminer, Chester County, Pennsylvania. Udderzook and Goss were brothers-in-law. According to the version of the commonwealth, they entered into a conspiracy to defraud certain insurance companies; and, Goss having obtained a large amount of insurance on his life in different companies, they rented a small frame tenement in the suburbs of Baltimore, where they ostensibly engaged in perfecting an invention of a substitute for India-rubber. The corpse of a man about the size of Goss is procured, and brought to the house in a box, the contents being represented as machinery to be used in their experiments. While Udderzook is temporarily absent at the house of a neighbour, having with him a third person (who seems to have been picked up as a convenient person, to be used as a witness when needed), the frame tenement occupied by the inventors is discovered to be on fire, and after it is burned to the ground Udderzook makes the discovery that Goss was in the house. Search is at once made for Goss's body, and, of course, the charred remains of the disinterred corpse are found, and everybody thinks it is the body of Goss. These remains are sent to Goss's family, who pretend to recognise them as his; and, shortly afterwards, suit is brought against the insurance companies on the policies held on Goss's life. The companies contest on the ground that Goss is not dead. Verdict is, of course, for the plaintiff; but the corporations appeal. Meantime Goss, carrying out his part of the conspiracy, becomes a wanderer, first in Canada, then in Tennessee and elsewhere, under the assumed name of A. C. Wilson. Finally, the sinews of war become exhausted, and, half disheartened and broken by excessive drink, he returns to Chester County, Pennsylvania, where he hides away under his assumed name.

Digitized by Google

And now, mark how readily one crime enforces the commission of another. Udderzook, fearing that Goss will become a witness against him, and that he will not only lose the prospective booty, but suffer the penalties of perjury and conspiracy, resolves to put him out of the way. After endeavouring, unsuccessfully, to persuade another brother-in-law named Rhoades to become an accomplice (without disclosing to him in a definite manner the name of the person proposed to be put out of the way), he resolved to do the deed himself. A buggy is hired, and he and Goss, *alias* Wilson, start across the country from Jennerville about nightfall. Udderzook returns about midnight with the buggy, but Wilson is no more seen alive. That night the wife of a farmer, residing near a wood in the direction of which the buggy went, heard the voices of two men hallooing, and distinctly heard one of them cry, "Oh!" The next morning a smoke was seen rising from the wood. When the buggy was returned to the owner, the iron supporting the dasher on the left side was broken; two of the bows supporting the top on the same side were broken and swinging loose; the oil-cloth that had covered the floor was torn out and gone; the blanket and sheet that accompanied the buggy were missing. Udderzook gave satisfactory explanations of these accidents, and paid the damages. It seems that nothing was suspected until about three weeks afterwards, when persons passing by the wood, where the hallooing had been heard and the smoke seen, smelled carrion, and saw buzzards congregating at a particular spot. An examination discovered the body of a man, *minus* the arms and legs, stabbed and cut in numerous places, slightly covered with dirt and leaves. Further search discovered the arms and legs buried in another place. The details of the evidence by which this mangled and decomposed corpse was identified as that of Wilson, and by which Wilson was shown to be none other than Goss, and by which the body burned in the shop in Baltimore was shown not to be the body of Goss, are too long to recapitulate. It is sufficient to say that it was of such a character as to leave no room for doubt in the minds of the jury, and fully to warrant their verdict of murder in the first degree.

APPOINTMENT OF CHIEF CLERK IN BANKRUPTCY.

By the profession and by the public, the announcement of the appointment of Mr. Farrell the Chief Clerk in Insolvency, as Chief Clerk in Bankruptcy, will be received with great and sincere gratification. That appointment, now made, fulfils the desire to which on a previous occasion, commenting on the constitution of the Court of Bankruptcy under the recent Act, we gave expression in the strongest manner, that the public should not be deprived of the invaluable services and experience of an officer of the longest standing in the Court, to whose zeal and efficiency the highest judicial testimony had been accorded, before the Committee of the House of Lords appointed to report upon the amendment of the Bankruptcy law. His exertions have been unremitting in the winding-up of the insolvency matters pending at the passing of the Amendment Act, and it is indeed satisfactory to find that, upon the cessation of his duties in that respect, his services in another capacity are still to be retained. His promotion to a post co-equal with that of Chief Registrar, is a well merited recognition of his ability, and ensures to the public and the profession the aid of a gentleman, whose courtesy and intimate acquaintance with the administration of business in Bankruptcy have commanded universal acknowledgment.

NOTANDA.

Contempt of Court; attachment; discharge from custody.—Mr. Lawless, Q.C., moved that the defendant, Mr. Daniel Tracey, solicitor, should be discharged from the custody of the governor of the Four Courts Marshalsea, to which prison he had been committed for contempt of court, in not lodging certain books of account and documents needed for the purposes of the suit of *Murray* v. *Tracey*. He stated that Mr. Tracey had been in prison under order of attachment since July, 1871. By his affidavit he had exonerated himself from the contempt as to the documents, and, as to the books of account, the suit being at an end, the necessity for their production no longer existed. There was a second committal for contempt against Mr. Tracey for not lodging £285, in obedience to the order of the court made in the cause. That committal was dated May, 1873, and, of course, would remain unaffected by Mr. Tracey's discharge under the committal of July, 1871, and, therefore, granting the present motion would not enable Mr. Tracey to get out of custody. *Mr. Foley*, Q.C., on the part of the defendant, submitted that the court should, if possible, put Mr. Tracey under terms as to paying in the money for which he was liable to the plaintiff. This motion was to carry the outpost, with a view of subsequently attacking the fortification, and in the result releasing Mr. Tracey from all the consequences of the orders of the court. CHATTERTON, V.C., said he did not see his way to putting Mr. Tracey under any terms in reference to this particular application, with which alone the court had to deal. He (the Vice-Chancellor) perfectly remembered the case, and he would be very glad, if he could, to secure to the plaintiff the sum of which he had been unjustly deprived. But the motion should really be dealt with on the special facts, and as the affidavit expunged the contempt by non-production of the documents, and the books were not now wanted, the suits being concluded, he was bound to grant the discharge of Mr. Tracey from the attachment of July, 1871, without prejudice to the attachment of May, 1873, under which he was also in custody (*Murray* v. *Tracey;* V.C., July 20, 1874).

Contempt of Court; attachment; discharge from custody.—Mr. Litton, Q.C., moved for an order discharging Mrs. Gallagher, of Crossmolina, county of Mayo, from custody. An order in the suit had been made, that Mrs. Gallagher, an aged lady, should bring in a sum of £238 and lodge a deed necessary for having a sale of houses in Crossmolina. Mrs. Gallagher brought in the money, but her attention was not specially called to the duty of lodging the deed, and without further intimation or warning, it was alleged, she was arrested on the 14th inst., under an attachment for contempt. The sheriff, seeing the danger of imprisoning a person so old, allowed her to remain out of jail under surveillance. The solicitor for Mrs. Gallagher had an interview with the solicitor for the other side before the arrest, and stated that the deed was either lost or mislaid, but that every effort would be made to obtain it, and it was charged that no statement was made that if the deed was not forthcoming the attachment would be sought. *Mr. Graydon*, for the defendant, opposed the application, on the ground that even yet Mrs. Gallagher had given no satisfactory reason for not producing the deed and the contempt therefore still existed. CHATTERTON, V.C., held that under the special circumstances of the case, and having regard to what occurred between the two solicitors, the motion for discharge should be granted, and made an order accordingly. (*Gallagher* v. *Gallagher;* V.C. July 20, 1874.)

Digitized by Google

Mode of trial; framing of issues; trial by jury.—The plaintiffs, Thomas Isaac and others, propounded the alleged will of Catherine Grant, of Sion Lodge, Sunday's Well, Cork, who died on the 26th Feb., 1873, by which will, dated 12th February, 1873, she bequeathed her property to the plaintiffs. The defendant, the Rev. Geo. B. Grant, pleaded undue execution, want of testamentary capacity, want of knowledge and approval, undue influence, and fraud. *Hickson*, on the part of the plaintiffs, moved to fix the mode of trial. He asked to have the case tried by a special jury. *Bewley*, for the defendant, also desired to have the case tried by a special jury. *Warren, J.* said in this case both the parties concurred in desiring to have the case tried by a jury. That being so, they had a right, under the Act of Parliament, to have the case tried by a jury. The Act provided that, in any case in which an heir-at-law, or both parties, concurred in desiring a trial by jury, it was then right to have a jury; and, therefore, in directing that and other such cases to be tried before a jury, he was simply acting in accordance with the provisions of the statute, which were absolutely binding on the court, whatever speculative opinions might be entertained on the subject. There was, however, another matter of importance as regarded the practice of the court involved in this motion. When he was appointed judge of the court he found that the practice was to direct a "general issue" to be sent to the jury—viz., whether the document propounded was or was not the last will of the alleged testator. Immediately after his appointment he communicated with Lord Penzance, the then judge of the Court of Probate in England, and that learned judge concurred with him in deeming it desirable that the practice of the courts in England and Ireland should be the same; and, accordingly, there had been ever since a cordial understanding between the courts; and, so far as he was aware, the practice in that court corresponded with the practice in England, varied in that respect from the practice in his court. He communicated with his distinguished predecessor (Judge Keatinge), and that judge informed him that he had adopted the general issue, after deliberate consideration on the subject, and he thought it would be an act of presumption on his part, even with the view of making the practice in that Court correspond with the practice in England, at once and suddenly to make a change. Accordingly, up to that time he had followed the practice as he had found it; but he thought the time had now come for a re-consideration of the matter. He had some experience of the working of that issue, and had had opportunities of contrasting it with the working of the English practice, and he had arrived at the conclusion that the English was the better system. No doubt, the sending of a general issue to the jury sometimes facilitated a suitor in obtaining a verdict, and diminished the risk of a disagreement, because it was more easy for a jury, if unable or unwilling to agree upon the specific questions raised upon the pleadings, to come to an agreement upon the general issues—whether the document propounded was or was not the last will of the alleged testator. It was, therefore, possible that in some cases juries had been able to agree on the general issue who would not have agreed upon the specific issues. He thought, however, that that was not a sufficient reason for depriving the parties of the benefit of having the specific allegations of fact on each side determined by the jury, and he had determined to change the practice in that respect, and, instead of sending to the jury the general issue, he would send special questions upon each point raised by the pleadings. In the present case the will was propounded by the plaintiffs, and the defendant had traversed the due execution of the will and the testamentary capacity of the deceased; he denied that she knew and approved of the contents of the will, and he charged fraud and undue influence. Accordingly, he (the judge) would direct issues to be sent to the jury upon each of these allegations—whether the will was duly executed in accordance with the statute; whether the testatrix at the time she signed it was of sound mind, memory and understanding; whether she knew and approved of its contents; whether her signature was procured by the undue influence of the plaintiff, or their acting with him, as alleged; and whether it was procured by fraud as alleged. He would take the finding of the jury on each of these issues, and these findings would, of course, determine the main question in the case—whether the document propounded by the plaintiffs was or was not the last will of the deceased. The present motion would be granted—to have the issues tried out before a special jury (*Isaac* v. *Grant;* Pro., Feb. 11, 1874).

Interpleader; real estate.—*Seeds*, on behalf of the Sheriff of Waterford, moved for an interpleader order to determine the ownership of a farm in that county, which the sheriff had taken possession of, as being the defendant's, under an execution at the instance of the plaintiff, the manager of a bank at Lismore, but which had since been claimed by the defendant's husband. FITZGERALD, B.—I cannot issue an interpleader order to decide the right to real estate (*Gardiner* v. *Hinds;* Con. Ch., Mar. 17, 1874).

Final examination; certificate of conformity.—The bankrupt had lately carried on business as a grocer in Kilkenny. He had, formerly, been in the coal trade in Cork. The sitting was for final examination. *Mr. Molloy*, for the assignees, asked for an adjournment of the final examination *sine die*. *Mr. Bradley*, under the order of the Court, appeared for the bankrupt. It appeared that the bankrupt had carried arrangements while trading in Cork in the years 1859, '69, and '71. In his last arrangement he proposed to pay 2s. 6d. in the pound; but he never paid any of it, and came to Kilkenny, where he opened the grocery business without any capital. He applied for and obtained a spirit grocer's licence, which he never paid for. He was fined £14 for selling drink without a licence, which he never paid. His debts now amounted to £1,247, and his assets, which he put down at £185, would realize £42. His profits on his trading for 12 months he set down at £119, and his personal and trade expenses were £393 11s. The bankrupt was examined by Mr. Molloy. HARRISON, J., said this was one of those cases which the Court should deal with in a manner calculated to put a stop to this kind of trading. Under the old Act, the final examination and certificate were substantially taken together, but under the recent Act the judge was coerced, even if the trader were guilty of fraud and mal-practices of a serious description, if he believed the accounting statement to be true, to pass the final examination. The question as to the certificate was then reserved. The passing of the final examination in this way was calculated to mislead persons unacquainted with the provisions of the new Act, and they regarded the trader as a certificated bankrupt. This was a point upon which the mercantile community required to be informed, and if persons chose to deal with an uncertificated bankrupt as if he had been certificated, they had but themselves to blame. In this particular case the bankrupt traded, in 1854, in Clonmel, and compounded with his creditors for 6s. 8d. in the pound in £2,200. Subsequently, he opened in the coal trade in Cork, and in 1869 and 1870 compounded for 4s. on £685; and in the end of last year, having opened in Kilkenny, he again proposes an arrangement with his

Digitized by Google

creditors for 2s. in the pound. This eventuated in bankruptcy. The bankrupt had given in estimates as regards his affairs, which were wholly unvouched, and, as a reason for not producing books or papers, he stated that they had been thrown out of the house in Cork by his landlady, and his son gathered them and bound them. The case presented a disastrous course of trading, and he would adjourn the examination *sine die*, with liberty to the bankrupt to re-open it when he was prepared with a more satisfactory statement of his affairs.—(*In re W. O'Dwyer;* Ba., May 8, 1874.)

Absconding bankrupt; expenses of trying to arrest; escape of bankrupt.—In this case the act of bankruptcy was absconding. In the course of the examination of the witnesses it had seemed probable that the bankrupt was about to start from Queenstown for America with a sum of money. The petitioning creditor at once filed informations in the police court, and sent a special messenger to Cork to identify the bankrupt, and point him out to the police authorities. The bankrupt escaped. *Perry*, for the assignees, now moved that they be allowed the expenses incurred in the ineffectual attempt to arrest the bankrupt. MILLER, J. (after communicating with HARRISON, J., before whom the case had been), allowed a sum for expenses (*Re J. Payne;* Ba., Mar. 20, 1874. A similar order was made in *Re Byrne* subsequently. In that matter, which is mentioned *ante*, p. 109, the bankrupt had afterwards been adjudicated on another act of bankruptcy.)

THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

The *Times* observes that the discussion raised in the House of Commons on the motion to go into committee on the Judicature Act Amendment Bill was a remarkable illustration of the extent to which an affectionate regard for fictions may be carried. Sir George Bowyer exerted all his powers of persuasion to induce the House to reverse the policy of the last year, and to reinstate what is called the House of Lords as the Court of Ultimate Appeal of the United Kingdom. The truth is that the House of Lords is not, and has not for a long time been, our Court of Ultimate Appeal. For the greater part of a century the function of sitting in judgment over the decisions of the inferior tribunals has been practically relegated by the Lords to a small court composed of members of their body, and this abdication of power on the part of the whole House was formally recognized and enforced by Lord Lyndhurst thirty years ago. The existing court of ultimate appeal may be defined as composed of those members of the Upper House, and those only, who have filled judicial offices or have been otherwise trained to the exercise of judicial powers, and to call this court the House of Lords is a misdescription which appears to be only too powerful in misleading superficial observers. The title, as Mr. Serjeant Simon remarked, is a fiction, and when, putting it aside, we proceed to inquire into the characteristics of the court which is so wrongly presented to the public, we find it is subject to defects which are universally confessed. Although litte more than half-a-dozen peers are eligible to sit on it, no one can now be a member of the court who is not a peer; it is now proposed that it may be recruited by the addition of members having no share in the legislative powers of the Upper House. A court containing commoners as well as peers, and sitting irrespective of the session of Parliament, may be called the House of Lords, but it would no more be the House of Lords than the Court of Session. The proposal amounts to a confession of the force of all the arguments for a severance of the connexion between the Upper House and the ultimate court of appeal, but pleads for the retention of a fictitious name; and it was impossible to suppose that the House of Commons could listen to this suggestion after the Lords themselves had rejected it, and by way of reversal of the policy adopted last year. Not a few lawyers joined in the sentimental regrets of Sir George Bowyer, but we fear their speeches will not heighten our regard for their judgment as members of a Legislature.

THE JUDICIAL STAFF IN IRELAND.

The want of national cohesiveness in the Irish character has frequently been the theme of reproach; the clannish spirit which has contributed to help Scotsmen on in the world has been found wanting beyond St. George's Channel, and the popular notion that "when one Irishman is to be roasted another is always ready to turn the spit" is perhaps not far from being true. Yet it must in fairness be admitted that there is at least one subject on which Irishmen are unanimous even to ferocity. They will not endure to see any diminution of the public patronage, and they regard the labours of the official economist as something like sacrilege. If Edmund Burke had expounded in the Parliament on College Green that "Economical Reform" which is among the most splendid monuments of his political greatness, he would have been hooted out of his native land; nor is it even possible to conceive any later champion of economy in the House of Commons—Joseph Hume, for instance, or Richard Cobden—as the popular representative of an Irish constituency. Retrenchment is in the eyes of most Irishmen a crime against society; and the threat of it is enough to unite Liberals and Conservatives, Loyalists and Nationalists, in a solid phalanx of determined opponents. To put public economy to the rout all weapons and all tactics are admissible. If facts seem to indicate that retrenchment may be practical and useful, so much the worse for the facts. If advocates of economy take their stand on principles which cannot be openly disavowed, it is easy to impute illiberal motives. What is peculiar is that the Irish mind is perfectly sincere in refusing to see the facts, and accepts the imputation of bad motives with equally unhesitating faith. This intellectual temper is most curiously exhibited in a Return recently printed by order of the House of Commons, showing in a comparative form the judicial work done in England and in Ireland. In innocent forgetfulness of the view that Irishmen take of retrenchment, we ventured to suggest, some months ago, that a considerable saving might be effected on the Irish legal establishment by suppressing the Judgeship in the Court of Exchequer then left vacant by the death of the late Chief Baron. We founded our argument for this particular economy on what we assumed to be the undisputed as well as indisputable fact that every Judge on the English Judicial Establishment has twice or three times as much business to dispose of as the official who fills a corresponding place in Ireland. In the tempest of wrath this proposition and the reasons assigned for it elicited, we were astonished to find ourselves accused not only of "malignity," but of "misrepresentation." The former charge must remain for what it may be worth; the latter is disposed of by the Return to which we have referred. But the Return was moved for by Mr. Sullivan, the member for Louth, evidently with the hope that by bringing into broad daylight the plain facts of the comparison the belief that Irish Judges do much less work than English Judges would be once for all exploded. This is almost a touching instance of the faith that if facts tell in favour of retrenchment they have no business to be facts, and should disappear accordingly.

In spite, however, of Mr. Sullivan's trusting appeal to the conscience of statistics, the comparison appearing upon the face of the Return is so far from weakening the case which, as it seems to us, can be made against the present constitution of the Irish Judicial Bench, that it strengthens all we have urged; and affords grounds for proposals of more sweeping change than we have hitherto ventured to suggest. The form of the Return is unnecessarily complex; the judicial work done in Ireland and England respectively is compared for each of the four years, 1862, 1870, 1871, and 1872, but the Irish statistics for the first year are imperfect, and, on the whole, the variations in the amount of business are so inconsiderable that a comparison for the year 1872 alone will suffice to show the drift of this contribution to the controversy. It will be as well to notice the different branches of legal business separately, and to remind the public of the relative strength of the English and Irish Judicial Staff in the several Courts. In the three Superior Courts of Common Law in England there are eighteen Judges; in Ireland, in the same Courts, there

Digitized by Google

are twelve Judges. But in 1872 the writs issued out of the English Courts of Common Law (though showing a considerable diminution compared with previous years, owing, presumably, to the development of business in the County Courts), numbered 63,926, while the Irish Courts issued only 17,136. The judgments entered up were in England 23,554, and in Ireland 4,481. It thus appears that the actual proportion of legal business finally disposed of by the twelve Irish Judges was less than one-fifth of the quantity which the eighteen English Judges got through. The proceedings in Chambers in England were 187,287; in Ireland, 2,653. The total number of verdicts given both in town and on circuit was, for England 2,608, and for Ireland 510; and the respective amounts recovered were £385,883 and £34,171. Of the English verdicts, too, not one in ten was for £20 or under; while those recorded in Ireland below that limit were in the proportion of about one in four. These figures will be sufficient to show the insignificance of the Irish business compared with that transacted in this country by a judicial staff only one-third more numerous than the Irish Common Law Bench. In Chancery, from the nature of the procedure, the comparison cannot be so precise, but the disparity of the work done is quite as great. The English Equity Bench consists of the Lord Chancellor, the two Lords Justices in Appeal, the Master of the Rolls, and the three Vice-Chancellors. In Ireland we have the Lord Chancellor, the Lord Justice, the Master of the Rolls, and the Vice-Chancellor. It must not be forgotten, of course, that much of the real business of the Court is done in both countries by subordinate and semi-judicial officers. Yet we can in some measure compare the pressure of work in the two establishments by the figures of the Return. In 1872 the bills or other original processes filed in the English Court of Chancery were 3,444; in Ireland they were 374. In England 27,636 summonses were issued; in Ireland, 360. In England there were 1,204 "hearings;" in Ireland, 222. It remains only to notice the business of the Admiralty, Probate, and Matrimonial Courts. In the Court of Admiralty in England 384 causes were instituted in 1872—338 in London, and 46 in Liverpool; in Ireland there were 44 in all. The English Probate Court granted 15,116 probates and administrations, entertained 557 causes, and dealt with 560 motions and 71 trials. The same Judge in divorce business disposed of 810 motions and 158 trials. The total number of probates and administrations granted in Ireland in the same year was 1,869; and there were 154 probate causes, 279 motions, and 69 trials. The matrimonial business in Ireland, where the Divorce Act is not in force, is naturally small; there were in the year reviewed no more than 20 motions and four trials.

The meaning of these facts can hardly be disputed even by Mr. Sullivan. It is clear that a judicial staff entirely disproportioned to the work is kept up in Ireland, of course at the public expense, and it is no doubt so kept up for political reasons. Those reasons may be entirely contemptible or moderately respectable. They may represent simply the desire of Governments—Whig or Tory, it matters not—to hold in hand a convenient sort of currency for trafficking in the support of placemen, or they may arise out of the policy of keeping the educated ranks of the Roman Catholics well affected by enlisting them in the service of the State. The former influence, which, we are afraid, has been hitherto the operative one in Irish politics, is rapidly losing its force. Governments are beginning to perceive that Irishmen are leaving their place-hunting representatives very little to sell. The Home Rule folly, though it be but a passing fever fit, has thrown Irish politics out of relation to the rest of public affairs, and a Minister has no longer any temptation to bid for Irish votes. As for the system of liberalizing the Irish Roman Catholic community by multiplying offices in Ireland, we confess it does not commend itself to us as either a very hopeful or a very moral scheme. If we have nothing better to build up in opposition to the advance of Ultramontanism than the allegiance of a few Judges, Magistrates, and placemen, we may as well abandon the breach at once. The less we allow any such *arrière pensée* to warp our judgment and our policy in dealing with Ireland, the more likely are we to make way, however slowly, towards conciliating the people to a rule which, in order to be truly just and truly generous, must practise a wise, watchful, and honest economy.—*The Times.*

THE PROFESSION OF THE LAW.

In Judge Pierrepont's oration at Yale college, he informed his audience that in the city of Amalfi, a council of the Roman Catholic Church decreed, that no one who was engaged in the practice of law could enter the kingdom of heaven; and that "in the city of New Haven, Noah Webster taught the children of America by picture before they could read, and by fable at their first lisping, that the farmer was honest and that the lawyer was a rogue." Thereupon Judge Pierrepont entered into a serious and eloquent defence of our profession against ecclesiastical attacks. It was scarcely needed. It is a source of great delight to us as lawyers to know, that the "lawyers" spoken of in the New Testament were not lawyers in the sense of the word as used at the present day, but were more nearly priests, the expounders of the church law. So the legal gentleman who tempted our Saviour was a clergyman rather than a lawyer, and so those on whom our Saviour denounced "woe" were gentlemen of the ecclesiastical and not of the legal robe. We say this affords us delight, not at the unenviable position of those persons, but that the accusation should recoil like the boomerang on the noses of the class who utter it. As for Noah Webster, he was a good lexicographer, and a good enough man to write a child's spelling-book, but his ideas about lawyers were antiquated and smack of the Ark, like his Christian name. We decidedly prefer Daniel of the same surname on this point. We think that a profession which Daniel Webster chose will be able to bear up under the implied censure of Noah and his spelling-book.—*Albany Law Journal.*

Not Guilty; but ——. The celebrated verdict of "Not guilty; but don't do it again" has been rivalled if not surpassed by the finding of a jury the other day at the Nottingham Assizes. The case was an indictment for obtaining money under false pretences, the prisoner, William Cowlenshaw, being charged with falsely pretending that he was a certified schoolmaster. It was proved that he had answered in person an advertisement for a certified schoolmaster for certain schools at Bingham; that he had stated his name to be Woodward, and said that he had been trained at Saltley and had passed 96 scholars. In order to have done this he must have been a certified schoolmaster. He subsequently sent a copy of testimonials, which turned out to be false. He was then engaged as a schoolmaster until March, was paid sums of money amounting to about £24, and entered into an agreement for a permanent schoolmastership at £60 per annum, with half the Government grant and a house and garden. After communication with the Education Department, it turned out that the name of Samuel Woodward assumed by the prisoner was that of a schoolmaster since dead, under whom he had served as an assistant. The case having been summed up to them, the jury, after consideration said, "We find he has done wrong, but we recommend him to mercy." The Judge wished to know whether they found the prisoner guilty or not guilty, and the jury were understood to say that they found him not guilty but recommended him to mercy." This verdict was, it appears, received with "some laughter;" and his Lordship having explained to the jury that a recommendation to mercy was an unnecessary appendage to an acquittal, they retired from the court to consider this explanation. In an incredibly short time they had mastered it, and returned into court with a verdict of not guilty.—*Pall Mall Gazette.*

Drink as a Source of Crime.—At the Warwickshire Assizes recently Mr. Justice Denman, in charging the grand jury, referring to drink as a prolific source of crime, mentioned as an illustration of this that there were thirty-nine prisoners for trial at the last Liverpool Assizes, one-third being cases of murder, manslaughter, and unlawful wounding, every one of which was directly attributable to drink.

Digitized by Google

ADMISSIONS TO THE BAR IN AMERICA.

Considerable discussion is going on in some of the law journals with reference to the practice of admitting candidates to the bar upon no other guaranty of fitness than the diploma of a law school. The law journals which have discussed the propriety of this practice, have, so far as we know, taken grounds against it. The Albany Law Journal, The Legal Intelligencer, the Washington Law Reporter, and the Daily Register have recently called attention to the practice, taking ground in favour of its abolishment.

The Albany Law Journal for May 23 contained a brief but pointed reference to this subject, which has called forth two or three commendatory letters. It said: "Within the past two weeks the ranks of the legal profession in this state have been swelled by the admission to the bar of about four hundred gentlemen. It is, however, doubtful whether the profession is to be congratulated for this accession. In 1871 the legislature provided that a term of three years' study should be necessary to qualify a person for admission to the bar, but at the same time excepted the law schools of the state from the provisions of the act. As the graduates of these schools are entitled, by statute, to admission to the bar, and as the term of study in some of them covers only nine months, and in none of them exceeds two years, the practical effect of the act has been to drive students to the law schools as a short-cut to the bar. These schools are good so far as they go, but that they are equal to the proper preparation of young men for the practice of the legal profession is not true. The instruction of the school combined with that of the office is to be preferred to the instruction of either alone; but if a young man can avail himself of only one, he would much better take that of the office. He will there get some experimental knowledge along with his theories, which he never can do at a school. We believe that no man should be admitted to the bar without having first studied the law for at least three years, and that at least a year of that term should be spent in the office of a practising attorney. Anything short of this is an injury to the student himself. Every lawyer who has turned his attention to the matter knows that a premature rushing into practice without a competent knowledge of the law has blasted the hopes and ruined the expectations of hosts of young men who, properly instructed, might have acquitted themselves creditably. It is an old observation, and one generally true, "that if a man does not obtain a character in any profession soon after his entrance therein he is not likely ever to obtain one."

The Daily Register pithily says: "The question then resolves itself into this: Who shall stand as sentinels at the entrance to the bar—members in active practice of the law and identified with the honor and dishonor of the profession, or those who have studied the theory of the law only and teach it to all comers who can pay the matriculation fee?"

It seems that in New York a law exists which provides that a certificate of certain law schools, setting forth the fact that the holder has studied law for two years, shall be held to be sufficient to entitle the presenter thereof to be admitted to the practice of the law in any of the state courts. Concerning this law, the Daily Register says:

"This law virtually denies to the judges on the bench and the lawyers practising at the bar any authority to pass upon the qualifications, either mental or moral, of candidates for admission, except such as have studied for three years in some law office. We will not now stop to speak of this invidious distinction, but confine ourselves to the question: Is it wise in the profession to part, without a struggle, with the power to examine, by a committee of members in good standing, into the qualifications of men seeking admission to the most conservative, the most influential and the most honorable of all the learned professions? We think that a sufficient number of unworthy members have crept in under the system which this law overrides, and society has grievously suffered at the hands of those ignorant and bad men, but open wide the gate and let a professor's certificate insure ready admission to the bar and soon you will have our courts filled with mere theorists and speculators, whose blunders and mispleadings will cause great confusion and serious losses."

The New York bar association have lately had the matter under discussion, but with what result we are not informed. At a recent meeting of the Washington bar association a resolution was passed for the appointment of a committee to wait upon the judges, and to urge that the rule of court under which graduates from the various law schools in that city are admitted to the bar without examination, be so modified as to require a reference of the applications of such graduates to examining committees, for action and report as in other cases.

In St. Louis candidates for admittance to the bar must undergo a rigid examination before the five circuit judges, unless they are attorneys of some other court of Missouri, or have been graduated from one of the two law schools of this state. Out of each class of candidates examined, a large per centage is usually rejected; and candidates are not unfrequently rejected who have diplomas from the leading law schools of the country. It looks odd to see lawyers who have had twenty years' successful practice in other states sit down with the tyros and undergo a searching examination in the elements of the law; but justice to the public and to the bar require that all should go through this ordeal. And it has happened in these examinations that old lawyers, or at least that old men claiming to be old lawyers, have been rejected, and not improperly; and it has not unfrequently happened that young men who came armed with the diplomas of law schools, have betrayed in these examinations scarcely the faintest glimmering of legal knowledge.

Whether the diploma of a law school ought, without further examination, to entitle its possessor to admittance to the bar, is a question of much interest to the bar, and also to the public. Much, doubtless, could be said in favor of such a regulation, as well as against it. Considering the great work which law schools are expected to accomplish in the training of scientific lawyers, it has no doubt been thought wise to encourage their attendance by young men seeking admittance to the bar, by making a certificate of graduation a passport to its honors. But it would really seem that such effect ought not to be given to the diplomas of law schools whose course of study is only one year in duration, or to those of schools whose course is nominally two years, but whose yearly terms are but six or eight months in length. It is impossible that the best intellects, in so short a space of time, can do more than learn how to study the law; to say nothing of acquiring sufficient knowledge to entitle them to hold themselves out to the public as persons learned in the law; to advise clients and manage causes in matters involving life, liberty and property, and the dearest interests of society.

In Massachusetts, whose bench and bar have always maintained a high standard and exerted a great power upon the jurisprudence of the whole country, it seems that the diploma of no law school—not even that of Cambridge, renowned for its eminent professors, and for its thorough course of study, lasting three years—will entitle its possessor to admittance to the bar. A correspondent in the Albany Law Journal, of June 20, says: "Even if a student spend a three-years' course and graduates from the Cambridge law school, still he is obliged to submit himself to an examination by a committee of the supreme court, or by a judge of that court, and on written questions at that—questions numbering upwards of two hundred, and covering the broad fields of topics and subjects which are usually taught at schools of law—before he can be admitted to practice in the courts of the state. I speak from personal experience." We should suppose that if even Cambridge may not claim for the possessors of its diplomas an unquestioned admittance to the honors and profits of the Massachusetts bar, the lesser law schools throughout the country might submit to the same rule with advantage to the public, to the bar, and especially to their students, although it is quite likely that it might diminish their annual receipts.—*Central Law Journal* (St. Louis, U S.)

By the last American mail, we learn that at West Chester a defendant in a law suit shot down the plaintiff's counsel; and at Memphis, one attorney shot another through the head.

Digitized by Google

ADMISSION OF ATTORNEYS IN VICTORIA.

The following is the new rule for the admission of attorneys:—

Whereas it is expedient to repeal the rule of the said Supreme Court, passed on the 3rd day of December, 1872, being number 18 of chapter II., and to substitute another rule instead thereof, it is therefore ordered as follows:—

18. CANDIDATES NOT PREVIOUSLY ADMITTED.

Every person, except as hereinafter provided, must, before he enter into articles in the colony of Victoria, produce to the board of examiners for attorneys, a certificate of his having passed at a matriculation examination in the University in Melbourne in six at least of the subjects fixed for the time being by statutes and regulations of the said University for matriculation examination, of which subjects Latin must be one, and must lodge with the said board a copy of such certificate; and must also, after he has entered into his articles of clerkship, pass two other examinations, with an interval of at least one academic year between each. The first of such examinations to be in History of the British Empire and Law of Obligations, as prescribed respectively for the second and third examinations for the degree of bachelor of laws of the said University. The second of such examinations to be in Constitutional Law and the Law of Property, as prescribed for the third examination for such degree. Provided that if any such person shall produce to the said board of examiners of the Supreme Court for Attorneys a certificate of his having passed at a matriculation examination in any University recognized by the University of Melbourne, or of his having passed the preliminary or any intermediate examination which clerks articled in England, Scotland, or Ireland may be required to pass, and lodge with the board a copy thereof, it shall not be necessary for him to submit to such examination as aforesaid. Provided also that every articled clerk who may have passed any examination under the rule hereby repealed shall have credit for the same, and if it shall be necessary for him to pass any other examination in the University, he shall pass the same in subjects named as those for the second examination under this rule.

RECENT BANKRUPTCY DECISIONS.

On the 10th ult. another question as to the construction of section 87 of the Bankruptcy Act, 1869, and the application of the decision in *Ex parte Villars* (22 W. R. 603), came before the Lords Justices, in a case of *Ex parte James*. A trader debtor filed a liquidation petition on the 18th of November. On the previous day the sheriff had seized his goods under a writ of execution for a debt above £50, and on the 22nd of November the sheriff sold. On the 3rd of December notice of the petition was given to the sheriff. On the 16th of December the adjourned first meeting of creditors was held. The creditors failed to pass any resolution, and the meeting separated. On the 17th of December the sheriff paid the money realized by the sale to the execution creditor. On the 19th of December a petition in bankruptcy was presented against the debtor, founded on the act of bankruptcy committed by the filing of the liquidation petition, and notice was given to the sheriff, and to the execution creditor. On the 10th of January an adjudication was made. On the 23rd of February, in consequence of the decision of Mellish, L.J., in *Ex parte Villars*, the execution creditor repaid the money which he had received from the sheriff to the trustee in the bankruptcy. After this decision was reversed, the execution creditor claimed to have the money returned to him, and Mr. Registrar Roche decided that he was entitled to it. The Lords Justices affirmed this order. It was argued that the adjudication was really made upon the liquidation petition, of which the sheriff had notice within fourteen days after the sale, especially having regard to the 267th Rule of 1870, that in the event of any neglect of the creditors to pass a resolution for liquidation or composition "the court may, on the application of any of the creditors, and after notice to the debtor," adjudicate the debtor a bankrupt. Their Lordships, however, held that the proceedings on the liquidation petition were really at an end when the meeting of the creditors broke up on the 16th of December without passing any resolution, as no trustee could then, by any possibility, be appointed. At any rate they thought that the Rules could not alter the provisions of the Act so as to affect the rights of an execution creditor. They held, therefore, that the sheriff was justified in handing over the money to the execution creditor on the 17th of December, and that, although it had been returned to him under a mistake as to the law, still, as the trustee was in the position of an officer of the court, he must return it to the execution creditor.

In a case of *Ex parte Boreham*, recently heard before the Chief Judge in Bankruptcy, on appeal from the Birkenhead County Court, the question arose what course of conduct by a debtor amounted to the act of bankruptcy of being out of England and remaining out of England with intent to defeat or delay his creditors? The short facts of the case were that the debtor had purchased goods for £500, paying £50 in cash, and giving his promissory note payable at a short date, for the balance. The debtor went to France before the note became due and remained there. Upon maturity the note was presented but not paid. There was no express evidence of intent to defeat or delay, but the Chief Judge, reversing the order of the court below, held that the legal and natural consequence of the debtor's acts was to defeat or delay the petitioning creditor, and that the intent must be presumed. The order of the court below dismissing the petition was therefore discharged, and the debtor was adjudicated a bankrupt.—*Solicitors' Journal.*

LORD COCKBURN ON APPELLATE JURISDICTION.

The Times, noticing the recently published "Journal of Henry Cockburn" (being a continuation of the "Memorials of His Time—1831-1854"), observes that it never seems to have occurred to Lord Cockburn that the Appellate Jurisdiction of the House of Lords should be abolished. His remedy for an acknowledged evil was to make the House of Lords do its duty. In 1851 the Faculty of Advocates appointed a committee to investigate this subject, and approved the report which it presented. Their proposal was simply to add a Scotch Judge to the number of ordinary Law Lords. But the scheme was condemned by Cockburn upon two grounds. In the first place, he said, a Scotch Judge permanently transplanted to England would soon lose all his Scotch law. "Nothing oozes out of a man so fast as law." In the second place, it was impossible, he thought, to rely upon the Scotch Bench for a succession of competent men. In the evidence taken before the English Committee in 1856 opinion was very much divided on this point. And in the report that was ultimately adopted the Committee recommended that no fixed and invariable rule should be laid down. It is rather curious that Cockburn's name does not anywhere occur in the Minutes. His own scheme was, as we have said, to make the House of Lords do its duty, "with the aid of a Scotch Judge or two when they are required." They were only 12 hours off, and could be called in upon as short notice as the English Judges are. There was one point, however, in which Cockburn did desire a very considerable change in the administration of Scotch affairs. He repeats several times that Scotch business cannot be properly transacted in the Imperial Parliament without a Scotch Secretary in addition to the Lord Advocate. He asks what people would think of making the English Attorney-General do the work of the Home Secretary. The expediency of a Scotch Secretary all depends on the amount of Scotch business; and we fancy that if any real necessity for it had existed in 1853, we should have heard a great deal more about it long before 1874.

The *Albany Law Journal* announces that Mr. Justice Doe, of the Supreme Court of New Hampshire, having written an opinion in a "partnership case," covering 284 pages, is engaged in cutting it down.

Digitized by Google

OBTAINING MONEY BY FALSE PRETENCES—EVIDENCE OF OBTAINING IT ON PRIOR AND DISTINCT OCCASIONS.

The recent case of *The Queen* v. *Francis* (22 W. R. 663) is one of much importance as regards the law of evidence in criminal cases. The question whether it is allowable in prosecutions for obtaining money under false pretences to give in evidence other instances of the obtaining of money under similar circumstances, has hitherto been involved in uncertainty. In *R.* v. *Roebuck* (25 L. J. M. C. 101), where a prisoner was indicted for fraudulently obtaining money from a pawnbroker by pretending that a chain which was not silver was a silver chain, evidence was admitted to prove that the prisoner, a few days after the offence charged in the indictment, offered a chain similar in appearence to another pawnbroker as a silver chain, requesting him to advance money upon it. Objection was made to the admissibility of the evidence, and the point was reserved, but the judgment of the Court of Criminal Appeal turned upon another point. In *R.* v. *Holt* (9 W. R. 74) a commercial traveller, employed to take orders, but forbidden to received moneys, obtained money by falsely pretending that he had authority to receive it. Evidence that he had subsequently obtained money from another customer by a like false pretence was admitted, and the prisoner was convicted. The question was reserved whether this evidence was rightly admitted, and the court quashed the conviction, saying that on the facts stated in the case they could not find any ground for saying that the evidence was admissible.. In neither of these cases did counsel appear for the prisoner; in the former the point as to the admissibility of the evidence was not raised in argument (see 25 L. J. M. C., at p. 102, note) or adverted to in the judgment, and in the latter no reasons are given by the judges.

In the recent case, however, the point was expressly reserved and fully discussed, and the court lay down a rule upon the subject. The facts, so far as they concerned the abstract point of law, were very simple. The prisoner obtained money by pretending that a certain ring was made of diamonds, when in truth it was composed of crystals. In support of this charge, evidence was given that on a prior occasion the prisoner had obtained money by pretending that a silver chain coated with gold was made of pure gold. This latter piece of evidence was objected to as inadmissible, and the point was reserved, but the Court of Criminal Appeal held that it was admissible. "It seems clear upon principle," said Lord Coleridge, C.J., in delivering the judgment of the court, "that when the fact of the prisoner having done the thing charged is proved, and the only remaining question is whether, at the time he did it, he had guilty knowledge of the quality of his act, or acted under a mistake, evidence of the class received must be admissible. It tends to show that he was pursuing a course of similar acts, and thereby it raises a presumption that he was not acting under a mistake."

The question may be put thus: In a series of similar transactions by the same person, which is the more probable—repeated error or repeated fraud? If this question were put barely, the answer must be, repeated error is more probable than repeated fraud, for error is more common than fraud. But add the circumstances that the transactions are of a lucrative kind, that the statement is in each case of essential importance to the transaction (and is not therefore made *per incuriam*), and that the untrue statement is always in favour of the person making it, and the question must be answered differently. The man who in a series of lucrative transactions makes statements which are in fact untrue, and which are always to his own advantage, may properly be held guilty of fraud, unless he is able to offer a satisfactory explanation. But by what accumulation of circumstances is the mere suspicion of fraud which a single such instance raises changed into such a certainty of fraud as will justify a finding of fraud as a fact? It is impossible to say. But each instance increases the weight of the evidence.

Take the analogous case (which has been recognised by the Legislature) of uttering counterfeit coin coupled with the possession of other pieces of counterfeit coin (24 & 25 Vict. c. 99, s. 10). Can it be denied that the possession of other counterfeit coins gives good reason to suppose that the utterer knew the coin to be counterfeit? But how many counterfeit coins possessed will lead to the inference of knowledge? Clearly a roll or packet of coins would be conclusive. But the possession of one coin is some evidence. Is there any difference between the nature or grounds of the inference in this case and in that in question?

There are many circumstances to be taken into account in estimating the *weight* of such evidence. The lapse of time, making exact proof of the circumstances imputing guilt, or tending to exonerate, difficult; the number of articles or instances, and many other circumstances not admitting of definite description, must be brought carefully before the jury, and are likely to be fairly and candidly considered by them. But if any such instance *tends* to prove the knowledge which is in question—and it must be admitted that it does so tend—there seems no ground on which it can be pronounced inadmissible.

The reason of practical necessity on which the admission of such evidence has been based is in itself not complete; but, as a supplementary argument, is of great weight. That reason is thus expressed by Heath, J., in *Whiley's case* (2 Leach C. C., at p. 986)—"The charge in this case puts in proof the knowledge of the prisoner, and, as that knowledge cannot be collected from the circumstances of the transaction itself, it must necessarily be collected from other facts and circumstances." Unless indirect proof of the guilty knowledge is admitted it would be impossible in many cases to prove this essential element in the offence.

It has been urged, on the other hand, that upon principle it seems difficult to stop short of the admission of evidence of independent acts to show the prisoner to be a bad man, for that is to make it less likely that he was acting under a mistake; but evidence of particular acts to show bad character is not admissible. It may be difficult to draw the line in principle, but is it not perfectly defined in practice? The admission of evidence to prove that a prisoner has been pursuing a course of acts of a similar kind to that with which he is charged, where guilty knowledge of a particular set of facts is one of the issues to be proved, is a different thing from admitting evidence of any criminal act to prove a general bad character. The difference between the two cases is greatest in the point which is alleged as constituting the strongest objection to the admission of the former kind of evidence—the alleged hardship on the accused caused by taking him by surprise and so depriving him of the opportunity of rebutting the evidence. In the first case the prisoner or his adviser must be aware that guilty knowledge is one of the facts to be proved against him; that it cannot be proved from the circumstances of the transaction itself, and that if proved at all it must be proved from certain previous transactions *of a similar nature.* There is a specific class of acts pointed out, as to which the prisoner must be prepared with evidence. On the other hand, if evidence of acts showing general bad character were admissible to prove guilty knowledge, the prisoner would be without clue as to what kind of offence would be given in evidence. "The observation respecting prisoners being taken by surprise, and coming unprepared to answer, and to defend themselves against extrinsic facts," says Lord Ellenborough in *R.* v. *Whiley* (2 Leach. C. C., at p. 985), "is not correct. The indictment alleges that the prisoners altered this note *knowing* it to be forged, and they must know that without the reception of other evidence than that which the mere circumstances of the transaction itself would furnish it would be impossible to ascertain whether they altered it with a *guilty knowledge* of its having been forged or whether it was altered under circumstances which showed their minds to be free from that guilt."

Still we cannot but feel that (since it is not to be presumed that prisoners will have the benefit of legal advice) an indictment merely charging the prisoner with a particular act does not give him such warning as he is entitled to that other similar acts will be put in evidence, and we would repeat what we said before (17 S. J. 479) with reference to the question of evidence raised in *R.* v. *Cotton*, that it seems to us worthy of consideration whether the true remedy for the alleged hardship on the prisoner caused by the admission of the class of evidence to which we have referred, would not be to change the fixed practice which now prevails, and

Digitized by Google

to indict the prisoner in one indictment for all the cases of false pretences in respect of which evidence is proposed to be given.—*Solicitors' Journal.*

RECENT DECISIONS.

VICE-CHANCELLOR'S COURT, WESTMINSTER, JULY 1.

[From the *Law Journal.*]

WATSON *v.* ROW.

Solicitor—Several Defendants—Bill of Costs—Severance.

This was a suit to administer the trusts of a will.

The defendants Row and Woodman, trustees of the will, gave a written retatiner to Messrs. Leadbitter and Flux; but the retainer was not expressed to be "joint and several," though it was practically a joint retainer, as they had not severed in defence. Woodman was insolvent, and owed a debt to the estate.

The plaintiff contended that the taxing-master ought, as against the estate, to separate the costs of the defendants Row and Woodman, and set off the amount due from the estate to Row against the debt due from him to the estate.

The consequence of such a taxation would be that the solicitors would have to lose half their costs, or get from Row the portion which Woodman could not pay; while Row would only get from the estate half the amount of costs incurred.

Mr. E. K. Karslake and *Mr. Kekewich*, for the plaintiff, claimed to set off the costs that would be due to Woodman from the estate against his debt, and relied on *Re Colquhoun*, 5 De G. M. & G. 35.

Mr. Methold for an infant.

Mr. Eldis and *Mr. C. T. Simpson* for the defendant Row.

HALL, V.C., distinguished the case of *Re Colquhoun*, on the ground of there being practically a joint retainer in the present case, and allowed the defendant Row all the costs, charges, and expenses properly incurred in the suit, for which he might be liable to the solicitors.

COMMON PLEAS, WESTMINSTER, MAY 4, JULY 8.

SUMMERS *v.* THE CITY BANK.

Husband and Wife—Wife's Earnings—Married Woman's Property Act (33 & 34 Vict., c. 93, s. 11)—Action for Breach of Contract.

The question raised in this case was, whether a married woman can, under section 11 of the Married Women's Property Act (33 & 34 Vict., c. 93), maintain an action for breach of contract against her bankers. The declaration contained three counts—one for not presenting for payment a bill of exchange deposited with the defendants as the plaintiff's bankers for that purpose; another for not giving notice to plaintiff of dishonour of a bill of exchange entrusted to them; and the third for dishonouring cheques drawn on them by the plaintiff. The defendants pleaded that the plaintiff was a married woman. To which plea there was a replication that the causes of action arose exclusively from earnings and property within the meaning of the Married Women's Property Act, and that the defendants knew when they accepted the plaintiff's banking account that she was a married woman, carrying on her business separately from her husband. The defendants demurred to this replication.

Sir Henry James (*Murphy* with him) argued in support of the demurrer.

Day (*Currie* with him) for the plaintiff.

Cur. adv. vult.

The COURT now gave judgment for the plaintiff, holding that the replication was good, as the causes of action were within section 11 of the Act, which enables a married woman to sue "for the protection and security of her earnings." The Court, however, did not decide that in all cases a married woman can contract.

Judgment for plaintiff.

LIABILITY OF TRUSTEES FOR NON-PERFORMANCE OF TRUST.

There have been some symptoms of late of a change in judicial opinion with reference to the liabilities of trustees. The significant remarks of Lord Justice James in *Ex parte Ogle, In re Pilling* (21 W. R. 938, L. R. 8 Ch. 711) have been followed by a decision which appears to indicate even more clearly the decline of the doctrine that the trustee is practically an insurer of the property of his *cestui que trust.* There is always some danger lest in the revulsion from unreasonable and impolitic rules the court should be carried towards the opposite extreme, and it may perhaps be thought that the case referred to (*Youde* v. *Cloud,* 22 W. R. 764) affords an illustration of this tendency.

A testator devised and bequeathed the residue of his real and personal estate to two trustees on trust to sell "as soon as possible" after his decease and to invest the proceeds and apply the income and principle as directed. The testator at the time of his death was entitled to an estate in a moiety of a house and land, expectant on the death without issue of the tenant for life of the entirety. This estate had been conveyed to him by the married woman to whom it originally belonged by a fine and recovery and an indenture dated 24th February, 1829. Shortly after the testator's death one of the trustees handed over to his co-trustee a box containing, as the Vice-Chancellor found, the extract from the recovery and the chirograph of the fine, but not the deed of the 24th February, 1829. Although the testator had told the trustee (as he admitted) that he had a deed under which if he lived longer than the tenant for life "it would be a good thing for him," the trustee had apparently taken no pains to discover this deed, and remained, as the Vice-Chancellor found, wholly ignorant that he had any duty to discharge with regard to any real estate. When at last the *cestuis que trust* discovered the testator's interest in the house and land, it was only to find that their rights had been barred by the Statute of Limitations. They sought in the recent case to make the representatives of the trustee liable for the consequences of his negligence. Bacon, V.C., dismissed the bill, but as "he could not find any reason or excuse for the trustee . . . not having done something about the recovery deed and the fine . . . and not having given any particular information upon that subject to the *cestuis que trust,*" he dismissed the bill without costs. The ground on which his Honour appears to have dismissed the bill was expressed by him as being that "no cases could be found in which a trustee . . . had been held liable for non-performance of a trust of which he was ignorant."

There seems to be a rather dangerous latitude in this expression. The learned Vice-Chancellor can hardly have intended to lay down that wherever a trustee is in fact ignorant of the existence of a trust, although inquiry or investigation would have resulted in his acquiring a knowledge of it, he is relieved from responsibility. That would be to afford a premium to negligence. The importance attached by the Vice-Chancellor to the fact that the trustee had neither seen nor had in his possession the deed of 1829 seems to indicate that if this fact had not been found the trustee might have been fixed with knowledge of the trust. But the trustee had in his possession documents with reference to which the judge held that he ought to have "done something"—that is, to have made inquiry. Such inquiries, if made, must apparently have led to the discovery of the deed. To stimulate inquiry on the part of the trustee there was not only the reference in the will of the testator to his real estate, but also an express statement made by him to the trustee that he possessed a deed under which his surviving the tenant for life of the property would be a benefit to him. It seems difficult to reconcile this decision with the test by which, as we venture to think, the liability of trustees should be tried—viz., has the trustee exercised the care which an ordinarily prudent man would exercise in his own concerns? Much injustice has resulted from the substitution of a more rigorous standard, but great evils would be the consequence of the adoption of one more lax. "I am anxious," said a late Vice-Chancellor, in *Tebbs* v. *Carpenter* (1 Madd., at p. 298), "not to discourage persons from acting as executors by throwing difficulties in their

Digitized by Google

way, and am willing to make every proper allowance, but I cannot forget the established doctrine of this court. If persons accept the office of executors they must perform it; they must use due diligence and not suffer infants to be injured by their negligence.—*Solicitors' Journal.*

CASES UNDER THE BETTING-HOUSE ACT.

It seems probable that the broad and very important question whether a racecourse is a "place" within the meaning of the Betting-House Act (16 & 17 Vict. c. 119), so as to subject the proprietor or occupier, to penalties for permitting betting thereon, will shortly be raised in and finally decided by one of the Superior Courts. It is also probable that if the decision of the court is in favour of a conviction, some further legislation will be necessary to meet the inevitable outcry of the betting fraternity. The first most important decision yet given by magistrates on this subject, was that delivered by the Edgware Bench in the case of Mr. Warner, of the Welsh Harp. The magistrates found (1) That the defendant was occupier of the grounds known as the Kingsbury Racecourse; (2) that upon these grounds betting stands had been erected; and (3) that the defendant knowingly permitted the place to be used for purposes prohibited by the Betting Act. They accordingly convicted, but granted a case for the opinion of the court. The question is, will this decision be supported? None of the cases which have lately been heard by the Superior Courts have dealt with the matter in this its broadest aspect; they have had relation exclusively to places in the nature of offices occupied by persons carrying on the business of betting. For example, *Doggett* v. *Catterns* (12 L. T. Rep. N. S. 355), decided that a position under a tree in Hyde Park was not a "place." In *Shaw* v. *Morley* (19 L. T. Rep. N. S. 15), a wooden structure on a slip of land outside a racecourse was held to be an office or place. These two cases were fully discussed in *Bows* v. *Fenwick* (30 L. T. Rep. N. S. 524), where an umbrella stuck in the ground on a racecourse, and beneath which the proprietor carried on betting operations, was held a place within the meaning of the Act.

It is to be observed that the ground upon which *Doggett* v. *Catterns* was decided was the narrow one that the position taken up by the appellant under the tree in the park was not a fixed and ascertained place, and this brings us very near to the question whether a racecourse upon which people who bet move about, can be considered a place within the meaning of the Act. In *Bows* v. *Fenwick*, Lord Coleridge, speaking of the position of the appellant, said, "It was an ascertained place, for the umbrella was fixed;' the place whence the defendant came was stated on the outside, and cards were given. Then the umbrella was kept up, whether it was wet or dry, and I am therefore of opinion that he was using a place within the meaning of the Act." Both the Lord Chief Justice and Mr. Justice Brett recognised this Act as being a stringent Act, interfering with the liberty of the subject, and as the Lord Chief Justice said, "A man has a perfect right to evade a stringent Act if he can do so." Mr. Justice Brett discussed the object of the legislation, and at this juncture his remarks are very important. His Lordship said: "When this Act was passed the Legislature had not made up its mind to prohibit betting altogether, nor has it yet gone so far; but what it had made up its mind to do is expressed in the preamble to the statute. "Whereas a kind of gaming has of late sprung up, tending to the injury and demoralisation of improvident persons by the opening of places called betting houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices." The kind of betting there described it had determined ought to be suppressed, and the first section shows against what sort of proceedings the Act is directed—viz., the opening of "places for betting purposes, with persons resorting thereto." It desired to prevent fixed places being established to which the unwary might resort for betting. It did not prevent persons betting on the course, but prohibited their having a certain place. No doubt to satisfy the statute a fixed place is required, such a place at any rate as might be ascertained and which could be used." Since the case of *Bows* v. *Fenwick* was decided, a similar question has been before the Court of Queen's Bench, which is, however, more analogous to *Warner's* case than to *Bows'*. It appears from the report in the Weekly Notes of last Saturday (*Eastwood* v. *Millar*, p. 135) that the appellant was charged for that he, being the occupier of certain enclosed ground called the Borough-park ground, did knowingly and wilfully permit such place to be opened, and kept and used by other persons for the purpose of betting on a certain pigeon shooting match for money, contrary to 16 & 17 Vict., c. 119, s. 3. The facts were that on the 15th Nov. 1873 a police constable went to the Borough-park grounds, occupied by the appellant; the public were admitted on payment of money. The policeman saw a number of people there, and, amongst others, two book-makers, with books in their hands. These two men were shouting out, "20 to 2 on the match." The match was a pigeon-shooting match, for £10 a side, between a person of the name of Parkinson and a person of the name of Wooler. He saw a man give to one of the men with a book a sovereign. The book-maker then gave a ticket to the man, and said, "That is on Wooler." Numerous other bets were made on the pigeon match, and afterwards a foot-race took place, at which bets were made in the same manner as on the pigeon match The appellant was standing near the policeman, and could hear what the book-makers and the other persons said. It was contended on behalf of the appellant that the ground was not "a place" within the meaning of 16 & 17 Vict. c. 119, s. 3. The justices convicted the appellant.

The court (consisting of Justices Lush and Archibald), held that the ground was a "place" within the meaning of 16 & 17 Vict. c. 119, s. 3, and that there was evidence that it was kept for the purposes of betting.

It must now be asked whether there is any material distinction between the Borough-park ground and the Kingsbury Racecourse. If there is a distinction it is scarcely perceptible, and on the most recent case it must be admitted that the Edgware Bench rightly convicted. It is quite clear, however, that in Mr. Justice Brett's opinion the Act relates only to betting houses or offices, fixed places where bets are booked and paid. A stringent Act is not to be strained, and whilst it would seem difficult to protect Tattersall's and the Jockey Club, we doubt whether the Act can be held to include a racecourse. It must be remembered that in the case of *Eastwood* v. *Millar* and in *Warner's* case the grounds were enclosed, the public being admitted by payment. If the conviction in *Warner's* case is to be quashed, *Eastwood* v. *Millar* must be overruled. It will be interesting to see what course will be taken; but the operation of the decision must not be exaggerated, being confined to grounds of the nature which we have already indicated.—*The Law Times.*

THE RIGHTS AND DUTIES OF CARRIERS AS WAREHOUSEMEN.

Two questions of great interest to common carriers in general, and to railway companies in particular, arose in the late case of *The Great Northern Railway Company* v. *Swaffield* (L. Rep. 9 Ex. 132; 30 L. T. Rep. N. S. 562). This was an appeal from a judgment of the Bedfordshire County Court. On the 5th July, 1872, Swaffield sent a horse directed to himself at Sandy Station by the above company's railway, the fare being prepaid. The horse arrived at night, and there being no one at the station to receive it, it was sent to a neighbouring livery stable, as the plaintiffs had no stable accommodation on the spot. Soon after defendant's servant demanded the horse. He was directed to the livery stable keeper, but declined to pay the charges demanded before delivery. Thereupon the horse was denied him. The charges were admitted to be reasonable. Next day the defendant himself made the same demand, but he would not allow the station-master to pay the charges, refusing to recognize the livery stable keeper in any way. The company afterwards offered to deliver the horse to defendant free of all charges. He refused this offer also, and insisted upon his right to have compensation for the expenses he had incurred, as well as for his loss of time. In the course of a few months the company paid the livery stable keeper's bill, amounting to £17, and sent the horse to defendant, by whom it was received. The company then brought an action in the Bedford County Court to

Digitized by Google

recover the sum of £17, and on judgment being given for the defendant, carried the case on appeal to the Court of Exchequer, where this judgment was reversed. The grounds upon which the decision of this court was given may be gathered from the succinct statement in Baron Pollock's judgment:—"If the case had rested on what took place on the night when the horse arrived, I should have thought the plaintiffs wrong, for this reason, that although a common carrier has, by the common law of the realm, a lien for the carriage, he has no lien in his capacity as warehouseman; and it was only for the warehousing or keeping of this horse that the plaintiffs could have made any charge against the defendant." Here we have also a statement of the two questions referred to above: first, can a carrier by land make any charge as warehouseman? secondly, has a carrier any lien for such charges? On the first point there appears to be no direct authority; but in the case of *Notara* v. *Henderson* (L. Rep. 7 Q. B.) an analogous question was fully debated. In that case the plaintiffs shipped a quantity of beans on the defendant's ship from Alexandria to Glasgow. The ship called at Liverpool, and in going out met with a collision, which detained her for a few days. By reason of the collision the beans were wetted by sea water, and the plaintiffs, who were at Liverpool, offered to receive them, and pay freight *pro ratâ*. The offer was refused, and the beans were carried to Glasgow. There it was discovered that they were much depreciated in value, and that much of this depreciation was due to the fact that they had not been dried after the collision. The plaintiffs accordingly brought an action against the ship owners for the neglect of the master to take reasonable care of the beans by drying them at Liverpool, where there was sufficient accommodation, and where the ship had put in for repairs. In the unanimous judgment of the Court of Exchequer Chamber, delivered by the late Mr. Justice Willes, the chief authorities upon the duty of a ship's master to use reasonable care in preserving the goods entrusted to him, are gone into, and the decision arrived at is that there is such a duty. This case was cited with approbation by the Judicial Committee of the Privy Council in the case of *Cargo ex Argos* (L. Rep. 5 P. C. 134).

After this decision had been given, it was but an advance in the same direction to say that the same duty devolves upon carriers by land, or, in other words, we might say it was but another deduction from the same general principle, if we were discussing the civil law, and not the laws of England. In the case we are now considering the question raised was, whether expenses incurred by the railway company as warehousemen were incurred justifiably; whether there was any duty incumbent upon them to take reasonable precaution to prevent any damage happening to the horse after its arrival at the place of destination. This point having been settled in the affirmative, we think it a very natural result to maintain that they could recover the expenses thus cast upon them. If such were not the case their position would be a very hard one. The law tells them "under certain circumstances it is incumbent upon you to make certain outlays for the security of the bailor's goods entrusted to you for carriage." What could be more reasonable than that the bailor should reimburse them? It is not likely that this treatment will at all tend to give the bailee an advantage over the bailor, for courts of law will be able to examine into the necessity of the expenses incurred on alleged behalf of the bailor; while, on the other hand, the bailor will himself have the satisfaction of knowing that the duty of the railway company does not cease with the mere arrival of the goods at the place of destination. The civil law went a step further than our law; it allowed even to the *negotiorum gestor* an action against the *dominus* to recover the expenses incurred *bona fide* in managing the affairs of the *dominus*.

With respect to the second point, we shall find there are a variety of dicta and cases. In 1793 was decided the case of *Lambert* v. *Robinson* (1 Esp. 118), which was an action of trover against a carrier. The Lord Chief Justice Eyre held that there was no lien given by law where the carrier makes a claim for booking or warehouse room. This case, however, is so briefly reported that it gives few grounds for deciding the point. In *Orchard* v. *Rackstraw* (9 C. B. 698) it was decided that a livery stable keeper has no lien for the keep of a horse, and that a veterinary surgeon has none for his attendance. This decision has, apparently, a bearing upon the present topic. *Judson* v. *Etheridge* is another decision, by Lord Lyndhurst, that livery stable keepers have no lien for the keep of a horse. In addition to these decisions we have a very clear statement of the nature of a lien in Story's Equity Jurisprudence, "a lien," he says, "is not in strictness either a *jus in re* or a *jus ad rem*, but simply a right to possess and retain property until some charge attaching to it is paid or discharged. It generally exists in favour of artizans and others who have bestowed labour and service on the property, in its repair, improvement, and preservation. It has also an existence in many other cases by the usages of trade, and in maritime transactions."

Of the four learned Judges who delivered judgment in the case of *The Great Northern Railway Company* v. *Swaffield*, three referred to this question of lien; but only one, Baron Pollock, expressed a decided opinion on the point we are now investigating. Baron Pigott passed over the question, simply remarking that they had not to deal with any question of lien; but Baron Pollock, whilst fully recognizing the acknowledged rights of a common carrier, distinctly stated that he had no lien in his capacity of warehouseman. On the other hand, Baron Amphlett, without expressing any decided opinion, did not wish it to be thought that he held identical views with those of Baron Pollock on this subject. "I should not wish," he observes, "to be considered as holding that in a case of this sort, the person who in pursuance of a legal obligation, took care of a horse, and expended money upon him, would not be entitled to a lien on the horse for the money so expended." However, as these remarks of the learned Judges were but *obiter dicta*, not necessary to support the judgment, we have yet to learn what is the law in such a state of circumstances as those described by Baron Amphlett. The several decisions referred to above will not be of much avail in elucidating the question. We do not know that any obligation was cast by the law upon the bailees, and we take it that this is really the vital point in the question of a right of lien now under investigation. If we were allowed to discuss the question upon abstract grounds, it would be no difficult matter to make our deductions, provided we were agreed upon first principles. We might, for instance, say, whoever does an act in pursuance of a legal obligation has a specific lien for his reasonable expenses thus incurred. Here, when the circumstance arose, it would be a comparatively easy proceeding to apply the general rule to the particular facts. But this is not the way in which our English case law proceeds. Here we must seek our rules and principles by a wide generalization of decisions, and abandon the method of deduction for that of induction.

It certainly will be an interesting investigation when a case in which is involved this right of lien comes into court for judgment. Equitable considerations may suggest that when the law compels a man to expend money on the goods and chattels of another, he should have the best possible security for repayment, otherwise we should find the law inflicting on one an evil which might very possibly be far greater than any corresponding advantage that would accrue as a result to another. Such legislation is certainly not to the interest of the community at large; nor would it be at all consistent with the maxims of far-seeing jurisprudents, such as Bentham and his school. Perhaps the best way of considering the matter is that adopted by those jurisprudents in their moral and legal investigations. There is a safer method than one which varies with the sympathies or antipathies of the legislator. We have some safeguard against reckless legislation if we seek to change no law until we are quite assured that the resulting good will more than counterbalance the evil that must of necessity follow from any change. We cannot go far wrong when we know how to interpret and apply the well worn maxim, *Salus populi suprema lex*. If we apply such a method here, there seems good reason to hold by the opinion of Baron Amphlett. The law inflicts an evil whenever it enjoins a duty upon a man; it does more if it does not make every reparation allowed by the case. It modifies the evil, and, at the same time, introduces a counterbalance of good if it secures for the one party the preservation of his property,

Digitized by Google

and for the other a good surety that the expense cast upon him by the law will be met by the person benefited, and secured by the law.—*The Law Times.*

STATUTES AND PARLIAMENTARY PAPERS.

The House of Commons Select Committee on Public Departments have made their report, and in it they suggest several reforms in the system of purchase and sale of materials and stores. One of the subjects pressed upon the attention of the committee was that of having an edition of the public Statutes printed in a cheap and compact form, so as to make them as accessible as possible to the general public. The committee state that the new revised edition of the Statutes now in force is issued in such a form that to possess a copy would involve an expenditure of £30 or £40. Such a price simply means prohibition so far as the general public is concerned, and it serves but to defeat the purposes for which the revised edition was undertaken and issued. The committee recommend that the Statutes of the realm should in future be printed and published by the Stationery Office; that of the editions now published the one known as the imperial octavo (which is printed from the same type as the Parliamentary Bills) should alone be continued; but, further, that a popular edition, made up in octavo, and published at a moderate cost of, say, from 5s. to 7s. per volume, should be printed and published annually by Her Majesty's Stationery Office. The committee regard the issue of the Acts of Parliament in a cheap form as a matter of great importance, furnishing, as it would, to all an opportunity of informing themselves upon the laws which they are expected to obey. The committee observe also that at present three separate offices are maintained for the sale of Parliamentary papers, with separate and distinct staffs. Messrs. Spottiswoode sell the House of Lords' papers, Mr. Hansard the papers printed by order of the House of Commons. The papers are distributed to members of both Houses of Parliament and to the public offices by different people, with separate staffs of messengers and porters. Messrs. Trubner distribute books and periodicals to the same public offices, and their trouble in this respect is taken into account in the prices charged against the Stationery Office. A daily distribution of papers and small stores is also made for the Stationery Department itself. The committee are also of opinion that a great public convenience would be attained, and some economy effected, if the whole arrangements for the distribution and sale of Parliamentary papers and Government publications were centralized, and placed under the care of the Controller of Her Majesty's Stationery Office. A central depot might be established, superintended by a practical man of business, who would be responsible for the receipt, distribution, and sale of all Parliamentary papers, and for the purchase and collection of all printed books and periodicals required by the public offices.

ARTIST OR TRADER?—A curious case was recently before the Court of Appeal, at Paris. The question arose whether a *chef de claque* was a trader, so as to be liable to the bankruptcy law. It appeared that a M. Goudchon was a contractor for dramatic success, and was attached in that capacity to several theatres. It was his duty to form, instruct, and direct a band of men, who every night ensured vigorous applause for the actors and the plays. Having been adjudicated bankrupt, in his absence, by the Tribunal of Commerce, he now applied to the Court to annul the adjudication, on the ground that he was not a trader. His counsel entered into a learned discussion of the origin of the *claque* and its history in ancient and modern times. He contended that the *chef* could not in any proper sense be considered a trader. His payment from the managers of the theatres was only in free admissions, which he sold at a low rate to the *claquers*. His gains consisted chiefly in gratuities from actors and actresses who desired specially rapturous applause. Under these circumstances, it was contended he was an artist, and not a trader. The Court, however, declined to take this view, and confirmed the order of the Tribunal of Commerce.

LEGAL ITEMS.

It is considered probable that Dr. Ball will be appointed Lord Chancellor of Ireland before the prorogation of Parliament. Under the new bill, the Irish Lord Chancellor will, in his capacity of President of the Court of Appeal, occupy a position of greatly enhanced importance, and there can be no doubt of Dr. Ball's fitness for his important duties. Among the candidates mentioned for the vacancy which will thus be caused in the representation of Dublin University are Mr. Purcell, Q.C., Mr. Gibson, Q.C., Mr. Miller, Q.C., and Dr. Traill, Fellow of Trinity College.

Hon. Lord O'Hagan is to preside over the Section for Economic Science at the meeting to be held at Belfast on the 19th of August.

The Right Hon. A. Brewster, ex-Lord Chancellor of Ireland, is still seriously ill at his country residence, Roebuck Grove, Clonskeagh; and, we regret to say, that there is hardly any hope of his recovery.

THE CASE OF DR. KENEALY.—The Benchers of Gray's Inn, among whom were Sir John Holker, the Solicitor-General, Mr. Manisty, Q.C., and Mr. A. J. Stephens, Q.C., held a pension on Saturday morning at 11 o'clock to proceed with the case of Dr. Kenealy upon issues arising out of the late Tichborne trial, and for articles published in a paper called the *Englishman*. Dr. Kenealy's solicitor attended on his behalf, and handed in a medical certificate setting forth the continued inability of Dr. Kenealy to be present. The Benchers thereupon held a conference, occupying about an hour and a half, when the Under-Tresurer said he was authorized to announce to the representatives of the Press that, in consequence of medical evidence of Dr. Kenealy's indisposition, they had decided to adjourn the further investigation of the matter until Saturday, August 1, at 11 o'clock.

JURISDICTION OF COURTS OF EQUITY.—A very singular extension of the jurisdiction of Courts of Equity in cases of fraud is noticed by the *Albany Law Journal* as having been made by the Court of Errors and Appeals of New Jersey, in the case of *Carris* v. *Carris*. The suit was brought by a husband for a divorce on the ground of fraud. The complainant married the defendant, supposing that she was at the time virtuous; two months after the marriage, however, she gave birth to a child. The court is stated to have "held that it had jurisdiction as a court of equity to annul the marriage on the ground of fraud, and that the want of chastity and concealment avoided the consent and constituted a fraud, upon which a court of equity would declare the marriage void *ab initio*."

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

FINAL EXAMINATION—MICHAELMAS, 1875.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—The question put by "An Apprentice" is premature. Although it would seem that we may anticipate the passing of the "Supreme Court of Judicature Act (1874) Amendment" Bill, and the abolition of the Appellate Jurisdiction of the House of Lords accordingly, it remains to be seen whether the "Court of Judicature Act (Ir.), 1874," Bill will pass before Michaelmas, 1875. Should it pass, candidates will by no means have to disregard the law as they have previously learned it, since it is not so much the law itself as the mode of procedure that will be changed. And in all probability, the Council of the Incorporated Law Society would follow the example of the English Council, who are about to recommend the examiners not to propose any questions upon the Judicature Act, at the examinations to be held during the year 1875.

Your obedient servant,

E. N. B.

Digitized by Google

COURT PAPERS.

SUPERIOR COURTS OF COMMON LAW.

List of Days to Plead, and Mark Judgment.

AUGUST, 1874.

Plaint Served on		Filed not later than	Last Day to Plead	Entitled to Judgment
Saturday,	.. 1 Aug.	11 Aug.	15 Aug.	17 Aug.
Monday,	.. 3 "	12 "	17 "	18 "
Tuesday,	.. 4 "	13 "	18 "	19 "
Wednesday,	.. 5 "	14 "	19 "	20 "
Thursday,	.. 6 "	15 "	20 "	21 "
Friday,	.. 7 "	17 "	21 "	22 "
Saturday,	.. 8 "	18 "	22 "	24 "
Monday,	.. 10 "	19 "	24 "	25 "
Tuesday,	.. 11 "	20 "	25 "	26 "
Wednesday,	.. 12 "	21 "	26 "	27 "
Thursday,	.. 13 "	22 "	27 "	28 "
Friday,	.. 14 "	24 "	28 "	29 "
Saturday,	.. 15 "	25 "	29 "	31 "
Monday,	.. 17 "	26 "	31 "	1 Sept.
Tuesday,	.. 18 "	27 "	1 Sept.	2 "
Wednesday,	.. 19 "	28 "	2 "	3 "
Thursday,	.. 20 "	29 "	3 "	4 "
Friday,	.. 21 "	31 "	4 "	5 "
Saturday,	.. 22 "	1 Sept.	5 "	7 "
Monday,	.. 24 "	2 "	7 "	8 "
Tuesday,	.. 25 "	3 "	8 "	9 "
Wednesday,	.. 26 "	4 "	9 "	10 "
Thursday,	.. 27 "	5 "	10 "	11 "
Friday,	.. 28 "	7 "	11 "	12 "
Saturday,	.. 29 "	8 "	12 "	14 "
Monday,	.. 31 "	9 "	14 "	15 "

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
B. M'Lenegan	Prove debts and vouch	*Mathews*
John O'Neill	do	*Perry & Co.*
John Neil	do	*Perry & Co.*
Thomas Bailey	do	*Scallan*
John O'Donnell	do	*Hamilton & Craig*
Joseph Parker	Vouch account	*Oldham & Eaton*
Richard O'Connor	do	*Noble*
John Byrne	Title and posting	*Fottrell & Son*

TUESDAY.

Before the COURT, at 11 o'clock.

Mary Anne Boyton	1st composition sitting	*Oldham & Eaton*
George P. Magrath	do	*Hickie*
Same matter	1st public sitting	*Casey & Clay*
Mary Carnegie	do	*Beauchamp*
C. C. W. Domville	do	*Findlater & Co.*
Joseph Doren	do	*Molloy & Watson*
Robert Crone	do	*Molloy & Watson*
R. K. Thompson	do	*Sinnott*
John M'Crory	Final examination	*Fottrell & Son*
Patrick Roche	do	*Casey & Clay*
James M'Aleenan	do	*Molloy & Watson*
Stephen Rickard	do	*Findlater & Co.*
Mary Anne Boyton	do	*Oldham & Eaton*
David Rutledge	do	*Larkin & Co.*
Ludlow Berkeley	do	*Scallan*
John Callaghan	do	*Mathews*
John Semple	Take charge as proved	*DeMolyns*
Robert Courtney	do	*Fitzgerald*
Daniel Cullen	do	*Lett*
John Nolan	Examine witnesses	*Larkin & Co.*
Edward Law	Motion	*Neilson*

Before the CHIEF REGISTRAR, at 12 o'clock.

John Farrell	Prove debts and vouch	*Perry & Co.*
O'Reardon and Murphy	do	*Larkin & Co.*
John Nolan	Costs	*Orpen & Sweeny*
James Keegan	do	*Hardman & Son*
Charles Owens	do	*Rynd*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

William Foxall	Prove debts and vouch	*Oldham & Eaton*
Walter O'Donnell	do	*Oldham & Eaton*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Thomas F. O'Neill	Vouch account	*Larkin & Co.*
Richard Boyle	do	*Larkin & Co.*
Nash, Harty & Co.	do	*Larkin & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

William Bergin	1st public sitting	*Rynd*
Thomas Clarke	do	*Casey & Clay*
George M'Donnell	do	*Mathews*
Eyre Silk	do	*Hartigan*
Joseph Farrar	do	*MacSheehy*
Richard M. Sadlier	1st composition sitting	*Kavanagh*
Same matter	Final examination	*Scallan*
John Brooks	do	*Casey & Clay*
Joseph Cresswell	do	*Mathews*
George P. Magrath	do	*Casey & Clay*
Aaron Boak	do	*Stewart*
Daniel Lenihan	do	*Scallan*
Philip Lyster	Audit and dividend	*Perry & Co.*
Sylvester Wallace	do	*Molloy & Watson*
S. M. J. Richardson	do	*Molloy & Watson*
John Smyth	do	*Browning*

The following at 12 o'clock.

Patrick Flood	Sale	*Maxwell & Weldon*

ADJUDICATIONS IN BANKRUPTCY.

Chamney, John, late Queen-street, Dublin, now of the Four Courts Marshalsea, gentleman. Sittings, *Friday, August* 14, and *Tuesday, September* 1. *Molloy and Watson*, solrs.

Donovan, George R., South Main-street, Youghal, county Cork, shopkeeper. Sittings, *Tuesday, August* 11, and *Friday, August* 28. *Scallan*, solr.

Duggan, John Robert, Christchurch-place, Dublin, commission agent. Sittings, *Tuesday, August* 11, and *Friday, August* 28. *Larkin and Co.*, solrs.

Horan, Patrick, senr., Tullamore, King's County, draper. Sittings, *Friday, August* 14, and *Tuesday, September* 1. *Larkin and Co.*, solrs.

Nolan, John, Gowran, county Kilkenny, grocer. Sittings, *Tuesday, August* 11, and *Friday, August* 28. *Larkin and Co.*, solrs.

Leahy, Daniel, Grand Parade-market, county Cork, butcher and victualler. Sittings, *Tuesday, August* 11, and *Friday, August* 28. *Scallan*, solr.

Page, Henry, Grafton-street, Dublin, haberdasher. Sittings, *Friday, August* 14, and *Tuesday, September* 1. *Molloy and Watson*, solrs.

DIVIDENDS IN BANKRUPTCY.

Canny, James, Ennistymon, Clare, draper. 1st dividend 8s. 1d. in the £. L. H. Deering, official assignee. *Findlater and Co.*, solrs.

Grogan, Robert, Spring-gardens, Dublin, builders. 1st dividend 18s. in the £. C. H. James, official assignee. *Perry and Co.*, solrs.

Kelly, John, Athy, Kildare, grocer. 1st dividend 7s. 7d. in the £. C. H. James, official assignee. *Molloy and Watson*, solrs.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JULY Fri. 17	Sat. 18	Mon. 20	Tues. 21	Wed. 22	Thur 23
	Government.						
—	3 p c Consols	92⅞¾⅞¾	92⅞	92¾⅞	92⅞	92⅞	92⅞¾
—	New 3 p c Stock ..	91⅞	91⅞¾	91⅞¾	91⅞¾	91¾⅞	91¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	107⅞	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102	—	102¾⅞	102⅞¾	102⅞¾	—
	Banks.						
100	Bank of Ireland ..	—	—	308½	310	310	311-12
25	*Hibernian Banking Co.* ..	57½	57½	—	58	59	59
15	*London Joint Stock* ..	—	—	49½	—	—	49½ 50
20	*London and Westminster* ..	71⅞ xd	71⅞-2	72¼⅞	—	—	—
3½	*Munster Bank (Limited)*	—	—	—	8½ 9	8½ 9	8½ 9
30	*National Bank*	—	61½-2	62⅞	63	62½	62¼½
15	*National of Liverp'l (Ltd)*	—	—	14⅞	—	—	—
25	*Provincial Bank* ..	88	—	—	88	88	88½
10	Do. New ..	—	—	—	—	—	—
10	*Royal Bank*	—	—	—	—	—	—
	Steam.						
100	City of Dublin	—	—	107	106⅞	—	106½
50	Dublin and Glasgow ..	—	—		—	—	—
50	Dublin & Liverpool Steam Ship Building Co	—	—	—	—	—	—
10	National S. S. Co. (ltd) ..	—	—	—	—	—	—
	Mines.						
3½	*Berehaven (Limited)*	2/	—	—	—	—	—
7	*Cape Copper M. Co. (lit'd)*	—	—	—	26	—	—
1	Killaloe Slate Co. (lit'd)	—	16/	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	5½	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Ga	9½ 10	—	10	10⅞¾	10¼⅞	10⅞
9½	*Dublin Tramways* ..	7½	—	7½	—	—	—
100	Grand Canal ..	—	—	52	52	52	—
25	*National Assurance* ..	—	—	—	—	—	—
9-4-7	*Patriotic Assurance* ..	—	—	10⅞	—	—	—
	Railways.						
100	Dublin and Belfast Junct.	92	—	—	—	91½	91
100	Dublin and Drogheda	—	—	112	—	—	—
100	Dublin and Kingstown ..	—	—	—	211	—	—
100	Dublin, W'klow, & W'ford	—	—	76½	—	—	76¾
100	Gt. Southern and Western	108⅞	—	108⅞	108⅞	108⅞¾	108⅞
100	Midland Gt. Western .	—	—	—	81½	81½	81¼½
100	Midland	—	—	—	—	—	—
25	Portdn. Dun. & Omh. Jun.	—	15	—	—	—	—
50	Ulster	—	—	—	—	—	—
12½	Do, Quarters	—	—	—	—	—	—
50	Waterford and Limerick ..	—	—	—	—	33½	—
10	Waterford and Tramore	—	—	7⅞	7⅞	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	103	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	104	—	104	—
100	D., W., & W., 6 per cent ..	—	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	54	—	—
50	Do. do. (1864)	—	53½	—	—	—	—
100	Gt. South'n & West'n 4 p c	99	—	99¾⅞	—	—	99½
100	Mid. Great Western, 5 p c	—	—	—	110½	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c	—	—	—	—	—	52½
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	95½	95½	—	—	95½
—	Dublin & Drogheda 4 p c	96 f	96 f	96 f	96 f	96 f	—
—	Dublin & Meath 4½ p c ..	—	—	89	—	—	—
—	D., W., & W., 4½ p c .	—	—	99½	—	—	—
—	Gt. South'n & West'n, 4 p c	98½	98½	—	98½	—	98⅞
—	Irish Nth Westn 1st C 5 p c	—	—	100½	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	103⅞

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 4th June, 1874
Of Deposit—2 per cent., 28th May, 1874.

Name Days—July 29th, and August 13th, 1874.

Account Days—July 30th, and August 14th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

JONES—July 21, at 97 Tritonville-road, the wife of Robert James Jones, Esq., solicitor, of a daughter.

JOYCE—July 20, at 7 St Edward's-terrace, Garville-avenue, Rathgar, the wife of P. W. Joyce, Esq., LL.D., of twin sons.

MARRIAGES.

CROOKSHANK and HUNTER—July 8, at the Wesley Chapel, Sligo, Robert Alexander Crookshank, Esq., eldest surviving son of the late Alexander Crookshank, Esq., solicitor, Belfast, to Lizzie, third daughter of Robert Hunter, Esq., J.P., Sligo.

DEATH.

KENNY—July 22, at 17 Middle Gardiner-street, Dublin, Lizzie, the fond and dearly-beloved wife of Mathew Kenny, Esq., solicitor, in her 44th year.

PUBLICATIONS:

JUST PUBLISHED, Price 12s., 476 pages, cloth, gilt lettered.

LAND ACT CHAPTERS AND REPORTS,
CONTAINING
DISCUSSIONS ON CONTROVERTED POINTS UNDER THE LAND ACT,
AND
FULL REPORTS OF NEARLY ONE HUNDRED LAND CASES.
BY
ROBERT DONNELL, M.A.,
Barrister-at-Law,
Professor of Political Economy, T.C.D.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.
Sold by all Booksellers.

OPINIONS OF THE PRESS.

"A valuable contribution on an important subject, and well worthy of the author's high reputation as a lawyer and political economist."—*Freeman's Journal.*

"This volume is a perfect hand-book both to the general effect and particular bearings of the law as interpreted by the tribunals, and has been edited with the greatest care, and arranged on so simple and clear a plan that no owner of land can mistake the force of the rulings that have been made, or their relation to his own circumstances in regard to the tenants on his property. We commend Mr. Donnell's treatise to the attention of all holders of property, or tenants with valuable interests, as a perfect key to their legal position, and the privileges, restraints, or remedies attaching to it."—*Dublin Evening Mail.*

"The volume forms a sequel to Mr. Donnell's *Practical Guide to the Land Act*, which, on its publication, became the standard work on the subject, and the two volumes now form a complete text-book on those most difficult points of law, raised in the working of the new Irish land system."—*Irish Law Times.* 352

THE LAW MAGAZINE AND REVIEW;
A MONTHLY JOURNAL OF JURISPRUDENCE AND INTERNATIONAL LAW for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

REEVES & TURNER, Law Booksellers, 100 Chancery-lane, London. 455

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

CHRISTOPHER FLYNN, of No. 199 Phibsboro'-road, in the City of Dublin, Grocer and Vintner, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on TUESDAY, the 4th day of AUGUST, 1874, at the hour of Twelve o'clock noon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 22nd day of July, 1874.

A. F. LLOYD, Deputy Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

THOMAS M'GOVERN, Solicitor for the Assignees, 21 College-green, Dublin. 522

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN CHAMNEY, late of Queen-street, in the City of Dublin, and now a prisoner in the Four Courts Marshalsea, Gentleman, was on the 3rd day of July, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 14th day of AUGUST, 1874, and on TUESDAY, the 1st day of SEPTEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

MOLLOY & WATSON, Solicitors, 18 Eustace-street, Dublin. 524

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, July 25, 1874.*

Digitized by Google

// THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, AUGUST 1, 1874. No. 392.

LIFE INSURANCE FRAUDS.—II.

In March, 1874, one of the most diabolical Life Insurance frauds ever perpetrated was brought to light, by the confession of one of the perpetrators. M'Nutt and Winner were painters at Wichita, Kansas, where they murdered an employé, named Saviers, last December. M'Nutt, who was subsequently captured, confessed that he got his life insured for 5,000 dollars, and that he and Winner planned to kill and burn some victim, whose body was to be palmed off as M'Nutt's, so that the money could be collected and divided between them. When the plan was laid they lived in Kansas city, Missouri, where they intended to carry it out, but they determined to go to the smaller town of Wichita, in Kansas, whence their escape would be easier. Here they began the business of painting, and soon built up a good trade. The want of a victim delayed for some time the execution of the plot; but Winner finally went to Kansas city, and employed Saviers to work for them. On his arrival at Wichita they met him at the railway station, and took him to their shop without any one knowing anything about it. They first made him drunk, and then administered ether until he was unconscious. Then they put his face over the fire, and burnt it until it could not be recognized, and laid him on a bed saturated with petroleum. M'Nutt then cut a gash in Winner's arm with a pair of scissors, and, opening a vein in Saviers' arm, took out a quart of blood and sprinkled it over Winner, to make it appear that be had bled a great deal. M'Nutt then left, dropping his vest and empty pocket-book at the back of the house, to make it appear as if thieves had thrown them away; and going to Atchison, he left by rail for Missouri. Winner then set fire to the building, which was burnt, and he reported that he was robbed, and M'Nutt killed and burnt. The story took for a few days, until M'Nutt was recognized and arrested, and subsequently tried. There be many devils that prompt to murder, said Luther; but it would be difficult indeed to find a parallel to that diabolical Missouri tragedy; and certainly, the romance of American life insurance has not, hitherto, been rivalled at this side of the Atlantic, in real life, however feebly emulated in fiction by the pen that depictured the villain Jonas Chuzzlewit. Crimes like those of Udderzook and of M'Nutt and Winner are unique in ghastly glory. "Glory's blood-relation, bastard murder," can point to no more terrible trophies even in America. Compared with them, the crime of Dr. Ernest Uhling glimmers but feebly indeed. In the month of June of the present year, that gentleman was sentenced to eighteen months' imprisonment, by the Court of General Sessions of New York city, for the crime of burying a box of bricks. The point was that the box was shaped like a coffin, and the "doctor" held a policy of insurance on the life of a young woman, whom he fraudulently represented to be dead and buried in the coffin.

"Bruff" says Miss Braddon, writing in the current number of "Belgravia," "is remarkable for nothing particular, save for having been the scene of a sanguinary battle between the English forces and the insurgents in 1641, and of various Whiteboy outrages later, and of a skirmish with the Defenders in 1793." But that little town on the banks of the Dawn has produced what, in its development at the recent Limerick Assizes, may well claim to be held one of the most remarkable *causes celebres* ever heard in this country, as well as one of the most singular in the annals of life insurance frauds. Briefly recapitulated the facts were as follows:—The Local Manager (Wm. Barry), two medical examiners (Drs. Meehan and Sheedy), and another official (Michael Meehan) connected with the Kilmallock branch of the New York Life Insurance Company, were indicted for a conspiracy to defraud the shareholders, by false and fraudulent misrepresentations as to the health and habits of persons proposed to be insured. It appeared that in 1870 the company began to transact business in Ireland. Mr. Barry, the principal traverser, obtained the appointment of agent; and was allowed commission at 4s. in the pound. It was proposed to him to communicate through Mr. Shaw, who had been appointed agent at Belfast, but he represented that it would be more satisfactory to deal directly with the London manager. On the recommendation of Barry, Dr. Meehan, another traverser, was appointed medical examiner. The first policy sent to the company was for £150, on the life of Mr. Bourchier, of Baggotstown, who was described by Barry as a first-rate life. It was returned to him for amendment, as it was not signed by the assured himself, and it was re-enclosed with the signature of Mr. Bourchier forged to it. A charge of a guinea, when a receipt was enclosed, was made for the medical fee, but the London manager wrote to say that for policies under £500 the fee allowed was only half a guinea. Barry urged the company to be expeditious in completing such transactions, on account of "the fickleness of the Irish race, and their philosophical character and want of resolution." Dr. Meehan certified that he had examined Mr. Bourchier, and his name was signed to the proposal. On the 1st of February, Barry wrote to the effect that he was working hard and expected more proposals in a few days. On the 27th February he sent another proposal for a policy on Mr. Bourchier's life. In March, he wrote to say that he should devote himself next week to "fishing out" a few cases; and in May he fished out Mr. Charles Wilmot Smith, a magistrate and grand juror of the county, who, some time previous, happened to have received threatening letters about land. The proposal purported to be signed by a person named James Whelan, who stated that his interest in the life of Mr. Smith consisted in the latter being a good landlord, and that if anything happened to him the loss would be equal to £500, the amount of the policy. This document was in Barry's handwriting. A series of questions respecting the health of the assured was answered satisfactorily by Dr. Meehan, who certified that he had examined him; and the policy was executed by the company. Mr. Smith, however, was never examined by the doctor, and was ignorant of the fact that his life was insured. The rules of the company required that the proposal should be signed by a personal friend, and in this case the friend was Mr. Michael Meehan, the doctor's brother. On the back was a memorandum that Barry never knew Mr. Smith to be ill, except some years before, when he had a cold. The whole of these documents were fabrications. Mr. Michael Meehan certified

Digitized by Google

that he knew that Mr. Smith was a man in perfect health. This policy was afterwards assigned by Whelan to Michael Meehan. Three other policies were effected on the life of Mr. Bourchier, another on the life of Mr. Smith, and one on the life of Mr. Harris, postmaster of Kilmallock, all of which were fictitious. The discovery of the fraud was made through the prudent practice of the company in writing to persons assured. Mr. Bourchier replied that he never allowed his life to be insured, and was never examined by Dr. Meehan. There were a number of other transactions, in which Dr. Sheedy, another of the traversers, was concerned. They were similar in their circumstances. Messrs. Smith, Bourchier, John O'Grady, solicitor, and Harris, of Kilmallock, whose lives had been insured, proved that they never authorised any one to insure them, and repudiated the signatures to the proposals; and the alleged personal inspections by the medical examiners were proved wholly fictitious. In the result, Lawson, J., before whom the case was heard, directed an acquittal of Michael Meehan; but the other traversers were convicted and sentenced—Barry to 18 months' imprisonment, and the two doctors to 12 months' imprisonment each. It may, indeed, be asked, what motive could induce two medical men, of hitherto unquestioned respectability, to lend themselves to such flagrant transactions; but the motive suggested was, not the paltry remuneration received merely, but that the connexion might be expected to lead to an increase of business in the district. Be this as it may, seeing that professional gentlemen of respectable position, free from the influence of the two chief handmaidens of crime—ignorance and want—have, yet, been found to tamper criminally with life insurance, and to taint with fraud operations which it is the interest of every man in the community should be fair and honest, any suggestion that may tend to frustrate the further growth of fraud in the insurance system, should receive attentive consideration. Sir Dominic Corrigan was led by those occurrences to re-issue two remarkable papers, read by him, some time since, at the Medical Society of the College over which he so often presided. He strongly censures the "private and confidential" letters sent from insurance offices to medical men, requesting information from the recipient of the epistle as to the health, ailments, habits, and associations of A.B., to whom the physician addressed in such "confidential" terms is known to be medical adviser, asking him to place before the company all he has discovered during his professional attendance on his client. In nearly all these cases the client is in utter ignorance of the whole procedure, and is not even aware that it has been proposed to insure his life. It may be added, incidentally, that he also objects to the form of certificates of death which the medical attendant of a deceased person is called upon to sign, and states that he has invariably refused to do so because the Act says that the medical practitioner who shall have been "in attendance until the death" is to sign, and Sir Dominic Corrigan holds that the doctor cannot be considered as in attendance until the death unless he was present at the death. The doctor is, also, required to certify from personal knowledge the day of death, the cause, and the duration of the illness; and he mentions some facts to show the danger of certifying such points without personal knowledge. In one instance, he was told that a patient whom he visited was dead, but on going upstairs he found persons transacting business with the sick man. He exhorts the profession to refuse to sign in all cases upon hearsay evidence, and let the Legislature amend the form of certificate. But to resume, we must say that the habit which has grown up of asking members of the profession to divulge, for financial and speculative purposes, the secrets confided to them by their patients and discovered by them during their professional visits, is one which should be discouraged on grounds of high commercial and professional principle. And we should think that, if those grounds are insufficient to deter speculative companies from asking the surreptitious disclosure of family or personal secrets, at all events one beneficial result of the Bruff prosecution will be to teach companies that, if they desire to avoid the deceptions too often practised by speculative insurers who traffic in the lives of other men, they must distrust the unauthorised espionage of medical detectives, and take measures to have direct knowledge brought home to the person whose life is to be insured that his confidential adviser is consulted for the purpose of an insurance speculation.

NOTANDA.

Divorce; domicile; jurisdiction.—This was a petition for a divorce *a mensa et thoro*, presented by a husband on the ground of his wife's adultery. *Campion*, Q.C. (with him *Smith*), for the petitioner. *Bruce*, for the respondent. Warren, J.—The petition in this case was by husband against wife for divorce, on the ground of alleged misconduct. The parties had been married out of Ireland; the respondent at present resides in London, and the general residence of the petitioner and respondent has been at Paris, in France. On behalf of the respondent, an objection was raised to the jurisdiction of the court to hear the case, on the ground that the petitioner was not a domiciled Irishman, but was a domiciled French subject. In support of this view, the respondent made affidavits, stating that her husband left Ireland 17 years ago, went to France, purchased a villa at Pau, and resided permanently there; that they had only been in Ireland three or four times on visits; and that her husband had taken certain proceedings against her in the French courts, which he could not have taken without averring that he was a domiciled French subject. The petitioner filed affidavits, stating that he left Ireland 17 years ago, solely in consequence of the advice of his medical attendants, and that he never intended to abandon his Irish domicile, but always returned to Ireland when the health of his wife, his child, or himself permitted it. He also submitted four draughts of wills which he had made, dated 1860, 1865, 1870, and 1872, all of which began with the words, "I, Thomas Gillis, of Belfast," and the two latter of which contained special reference to his being a domiciled Irishman. He further stated that he was possessed of real property in Ireland and personal property invested in Irish securities. In reference to this, the respondent made an affidavit that her husband had informed her he had no property, nor a tie of any kind in Ireland. In support of the petitioner's contention an affidavit had been made by a French advocate, M. Carot, stating that the purchase of freehold property in France did not involve the necessity of the purchaser's being a French subject, and also that proceedings such as those taken by the petitioner against his wife in France did not need an averment that the petitioner was a French subject. Upon the authorities, I am of opinion that domicile in Ireland, even without residence, is sufficient to sustain the jurisdiction of the court. It has been admitted that the petitioner's domicile of origin was Irish; and the domicile of his wife must follow that of her husband. Consequently, the court has jurisdiction to entertain the suit unless it had been clearly shown that the petitioner had acquired a French domicile, in substitution for his domicile of origin. It appears from the draft wills that the petitioner had real and personal property in Ireland, and

Digitized by Google

from the tenor of those documents indicating affection towards the respondent, I cannot believe that the petitioner always falsely represented to his wife that he had no property or tie of any kind in Ireland. I believe her statements to that effect are not true; and, believing some of the statements in her affidavit to be reckless and untrue, I cannot rest with any confidence on other parts. In the result, I am of opinion that the court has jurisdiction to entertain the suit (*Gillis* v. *Gillis;* Mat. Court, Feb. 16, 1874).

Administration; question of legitimacy; costs against the Crown; jurisdiction.—This was a suit instituted to determine the legitimacy of Eliza O'Neill, who died on the 7th September, 1872. The plaintiff, William John Good, claimed to be the first cousin of deceased, and sought administration of her estate. The deceased had left assets amounting to about £800. After her death administration was granted to Mr. William Lane Joynt, Crown and Treasury Solicitor, on the ground that she died intestate, and was illegitimate. Amongst the papers of the deceased was found an unexecuted paper writing, in which she purported to bequeath her assets to an institution in which she resided, and it was stated that it was the intention of the Crown, in the event of her intestacy and illegitimacy being established, to dispose of the property in accordance with her supposed intentions. The Crown relied upon certain statements made in affidavits, filed in a Chancery cause in 1865, in which it was hinted that the deceased was born out of wedlock. The case of legitimacy rested on the fact of the deceased having always been regarded by the family as legitimate.. The plaintiff, having succeeded in establishing the legitimacy of the deceased, obtained administration, and the case thereupon stood over for the purpose of consideration as to whether the Crown should be ordered to pay the costs, or whether the costs of the Crown should be paid out of the assets. *J. A. Byrne*, Q.C. (with him *Webb*), for the plaintiff. *S. Walker*, Q.C. (with him *Molloy*), for the Crown. Warren, J., decided that he had no jurisdiction to give costs against the Crown in a case of the kind, but he would not give the Crown costs out of the assets (*Good* v. *Joynt;* Prob., Feb. 11, 16, 1874).

Homicide; negligent driving; onus of proof.—In this case, the prisoner having been convicted at the Commission Court, Green-street, of the homicide of an aged woman by driving a horse and cab over her while she was crossing the street, a question was reserved as to whether, the mere act of driving being of itself lawful, it lay upon the Crown to prove that the accused was guilty of negligence in the act that caused death, or upon the prisoner to show that he had not been negligent. *J. Murphy*, Q.C. (with him *W. O'Brien*, Q.C.), for the Crown. *J. A. Curran*, *contra.* Monahan, CJ., Fitzgerald B., Morris and Lawson, JJ., and Dowse, B. (O'Brien, J., *diss.*), held that the onus lay upon the accused to disprove the *primâ facie* case against him of having caused the woman's death, and affirmed the conviction (*R.* v. *Cavendish;* C. C. R., Jan. 29, 1874).

Keeping grey-hound without proper qualification; 10 Will. 3, c. 8, s. 2.—Case stated by justices at petty sessions. The question at issue had been raised by Dr. Russell upon the refusal of the justices at Cashel to convict the respondent, under 10 Will. 3, c. 8, s. 2, for possession of a grey-hound without the qualification thereby required, and the point involved was as to whether the justices had jurisdiction so to convict. *E. Gibson*, Q.C. (with him *Lover*), for the appellant. *Tandy*, Q.C. (with him *Curtis*), for the respondent. O'Brien, J., in delivering judgment, said that the appellant based his case upon the second section of the Act, and to this it was objected on the other side that by a subsequent Act of George III. the qualification for the possession of a grey-hound was altered, and that as no penalty was by this latter Act imposed in a summary manner, its effect was virtually to repeal the penalty empowered by the Act of William, and took away from the magistrates at petty sessions the jurisdiction of convicting under it. The respondent also relied upon the recently passed Dogs Regulation Act (Ireland), by which it was declared that any person, being licensed, might keep any dog he wished. The court did not now desire to give any opinion upon the latter point, but held unanimously that the Act of George III. had in effect repealed the Act of William III., and that the only proceedings against a party not qualified to keep a greyhound, if such a disqualification existed, would be by indictment at common law. The refusal of the magistrates, therefore, to convict must be upheld. Fitzgerald, J., in concurring, pointed out the stringency of the Act of William III., which even subjected parties to public whipping, which, he thought it might be worth knowing, had been passed by a domestic legislature—passed by landlords for their own purposes, and the preservation of game. He was disposed, at first, to accept the views put forward by Mr. Lover, that the Act of George III. did not take away the power of summary conviction conferred by the earlier statute, but, on carefully looking into the Act, he had come to the conclusion that the power of the magistrates was not in force, and was disposed to hold that the whole of the Act of William III. was abrogated in point of law by the subsequent statute of George. The decision of the magistrates must accordingly be affirmed, and the appeal dismissed with costs. With regard to the Dogs Regulation Act, the court were not called upon to express any opinion upon it, but he himself was not disposed to treat it as not raising a very serious question under the sixth section (*Russell* v. *Dwyer;* Q. B. June 3, 1874).

Mandamus; magistrates refusing to issue summons; previous summons dismissed without prejudice.—Motion on behalf of the prosecutor, who was one of the auditors of the Local Government Board, to make absolute a conditional order for a *mandamus*, to order Captain Butler, R.M., Mr. Murphy, J.P., Mr. Drake, J.P., and Mr. Colgan, J.P., or one of them, to show cause why they should not issue a summons against Messrs. Brennan, Plunkett, and Malone, three of the town commissioners of Trim, calling on them to pay a sum of £28, surcharged upon them by the auditor, being the amount which they had given out of the borough funds to the Rev. John Duncan, P.P., Trim, for the purpose of putting up gas fittings in the chapel and the parochial house. It appeared that the auditor, on August 7, 1873, when auditing the accounts of the Town Commissioners of Trim, disallowed two items as being an illegal expenditure of the money of the ratepayers—namely, £28 to the parish priest for gas fittings for the chapel and for his private residence, and £6 to the Wesleyan minister for a like purpose. The three commissioners who had signed the order for the money were surcharged with the amount, and became liable to pay it to the Local Government Board within fourteen days. They appealed to the Chief Secretary, who referred the matter to the Board, who disallowed the appeal. Mr. Finlay then wrote to the Commissioners to pay the money to the treasurer, but they failed to do so, and he summoned them before the magistrates. The summons in the first instance was granted by Captain Butler; but when the case came on for hearing, on the 7th of January, the only magistrates sitting were Mr. Colles and Mr. Murphy, and these gentlemen disagreeing in opinion the summons fell through. Capt. Butler then issued a second summons on the previous complaint, and this case came on for hearing on the 14th of

Digitized by Google

February. Captain Butler, Mr. Murphy, Mr. Drake, and Mr. Colgan sat on the bench that day and heard the case, but dismissed it without prejudice. The solicitor for Mr. Finlay presented another summons to Captain Butler for signature, but that gentleman refused to sign it unless a fresh cause of complaint was stated, and the other magistrates, it was alleged, were of the same opinion, and declined to issue a third summons. It appeared that a sum of £5 was allowed by the Commissioners out of the borough to the Methodist Chapel; but when the auditor disallowed the two payments the Methodists at once paid back the sum which they had received. *P. Whyte*, Q.C., *C. Molloy*, and *Holmes* showed cause. *Serjeant Armstrong* (with him *D. Fitzgerald*), *contra*. WHITESIDE, C.J., in delivering the judgment of the Court, said the case was extremely simple. The Act of Parliament required the persons who improperly paid away the ratepayers' money to refund the amount to the treasurer of the union when the auditor had disallowed the payment. It empowered the auditors, if they refused, to summon them before the magistrates, who were simply, on production of the auditor's certificate of disallowance, to inquire whether the money had been paid to the treasurer of the union, and if not so paid, then to make an order upon the defendants. The language of the Act of Parliament was so clear that the most rustic intellect could not fail to understand it. He could not understand why the magistrates differed on the first occasion, for there was nothing to differ about. Then on the last occasion they distinctly refused to sign the fresh summons tendered to them, although it was their bounden duty to do so. It appeared that one of them had said, "Are we machines to carry out the law?" Well, that was just what they were, and the law which they should have carried out in this case was quite clear. The conditional order must, therefore, be made absolute, and with costs (*Queen* v. *Justices of Meath;* Q. B., May 6, 1874).

Compensation for disturbance; Ulster custom; purchaser of tenants' interest, with notice that he would not be accepted.—Appeal from the decision in this case by the Chairman, reported 8 IR. L. T. R. 92. *Boyd*, for the claimant. *Monroe*, for the respondent. FITZGERALD, J., held that the decision of the Court below should be reversed, on the ground that, as Little had violated the express rule of the estate by purchasing from the tenant Lappin, after he had been warned that he would not be accepted by the landlord, he was not entitled to compensation; but consented to state a case for the Court of Land Cases Reserved (*Lappin and Little* v. *Coote;* Monaghan Assizes, July 10, 1874).

HOUSE OF COMMONS.

Thursday, 30th July.

LEGAL APPOINTMENTS IN IRELAND.

Mr. Serjeant SHERLOCK—I beg to ask the first Lord of the Treasury whether it is the intention of Her Majesty's Government to make any appointment to the office of Lord Chancellor of Ireland, and if so, whether such appointment will be made before the resumption of legal business in November next?

Mr. DISRAELI—The final determination with regard to the postponement for the present of the Irish Judicature Bill has been arrived at so recently that Her Majesty's Government have not had an opportunity of considering what course they ought to pursue as to the vacant legal offices now existing in Ireland. It is, however, a subject which will necessarily engage their immediate attention.

THE IRISH JUDICATURE SYSTEM.

The following question stood on the paper in the name of Mr. Mitchell Henry—To ask the First Lord of the Treasury whether his attention has been directed to pamphlets published by the Lord Justice of Appeal on the Judicial System of Ireland, and to correspondence between the Judge of the Landed Estates Court and the Lord Chancellor, and also to returns recently laid before Parliament on the Judicial work in England and in Ireland respectively, and whether, having regard to the facts stated in these documents, he will, before another Judicature Bill is introduced relating to Ireland, consider the propriety of issuing a Royal Commission, upon which, as in the similar case of England, the general public shall be represented as well as the legal profession, to inquire into the whole judicial system of that country, both as regards the superior courts of common law and equity, and the county courts presided over by the assistant barristers or chairmen of counties, and also into the appointment and duties of persons unlearned in the law as stipendary magistrates in the country?

The Hon. Member, however, merely rose and said—I beg to ask the right hon. gentleman the First Lord of the Treasury the question that stands in my name.

Mr. DISRAELI—At this period of the session it is very considerate of the hon. member not to read his question at length (cheers and laughter). My attention has been called to the pamphlets to which the hon. member refers, and also to the other documents, but it is not the intention of the Government to recommend Her Majesty to issue a Royal Commission, as the information is already in the possession of the Government.

THE IRISH JUDICIARY.

We may frankly confess that we regret the abandonment of the Irish Judicature Bill even more than the postponement of the new English machinery. The latter will be set at work next year, and the loss will not be irreparable; but it is much to be feared lest the withdrawal of the Irish Bill should prove the cause of the total abandonment of the proposals for reducing the Irish Bench so as to bear a reasonable proportion to the work required of its members. This is a policy which requires to be carried through Parliament in a prompt and, we may even say, in a peremptory manner; if hesitation is not fatal to it, it gains no strength by delay. Mr. Sullivan and one or two other members may recognize the evils brought upon Ireland by the excessive proportions both in number and in pay of the Irish Judicial establishment; but the majority of Irish members consider the benefits produced by the expenditure in Dublin of an additional sum drawn from the Consolidated Fund sufficient to outweigh all disadvantages. The diffusion among the Irish Bar of a bountiful number of prizes is also a cause of general satisfaction in Ireland, and when the question of a reduction in the judicial and official staff was mooted last winter, it provoked a very general expression of opposition. The Lord Chancellor's first scheme showed his consciousness of the direction and strength of professional feeling, and its modest proposals have since been made still more strikingly moderate. What is now to be apprehended is the possibility that next year Lord Cairns will drop altogether his recommendations for reducing the judicial and legal machinery of Ireland, and, in the absence of a healthy public opinion on the subject on the other side of St. George's Channel, we do not see how his hands are to be strengthened. Mr. Mitchell Henry suggests the appointment of a Royal Commission, in which the general public as well as the legal profession should be represented, to inquire into the best mode of reconstructing the Irish Judiciary; but if we are to understand by "the general public" that of Ireland, we have little faith in the help thus recommended. The Government can easily ascertain for themselves what might be done, and in doing it they would have to rely for the present on the approbation of England and Scotland, and to wait with some patience for the more tardy acquiescence of independent Irishmen; but, in the state in which the question has been now left, every opposing influence is encouraged to fresh exertions against economical reform, while the influences favourable to it are weakened and dispirited.—*The Times.*

In the State of Puebla, capital punishment is only applied in cases of assaults on the highway and kidnapping.

Digitized by Google

JUDICIAL WORK IN ENGLAND AND IN IRELAND.

In the *Times* of July 27th there appears under the above heading a long letter from Mr. A. M. Sullivan, explanatory of his reasons for moving for the Parliamentary return, recently issued at his instance, of the amount of business disposed of by the English and Irish judges respectively. He maintains that the Irish bench is over-manned, in accordance with a well-understood principle in the Government of Ireland, "that a judicious application of the Consolidated Fund, in prodigalities that bribed influential classes in the community, was the real way to carry things smoothly." This system has created a hunger for judicial pap, and is destroying the spirit of manly independence. The following is the principal portion of Mr. Sullivan's letter:—

Mr. Butt, Mr. Mitchell Henry, Mr. John Martin, myself, and other of the Home Rule members, felt that so astonishing were the facts and figures as to the bar-bribery system in Ireland that if we ventured to state them in debate, English members would deem them too incredible. To obviate this I, in view of the Judicature Bill debates, called for the return on which you have commented. If 12 Judges are really necessary for so much work in Ireland, not 18, but 38, would need to be the number in England, according to the proportion of work, 6 instead of 12 ought to be more than sufficient for Ireland. But not only is the Irish bench enormously over-manned, it is extravagantly over-paid. What ought to be the consideration ordinarily determining the fair amount of salary for a judge? The salary of a judge in our superior courts ought to bear a certain proportion to the average emoluments of a Queen's counsel of the first rank in his profession. The salary ought to be enough to command the services of men in such a rank of professional eminence; no more. The moment you make judicial salaries exceed the average emoluments of such men at their profession, you disturb the whole economy of, and eventually demoralise the bar. You make the attainment of promotion to the bench, not of professional eminence, the real goal to which practitioners strive. You cause the bar to become waiters upon the providence that dispenses judgeships. The mainspring and incentive of their self-reliance is gone; political not forensic oratory becomes the barrister's study. The practice and the facts in England, as contrasted with the facts and the practice in Ireland, illustrate this. In England the actual amount of the judge's salary is considerably below the average emoluments of a first-class Q.C. In Ireland the judge's salary is far in excess of—is, in fact, double—the average emoluments of a first class Q.C. In other words, if the Irish judges are not extravagantly overpaid as well as underworked, the salary of an English judge ought to be £10,000, where it is £5,000. If the English judges are decently paid, the Irish judges should have £1,500 where they now receive £3,000 and £3,500. This is but a part, and not the largest part of the system. The state of affairs as to our county court judges is infinitely worse. If there be any public man or public journal in England desirous not alone of enforcing "economy," but of terminating a very vicious and demoralising system, here is a field for useful labour. I have myself ascertained a fact calculated to startle most Englishmen—namely, that for every three practising barristers in Ireland (*i.e.*, men who seek to live by the profession, there is one Goverment situation at the disposal of the Castle. What wonder that Cork Hill is, as Lord Justice Christian says, the very focus and hotbed of intrigue!

RATIONAL LAW-MAKING.

Among the recommendations contained in the recently published Report of the Select Committee on Public Departments is one to the effect that the Statutes of the Realm should in future be printed in a form which will admit of the volume comprising the year's legislation being sold at about five shillings. The Committee thinks that the issue of Acts of Parliament in a cheap form is a matter of great public importance, since it would furnish to all classes an opportunity of informing themselves upon the laws which they are expected to obey. As the recommendation stands, the discrepancy between the end proposed and the means suggested for its attainment is very considerable. The publication of the statutes at the rate of five shillings a volume might be valuable as an indication of the disposition of the Government to make its subjects acquainted with the laws under which they live, but this is about all that can be said in its favour. Very few persons would care to pick out the provisions which specially affect them from the ponderous volume which contains the annual results of Parliamentary wisdom. The mere table of contents would throw most unlearned readers into hopeless confusion; and if any person more persevering than the rest succeeded in getting hold of the statute he was in search of, he would eventually be confounded by the technical language and the frequent references to other Acts not contained in the same volume. It may be questioned whether the authors of this recommendation are themselves in the habit of studying the laws which they assist in passing. At the same time the object which the Committee has in view is one of real importance. In England punishment is in too many cases the principal machinery for diffusing a knowledge of law. Certain acts are forbidden, and certain acts are enjoined, but a great part of the community only discovers what these acts severally are by suffering, or seeing others suffer, for doing or not doing them. The criminal class, indeed, learns to distinguish between the offences which involve penal servitude and those which are let off with imprisonment; but there is a much larger class which lives in almost total ignorance of the laws which are supposed to govern its conduct, and by consequence furnishes many unintentional recruits to the criminal class.

There must be a considerable number of offences which would never have been committed if the offender had clearly taken in beforehand that he was bringing himself within the grasp of the law. If even a few persons can be kept from breaking the law by being made more familiar with its provisions, it will clearly be a cheaper process than giving them an experimental acquaintance with the penalties which they incur by their ignorance. Besides this, a better knowledge of what the law commands or forbids might sometimes save people from making blunders which, as regards results, may be not less disastrous than actual crimes. There is a good deal of ignorant wrong-dealing—with trust property for example—which is not fraudulent, but yet produces as much misery as though it were fraudulent. If the principles of the laws affecting trustees were better known most of this might be avoided, and they would be better known if the laws themselves could be had in a cheaper and more intelligible shape. Trustees would then contract a habit of looking at the law before dealing with the funds under their care, and the existence of greater facilities for gaining a knowledge of a trustee's duties might induce many cautious men to accept the office who are now deterred by the sense of their own ignorance and of the risks which that ignorance involves. A further gain would be found in the removal of one cause of the impunity which offenders against the law too often enjoy. Those who are injured by breaches of the law do not know what means of redress have been provided for them, and they consequently sit down patiently under wrongs for which they would otherwise seek compensation. It would be rash to say that the diffusion of this knowledge would always benefit its possessor, inasmuch as even a succesful suit is usually a costly gratification. But it would benefit the community at large, since it would make many wrongdoers hesitate before incurring penalties which they now disregard because they feel assured that the law will not be put in force against them. What is really wanted for this purpose is cheap and convenient editions of separate Acts or groups of Acts, especially of those which affect the less educated classes. Some acquaintance with law is desirable for every one, but it is most of all desirable for those who from various circumstances are least likely to possess it if it is not designedly brought within their reach. Something more would be needed, however, than the bare text of the Act of Parliament. Such editions as we have in view should be accompanied with a plain and untechnical statement of what the Act purports to do. The best drawn statute needs to be supplemented in this way before it can be adapted for popular use. It would be further desirable that to each

Digitized by Google

Act, or group of Acts, there should be prefixed a concise explanation of a few elementary legal conceptions. It ought not to be impossible to give reasons why laws ought to be obeyed, or why contracts should be enforced, which would secure a more intelligent acquiescence than can be extorted by that vague dread of the police or of a "lawyer's letter" which at present constitutes to a large part of the population the sole sanction in civil and criminal matters. If these editions were thoroughly well prepared and were published at a sufficiently low price, contemporary statute law would not remain the sealed book which it is to the vast majority of Englishmen.

A more remote advantage following upon the adoption of this plan would be seen in the preparation of the Acts thus popularized. In proportion as it became recognised that laws are meant to be understood, and understood by those to whom they are addressed, as well as by the experts who expound them, Parliament would be forced to give up passing laws which are unintelligible. The mystery and confusion of many Acts are due not so much to the inherent difficulty of the subject matter as, as to the carelessness of those who make them. It is a constant complaint of the judges who have to interpret Acts of Parliament that they have been passed in a shape which will not allow of any uniform and consistent sense being put upon all parts of them. The judge has to pick out what seems to be the meaning of the principal provisions, and to neglect or put a gloss upon other provisions which conflict with this. If a statute had to be explained as soon as passed, it would be necessary to create a competent legal staff for this express purpose, and after this staff had reported several times that such and such a new Act was so obscurely worded that, until the opinion of the judges could be taken upon it, it would have to be issued without the customary explanation, it would probably be found convenient to consult the legal department as to the effect of a Bill before it had been read a third time. By this means amendments in committee would come to bear their true character—that of instructions to the draftsmen as to the purpose of the modifications to be introduced into the original Bill. At present, however intelligible a Bill may be when it is first introduced, there is no security that it will not become utter nonsense by the time that it has got through committee. A number of contradictory amendments are proposed, some of which are adopted in part, others altogether—some in the form in which they are first conceived, others after they have been amended in their turn. It is nobody's business to see that these changes are properly dovetailed into the Bill, still less that they harmonize with the unamended parts of it, or with one another. It is quite possible that every clause of a large measure may have been altered during its passage through committee, and that, in order to make it attain what has now become its object, the whole structure of the Bill ought to be recast. The existence of a Parliamentary legal department would make this process comparatively simple. Instead of members undertaking to alter the wording of each separate clause, they would propose their amendments upon each section, and the original words, together with the change ordered to be introduced instead of them, would go back to the legal department to be put into proper form.

By slightly extending the functions of this department the time of the House of Commons might be very much economized. At present nothing is known of the contents of a Bill upon its first introduction except what can be gathered from the statement of the member who asks leave to bring it in; and when, as not unfrequently happens, leave is given without anything more than the title of the Bill being read, there is no opportunity of explaining its provisions until the debate on the second reading. If every Bill were printed before leave was asked to bring it in, and further, if every Bill were prefaced by a statement of the objects which it proposed to effect, and the means by which this object was to be attained, members would know beforehand whether these objects were such as they desired to see achieved, and whether the means proposed seemed calculated to achieve them. If the majority of the House were satisfied that the objects set forth in the Bill were inexpedient, the discussion would naturally be taken on the motion for leave, and, unless the mover could change the opinion of the House upon the merits of his Bill as set out in the preliminary statement, it would be rejected at that stage instead of taking up valuable time some weeks later. In the case of Bills the objects of which were *primâ facie* good, such an explanation would make it easier to distinguish between means and ends, and thus tend to check that confusion between what ought to be said in the debate on the second reading and what ought to be reserved for the discussion in committee. In the case of Bills which became law, the preliminary statement (modified by the changes introduced during the progress of the measure) would supply the foundation of the explanation to be prefixed to the Act of Parliament. Under the present system Bills, the drift of which is but imperfectly understood, are allowed to pass into laws the meaning of which is necessarily obscure. Under such a system as has just been sketched, the meaning of the original Bill, of the amendments on it, and of the Act growing out of them, would be alike intelligible.—*Saturday Review.*

THE LAW OF HOMICIDE.

The Select Committee to whom the Homicide Law Amendment Bill was referred have agreed to a special report, which is published. They have examined Mr. Justice Blackburn and Baron Bramwell, and have received from the Chief Justice of England a letter containing an elaborate criticism of the bill. They have also examined Mr. Stephen, Q.C., by whom the bill was drawn. The Committee consider that the law of homicide requires very considerable alterations in substance before it is reduced to its simplest form, and made permanent in a code. They were required to declare that negligence is not manslaughter, and that suicide is not murder; both probably salutary changes, but which should be settled on their own merits. The existing definition of murder, which may be roughly stated as killing with malice aforethought, is far too narrow, and the defect has been supplied, not by re-defining the crime, but by subtle intendments of law, by which malice is presumed to exist in some cases where the action is unpremeditated, and even in some cases where death is caused by accident. It is most desirable that a state of the law under which people are condemned and executed by means of a legal fiction should cease. But such a change, however urgently required, is, in the opinion of the committee, not a matter for them, but rather for the law officers of the Crown, assisted by the advice and fortified by the sanction of the highest legal authorities, after mature and careful deliberation. The committee are of opinion that it is not desirable to proceed with the present bill, notwithstanding that this experiment in codification has been presented to them with every advantage that learning and skill can give it. The committee earnestly recommend that the attention of the Government and of Parliament should be directed to the present imperfect state of the definition of the law of murder. They believe that they have collected materials from which a re-definition of the law of murder can be produced, and they are convinced that such a definition is urgently needed, not only to rescue the law from its present discreditable state, but to give clear notions to the public at large of the real nature and extent of this crime, and to prevent the confusion often created in the minds of jurors by an appeal to the doctrine that murder cannot be without malice aforethought, which it is not always easy for the judge to remove. If there is any case in which the law should speak plainly, without sophism or evasion, it is where life is at stake; and it is on this very occasion that the law is most evasive and most sophistical.

FEMALE MAGISTRATES.—Female justices are not an exceeding rarity now-a-days in America, but we have here a story that varies a trifle from the Wyoming fashion. Mr. Starks was a justice of the peace in an Illinois town, and he had for a wife a woman not unworthy to be ranked as a second cousin to the historic "Molly Starks." Mrs. Starks always acted as clerk to the aforesaid justice, and one day while a trial was in progress, she dropped her pencil. The justice at once roared out, "O, yes, stand back, I say, the Court has lost her pencil."

Digitized by Google

THE APPOINTMENT OF MR. FARRELL AS CHIEF CLERK IN BANKRUPTCY.

At the sitting of the Court of Bankruptcy on Tuesday, Judge Harrison said he believed the professional gentlemen present were all aware that Mr. Farrell, formerly the Chief Clerk in Insolvency, and a most experienced officer of the court, had been appointed to the office of Chief Clerk in Bankruptcy, a position analogous to that of Chief Registrar. This appointment had at length been made, the judges of the court having for the last two years used their exertions with the Treasury to have the valuable services of Mr. Farrell suitably recognised. Mr. Farrell had been appointed, or was named in the Bill of 1872, when it passed in the committee of the House of Lords, as Chief Registrar; but through some misfortune, he might say—there was no use in applying a hard word to what had occurred,—his name was struck out of the Bill in the House of Commons without any notice appearing in the usual way on the notice paper, or any intimation that such a course was proposed. For the last two years, as he had said, the judges of the court had been in constant communication with the Treasury and other departments to try to get that wrong remedied, and at last, he was glad to say, it had been almost satisfactorily redressed. The judges felt indebted to the present Chancellor of the Exchequer for the considerate manner in which he had attended to their requisitions. It was unnecessary for him (Judge Harrison) to say one word in regard to Mr. Farrell's qualifications for the post to which he had been appointed. They were well known to all the professional gentlemen practising in the court. The new office to which Mr. Farrell had now been appointed was almost similar to that of Chief Registrar, and the duties he would have to discharge as Chief Clerk in Bankruptcy would be analogous to the duties of Chief Registrar. He was sure that the gentlemen who heard him—many of them having been a long time practising in that court—would agree with him in congratulating Mr. Farrell on his appointment. It was unnecessary to say that no appointment could be more satisfactory to all persons connected with the court, or more thoroughly advantageous to the public, who, after all, are chiefly concerned. His great experience, accurate legal knowledge, and thorough mastery of all the details of bankruptcy law and practice, would now be available, and of the greatest assistance in adding the court in disposing of its heavy and increasing business. He (Judge Harrison) could only say now, and he was sure it was the wish of all present, that he hoped Mr. Farrell might long live to discharge the duties of his new office.

A SHORT RULE FOR LIFE INSURERS.

It is of course desirable to insure on the most advantageous terms, but it is more desirable to insure beyond the possibility of doubt. Husbands and fathers are chiefly anxious upon this point, and how are they to feel certain on it? They can only do this by ascertaining what funds the office has in hand, how these funds are invested, and what relation these funds bear to the liabilities of the Company. The returns made under the Act of 1870 supply this information, and we are thus enabled to apply a test to all Companies, and we should either avoid altogether those which do not satisfactorily answer it, or at any rate only resort to them under particular reasons for confidence in the management. Everything must have a beginning, and we cannot expect a new Company to possess the accumulated capital of a Company that has done a large and steady business for forty years. But persons witnout special knowledge or connexions will do well to select some Company that satisfies the following test. Experience shows that the premium received annually may be reckoned at three per cent. on the sums assured. Thus, if an office has outstanding policies for a million sterling, its income from premiums will be £30,000 a year. If it raises £30,000 a year, its outstanding policies will be for a million. Supposing that an office has outstanding policies to this amount, what amount of assets, invested in indisputable securities, should it have? The answer derived from the history and position of the best offices is that the accumulated fund of the Society should be at least eight times the amount of the annual premiums, or should be at least one-fourth of the money assured. The position of the best offices would be more truly described by saying that their accumulated fund is ten times the amount of their premium revenue, or one-third of the sum assured, and there are offices which have a fund twenty times the amount of their premium revenue. But the insurer need not apply a rule which only a few offices could satisfy, and the rule whiho would bid him be content swith eight times the annual premium is, we believe, quite safe.—*Saturday Review*.

LORD COCKBURN ON THE CHARACTER OF BROUGHAM.

The Times, noticing the recently published "Journal of Henry Cockburn," says:—

The character of Brougham, vol. 1, pp. 190-210, is the most elaborate piece of writing in the whole journal, and though the style is occasionally inelegant, it is on the whole a masterly composition. He says:—

"It is impossible to contemplate this astonishing person without the highest admiration and the deepest sorrow. His character is marked by such strong lines, and has been evolved in such unequivocal facts, that it is liable to no material doubt. Its peculiarity consists in the contrast which exists between the excellence of his intellectual and the defects of his moral nature."

And then he proceeds to work out this contrast in detail with a knowledge of the subject and a power of expression which combine into a brilliant masterpiece. Brougham's immense acquisitions in science, philosophy, and history; his knowledge of contemporary events and public men; his "stupendous industry," his "unrelaxing energy," and his varied eloquence, now withering an adversary with storms of sarcasm and invective, now unfolding in a style at once "pure and magnificent" those broad views and great principles of which he was a master, are all by Lord Cockburn not only cheerfully, but even reverentially acknowledged. His two deficiencies, according to Lord Cockburn, were in law and classics. He was not, says our author, "even such a gentlemanlike scholar as often appears in Parliament, yet falls far short of everything like accurate or deep classical learning." His legal knowledge, we are told, would never have enabled him to approach even the lower heights of his profession, and his disdain of other people's arguments prevented him from mending as a Judge the defects which had marked him as an advocate. But his worst faults were moral. His overweening opinion of himself was accompanied by a malignant jealousy of all personal rivals, and a systematic depreciation of them on every possible occasion as long as they were likely to be dangerous to him. He is "an instance of the blunders men commit about themselves. He thinks that his power lies in his formidableness, in the terror of people lest they should incur his violence; but, in truth, that is his weakness. Could he retain the esteem of men half as he provokes their hostility he would be omnipotent." In public affairs he always thought more of himself than of his party, or of the great ends to be accomplished These must be subservient to his own vanity, or he would thwart and undermine them. The consequence was, that in spite of his great services to the Liberal cause, it was impossible to rely on either his fidelity or discretion. "The very people he is vehement for often inwardly wish that he had let them succeed or advance quietly, instead of endangering their cause by the splendid intemperance of his championship." Such is a very imperfect epitome of this eloquent and searching diagnosis, the unfavourable parts of which are abundantly confirmed by Lord Campbell, so far as we may be disposed to accept Lord Campbell's testimony. Brougham himself, of course, has a different version of the story, and as far, perhaps, as regards the one great fact round which so much controversy has turned—namely, his treatment of and by the Whigs, the evidence is pretty evenly balanced. The chief charge which the Whigs have brought against him is that he intrigued to supplant Lord Grey, being desirous to be Prime Minister himself. Grey's demeanour to him, as described by Lord Cockburn, certainly favours the supposition:—

"I saw these two remarkable men meet at Oxenford one

Digitized by Google

day before the festival was held, and nobody who witnessed the scene can ever forget it. . . . Brougham walked directly up to Grey, who was standing conversing, and made the gesture, though timidly, of one intending to shake hands. Lord Grey made no corresponding gesture, but drew himself up, made no sign of recognition, but in steady silence looked a calm repulse."

But Lord Brougham, in his own autobiography, has quoted a letter from Lord Grey, in which the latter expressly denies that he had ever suspected Lord Brougham of intriguing against himself. And as for the King's dislike, which is said to have had a good deal to do with his exclusion from the Woolsack in 1835, Brougham himself very justly says that the King, in his then frame of mind towards the Whigs, would never have refused to make him Chancellor because he had offended Lord Grey. The truth rather seems to be that the King had been considerably annoyed by Brougham's speeches in Scotland the year before, and especially by one he made at Inverness, when, on being presented with the freedom of the city, he thanked the citizens in the King's name for the honour they had done to his deputy. Some other rather ludicrous *gaucheries* of this kind of which Brougham was guilty had doubtless created a prejudice against him in the Royal Family; and perhaps his habit of always speaking of the King as "William," which, no doubt, had reached His Majesty's ears, may not have increased the Sovereign's partiality for his servant. It is probable, however, that these feelings by themselves would not have been allowed to stand in the way of Brougham's appointment had the new Prime Minister desired it. But it seems to be allowed on all hands that he was only too glad to get rid of him. Brougham, though we may believe his protestations that he had no desire to be First Lord of the Treasury, would submit to no control; wished everything to be done through or by himself, and took credit to himself for almost everything that was done. That he had offended Lord Grey, though he might not have suspected him of treachery, is almost certain; and Lord Melbourne, though not so proud a man as his predecessor, was too able a one not to feel insulted by his airs of superiority, and too lazy a one not to be bored by them. Lord Cockburn says well enough that "the probability must always be against the individual whom, though his support be valuable and his opposition formidable, his whole party unites to cast off." Yet here, too, we must remember that Lord Brougham has a counter case against the Whigs which must not be lightly thrown aside. According to him it was his disapproval of the Lichfield House Compact which caused the Whigs finally to break with him. They had, in fact, to choose between himself and O'Connell, and they choose the latter. If this was so, then, of course, Lord Cockburn's assertion just recorded goes for nothing, because in that case Brougham was cast off in favour of "an individual" whose support was more valuable and whose opposition was more formidable than his own. And there is undoubtedly apparent in all that Lord Cockburn has written on the subject a disposition to think evil of his former friend and coadjutor. He predicts that when abandoned by the Whigs he will throw in his lot with the Radicals, still clinging to the notion that with Brougham personal advancement was prior to all other considerations. But Brougham, we see, did nothing of the kind; and this much at least may be said of him, that his conduct after leaving the Whigs was uniformly consistent with his own version of the quarrel.

IS A RESIDUARY DEVISE STILL SPECIFIC?

It seems scarcely credible that the law determining what are, and what are not, primarily assets for the payment of a testator's debts, should not long ago have been conclusively settled. The case, however, of *Lancefield* v. *Iggulden*, lately decided by Vice-Chancellor Bacon, turns upon this question, and we venture to think does not contribute to make the rules of law less difficult or perplexing. The point which arose in this case is the familiar one, whether or not a residuary devise is still specific? Before the Wills Act there was, of course, no doubt upon this question. As the will spoke from the date of its making, the residuary real estate was as clearly ascertainable as what was specifically devised; and the general opinion has been that the law in this respect remains unaltered. The decision in the present case, therefore, which is to the contrary effect, is somewhat of a surprise. The plaintiff was legatee and devisee of George Lancefield, whose will was dated the 24th Nov., 1864, and he also claimed to be a creditor of the testator to the amount of £400. The bill was for an account between the plaintiff and the other creditors; that the testator's real and personal estate should be applied in payment of his debts, and that subject thereto the trusts of the will should be performed. Those trusts were to the effect that the whole property of the testator should be enjoyed by his mother for her life; after her death a specific legacy upon certain trusts was to be raised, and parts of the real property were the subject of specific devises. The residue of the freehold and leasehold hereditaments was to vest absolutely in the testator's sister, Eliza Lancefield. The mother died in April, 1870. The plaintiff, whose claim to be a creditor was disallowed, contended that, the personal estate proving insufficient, the residuary real estate was primarily applicable in exoneration of what was specifically devised. The Vice-Chancellor decided in his favour, observing that the true rule in such cases was laid down in *Tombs* v. *Rich* (2 Coll. 490). We cannot, however, discover that the present decision is required by that case, and there are certainly other cases which seem to warrant a different conclusion. *Tombs* v. *Rich*, decided in 1846 by Vice Chancellor Knight-Bruce, was a case of simple contract and specialty debts where, the personalty being insufficient to satisfy the latter, the specific legatees and devisees were bound to contribute rateably. That case, therefore, was not directly in point. But *Gibbins* v. *Eyden*, decided by Malins, V.C., in 1869, and the judgment of Chelmsford, L.C., pronounced in Nov., 1867, in *Hensman* v. *Fryer* (3 Ch. App.), are most clearly and unambiguously to the effect that a residuary devise is still specific, notwithstanding the 24th section of the Wills Act. It is true that Vice-Chancellor Malins, in spite of his own judgment in *Gibbins* v. *Eyden*, and of the terms of approval of *Hensman* v. *Fryer* which he there uses, decided in the opposite sense in *Dugdale* v. *Dugdale* in 1872 (L. Rep. 14 Eq.), and spoke in cursory and rather disrespectful terms of Lord Chelmsford's judgment, remarking that he was not bound to follow even the decision of a court of appeal "if clearly erroneous." But the learned Vice-Chancellor failed to show wherein that decision was "clearly erroneous," and was unable to quote a single case in his favour. We submit, therefore, that such cases as the present and that of *Dugdale* v. *Dugdale* have a tendency to unsettle plain rules of law, and that *Hensman* v. *Fryer*, being the judgment of a court of appeal and being in harmony with the current of authorities, is more likely to be followed, if the present decision is appealed against, than the judgments of the two Vice-Chancellors. In that case we should also have the sound principle carried out that a statute should not be interpreted to imply a greater change in the law than is explicitly expressed on the face of it.—*The Law Times.*

CASES AFFECTING SOLICITORS.

Our Reports for the current month contain two cases closely affecting solicitors in relation to the conduct of business with clients. In one of these, *Turton* v. *Barber*, 43 Law J. Rep. (N.S.) Ch. 468, there was a claim under an administration suit for damages for breach by the testator of an agreement to grant a lease of mines. An inquiry had been directed, the claimant had filed an affidavit, and his solicitor, who had acted in the negociations for the lease, also filed an affidavit in support of the claim. An order was obtained for the cross-examination of the claimant; and at the cross-examination he was asked to produce the bill of costs of the solicitor, and also asked as to certain communications between him and the solicitor, having reference to the obstacles to the lease of the mines. The claimant relied on his privilege, and refused to produce the bill of costs or to answer. Thereupon a motion was made to compel both production and answer; and it was contended that, as the solicitor had made an affidavit in the suit in support of the claim, there had been a waiver of the privilege. The Vice-Chancellor held that the making of the

Digitized by Google

affidavit was not such a waiver of the client's privilege as to entitle the other side to cross-examine him as to all that had passed between him and his solicitor. His Honour also thought that the bill of costs was privileged, remarking that a bill of costs is really a record of what has taken place between solicitor and client, and that, as the oral communications between them were privileged, the written account of these communications must be so likewise.

The other case, that of *Barnes* v. *Addy*, 43 Law J. Rep. (N.S.) Ch. 513, seems to show a healthy reaction from the extreme length to which the Court of Chancery has been asked or tempted to go, both in fixing trustees with liability, and in condemning solicitors in costs. In that case the sole survivor of three trustees instructed a solicitor to prepare a deed appointing the husband of the *cestui que trust* sole trustee in his place; another solicitor, acting for the *cestui que trust* and her husband, perused and approved of the draft. The deed was executed, and the trust fund was transferred to the husband, the new trustee, and he sold out the consols representing the fund and appropriated the money. Both the solicitors who had acted in the several capacities mentioned were made defendants to a bill filed to recover the trust fund from the original trustee. The Full Court of Appeal, affirming the decision of Vice-Chancellor Wickens, held that neither of them was liable for the loss occasioned by the breach of trust. It was contended at the bar, that although these gentlemen might not be liable as trustees, yet they ought to be charged with costs. Upon this point the Lord Chancellor (Lord Selborne) spoke very decisively. "I have been under the impression," said he, "and I hope the impression will go abroad, that of late years the Court has set its face against making solicitors or others who are properly witnesses, and who are not primarily chargeable with any part of the relief prayed, parties to suits with a view of charging them with costs alone. I know no principle upon which they can be charged and made parties for that purpose unless they are chargeable with more or greater relief." Lord Justice James agreed with the sentiment expressed by the Vice-Chancellor, that, "with a view to discourage as far as possible suits of this nature against solicitors," the bill ought to be dismissed with costs as against the solicitors. It is to be hoped that the lesson of this case may not be lost.—*The Law Journal.*

BREACH OF COVENANT TO REPAIR—MEASURE OF DAMAGES.

A case of some interest in relation to the assessment of damages on the breach of a repairing covenant contained in a lease came before the Court of Common Pleas, consisting of Lord Coleridge, C.J. and Brett and Grove, JJ., on the 26th ult. Divested of extraneous matter, the facts in *Williams* v. *Williams* (the case referred to) were these: A lessee under covenant with his superior landlord to keep the demised property in repair, and under a special and independent covenant to repair on two months' notice, had demised the same property to a sub-lessee, who entered into similar covenants with his lessor. The lessee having received a notice from the superior landlord to put the property in repair, gave notice to the sub-lessee to repair under his special covenant, but before the two months had elapsed, fearing lest that the superior landlord should resort to his remedy by eviction, was permitted by the sub-lessee to enter upon the demised property and execute the repairs required by the superior landlord. The lessee having executed the repairs brought his action against the sub-lessee for breach of the general covenant to keep in repair, claiming as damages the sum expended in the execution of the repairs. The Court of Common Pleas held that the lessee could only recover nominal damages. This, we think, is a conclusion which no layman would arrive at, and that very many lawyers would reject. The unanimity of the Court of Common Pleas fails to convince us of its soundness, and we are unable to discover anything in the judgments delivered by Lord Coleridge and Mr. Justice Brett which at all removes our *prima facie* impression that the view acted on by the court operated as a denial of justice.

We do not, of course, contend that the liability of the sub-lessee under his covenant would be necessarily co-extensive with the liability of the lessee under his covenant, though the covenants should have been couched in identical language. As was decided in *Walker* v. *Hatton* (10 M. & W. 249), the extent of repair which a covenantee can require is governed in a great degree by the age and general condition of the property at the time when the covenant was entered into. Neither do we contend that the entire costs incurred by the lessee in executing such repairs as the sub-lessee was bound to execute, or was liable for not having executed, would necessarily be recoverable against the sub lessee, since it is obviously possible that the lessee might have executed such repairs in a needlessly extravagant and costly manner.

Assuming, however, as seems to have been the fact, that the sub-lessee, being under covenant to keep the premises in substantial repair, did not so keep them we cannot understand why for such a breach substantial damages should not be recoverable. The court seems to have been of opinion that the repairs having been in fact executed before action brought, there was no real damage. With great respect we submit that this is to ignore the peculiar circumstances under which the repairs were executed. They were in truth executed by the lessor by way of salvage to protect his term, and incidentally that of the sub-lessee. We find it impossible to infer that there was any contract, or anything resembling a contract, between the lessee and sub-lessee, that the repairs carried out by the lessee should exonerate the sub lessee from any *previously accrued* legal liability which might be subsisting under his covenants. The sub-lessee could not, with any show of reason, have inferred that repairs so executed by his lessor were to operate in mitigation of damages recoverable for the previous breach. The counsel for the defendant did not venture to argue that they operated to release the right of action for that breach. The court said that at the time of action brought the *reversion* was not injured. Be it so; but the reversioner was most seriously injured, and that we believe to be the important point. Though the depreciation arising to the market value of the reversion is, no doubt, in general a fair measure of the damage sustained, the rule is not universal. Baron Channell puts the matter on its true footing when he says, in *Davies* v. *Underwood* (3 Jur. N. S., 1223): "The question is, what damage has the plaintiff sustained, not, what is the value of the reversion? The latter is only a test for ascertaining the former."

A sub-lessee could not, we apprehend, under the ordinary covenants be held liable in damages for the loss of the lessor's term on an eviction by a superior landlord for breaches of a repairing covenant which the sub-lessee ought to have performed. The loss of a lessor's term is a consequence which the law would scarcely expect the sub-lessee to foresee, and might therefore consider too remote. Where, however, an eviction has taken place, or when the lessor is liable to eviction, and such eviction or liability to eviction arises wholly or in part through the default of the sub-lessee in the performance of his covenant to repair, there we think the true measure of damage is the sum required for the specific performance of the covenant, and is not to be restricted by any reference to the question whether the market value of the reversion is depreciated. In this there is no possible hardship on the sub-lessee. If a lessee covenants to execute a given work and fails to execute it, he has assuredly no ground for complaint if compelled to pay the sum necessary for its execution, or for recouping the lessor if the lessor himself has been compelled to execute it.

The form of the covenants to repair usually inserted in a sub-lease will have to be modified in the interest of the lessor if the decision in *Williams* v. *Williams* is to be maintained. To indemnify a lessor against his superior landlord, to the extent to which a lessor generally expects to be indemnified, it will be necessary that the sub-lessee should covenant to perform, or to indemnify the lessor against, the covenants of the original lease, and that a power be given to the lessor, if he thinks fit, to enter and execute the necessary repairs, and to recover the amount expended from the sub-lessee.—*The Law Times.*

Digitized by Google

MORALLY A FRAUD.

Ann George, a charwoman, was charged at Worship-street with obtaining victuals and drink by fraud. The woman went to a coffee-house, ordered coffee, bread and butter, and haddocks for two, devoured the whole of the food, and then it was discovered that she had no means of paying. The coffee house keeper, who evidently does not know the law, gave her into custody. There is a story told of a well-dressed rogue going to a hotel, partaking of a sumptuous dinner, and then assuming utter impecuniosity. The landlord offered to let the cheat depart without the merited thrashing if he would serve his rival, the Blue Lion, the same trick. "I did the Blue Lion yesterday," was the reply, "and the landlord gave me five shillings to do you to-day."

The rogue ran no risk of punishment, for, as Mr. Bushby said in respect to Ann George, "it was really not a fraud in criminal law. Morally and actually it was undoubtedly a fraud, but in law it was a civil debt." In France the law is different, and a person who takes refreshment without the means of paying for it, is liable to a term of imprisonment. We are not sure that our law is not the most consistent, because to obtain a dress from a silk mercer on credit, without the prospect of being able to pay for it, is morally as gross a fraud as for a hungry person to eat food without being able to pay for it. Moreover, we perceive that this sort of fraud is infrequent. Since 1867 licensed victuallers and beershop keepers have been debarred from recovering by legal process money due for beer, cider, and perry consumed on the premises, and we have not heard of any case of the publicans being cheated. Perhaps Englishmen are more anxious about paying "debts of honour,"—that is, debts not recoverable by legal process—than they are about the discharge of debts due at law.

It was rather cruel of Mr. Bushby to tell the coffee-house keeper that he might, if he thought fit, summon the prisoner in the County Court. Fancy the victimised coffee-house keeper wasting his time and money in summoning and appearing against a pauper charwoman for a debt of eighteen pence! For the future he had better demand prepayment from hungry-looking females who order coffee, bread and butter, and haddocks for two, on the pretence that they have a friend waiting outside who will come in directly.—*The Law Journal.*

WILTS ASSIZES, SALISBURY.—SATURDAY, JULY 18.

(Before BRETT, J.)

Parliamentary election — Returning officer — Action for penalties.

This was an action brought to recover a penalty of £500 under the 7 & 8 Will. 3, c. 25.

H. T. Cole, Q.C. (with *Charles*), (instructed by *Messrs. Shaen and Roscoe*), for the plaintiff.

Kingdon, Q.C. (with *Pinder*), (instructed by *Messrs. Mullings, Elletts, and Co.*), for the defendants.

The facts were, that at the last election for the Parliamentary borough of Cricklade, which is of very considerable area, extending over fifty-one parishes, there were six candidates, of whom Mr. Daniel Gooch and Mr. A. L. Goddard were elected by a large majority; and amongst the other candidates were Mr. William Morris, the proprietor of a local newspaper. A Mr. Langley was the returning officer, and Mr. John Mullings, the town clerk, was the adviser of the returning officer. There being twelve polling districts, with eighteen presiding officers, a great amount of work had to be done in preparing for the contest, and a large staff of officers had to be provided to assist the town clerk in making the necessary preparations. The charges sent in by the town clerk amounted to £580, which, divided into six parts, made the charge against each candidate £96 15s., and in such amount there was included a customary gratuity of £15 15s. to the returning officer, which had been the custom at every election for upwards of forty years to pay him to cover any expenses which might have been personally incurred. That sum would be a charge of £1 15s. for each candidate. On the trial it was proved that Mr. Mullings had paid over the gratuity to the returning officer some time previous to having actually received the candidates' money. The returning officer had only recently been elected, and was wholly unaware as to any questions of legality or illegality of receiving the gratuity; and, for that matter, it appeared that the town clerk was unaware of the above statute, and of any effect it might have in respect of the payment of such customary gratuity. The declaration was laid against the returning officer, under sect. 6 of the Act, for having wilfully received, and taken from the plaintiff, a fee, reward, or gratuity for the execution of the writ (to return the members), or that he had committed a wilful offence against the statute. The counsel for the plaintiff contended that the defendant had brought himself within the statute, and made himself liable to the penalty, by the payment to him of the portion of the gratuity which Mr. Morris had to pay; all the other candidates appear to have paid their quota of the charge without demur. And the counsel for the plaintiff relied on the case *Farr* v. *Magahee* (7 C. & P.), which was under sect. 72 of the Act against overseers for wilfully inserting the names of voters on the register, and contended that it was not necessary to show wilful misconduct. The judge remarked that at the time when that statute was passed, the return was made by writ on return. The counsel for the defendant contended that there was no evidence of any wilful offence to bring the defendant within the terms of the statute; the word "wilful" had received construction in several cases, and it had been decided in *Drew* v. *Coulton* (1 East, 562), and in note A., p. 2, there were some observations on the construction of the word wilful, but since then it had been held that no such action laid in the execution of a sheriff's office, unless it be wilful and malicious. In *Ashby* v. *White* (1 Sm. L. Cas.), at law, there was no ground for such action, and therefore none for a penalty, as it required wilfulness and malice, and Wilson, J., had remarked that to be wilful it must be against the person's conviction, and he must know that he has done wrong. The defendant's counsel stated that the points of defence were: first, that the defendant had not committed any wilful offence against the statute, as there had been a long unbroken custom to pay such gratuity; secondly, that the defendant never had one shilling of the plaintiff's money, as the town clerk had paid him the gratuity before receiving the proportion of expenses from the plaintiff; thirdly, that under the Ballot Act the returning officer was allowed to charge his reasonable expenses, and that if a man made a mistake in a single item, he could not be charged with having committed a wilful act, so as to render him liable to a penalty of £500; fourthly, that it was not a case within the statute. Sect. 2 prohibited any officer to whom the execution of any writ for electing members was entrusted from giving, paying, receiving, or taking any fee, reward or gratuity, for the making out, receipt, delivery, return, or execution of any such writ; and under sect. 6, the returning officer had to deliver to any person who should desire the same, a copy of the poll taken at such election, paying only a reasonable charge for writing the same, and every officer to whom the execution of any writ or precept for electing members to serve in Parliament did belong, for every wilful offence contrary to that Act, should forfeit to the party aggrieved the sum of £500, with costs of suit.

BRETT, J., stated that he should ask the jury if the defendant was aware of the charge made for him, and that when he received the money whether he knew it was a gratuity, and that he believed it was a lawful charge; and he also remarked that the plaintiff had at first made no objection to the item; he knew nothing about the Act of Parliament, or whether it was legal or not, except that some one found it out and advised him to bring the action, the defendant's share being only one-sixth part of 15 guineas, and for doing so the defendant was sought to be made to pay £500. It could not be said that he had broken the Act wilfully; it might have been under a mistake, and, whoever broke the Act, the defendant did not; and the following questions were left to the jury to answer:—First. When the defendant received the 15 guineas, did he know that any charge was made in his behalf for gratuity? The answer was "No."—Secondly. Did he, when he received it, know that it was paid to him as a customary gratuity or fee? The

Digitized by Google

answer was "Yes."—Thirdly. If he received it as a fee did he believe he received it as a lawful charge? The answer was "Yes."—Fourthly. Did Mr. Mullings, when he charged it, believe it to be lawful as a customary payment? The answer was "Yes."

Judgment was thereupon entered for the defendant, with leave to plaintiff to move, upon the answers of the jury, that the verdict ought to have been for the plaintiff. A certificate for the special jury was given.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

ADMISSION TO THE IRISH BAR.

"Attorney's Apprentice," writing, July 25th, suggests that we should publish the course requisite for admission to the Irish Bar. So to do would, however, unnecessarily occupy space, as our correspondent will have no difficulty in obtaining the necessary information on applying at the office of the courteous Under-Treasurer of the King's Inn, Henrietta-street.—[ED.]

OBITUARY.

RIGHT HON. ABRAHAM BREWSTER.

It is our painful duty to record the demise of the Right Hon. Abraham Brewster, which took place at his residence, in Merrion-square, on the 26th instant. He was born in the year 1796, so that he had lived 78 years. He was son of William Brewster, Esq., of Ballynulta, in the county Wicklow, a member of an English family, whose ancestors apparently settled in Ireland about the time of the Protectorate, as soon after that date there is mention made of a Sir Francis Brewster, acting as one of the Commissioners of Forfeited Estates on the Restoration of Charles II. Abraham Brewster entered Trinity College, Dublin, in 1812, and took his degree in 1817; but his college career was not a brilliant one. He was called to the bar in 1819, and was married in the same year to the daughter of Mr. Robert Gray, of Upton-house, county Carlow, by whom he had issue a son and a daughter, both of whom predeceased him. Although his reputation throughout his long career was that of a hard-working lawyer, he was seventeen years in the practice of his profession before he was called to the Inner Bar. He received silk in 1835, while Lord Plunket was Lord Chancellor. In 1842, during the Attorney-Generalship of the late Lord Chancellor Blackburn, he was appointed Castle Adviser under Lord De Grey's administration. In 1846 he was elected a Bencher of the King's Inn, and in the same year was appointed Solicitor-General for Ireland during the Viceroyalty of the late Earl of Bessborough, who died in the Government in 1847. On the return of the Conservatives to power in 1853, Mr. Brewster was appointed Attorney-General for Ireland, and sworn member of the Privy Council. He continued Attorney-General till the dissolution of Lord Aberdeen's Government in 1855, when, although solicited by Lord Palmerston to continue in office, Mr. Brewster thought fidelity to the Peel party necessitated his refusal, and he accordingly returned to his profession. He was succeeded in the official position by the present Judge Keogh, who had acted as Solicitor-General under him. In 1866, when the party were again in occupation of the Treasury Benches, Mr. Brewster (thirty-one years after he had received silk) was appointed Lord Justice of Appeal, in succession to the late Right Hon. Francis Blackburne, who for the second time had been elevated to the Lord Chancellorship of Ireland. Again in 1867, on the retirement of Mr. Blackburne from the Chancellorship, Mr. Brewster succeeded to the judicial honours vacated by his early friend and patron. In December, 1868, he sat in the Court of Chancery for the last time, having relinquished office on the resignation of Mr. Disraeli's Government, when he was succeeded, on the accession of Mr. Gladstone, by Lord O'Hagan. It is said that early in the present year he would have been appointed Lord Chancellor of Ireland by Mr. Disraeli, but that he made it a condition that, if he again accepted the office, it should be accompanied by a peerage. This probably would have been conceded, but that Mr. Brewster—so it is rumoured—stipulated for remainder to his grandson, the issue of the marriage of Miss Brewster with Mr. French, and who, we believe, will inherit the greater part of the enormous fortune amassed by his grandfather. His only son entered the army, and served with distinction in the Caffre war under Sir George Cathcart; but perhaps he was better known as the popular Colonel Brewster, who for some years commanded the Inns of Court Rifle Volunteers.

Mr. Brewster, though an active politician, never sought Parliamentary honours, but was one of the few fortunate lawyers who have risen to judicial eminence through professional services alone. He was a member of the Leinster Circuit; and while at the bar took part in almost every *cause celebre* heard at *nisi prius* during the period of his forensic practice. In the celebrated case of *Handcock* v. *Burke*, he and Mr. Keogh—then Attorney-General, now Judge—were opposed to the late Marquis of Clanricarde, and the bitterness of his invective on the occasion caused, for a great many years, the severance of a friendship which had long existed between Lord Clanricarde and Mr. Brewster. In the notorious Yelverton marriage case, Mr. Brewster was counsel for Major Yelverton, and Mr. Whiteside, now Lord Chief Justice of Ireland, was the lady's champion. In equity, also, he was held in high estimation and enjoyed extensive practice. By the prosecution of the Six-mile-bridge rioters, during his Attorney-Generalship, Mr. Brewster incurred some obloquy; but his management of the public business was always honest, firm, and unswerving, and no imputation of favouritism was ever made against him. Though not a brilliant or eloquent orator, Mr. Brewster was a persuasive and effective speaker. As a lawyer, he was possessed of great acumen and sound attainments. But it was in tact and the general management of cases, in the mastery of complex facts, and skill in grouping and massing them, in the knowledge of human nature, and in the application of strong common sense and sagacity, that he eminently excelled; while, such were the readiness of his legal resources, that it was almost impossible to take him by surprise in what Lord Coke calls the "occasion sudden" of *nisi prius*, interruption by Bench or Bar seemed only to give him additional strength, nor did he even experience inconvenience from any unexpected derangement of a preorganized line of argument. As a judge, however, it must be confessed that his temper was not at all times placid, and though his decisions were generally recognized as sound, they were undistinguished by any special manifestations of power. From a recently published memoir of the deceased we take the following remarks:—"Mr. Brewster's career is more or less identified with the public history of the country, with the leaders of the various Governments, and with the public men of the period, for nearly half a century. His management of the public business when at the Castle, and during his official career, was firm and resolute, and no imputation ever rested on him of favouritism to one party more than to another. It is especially remarkable that of a man so largely engaged in professional business, so long connected with the public life of the country as Mr. Brewster, there remains nothing but a tradition. There is no wonderful speech on record, no singular effort of statesmanship or legislation identified with his name. To be sure, Mr. Brewster never had a seat in Parliament, but he must have been consulted by almost every statesman of either party who has had aught to do with Irish affairs during the last forty or fifty years. Though in his early career he was a stout and uncompromising Tory, Mr. Brewster separated himself from that party on his assuming office in the Aberdeen Government, and became more or less in accord with the Liberal politicians, and so when he was created Chancellor by the Disraeli Government the Conservative party

Digitized by Google

represented that his promotion should not have proceeded from their political friends. Those who have been contemporaries of Mr. Brewster can speak of the strength and power of his handling of cases at either side of the Hall of the Four Courts, the incisive force of his points, the weight of his argumentation, and his preparedness for every emergency. Whether it were a new trial motion, a bill of exceptions, or a dry legal argument, he was ever ready, ever fortified, and when he gave up Common Law business, and confined himself to Chancery, he assumed and took the lead of that court, which he maintained till the repose of the Bench gratefully rewarded him. He was a master of examination and cross-examination of witnesses, and there is told how, on one occasion, being engaged in a case in court, arising out of a contested election for the county of Carlow, at which he had been counsel for the Conservative candidate, he was cross-examining a witness who was answering him with the most cool effrontery as to the facts which the counsel was personally cognizant of, and which had occurred in his presence at the election and in the presence of the witness, when, becoming somewhat irritated at the unblushing falsehood of the witness, he took his wig off, and then put the crucial question to the witness, 'Did you ever see me before?' The witness had not identified him in his wig, but the moment the query was put, and the witness looked at the questioner, he jumped off the table and precipitately left the court. Mr. Brewster was somewhat merciless in his advocacy; he seems to have been of a like opinion with Lord Brougham, that an advocate should know no one but his client, and to sustain that client's case he was bound to sacrifice all other considerations." The late Lord Chief Baron said of him, on one occasion, that he had addressed more juries than any man of his standing at the profession. Indeed, at a subsequent period, it was said that there were scarcely any cases in which he was not engaged on the one side or the other, and that no barrister ever held so many special retainers. His name, though not that of one of the greatest ornaments of the Judicial Bench, will be remembered hereafter as, at all events, that of one of the greatest Irish advocates of our century.

FUNERAL OF THE HON. ABRAHAM BREWSTER.

The remains of the late Right Hon. Abraham Brewster were removed from 26, Merrion square South, on Thursday morning, at half past seven o'clock; to the Kingsbridge Terminus, and thence conveyed by special train for interment in the family burial place at Tullow, county Carlow, where the remains were interred in the afternoon.

A BUCHAREST TRAGEDY.—A tragic affair occurred the other day at Bucharest arising out of legal proceedings for recovery of a debt. An old man, a Servian resident, owed a sum of money to a usurer, who, failing to obtain payment of his claim, went to law and obtained a writ against his debtor. When, however, he proceeded to eject the old Servian considerable difficulties "cropped up." The old Servian did not like to be ejected, and endeavoured in the first instance to induce his creditors to grant him a respite. His request was ably backed up by his wife and children, but it was made in vain, for the creditor was inexorable. Annoyed at the refusal of his supplication, the old Servian somewhat hastily plunged a knife into the heart of the usurer, probably intending no harm, but imagining that usurers have no hearts. If the old Servian had simply contented himself with killing the usurer, perhaps little would have been thought of the matter, but unfortunately, on a bystander officiously attempting to seize him, the old Servian, still further irritated, gave him also a mortal stab. Here the tragedy would probably have ended, but that the dying bystander, instead of forgiving his assailant in his last moments, was unchristian enough before he died to seize a great log of wood and knock the old Servian's brains out. The bystander then expired, and everybody concerned in the affair being dead, nothing remained to be done but to bury their bodies. The fate of the old Servian has excited general sympathy, and much indignation is expressed at the conduct of the usurer which has led to such deplorable results.

BARON BRAMWELL ON ACTIONS FOR BREACH OF PROMISE OF MARRIAGE.—At Maidstone Assizes (July 22) in *Tredwall* v. *Flack* an action for breach of promise of marriage Bramwell B., in summing up to the jury said:—He thought this was a class of actions really almost in one sense dishonest, for if the parties were asked, when the engagement began, whether they intended that it should be enforced by law, they would say "Oh, dear, no, certainly not;" and yet, when it was broken, the wounded party went to law for damages. Moreover, he thought they were a very mischievous class of actions, and he was very much against large damages in such cases, unless there were some very peculiar circumstances in the case; for surely if either of the parties found that there was not so much affection as was supposed, it was better that the engagement should be put a stop to.

AFFIDAVIT EVIDENCE.—The *Globe* states:—"The question of an entirely reformed system of jurisprudence is prominently before the public at this moment. At present the rules under which the system is to be worked have not been seen. All who take an interest in the administration of justice will remember the strong comments called forth from Lord Chief Justice Bovill on the occasion of the first Tichborne trial by the way in which evidence was given by affidavit in the Court of Chancery. The Epping Forest case now being heard before the Master of the Rolls, is provoking similar comments upon the affidavits put in by the lords of manors. On Tuesday, the 14th, for instance, during the cross-examination of the defendant's witnesses, he expressed himself thus: 'Bad as our system of affidavits is, it does not generally break down like this;' and again, 'up to the present moment we have not got a witness who knows what he has sworn to in his affidavit.'" The writer in the *Globe* adds: "It is to be hoped in the interest of truth, that affidavit evidence will be put an end to in contested causes, so that every facility may be given for the cross-examination of deponents, not by favour of the presiding judge, but as the right of the suitor. It is encouraging to find the Master of the Rolls speaking plainly upon the subject, for the equity judges do not often look with dis-favour upon a system in which they have been reared, and which saves them trouble."

A SOLICITOR'S BREACH OF PROMISE CASE.—"When Greek meets Greek then comes the tug of war." When in a breach of promise case a solicitor father meets solicitor lover, then perhaps the tug of affection, and also of law, may be reasonably anticipated. A curious case, not so much between Miss Maule, aged 19, and Mr. Fowler, aged 34, as between Miss Maule's papa and a solicitor, carrying on his profession in Huntingdon, and Mr. Fowler, also a solicitor, of the same town, has just been decided at the Norfolk Assizes with heavy damages to the amount of £1,250 against the defendant. The manner in which Mr. Maule, *père*, described the sentiments of Miss Maule when her lover of nearly twice her age transferred his affections at his aunt's behest to a better *parti* at Brighton, was touching in the extreme. It is really very encouraging to all of us who have passed the sunny side of two lustres to know that sweet girls in their teens are liable to suffer so much from the inconstancy of middle-aged men. For the future, at all events, we think that even gentlemen learned in the law, like Mr. Fowler, will approach young ladies under such careful and judicious guardianship as Miss Constance Maule enjoys rather with the feelings wherewith we gather a moss rose, than those with which we pluck a *Rose Celeste*, so called from the circumstance of having no thorns. Before Mr. Fowler had proposed to Miss Maule, her brother, aged twenty-one, had written to him to ask had he any "serious intentions," and though Mr. and Mrs. Maule made some demur at first to the engagement on the ground of disparity of years, they seem to have soon and decidedly accepted Mr. Fowler. Perhaps, in such cases, the conduct of families may be described much as Ingoldsby describes that of the saints:—

> "Where once they have managed to take you in tow,
> It's a deuced hard matter to make them let go!"

However, no one except, perhaps, Mr. Fowler, can be sorry that the young lady of nineteen should have presented him with such a bill of costs.—*The Echo*.

Digitized by Google

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Lancashire	Prove debts	*Perry & Co.*
A. W. Labertouche	do	*Perry & Co.*
Patrick Luigane	Prove debts and vouch	*Perry & Co.*
A. M. Sheridan	do	*Findlater & Co.*
Peter Wright	do	*Mathews*
Henry L. Dymoke	Vouch account	*Larkin & Co.*
William Holmes	Vouch mortgagee's act.	*Larkin & Co.*
Edward Kenny	Reference	*Casey & Clay*
Thomas F. O'Neill	Voucb account	*Larkin & Co.*
John Brooks	Sign posting and con-ditions	*Casey & Clay*

TUESDAY.

Before the COURT, at 11 o'clock.

David F. Jones	1st public sitting	*Tatlow*
Wm. Fitzgerald	do	*Mathews*
George Boyd	do	*Donnellan*
John Kennedy	1st composition sitting	*Mathews*
Samuel Hood	do	*Leachman*
Same matter	Final examination	*Perry & Co.*
James Lynam	do	*Maxwell & Weldon*
Same matter	Examine witnesses	*Maxwell & Weldon*
J. J. Hennessy	Final examination	*Thompson*
George Marshall	do	*Redington*
Daniel Cullen, jun.	do	*Larkin & Co.*
Thomas Scott	do	*Larkin & Co.*
John Kennedy	do	*Roe*
William Foxall	Motion	*Larkin & Co.*
Samuel Doyle	Prove charge	*Meldon & Sons*
Ludlow Berkeley	Confirm sale	*Scallan*
Joseph Jermyn	Audit and dividend	*Hamilton & Craig*
George Craig	do	*Cronhelm & Co.*
Andrew Kehoe	do	*Hamilton & Craig*
John Nolan	Audit mortgagee's act.	*Orpen & Sweeny*

Before the CHIEF CLERK, at 12 o'clock.

Samuel Hood	Prove debts	*Leachman*
Chris. Flynn	Prove debts and vouch	*M'Govern*
Joseph Hanna	do	*Cronhelm & Co.*
Same matter	Reference	*Cronhelm & Co.*
Daniel Shea	Prove debts and vouch	*Perry & Co.*
Charles Owens	Costs	*Rynd*

WEDNESDAY.

Before the CHIEF CLERK, at 12 o'clock.

Philip Brown	Prove debts and vouch	*Forsythe*

FRIDAY.

Before the COURT, at 11 o'clock.

Wallace, Magill, and Co.	1st composition sitting	*Leachman*
Bernard Brady	do	*Casey & Clay*
Same matter	1st public sitting	*Casey & Clay*
Robert Courtney	1st composition sitting	*Perry & Co.*
Robert Courtney	Final examination	*Goff*
A. D. Stewart	1st public sitting	*Fay & M'Gough*
Richard Bell	do	*Scallan*
Arthur G. Hay	1st composition sitting	*Mathews*
Same matter	Final examination	*Mathews*
John Farrell	do	*Larkin & Co.*
John Kelly	do	*Beauchamp*
Mary Williams	do	*Oldham & Eaton*
Daniel Kilbride	do	*Beauchamp*
Philip M'Cusker	do	*Perry & Co.*
Archbd. Meikle	Audit and dividend	*Forsythe*
Richard O'Connor	Audit mortgagee's act.	*Noble*

The following at 12 o'clock.

Walter O'Donnell	Sale	*Maxwell & Weldon*

ADJUDICATIONS IN BANKRUPTCY.

Allison, James, Cornwallis-street, Limerick, merchant. Sittings, *Friday, August* 12, and *Tuesday, September* 8. *Casey and Clay*, solrs.

Hickey, James F., 48, Lower Mecklinburgh-street, Dublin, grocer. Sittings, *Tuesday, August* 18, and *Friday, August, September* 4. *Goff*, solr.

Mason, John, and Looby, Patrick, Templemore, county Tipperary, drapers trading as the Irish House. Sittings, *Friday, August* 21, and *Tuesday, September* 8. *Casey and Clay*, solrs.

DIVIDENDS IN BANKRUPTCY.

Keniry, P. J., Garrycloyne, Waterford. 1st dividend 9s. 7½d. in the £. L. H. Deering, official assignee. *O'Callaghan*, solr.

Rickard, Stephen, Howth, Dublin, grocer, baker, and farmer. 1st dividend 4s. in the £. C. H. James, official assignee. *Findlater and Blood*, solrs.

Sweet, Rev. J. H., Kilmacow, Kilkenny, clerk. 1st dividend 2s. 4½d. in the £. L. H. Deering, official assignee. *Maxwell and Weldon*, solrs.

A Northampton journal states that Mr. Edwin James, formerly M.P. for Marylebone, will be a candidate for Northampton on the first vacancy.

JUDGE MILLER.—The last time I met Joaquin Miller, the American poet, says the London correspondent of a contemporary, he spoke of himself as "Judge" Miller. I expressed my delight and surprise. I had been unaware of his judicial dignities. Indeed, I did not even suspect that he knew any law. Upon my expressing my surprise, he replied calmly—"Yes, sir, for four years I administered justice in Oregon—with the help of one law-book and two six-shooters."

LADY BARRISTERS.—The Court of Claims has rendered a decision, on the application of Mrs. Belva Lockwood for admission to the bar of that tribunal, refusing her admission. The court was of the opinion that, at common law, women were not eligible to the office of attorney. It is stated that Mrs. Lockwood will take an appeal to the Supreme Court, and will petition Congress to pass an enabling statute, and, we may add, will probably after that go to lecturing.—*Albany Law Journal.*

THE NEW JUDICATURE ACT.—Mr. Justice Keating in charging the Leicestershire grand jury, referred to the pending change in the administration of the law, by which, he said, the old Courts, of one of which he had been a member for fifteen years, and which had sat at Westminster for over 700 years, had with others ceased to exist. He had assisted at its obsequies a few days ago. He expressed a hope that though the Courts would still administer the same law, there would be greatly increased facilities to suitors and a large saving of expense.

THE LAW RELATING TO PATENTS.—The bill amending the law relating to patents, copyrights, and trade marks, just passed by the Senate of New York, is a most important measure. It provides that no person shall maintain an action for infringement of his copyright unless every book or article copyrighted shall bear notification of the copyright, together with the year of entry and name of the party who took out the copyright. The bill also provides that no engravings, cuts, or prints shall be copyrighted unless they are pictorial illustrations or works connected with fine arts, but that prints or labels designed to be used for any other article or manufacture may be registered in the Patent Office on payment of a fee of three dollars, which shall cover the expense of furnishing a copy of the record. The Librarian of Congress is to charge one dollar for recording and certifying any assignment of a copyright or for any copy of assignment.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JULY Fri. 24	Sat. 25	Mon. 27	Tues. 28	Wed. 29	Thur 30
	Government.						
—	3 p c Consols	92¼	92⅜	92⅜	92⅜	92⅜¼	92¼
—	New 3 p c Stock ..	91⅞⅞–2	91⅞⅞	91⅞⅞⅞	91⅞	91⅞	91⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	107⅜	107⅜	107⅜⅜	107⅜
—	4 p c Oct. '88 } Bk. of Irel.	—	—	102¼	—	102⅜	102⅜⅜
	Banks.						
100	Bank of Ireland ..	313	312	310	310–½	310	310
25	*Hibernian Banking Co.* ..	59	58⅜	58⅜	—	—	59–⅛⅞
15	*London Joint Stock* ..	49⅞		50	--	x d	—
20	*London and Westminster* ..	72¼	—	72¼	72¼	72⅛⅞	72⅛
3½	*Munster Bank (Limited)*	8⅞ 9	8⅞ 9	—	—	—	8⅞ 9
30	*National Bank*	62–1⅞	61⅞⅞¼	61⅞	—	60⅞60	60¼⅛¼
15	*National of Liverp'l (Ltd)*	—	14⅞	—	-	x d	-
25	*Provincial Bank* ..	88¼	—	88	87⅞	88	88
10	Do. New ..	35	—	—	—	—	—
10	*Royal Bank*	30⅞	30⅞	—	—	—	30⅞
15	*Union of London* ..	—	—	—	—	x d	—
	Steam.						
50	British & Irish	—	—	—	—	x d	—
100	City of Dublin	106¼⅛	106¼	—	—	—	—
50	Dublin and Glasgow ..	—	—	-	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	--	—	—	—	—
10	Dundalk (Limited) ..	—	6⅞	—	6⅞	—	—
10	National S. S. Co. (lit'd) ..	—	—	—	—	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	—	—
7	*Cape Copper M. Co. (lit'd)*	—	--	—	-	—	—
1	Killaloe Slate Co. (lit'd)	--	—	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	--	5¼	5⅞	5⅛⅞	5⅞¼	6
2½	Wicklow Copper	—	—	—	—	—	3
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅞⅞	—	--	10⅞	10⅞⅛	10⅞
9½	*Dublin Tramways* ..	7⅞	7⅛⅛	--	6⅞	6⅞	7
100	Grand Canal ..	—	—	52	—	—	—
25	*National Assurance* ..	—	—	—	50	48⅞xd	—
5	*National Discount (Limited)*	—	—	—	—	x d	—
9-4-7	*Patriotic Assurance* ..	10⅞	—	10⅞	—	—	—
	Railways.						
100	Dublin and Belfast Junct.	91⅛	91⅛	—	—	—	—
100	Dublin and Drogheda .	—	--	..	—	—	—
100	Dublin and Kingstown ..	—	211	—	—	—	—
100	Dublin, W'klow, & W'ford	—	—	77¼	77⅛	77⅞	—
100	Gt. Southern and Western	108⅞	—	108⅛	--	108⅛⅞	108⅛⅞
100	Midland Gt. Western ..	—	—	81⅛–1	80⅞	—	80⅛⅞
100	Midland	—	—	—	—	—	—
25	Portdn. Dun. & Omh. Jun.	15	—	—	—	—	—
50	Ulster	—	—	—	—	—	—
12½	Do , Quarters	—	—	—	—	—	—
50	Waterford and Limerick ..	--	—	33	—	—	—
10	Waterford and Tramore	—	—	—	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	—	—	—
100	D., W., & W., 6 per cent .	--	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	54	—	—	—
50	Do. do. (1864)	—	--	—	—	53⅛	—
100	Gt. North'n & West'n, 5 p c	—	106⅛	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	—	99⅛	99⅞
10	Irish North Western A 5 p c	—	—	--	—	4 3⅞	—
100	Mid. Great Western, 5 p c	—	--	—	—	—	111
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	96⅛	—	96⅛⅞	97	—
50	Do., new red, 1873, 5 p c ..	—	52⅛–2	52⅛	—	52¼	52¼
25	Do. New, 5½ p c	—	—	—	—	—	27¼
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	--	—	—	95⅛
—	Dublin & Drogheda 4 p c	—	96⅛ f	96 f	—	—	96 f
—	Dublin & Meath 4½ p c ..	—	—	—	--	—	—
—	D., W., & W., 4½ p c .	--	99⅛	—	—	—	—
—	Gt. South'n & West'n, 4 p c	—	98⅛ f	98⅛	98⅛	99	—
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	--	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount- 3½ per cent., 4th June, 1874.
Of Deposit—2 per cent., 28th May, 1874.

Name Days—August 13th and 27th, 1874.

Account Days—August 14th and 28th, 1874.

HOLIDAY.—Monday next, 3rd August (Bank Holiday), the Stock Exchange and Brokers' Offices will be closed.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

The Bench and the Bar in America.—The Indiana judges stand no nonsense from the bar. A lawyer there lately, in the course of his argument, used the word "disparagement." "Stop using Latin words," said the judge, "or sit down." The poor lawyer, undertaking to explain, was ruthlessly fined twenty dollars for contempt.

During the trial of a rather "demoralized" looking individual, in Buffalo, not long since, one of the "lookers on" at the bar, turning to another, and calling his attention to the jury, said, "How lucky it was that such men were created, for, without them, how could the benignant provisions of our glorious constitution be carried out, which guarantee to every man the right to be tried by his peers."

Massanet de Marancomt, condemned to transportation, escaped from Paris and France dressed as a commandant of gendarmes. He inspected every post of the gendarmerie between France and the frontier on the line of the Eastern Railway.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BURTON—July 26, at 1 Read's-road Leeson Park, the wife of Arthur T. Burton, Esq., solicitor, of a daughter.

DAVIS—July 30, at 162 Rathgar-road, the wife of James Davis, Esq., solicitor, of a daughter.

M'SHEEHY—July 24, at Togher House, Hollymount, county Mayo, the wife of J. T. M'Sheehy, Esq., resident magistrate, of a daughter.

SHERIDAN—July 29, at 17 Upper Fitzwilliam-street, the wife of T. B. Sheridan, Esq., barrister-at-law, of a son.

MARRIAGES.

MOLLOY and BASKERVILLE—July 22, at the Pro-Cathedral, Kensington, James I. Molloy, Esq., of the Middle Temple, eldest son of the late Kedo Molloy, Esq., of Drummond Lodge, King's county, to Florence, youngest daughter of Henry Baskerville, Esq., of Crowsley Park, Henley-on-Thames.

POWER and MOORE—July 28, at St. Peter's Church, by the Rev. Achilles Daunt, B.D., assisted by the Rev. Mr. M'Sorley, Pierce Power, Esq., solicitor, to Maria Elizabeth Moore, second daughter of Edward Moore, Esq., solicitor.

DEATHS.

BREWSTER—July 26, at his residence, 26 Merrion-square, South, the Right Honourable Abraham Brewster, aged 78 years.

WALKER—July 29 at 2 Glasthule-terrace, Kingstown, at an advanced age, Miss Emily Walker, daughter of the late Maynard Chamberlain Walker, Esq., barrister-at-law, and formerly one of the Commissioners of Bankrupts.

CASES for holding The Irish Law Times, and Solicitors' Journal, for One Year, can now be had, Lettered on side, Price - whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s.; by Post 4d. extra, from J. Falconer, 53, Upper Sackville-street, Dublin.

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A Monthly Journal of Jurisprudence and International Law for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

Reeves & Turner, Law Booksellers, 100 Chancery-lane, London.

455

LEGAL POSTINGS:

IN THE LANDED ESTATES' COURT.

FINGLAS, COUNTY DUBLIN, AND CITY OF DUBLIN.

Arthur Brathwaite Warre, Charlotte Sophia Cooper, and several others, Owners and Petitioners.

NOTICE is hereby Given, that Private Proposals for the purchase of all or any of the Unsold Lots of this Estate, being Lots 3, 5, and 7, in the printed Rental in this Matter, and consisting of the Lands of Tolka, Belvue, near Finglas, in the County of Dublin, held in Fee-simple; and the Houses and Premises known as Nos. 53 High-street, and 12 Lower Kevin street, both in the City of Dublin - the former held in fee, and the latter in fee-farm—will be received by me, and if deemed sufficient, will be submitted to the Honourable Judge Flanagan for approval, at his sitting after the present vacation.

Dated this 22nd day of July, 1874.

JOHN J. TWEEDY, Solicitor having carriage of the Sale, 29 North Frederick-street, Dublin. 530

Printed and Published by the Proprietor, John Falconer, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, August* 1, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, AUGUST 8, 1874. No. 393.

LIFE INSURANCE LAW AND LEGISLATION.—I.

A MOTHER asked a crocodile, running off with her child, to give it up. "With pleasure," replied the polite animal, "provided that you answer me truly—Shall I restore it or not?" If she said "No," then he gave it her, but, as in such case she had not answered truly, she had to return it; and if "Yes," she was equally at fault. The sophisms lurking in ordinary policies of Life Insurance are no less subtle; and we have the authority of Lord St. Leonards—who admits that he himself had been bitten—for saying that it is distasteful to the majority of companies to be bound with anything like certainty, and that a loophole for escape here and there is considered generally desirable. As insurance contracts are in practice framed and entered into, they may be avoided by reason of the assured having, upon an immaterial matter, stated as a fact that which he *bona fide* believed to be the fact, if it turns out—after the company had pocketed the premiums—that he had been mistaken. And we almost expect to hear of a company some day setting up as a defence that, although what was stated was in fact true, yet that the assured believed it was untrue, and had therefore, according to the moral theologians, told a lie. "So far gone in their devotion to strict and technical construction on this subject have some lawyers become," says the *Albany Law Journal*, "that when a judge once inquired of counsel if he contended that, if the applicant should be asked what color of handkerchiefs he used, and he, being color blind, should reply green, when in fact they were blue, the policy would be void, because it declared all answers to be warranties; counsel responded that, although it was an extreme case, yet he supposed the policy would be void." Yet that is scarcely a more extreme case than the one put by Chief Justice Shaw, who seemed to feel the absurdity and hardness of the doctrine at the very time that he judicially enforced it, in *Daniels* v. *Hudson F. Inse* Co. 12 Cush. 424, for he said, if on application for fire insurance, the insured being asked what he keeps his ashes in, replied an iron hod, and it turned out to be a copper hod, his policy is avoided if the policy declares that the answers are warranties. Our contemporary indeed, referring in particular to a recent American case, *Fitch* v. *Amer. Popular Life Inse Co.*—where it was held that warranties in an application for a life policy, whether upon material matters or not, avoid the policy, if untrue—points out that if the law be as it has been frequently, perhaps almost uniformly decided, not one such policy in a hundred could be enforced, for the insured must often be innocently mistaken upon immaterial matters; and it boldly declares that this absurd doctrine of warranties is not *law*, and will be eventually overturned, or if not, the life insurance companies, after a few more years of practice in trickery and trap setting, will have things pretty much their own way, and all that the Courts will be good for in their cases will be to spring the traps; and as it is, "we have no hesitation in saying that life insurance, as conducted by a majority of the companies in this country, is a fraud; there are dozens of companies who, after getting fairly under way, never pay anybody but their officers and agents, and an occasional loss by way of bait; and by the aid of the doctrine of warranties the American Popular Company is able to say with considerable glee that they have won fifteen out of sixteen contested cases." We have recently seen an American company figuring, in this country, as a prosecutor, after having received some £600 premiums on the very policies which gave rise to the charge of fraud first brought forward when, upon the death of one of the persons assured, they were sought to be rendered liable. But it is instructive to hear from America what is thought about the majority of American companies themselves. We have observed before now (5 IR. L. T. 5) how those American companies contrive to wriggle out of engagements by agents who obtain insurances and the pre-payment of premiums on the faith of their representations; and this doctrine of warranties affords further scope for "cuteness." Thus, observes the *Albany Law Journal*, "a man applies for a life policy, and is asked by the company if he has ever lived in the southern states? He replies no. Now, in the absence of any provision to the contrary in the policy, this would be a mere representation, and if the applicant were innocently mistaken it would not invalidate his policy. But there is a provision that all answers on the application shall be construed and held to be warranties—that is, the applicant warrants their truth and correctness on the penalty of forfeiting the whole insurance. Now it turns out that the applicant's parents took him, when he was six months old, to Florida, and resided there with him for one year. This piece of family history has never come to his knowledge, and yet his negative answer renders the policy void, if the company's officers unearth the information. Perhaps, they have taken his premiums with the greatest constancy for sixty years; perhaps, they have known all along that the applicant was under a mistake; perhaps, the applicant did originally know the fact, and disclosed it to the agent, but the agent told him that it was of no consequence—that what the company meant was a residence at a time of life likely to have fixed some habit of body upon him, and that his proper answer is no; but, for all that his policy is void. There is nothing in all this that hurts the company in the least. They would have taken the risk in spite of the infantile residence of the applicant in Florida. Let us go a step further. Can we not conceive a misrepresentation, even of a material point, that would be to the advantage of the insurer? Take the matter of the applicant's age; he states himself a year older than he really is; that mistake enables the company to exact a larger premium than they are in reality entitled to; and yet the answer is not "correct and true," and the insured is at the mercy of the company."

Unfortunately, although our contemporary very ingeniously contends that the doctrine in question is contrary to public policy, and that such agreements are void, or at least voidable—like certain agreements as to referring all disputes to arbitration, covenants in restraint of trade, &c.—we fear that the law is but too well established in this country also. We need hardly observe that *Barker* v. *Janson* (L. R. 3, C. P. 305) could have no direct application on this question; although an extension might well be wished for of the principle laid down by Willes, J., where, on a valued policy on a ship, which turned out to be exorbitant, he

Digitized by Google

said, "A mistake, to entitle the parties to re-open a contract of valuation, must be such as would entitle the parties to proceed in equity for relief. It must have been a mistake of *both parties* in respect of something which was *material to the contract.*" But in *Anderson* v. *Fitzgerald* (4 H. L. C. 484), reversing the decisions of the Irish Courts of Exchequer and Exchequer Chamber, it was held that answers forming the basis of a contract of life insurance, which the assured declared were true, should, though immaterial, be true in fact—within a proviso that "if anything so warranted should not be true . . . the policy should be null and void;" and the Lord Chancellor points out that the distinction between a "warranty" and a "representation" has no application to a case where it is part of a contract that if a particular statement is untrue the contract shall be at an end.

THE IRISH JUDICATURE BILL.

Our readers were probably surprised by the announcements of the Prime Minister, and the Attorney-General, that all the measures relating to legal reform had been withdrawn. It was understood that this was one of the subjects *par excellence* which the present Government could do thoroughly. With Lord Cairns in the one House and Dr. Ball in the other, and the cordial assent of Lord Selborne, it would not have been difficult to have passed at least those bills relating to the improvement of our Judicature, even if those having reference to the transfer of land were thought rather heavy, and too *doctrinaires* for the present session. We imagine there was a deeper reason, or rather that there were two reasons, for thus postponing such useful measures. In the first place, as to the appellate jurisdiction of the House of Lords, it is notorious that it was given up by the Peers in a moment of enthusiasm for legal reform, without duly considering its constitutional importance, and the effect such a surrender might have on the future stability of one of the estates of the Realm. The objections to this change in the Court of Ultimate Appeal have been strenuously urged in Ireland and Scotland, and are now being considered in England.

Is it too much to suppose that the leaders of the Conservative party are willing to wait for a year longer to try the force of public opinion on the point, and if possible resort to the old method? As to the Rules, they have at length been published, and apparently are well fitted to carry out the purposes of this most important Act when it shall come into force. Our own Rules will probably, *mutatis mutandis*, be an exact transcript of the English in those branches of jurisdiction which are common to the two countries; and therefore there is much to be said in favour of Mr. Butt's proposal that they be enacted by Parliament, and incorporated with the future Irish Judicature measure—the strongest objection to this course being that, if they were passed by the Legislature *in globo*, they would be unalterable without an amending Act, if from experience some of them should be found unworkable. The second reason for postponing those Acts may have been that the Government had not quite made up its mind what to do in reference to Ireland. It was admitted that the measures regulating the judicature in each country should practically stand or fall together, and then, pending the final decision of the Government as to their treatment, the Irish Final Appeal Courts, number of judges, and changes of circuits, it was necessary to postpone the one and drop the other measure.

We may safely anticipate, however, that the six months' reprieve which our present institutions have obtained will not be renewed, and that the interval will be employed in accumulating information from private sources as to the amount of business done in Ireland, number of suits issued, and number of court days, &c., the result of which may possibly be a reduction of our judges on one side and an increase on the other of the Four Courts, and a consequent diminution of the number of circuits. We can confidently point to the lists of records tried at the last assizes in every assize town of the country, with but few exceptions, to show that the civil business has not diminished, but has actually increased, although the comparative absence of prisoners and crime allowed the business to be quickly despatched. Meanwhile we expect the office of Lord Chancellor will be filled up immediately, and we shall be surprised if the Government do not make an appointment to the so long unfilled vacancy in the Landed Estates Court.

It is much to be desired that the lengthening of the interval before the coming into operation of the Judicature Act may be taken advantage of to present the profession and the public with a compact and complete code of procedure under the new system? As our readers are well aware, the Act of 1873 is absolutely bare of repeals, and however exhaustive the new rules might be, the whole of the existing procedure—Chancery Procedure Acts, and Consolidated Orders, Common Law Procedure Acts, and Common Law Rules of Court—was not only impliedly but expressly left standing (see Judicature Act, section 73, which saves "all forms and methods of procedure in force under any law, custom, general orders, or rules whatsoever," not inconsistent with the Act, the rules in the schedule, or the rules of court). If the breathing space made by the postponement of the Act is properly utilized, it would not be impossible to emulate, with respect to the old procedure, the practice that was followed with respect to stamps in 1870, by 33 & 34 Vict. c. 99, and with respect to oaths in 1871, by 34 & 35 Vict. c. 48.

THE JUDICATURE RULES.

The new Rules under the Judicature Act of 1873 have at length been laid on the table of the House of Commons. They are expressed in plain, untechnical language, which is of itself significant of the extent and tendency of the reform to which they will materially contribute. Their provisions will affect both the form and the substance of legal proceedings. We are to have done with such things as new assignments and surrebutters and all the jargon which irritates without instructing. Framed, as they are, to supplement the Act itself, these Rules will help to abbreviate the dull prolixity of Chancery proceedings and to translate the archæological abstruseness and temper the casuistry of Common Law. At the present moment the pleadings at Common Law are really based upon the principle of encouraging each party to withhold as much information as possible from his antagonist. The plaintiff begins with a very bare statement of his complaint, which need do no more than indicate the nature of the action, to which the defendant habitually answers by denying almost every allegation of his opponent, without the slightest regard to its truth or falsehood. If, for example, a Railway Company complained of an injury to one of their Stations, the defendant's pleader would deny that the Station belonged to the Company, and would studiously conceal his real defence behind some formal set of words which should afford the least possible intimation of its nature. When the attorney's clerk was indignantly questioned by Mr. Pickwick as to the objects for which his friends were to be called as witnesses at his memorable trial, our readers will remember the evasive but significant answer returned to Mr. Pickwick by the gentleman of the law. Pleadings have been greatly modernized in form since that *cause célèbre*, but the eloquent piece of pantomime employed by the gentleman of the law on that occasion compendiously

Digitized by Google

expresses the spirit in which Common Law pleadings are still carried on. In Equity there is more solemnity, but equal inconvenience. Those High Courts address themselves to the conscience of the parties, and require them to state explicitly all the facts within their knowledge. The consciences of litigants are, however, so scrupulous that they, or rather the solicitors who, for the purpose, are their consciences' keepers, cannot unburden themselves within any moderate compass, and we see, as the result of their rectitude, voluminous folios entering into the most insignificant details with a minuteness which would be sufficiently exact if the destiny of a nation hung upon the balance. These abuses will be removed under the new system in a simple and effective manner. Writs, which are to be the commencement of all proceedings, must be endorsed with a short statement of the cause of complaint, and, if this proves insufficient in any case, the defendant may require a further statement, in answer to which he will have to render a statement of his own defence. These documents must convey as concisely as may be the material facts on which the party pleading relies, and the Court will charge with the costs of any unnecessary prolixity the persons responsible for it. Nothing can be better, but it will require all the watchfulness of Courts to keep the old abuses from recurring.

Probably the most serious defect in the system which has hitherto prevailed is its inordinate delay. This has become so proverbial that it is looked upon almost in the light of a necessity ordained by nature, and irremovable by any human exertions. Delay, apparently, is regarded as being to the law what thorns are to a rose—very unpleasant, but quite unavoidable. Bitter satire has been levelled at this defect, but it has in some measure been directed against the wrong persons. Lawyers are not wholly responsible for the dilatoriness of the law. The Legal Year has been, and still is, split up into fragments, to each of which is allotted an appropriate, or inappropriate, function. There are short Terms in which a man may move the Court and sittings out of Term in which he may not move it, and particular days upon which he must answer as to particular things. If he fails to light upon the propitious time, he must defer the undertaking till the next fixed day or till the next Term, or in some cases, if he misses a certain number of days, he must hold his peace for ever. There is nothing in the nature of things which necessitates the constant postponement of legal more than of any other matters. If a merchant resolved to deal in tea for one week and in coffee for the next, and so on in a regular routine, absolutely refusing to consider any other matters than those assigned to him by his rigid rule, his customers would experience the same kind of inconvenience that suitors now complain of. We are glad to see that the New Rules make provision for a sensible division of the Legal Year, but the real good was done when the Act itself required continuous sittings in London for the trial of causes at *Nisi Prius*. It is impossible to make more days out of the year, even by Act of Parliament, but a great saving of time may be effected by the abolition of the intermittent method of conducting business which now prevails. Other regulations show equal good sense and thoroughness. When a dispute arises between two or more persons in which each makes a claim against the other, they are to be enabled to try the whole matter out in one action, instead of being driven to separate actions, as has too often hitherto been the case. Care is also taken to provide for the many different kinds of cases an appropriate method of inquiry. A juryman who has never seen a dockyard can know but little of the construction of a ship, yet it constantly happens that he is required to give an opinion. For the future, attempts are to be made to adapt the nature of the tribunal to the nature of the case by employing skilled assessors or special arbitrators where special knowledge is needed, and, as a rule, evidence will be received by word of mouth, even in Courts of Equity, where oral evidence is at present the rule, and the practice prevails of taking down at a preliminary hearing and printing at great expense all that falls from the witnesses' mouth. It is evident that those who have to judge of the credibility of a witness should have an opportunity of observing the manner in which he gives his evidence.

The portion of the Rules which will most nearly affect the legal profession is that which regulates the extent to which District Registries shall be used. Local Bars will, no doubt, be considerably encouraged, and perhaps steps are designedly taken in that direction with a view to further changes in the future. Hitherto all legal process, except in some few cases, has been issued in London, even where the trial is intended to be held in a county town. Accordingly, provincial business has always been transacted through London agents, whose interests are justly entitled to consideration, though they cannot, of course, be allowed to stand in the way of any necessary reform. The Act provided for the establishment of District Registries out of which process might issue, and the Rules direct that if a writ is issued out of a District Registry and the defendant resides or carries on business within the District, he shall appear to the writ in that Registry. Otherwise he may elect to appear either in the District or in London. This arrangement seems very equitable, for while it will give a plaintiff the right to conduct all his legal business in his own neighbourhood when his opponent also belongs to the same locality, it will not entitle him to do so in other cases and thus, consistently with convenience to the public, the change will not be effected wholly at the expense of London solicitors. Many other provisions are also contained in the Rules, among other things for increasing the facility of transacting business during vacations and for regulating appeals, though the Long Vacation is practically preserved in its integrity. These are, however, almost entirely matters of practice directing the machinery for enforcing the Act. It will be very strange if some mistakes and ambiguities are not found in so long and difficult an undertaking after the result has been submitted to the test of practice, but such short-comings can easily be amended, and if the New Rules are enforced in the spirit in which they have been conceived, they will prove very suitable accompaniments to a most beneficial enactment. From the simplicity and good sense with which they handle the subject, we can only regret that they are not to be available at the early date which was originally fixed for their introduction.—*The Times.*

IRISH JUDICATURE.

Mr. Sullivan, M P., has written an interesting letter *apropos* of the condition of the Irish bar and the Irish judiciary. He contends, in the first place, that the Irish bench is enormously overmanned. There are twelve Superior Common Law judges in Ireland, and eighteen in England. But what is the proportion of work? According to a parliamentary return it appears that in 1872 the bills or other original processes filed in the English Court of Chancery were 3,444; in Ireland, 374. In England, 27,636 summonses were issued; in Ireland, 3,600. In England there were 1,204 hearings; in Ireland, 222. It seems that, compared with the English judges, the Irish judges have an easy time. But in our opinion the English judges are overworked, and further, there is no harm in judges being underworked, except from the pecuniary point of view; and it is of such vast importance that justice should be speedily and properly administered, that the extra cost of judges for the avoidance of delays, and for the full as well as the prompt investigation of suits, is really not worth consideration.

But the other point—viz., that the Irish judges are overpaid—is of serious consequence. It would be very wrong to fix the salary according to the amount of work, and Mr. Sullivan does not intend to do that when he says, "If the Irish judges are not extravagantly overpaid as well as underworked, the salary of an English judge ought to be £10,000 where it is £5,000. If the English judges are decently paid, the Irish judges should have £1,500 where they now receive £3,000 and £3,500." His argument is thoroughly sound, and if his facts are correct there ought to be a change. He writes :—

"What ought to be the considerations ordinarily determining the fair amount of salary for a judge? The salary of a judge in our Superior Courts ought to bear a certain proportion to the average emoluments of a Queen's Counsel

Digitized by Google

of the first rank in his profession. The salary ought to be enough to command the services of men in such a rank of professional eminence; no more. The moment you make judicial salaries exceed the average emoluments of such men at their profession, you disturb the whole economy of, and eventually demoralise, the bar. You make the attainment of promotion to the bench, not of professional eminence, the real goal for which practitioners strive. You cause the bar to become waiters upon the providence that dispenses judgeships. The mainspring and incentive of their self-reliance is gone; political not forensic oratory becomes the barrister's study. The practice and the facts in England, as contrasted with the facts and the practice in Ireland, illustrate this. Unfortunately, I have no parliamentary return on this branch of the subject; but that is not my fault. Some weeks ago I moved for, but was refused by Government, a return showing the proportions respectively in England and in Ireland between judicial salaries and bar emoluments. I admit it was a difficult and delicate matter to touch. I was possessed of a very good approximation to the facts from non-official sources; but, as in the case of 'judicial work,' I wished the public to study the startling contrast shown on parliamentary authority. In England the actual amount of the judge's salary is considerably below the average emoluments of a first-class Q.C. In Ireland the judge's salary is far in excess of—is, in fact, double—the average emoluments of a first-class Q.C."

If we may not say that English judges are underpaid, we may remark that they receive a minimum payment. Many barristers make a pecuniary sacrifice in accepting a judgeship, and it sometimes happens that a judgeship is refused for pecuniary reasons. We have asserted that it is better for the judiciary to be underworked than overworked, and we further maintain that it is better for the judiciary to be underpaid than overpaid. Provided the salary is sufficient for the maintenance of a style of living befitting the social *status* of a judge, the majority of the best men at the Bar will in due course be willing to give up their larger professional incomes for the smaller income of a judge. But if the salaries of the judges are greatly in excess of the professional incomes of the best men, there will be an unhealthy and dangerous competition for judgeships. Mr. Sullivan says that the salary of a judge ought to be sufficient to command the services of a Queen's Counsel in the first rank of his profession. We should rather say that it ought not to be so high as to offer an irresistible pecuniary inducement for the best men to seek judgeships. This is our happy position in England. It is not a motive of avarice that prompts leading men to accept judgeships, but the honour and dignity of the judicial office.

We are sorry to hear that the Irish Bar is so badly off that if the salary of the judge is to be in proportion to the earnings of a foremost Q.C., it ought not to exceed £1,500. Perhaps Mr. Sullivan is in error. If not, though we admit his principle, we could not advocate its rigid application to the Irish judiciary. It is absolutely necessary that a judge should have a salary that will enable him to live in the style of a gentleman without pecuniary difficulty or anxiety. This cannot be done for £1,500, and, of course, if the Irish Bar is so badly off, they cannot do like English barristers, who are often able to save a fortune before they begin their judicial career.

Further, we see no objection to the judiciary in a poor country being somewhat overpaid in comparison to the wealth of the country. We do not imagine that loyalty can be bought, or that bought loyalty is worth the purchase-money. But we have no doubt that it is conducive to a sentiment of loyalty for the offices of Government to be liberally remunerated. Demagogues talk of economy, but there is nothing so much disliked by the populace as an appearance of parsimony in the administration of the Government. Besides, a highly paid judiciary encourages a superior Bar. It is said, or was said, that every French soldier carried a marshal's *baton* in his knapsack. We do not say that every barrister expects to become a judge; yet so many aspire to the crowning honours of the profession, that the ample payment of the judges is an attraction to the best men to devote themselves to the practice of law.—*Law Journal.*

EXPIRING LAWS CONTINUANCE BILLS.

The Home Rule members on Saturday last, and again on Thursday, conferred a great benefit on the country by calling emphatic attention to the evils of the practice of embracing, in an expiring Laws Continuance Bill, a number of important Acts, the necessity and policy of continuing which ought to be carefully considered by the Legislature, while under the practice alluded to they are hurried through Parliament at a period when members are either "exhausted or excited," and in a form which repels instead of inviting discussion and consideration. We reported this time last year (17 S. J. 793) some very severe strictures made on the practice by two distinguished peers who are now members of the Government. Their influence, however, while in office, does not seem to have enabled them to prevent the Government from adopting this easy plan of shortening their labours. The Bill of the present session comprised more than thirty Acts, some of which—such as the Master and Servant Act and the Election Petitions and Corrupt Practices Act,—in the opinion of many persons, need revision and alteration. Fortunately three of the Acts were Irish Coercion Acts, and there was a strong muster of Irish members to protest against this method of smuggling those Acts through the House. On the side of the Government there was hardly any one so bold as to defend the propriety of including in a Continuance Bill Acts of a character necessarily raising discussion. Mr. Disraeli, indeed, promised that the Coercion Acts, if it should be necessary to continue them, should not again be dealt with in this way, but should be introduced separately and early in the session. We hope that this treatment may be extended to all Acts the continuance of which is at all open to question. With this view it would be well to restore the practice of appointing a committee to consider the Bills to be continued. Such a committee could sift out of the mass of expiring laws all such as were at all likely to lead to discussion; and if the committee were appointed and reported early in each session, the dangers springing from the convenient practice of a Continuance Bill would be reduced to a *minimum.*—*Solicitors' Journal.*

THE POSTPONED LEGAL REFORMS.

The question whether the Government has laid itself open to the serious animadversion which has been levelled against it by reason of the postponement of the coming into operation of the Judicature Act, 1873, and the withdrawal of the Amendment Bill and the Land Titles and Transfer Bill, is one which is of more than merely political importance. We care nothing whether the Government loses or retains its prestige, and we desire only to inquire, "Will the Profession be damnified; will the public suffer by the course which has been taken?"

The legal press has expressed, we believe, but one opinion respecting the perils attending the delay in laying the rules under the Judicature Act before Parliament. We have repeatedly pointed out that it would be almost impossible to work the Act in November by means of rules issued in August. It could not be expected that the Long Vacation should be devoted to the study of the new machinery, and we confidently assert that, had the Act come into operation next November under these conditions, the public would have had to pay dearly for educating the Profession in the procedure. To this the Profession and the public ought to object. Nothing, indeed, is more mortifying to a professional man than to be compelled to learn his work at the expense of his client. On this ground alone we think it is matter for congratulation that a few months more must elapse before the Act is to operate. We shall soon know what the rules are; they will be subject to criticism which it is impossible to doubt will be a most wholesome ordeal, and by the time it becomes necesary to put them into practice the Profession will be familiar with their scope and meaning.

The real grievance arising out of the delay is to be found in connexion with the Irish Bills. A reform of the Irish judicature is a matter clearly of the most pressing importance. It is obvious that a system has grown up in Ireland which is altogether out of proportion to the wants of the

Digitized by Google

people. The judicial strength is at least one third greater than there is any necessity for. This must be a constant source of regret when in England we find the converse to be the case—growing accumulations of work wholly beyond the power of the Judges to control. The Irish judicial system it is said has been kept alive in its present form simply for the purposes of patronage. Such a plea for its continued existence is a strong argument for its curtailment. It is a plain absurdity that we should maintain Judges in comparative idleness in Dublin whilst Judges are overworked in England, and the work is falling into arrear. It must, therefore, be sincerely regretted that the Irish Bills have been delayed. The *Times* fears this delay will amount to an abandonment of the scheme of Irish judicial reform. We trust not. The consequences of carrying through this measure may be inconvenient to the Ministry, but it should be one of the first duties of next session.

On the whole, we think that the Government cannot be blamed for pursuing the cautious policy of delay. It is infinitely safer than haste: nothing, indeed, is more fatal in judicial reform than inconsiderate haste. We anticipate that law reform will profit by the circumstance of a strong government being in office, which was not bound to bid for popularity by carrying through measures at any risk.—*The Bar.*

ORDER OF THE LORDS COMMISSIONERS

Relating to the Business in Masters' Offices.

Whereas by the Chancery (Ireland) Act, 1867, section 29, it is enacted that whenever in the judgment of the Lord Chancellor, from the state of business in the Court, any Master whose office is by the said statute abolished, can be spared, it shall be lawful for the Lord Chancellor to release such Master from his duties as such, at such time as to him shall seem meet: And whereas by the 2nd section of the same Act the expression Lord Chancellor occurring therein shall mean and include the Lords Commissioners for the Custody of the Great Seal of Ireland.

And whereas, in our judgment, having regard to the state of business in the said Court and in their respective offices, the Right Honorable William Brooke and Jeremiah John Murphy, Esquire, two of the said Masters, may be spared: we do hereby release the said William Brooke and Jeremiah John Murphy from their duties as such Masters from and after the 8th day of August next ensuing.

And whereas the 39th section of the said Act directs the nature of the business to be prosecuted by the then Masters of the said Court until they should be removed by resignation, death, or otherwise, or released from their duties under the said Act; and that such business, if necessary, should from time to time be distributed among the Masters, or such of them as should then remain, and the Receiver Master, in such manner as the Lord Chancellor should direct: and whereas it is enacted by the 175th section of the said Act, as interpreted by the 2nd section thereof, that all suits, causes, matters, or other proceedings which were pending in the said Court on the first day of Michaelmas Term, 1867, should be conducted or prosecuted according to the same practice as if the said Act had not passed; provided that it should be lawful for the Lord Chancellor, by an order to be made upon motion or petition, to direct that the whole or any part of the further proceedings in such suit, cause, or matter, should thenceforth be carried on according to the practice introduced by the said Act: and whereas all the business now carried on in the offices of the said two Masters has been carried on according to the former practice; now we do hereby direct that all the business now transacted in the offices of the said two Masters, which consists in the passing of the accounts of receivers, guardians, and committees of the estates of lunatics, and in the management of the estates wherewith they are entrusted, shall, from and after the 8th day of August next, be transferred to the office of the Receiver Master; and that all other business now appertaining to the said two offices shall, from and after the said 8th day of August, be transferred to the chambers of the Lords Commissioners; and it shall be competent for any person interested in the prosecution of any suit, cause, matter, or other proceeding so transferred, to make application to the Lords Commissioners in Chamber touching the regulation of the course of practice to be pursued in its further prosecution.

(Signed), JOSEPH NAPIER, C.S.
JAMES A. LAWSON, C.S.
WILLIAM BROOKE, C.S.

The 4th day of July, 1874.

THE PEACE PRESERVATION ACT.

At the Evening Sitting, on Friday last, in the House of Commons, the First Order was the consideration of the Amendments in the Expiring Laws Continuance Bill, and

Mr. BUTT announced that the Irish members, having reconsidered their course, had decided that they would not be justified in further occupying the time of the House after the concession made by the Government, which fully established the principles for which they had been struggling. They would, therefore, take one division on the question of excluding the Peace Preservation Bill from the Schedule, and would then retire from further opposition. At the same time he earnestly appealed to the Government to give up this system of governing Ireland by Coercion Acts, and to trust solely to the Common Law.

Mr. DISRAELI said he did not complain of the opposition to Coercion Acts and Continuance Bills, but he did complain that the question should be raised against the Government, which under the circumstances could have taken no other course, and at this time of the session. No notice had been given of this grievance, for when Sir M. Beach went to Ireland it was the unruly character of the River Shannon which seemed to excite most interest. The practice of bringing in Continuance Bills was too convenient to be absolutely abandoned, but he agreed with Mr. Butt that important Acts of this character ought not to be introduced into them. Next year the Government would have to consider the subject. No set of public men would be more delighted if they could recommend the abandonment of the policy of Coercion Acts, but no consideration of passing unpopularity would induce them to part with these Acts if they thought them necessary. While paying a compliment to the fairness with which Mr. Butt had acted, Mr. Disraeli expressed a hope that his example would be useful to those among his friends who had not the same experience.

Mr. DOWNING moved to omit from the schedule the Peace Preservation Act, which was defeated by 137 to 56, and the other amendments were agreed to.

CRIME IN IRELAND.—An epidemic of murder appears to have broken out in a limited part of the south of Ireland, a district only fifteen miles square. Three most atrocious crimes of the kind following one another in quick succession within the narrow area referred to have alarmed the people living on the borders of Cork and Waterford. The victims belonged in all cases to the peasant class—small farmers or day labourers—and were old men or helpless women residing in lonely cottages where no alarm was possible and no help within reach. What is remarkable is that no trace can be discovered in these crimes of agrarian animosity or personal feuds. The police attribute them all to greed for gain; and suspicion has fallen on the tribe of roving tramps who have always been encouraged in Ireland by the popular tenderness for mendicancy. It is stated, moreover, that the character of this class has deteriorated by the admixture among them of men who have tried life in the United States, and, failing through laziness or shiftlessness, have come back with an increase in both their aptitude for low cunning and their readiness to resort to violence. It may be also that the unfortunate lenity of Irish juries towards crimes against the person has something to do with the recklessness of Irish criminals. A peculiarly savage murder, also for the sake of plunder, which was committed some time ago at Limerick, has up to the present time escaped unpunished. At the Limerick assizes in the spring the jury disagreed; and though the venue was changed to Cork, where the case was heard again last week, it seems only too probable that there also a failure of justice will happen. *Pall Mall Gazette.*

Digitized by Google

THE CASE OF DR. KENEALY.

The following is a copy of the minutes and resolutions adopted by the Benchers of Gray's-inn on Saturday last:—

At the adjourned Special Pension, holden this 1st day of August, 1874, for the purpose of inquiring into the fact of Dr. Kenealy, Q.C, a member of this Inn and a Bencher, being the editor of the *Englishman*, and his conduct as such—present, The Treasurer (Master Russell), Masters Holker (Solicitor-General), Manisty, Wilde, Parker, Wigg, Wishaw, Blount, Tatham, Fooks, and Joyce. The minutes of the adjourned Special Pension, holden on the 18th of July, were read. The Steward reports that on the 8th of July he wrote and sent to Dr. Kenealy a letter, of which the following is a copy:—

"Steward's Office, Gray's-inn, W.C., July 8, 1874.

"SIR,—I am desired by the Treasurer and Masters of the Bench to give you notice that, not having received any answer to my letter addressed to your solicitor, Mr. Evans, on the 1st inst., they will, at the adjourned Pension to be holden on the 18th inst., limit the inquiry to the fact of your being the editor of the newspaper called the *Englishman*, and your conduct as such.—I am, Sir, your obedient servant, CHARLES EDMUND BANKS, Steward.—To E. V. Kenealy, Esq., Q.C., LL.D., 2, Gray's-inn-square."

The Steward further reports that on the 18th of July he communicated to Dr. Kenealy and his solicitor the orders of Pension made on that day, in a letter of which the following is a copy:—

"Steward's Office, Gray's-inn, W.C., July 18, 1874.

"SIR,—I beg to communicate to you the orders of Pension set out on the other side, and which were made by the Masters of the Bench at the adjourned Special Pension holden this day.—I am, Sir, your obedient servant (signed), CHARLES EDMUND BANKS, Steward.—To E. V. Kenealy, Esq., Q.C., LL.D."

The Steward further reports that on Monday, July 20, he delivered to Mr. Bradley, the printer of the *Englishman*, at his printing-office, No. 1, Plough-court, Fetter-lane, a copy of the following order:—

"Gray's Inn.—At an adjourned Special Pension, holden on the 18th of July, 1874, ordered that the printer of the *Englishman* be requested to attend the Special Pension to be holden on Saturday, the 1st day of August, next, at eleven o'clock in the forenoon. (Signed) CHARLES EDMUND BANKS, Steward."

The Steward further reports that on the 30th of July he received from Mr. Bradley a letter of which the following is a copy:—

"1, Plough-court, Fetter-lane, E.C., July 30, 1874.

"Dear Sir,—I regret to say that my position as a printer would render my attendance at your Special Pension an unbusiness-like proceeding on my part. I am obliged, therefore, to be absent. With deep regret, I remain, dear sir, your obedient servant. (Signed) CHARLES W. BRADLEY."

The Treasurer read a letter which he had this day received from Mrs. Kenealy:—

"Lancing, Sussex, July 31, 1874.

"Sir,—On receipt of the order of Pension of July 18, Dr. Kenealy sought for counsel to represent him, but failed to procure one; circuit keeps all out of town, and Dr. Kenealy would not be justified in going to the expense of bringing counsel to town specially. Under these circumstances he went to town, intending to appear himself, but he was attacked with violent pains in the head, and was obliged to return here. I am sorry, therefore, to say he cannot attend on August 1. He has no knowledge of what the new charges are against him, having received no particulars from Gray's Inn. He is reluctant to ask for any further adjournment, and he leaves the Masters of the Bench to act as their own sense of honour, right, and justice may dictate.—I am, sir, yours sincerely (Signed), ELIZABETH KENEALY."

Dr. Kenealy did not attend, and no one attended on his behalf. The printer, Mr. Bradley, did not attend. Seventeen numbers of the *Englishman*, bearing the name of Dr. Kenealy, Q.C., as editor, commencing the 11th of April last, and ending this day, were produced by the Steward pursuant to the order of the Bench, and their contents were considered by the Benchers present.

The following resolutions were moved by Master Manisty, seconded by Master Holker, and carried unanimously:—"1st. That this Pension find as a fact that Dr. Kenealy is the editor of the newspaper called the *Englishman*. 2nd. That the *Englishman* is replete with libels of the grossest character. 3rd. That Dr. Kenealy, being editor of that newspaper, is unfit to be a Master of the Bench of this Honourable Society."

The following resolutions were moved by Master Manisty, seconded by Master Holker, and carried by a majority of 10 to 1:—"4th. That the call of Dr. Kenealy to this Bench be and the same is hereby vacated. 5th. That Dr. Kenealy be prohibited from dining in the hall of this Society until further order."

The following resolutions were moved by Master Manisty, seconded by Master Holker, and carried unanimously:—6th. That the further consideration of this matter, as well as the consideration of the several other charges which Dr. Kenealy has been called upon to answer, be postponed to a future Pension to be hereafter appointed. 7th. That a copy of this day's proceedings be sent to Dr. Kenealy; also, that a copy be screened in the hall of this Inn, and that a copy be sent to the treasurer of each of the other Inns of Court. Ordered, that the Treasurer be requested to transmit to the Lord Chancellor a copy of the proceedings at the Special Pensions holden on the 7th and 18th of July and this day, together with the seventeen numbers of the *Englishman*.

NEW ACT ON MARRIED WOMEN'S PROPERTY.—An important Act of Parliament has just been printed, having been passed on Thursday, to amend the law with respect to the property of married women. The preamble of the statute states that it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and, further, the law as to the recovery of such debts requires to be amended. This declaration is worked out in the several sections. The Act has immediate operation in the United Kingdom with the exception of Scotland. So much of the Married Women's Property Act, 1870, is now repealed, that declares that a husband shall not be liable for the debts of his wife contracted before marriage, so far as to marriages after the passing of this Act, and a husband and wife married after this Act may be jointly sued for any such debt. The extent of the liability of a husband is defined by the new law. The husband in such action or in an action for tort committed by his wife before marriage or for contract, to be liable only to the extent of the assets specified, or confessing his liability to some extent, that he is not liable beyond what he confesses, and if no such plea is pleaded, the husband to be deemed to have confessed his liability so far as assets are concerned. If it is not found that the husband is liable in respect of assets, he is to have judgment for his costs of defence, whatever the result of the action may be against the wife. When a husband and wife are sued, the judgment to be a joint one to the extent of the lialility of the husband, and for the residue to be separate against the wife. Under six heads assets, in respect to which a husband is liable are specified, consisting of the value of personal estate in possession of the wife, vested in the husband, "choses in action," "the value of chattels real," rents, property transferred, or property made over to delay or defeat creditors.

A LADY IMPRISONED FOR LIBEL.—At the Stafford Assizes, on Friday, Mrs. Emma Smif Jones, a lady of position, and a widow of a Staffordshire magistrate, was charged with having libelled an auctioneer, named Gillard, at Stafford. The libel complained of consisted of a letter which she wrote, stating that Mr. Gillard concocted a will of her late husband, whereby she was deprived of certain property. The judge said the letter was as foul and offensive a libel as the pen of a woman could possibly write, and he sentenced her to three months' imprisonment.

Digitized by Google

APPELLATE JURISDICTION IN EQUITY (VICTORIA)—MAY 2, 1874.

(Before their Honours Mr. Justice BARRY and Mr. Justice FELLOWS).

Re PATRICK M'DONALD.

[From the *Australian Jurist.*]

Insolvency Statute. 1871, No. 379, sect. 38—Debtor summons—Unless debtor shows that he is not indebted to the creditor in an amount sufficient to support petition for sequestration, summons is not to be dismissed; the inquiry is merely preliminary—The question whether non-payment is an act of insolvency, is for the Supreme Court.

See report of the judgment appealed from, 4 A. J. R. 184: report of subsequent proceedings, *ante*, pp. 12, 26.

This was an appeal against a decision of Mr. Justice Molesworth.

In 1871 M'Donald, a merchant carrying on business at Geelong, executed an assignment in trust for the benefit of his creditors, under the provisions of the Insolvency Statute, 1865. The Commercial Bank, who were creditors to a large amount, refused to sign the deed, and sued M'Donald for the amount of the debt. They recovered judgment against him for about £13,000. The deed was signed by a majority in number and value of the creditors, but not by three-fourths, which would make it effectual as an answer to any order to sequestrate the estate under the terms of the Act of 1865. The Act of 1871, however, came into force, and under its provisions the bank applied for a rule *nisi* to compulsorily sequestrate the estate, on the ground of failure to point out property to satisfy the execution. The Full Court held that the existence of the assignment protected the estate from sequestration, and therefore discharged the rule. Towards the latter end of last year the bank took out a debtor's summons under the Act of 1871. M'Donald then applied to set aside the summons, and Judge Skinner granted his application. Against this decision the bank appealed to Mr. Justice Molesworth, who reversed the decision of the Court below, and held that, according to the terms of the Act, the summons could not be dismissed, although it was another question whether M'Donald's estate could be sequestrated for non-payment of the debt referred to in the summons. Against this decision of Mr. Justice Molesworth's M'Donald appealed to the Full Court.

Mr. Holroyd and *Mr. Webb* for the appellant; *Mr. Lawes* and *Mr. A'Beckett* for the respondent.

Clause 38 of the Act No. 379 provides that "a debtor's summons may be granted by the Court on a creditor proving to its satisfaction that a debt sufficient to support a petition for sequestration is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt after using reasonable efforts to do so. The summons shall state that, in the event of the debtor failing to pay the sum specified in the summons or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that his estate may be sequestrated. Any debtor served with a debtor's summons may apply to the Court in the prescribed manner and within the prescribed time to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a petition of sequestration against him. And the Court may dismiss the summons if satisfied with the allegations made by the debtor, or it may upon such security being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the cost of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt." Section 39 empowers the Supreme Court to make an order *nisi* for sequestration on its being proved that the respondent has committed an act of insolvency. Among the acts of insolvency enumerated in sect. 37 is, that the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due of an amount not less than £50; and the debtor has, for the space of 14 days succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same. It was argued for the appellant that this debtor's summons could not be maintained, inasmuch as no petition for sequestration could be based on it, for the Court had already held that the deed of assignment was a sufficient answer to any petition based on his not paying the judgment. For the bank it was urged that it was premature to decide now whether a petition for sequestration could be based on the debtor's summons. All the Court had to determine was whether a debt was due of sufficient amount to support a petition for sequestration. If the Court were to entertain the question of the assignment at all, the bank would be in a position to show that it was not a valid deed under the Act of 1865, as containing unreasonable provisions, such as that by which the trustees were made sole judges of the amount of the debt of each creditor, and that no creditor could receive a dividend unless he signed the deed.

(The Court did not decide the validity of the assignment, but only the question whether M'Donald could have the summons dismissed).

Mr. Justice BARRY said,—The issue in this appeal is narrowed to a very small point. The object of the Legislature has been to institute a preliminary inquiry in the Insolvent Court, in order to give jurisdiction to the Supreme Court to deal with the question of the sequestration of the estate of the debtor. That preliminary inquiry is as to the existence of a debt; the debt being established, the next inquiry is whether an act of insolvency has been committed by the debtor. It appears remarkable that whilst in almost every other case there has been an endeavour to consolidate jurisdictions, here there has been a distribution of the two inquiries between two separate courts. The Insolvent Court undertakes the inquiry in the first instance as to the existence of the debt; the next inquiry, involving the consideration of the sufficiency of the debt as an act of insolvency, is to be entertained by the Supreme Court. This distinction is clearly laid down by Lord Justice James, *in re Mauritz*, L. R. 5, Ch. App. 779. We do not say whether the non-payment of this debt will be sufficient to support a petition of sequestration; and we shall decide that when the question of the sequestration of the estate arises. We think the decision appealed from is correct.

Mr. Justice FELLOWS said,—Section 38 of the Act of 1871 provides that a summons may be granted to a creditor under certain conditions. Those conditions are that the creditor is to prove to the satisfaction of the Court that a debt sufficient to support a petition for sequestration is due, and that he has not been able to obtain payment. It is proved here that a debt is in existence, and that the debt is clearly sufficient to support a sequestration; although it is possible that it may be a debt the non-payment of which will not support an act of insolvency. The section then goes on to provide that the debtor may apply to set aside the summons on the ground that he is not indebted, or that he is not indebted to an amount sufficient to justify a petition for sequestration; and the last provision is that proceedings may be stayed and a trial be directed of the question relating to the debt. If that course had been adopted in this instance, an action would have been brought by the bank on the judgment, and the only possible defence to such an action would have been payment. As the debt was not paid, the plaintiff must have recovered a verdict. There is therefore, in my opinion, a debt existing within the meaning of the section. Whether it can be made available afterwards by reason of non-payment within 14 days, as an act of insolvency, is a question which will be properly considered when the rule *nisi* for sequestration is applied for.

PROBATE.

ATTESTATION OF WILL.

Re Elizabeth Maddock (30 L. T. N. S. 696).

Sir James Hannen, in the case *Re Elizabeth Maddock* (30 L. T. Rep. N. S 696) decided a question of general interest to testators. The testatrix executed her will by making her mark at its foot, in the presence of two witnesses. Of these witnesses, one signed his name in due form; the other,

Digitized by Google

an old man, named Samuel Birtwistle, wrote "Saml." but could not complete his signature owing to infirmity. This not being deemed sufficient, another witness was sent for. He signed the will, whilst the first witness simply went over the signature he had previously written with a dry pen. The learned Judge proposed two questions for decision: first, whether the second attesting was a valid attestation; secondly, whether the first attesting was a valid attestation? The first question was solved in the negative by *Playne* v. *Scriven* (Robert. 772). On the second question the judgment went more into details. The rule of law is, that "if a witness makes any mark with the intention thereby to subscribe, that is sufficient." Thus it becomes a question of intention. The learned Judge expressed approval of the rule laid down in *Charlton* v. *Hindmarsh* (8 H. of L. Cas. 160), and thought it essential that the act intended as a subscription should be completed. This rule, hard as it may sometimes work, has received the approval of Lord Campbell, Lord Cranworth, and Lord Chelmsford. From their Lordships' remarks, it is evident that they were fully aware that such a rule might afford examples of the maxim *summum jus summa injuria*, and such was the case in *Re Elizabeth Maddock*; for it was held, that as the act which the witness intended to perform was not complete, the will was not duly attested.—*The Law Times.*

DIGEST OF RECENT ENGLISH DECISIONS.

[From the *Albany Law Journal.*]

CARRIER.

Carriers' act: felony of carrier's servants: evidence.—In an action against carriers for loss of the plaintiff's goods, upon an issue that the loss arose from the felonious acts of the defendants' servants, it is sufficient to prove facts which render it more probable that the felony was committed by some one or other of the defendants' servants than by any one not in their employment; and it is unnecessary to give such evidence as would suffice to convict any particular servant. *Vaughan* v. *London and North Western Railway Company*, L. R. 9 Ex. 93.

CONTEMPT OF COURT.

Pending trial: practice.—When a true bill has been found, and the indictment removed into the Court of Queen's Bench, and a day fixed for the trial, the case is pending; and it is contempt of court to address public meetings, alleging that the defendant is not guilty, and that there is a conspiracy against the defendant, and that he cannot have a fair trial. And the court will rule the parties offending to appear in court to answer for their contempt; and on their appearance will fine and imprison them, at the court's discretion. *The Queen* v. *Castro*, L. R. 9 Q. B. 219.

CONTRACT.

Evidence: acceptance of offer with a reservation.—The plaintiff, who proposed to enter the service of the defendant, a calico-printer, as salesman, on the 21st of September, wrote as follows: "Referring to my conversation with you, I have now the pleasure to state my willingness to enter the service of your firm for one year on trial, on the following terms, viz.: a list of merchants to be regularly called on by me to be made, and corrected as occasion requires. My salary for the year to be £120, and in addition a commission of ½d. per piece on all sales effected or orders taken by myself, etc. If the terms herein specified are in accordance with your ideas, kindly confirm them by return, and I will prepare to enter on my duties at your warehouse on Monday morning next." The defendant on the following day replied,—"Yours of yesterday embodies the substance of our conversation and terms. If we can define some of the terms a little clearer, it might prevent mistakes; but I think we are quite agreed on all. We shall therefore expect you on Monday." Then followed this postscript,—"I have made a list of customers, which we can consider together:"—*Held*, that these two letters did not constitute a binding contract in writing, the defendant's answer not being an absolute and unqualified acceptance of the plaintiff's offer. *Appleby* v. *Johnson*, L. R., 9 C. P. 158.

LAW CLERKS' ASSOCIATION.

The monthly general meeting was held on Monday evening, at 207, Great Brunswick-street. Owing to the absence of members at the assizes and upon their holidays, the attendance was small. Mr. Dowling, the vice-president, took the chair, and among those in attendance were—Messrs. Jervise, Flynn, M'Kittrick, Devereux, Farrelly, Sohan, Walsh, and Sheridan. The secretary announced that he had forwarded to the Hon. David Plunkett, M.P., for presentation to the House of Commons, the petition of the association upon the Saturday half-holiday question, and a petition praying that no clause should be introduced into the Judicature Bill that would have the effect of excluding properly qualified law clerks from being eligible for certain of the situations proposed to be created under it. The petitions had been duly presented, but the sudden withdrawal of the bill had suspended further action for the present. Attention was then called to the fact that a barrister of many years' standing, but of limited practice, was acting as managing clerk in a solicitor's office in the city. Inquiry was directed to be made into the case, with the view of ascertaining whether such a practice was consistent with the rules of the bar, so that, if necessary, the opinion of the benchers should be sought upon the question. A discussion also arose in reference to the great number of solicitors now obtaining employment as conducting clerks in the offices of the practising solicitors. These were gentlemen who, not having any *clientele* of their own, were obliged to go as clerks in the larger offices. Mr. Power stated there was no doubt this system was gradually coming into favour, and to such an extent that he believed that in the space of a few years nearly all the superior positions in solicitors' offices would be filled by gentlemen admitted as solicitors, and not by law clerks, who will have to be content with the drudgery and bad pay of the minor positions. This was purely a question of qualification which rested entirely with the law clerk himself. If the clerk will not qualify himself by study, application, and steadiness, to compete with the young solicitor for the superior clerkships, he has no one but himself to blame. To enable him to compete on pretty equal terms, the association has now a reading-room and library with premises in which a legal debating society can be opened as soon as the members themselves desire it. Every means of improvement will be placed within their reach if they will only avail themselves of them. After some further discussion the meeting adjourned.

DISBARRED.—Mr. Weightman, who, it will be remembered, was convicted at the Central Criminal Court, and sentenced to six months' hard labour for purloining books from the Inner Temple library, some time ago, has, since his liberation from confinement, been called upon by his Benchers to answer for his conduct, and has been disbarred after an investigation lasting over three days. During the inquiry it transpired that on being released from prison a check. representing public subscriptions amounting to £600, was handed over to him. After the sentence of disbarment had been passed upon him he gave notice of appeal to the judges, but failed to put in an appearance at the appointed day; and notwithstanding every inquiry, no one has since heard of him. It was rumoured that of the proceeds derived from the sale of one book which he had taken, he actually applied a portion to the sustenance of a brother barrister (since dead), who, like himself, was, at the time of the commission of the offence, starving and almost dying. Since the disclosure of the privations endured by Mr. Weightman, a fund has been established by all the Inns of Court to alleviate the wants of the poorer members of the Bar.

IRISH REPRODUCTIVE LOAN FUND.—On Saturday last the Irish Reproductive Loan Fund Bill was passed through committee, after a protest from Mr. Downing, who insisted that it was a very inadequate discharge of the obligation imposed on the Government by the division on Mr. Synan's motion, and was an outrageous departure from the purposes to which this Fund was originally dedicated.

Digitized by Google

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Coyne	Prove debts and vouch	
O'Donnell	Adjourned prove debts and vouch	
O'Reardon and Murphy	do	
Wright	do	
Beresford	Adjourned reference	
Neill	Costs	*Fay & M'Gough*
Dymoke	Adjournad vouch acct.	

TUESDAY.

Before the COURT, at 11 o'clock.

Clarke	Adjourned 1st composition sitting	
Cannon	2nd composition sitting	
Duggan	1st public sitting	
Donovan	do	
Nolan	do	
Leahy	do	
Creswell	Final examination	
Wallace & Magill	do	
Hazelton and Sheppard	do	
Doyle	Adj. final examination	
Cannon	do	
Magrath	Adjourned 1st composition sitting	
Roche	Adj. final examination	
M'Aleenan	do	
Rickard	do	
Barton	do	
Quiry	do	
O'Connor	Audit and dividend	
Gilman	do	
Murray	Charge	
Connor	Motion	

Before the CHIEF CLERK, at 12 o'clock.

Graham	Prove debts	
Foxall	Adjourned prove debts and vouch	
Dillon	Vouch	
Kavanagh	Adjourned vouch	
Flynn	do	

WEDNESDAY.

Before the CHIEF CLERK, at 12 o'clock.

Neill	Adjourned prove debts	
Burne	Costs	*Molloy & Watson*
Potter & Gillman	do	*Thompson*
Lancashire	Adjourned prove debts	
Labertouche	Costs	*Casey & Clay*
Parker	do	*Oldham & Eaton*
Courtney	do	*Goff*
M'Kenzie	do	*Casey & Clay*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Darcy	Costs	*Goff*
Cummings	do	*Goff*
Beresford	Adjourned reference	
Brady	Vouch account	

FRIDAY.

Before the COURT, at 11 o'clock.

Barton	1st composition sitting	
Quirey	do	
Page	1st public sitting	
Horan	do	
Chamney	do	
Carnigie	Final examination	
Domvill	do	
Dwen	do	
Crone	do	
Thompson	do	
Slattery	Adj. final examination	
Holland	do	
Meikle	do	
Boak	do	
Singleton	Confirm sale	
Sloan	do	
Byrne	Sale	
Rogers	Application for certificate	
Parker	Audit and dividend	
O'Donnell	do	
Berkley	Examine witnesses	
M'Donnell	do	

Before the CHIEF REGISTRAR, at 12 o'clock.

Foxall	Costs	*M'Evoy*

LADY LAWYERS.—According to the *Chicago Legal News* (edited by a lady), Miss Lavinia Goodell, of Janesville, Wisconsin, has been admitted to the Bar. The *News* proceeds thus :—"We are personally acquainted with Miss Goodell. She is a young lady of good education, fine appearance, modest bearing, and we have no doubt will succeed well at the Bar, and receive, as she deserves, the good will and respect of her brethren in the Profession."

BURNT DOCUMENTS.—M. Rathelot, an officer of the Parisian law courts, has saved, recently—valuable records damaged during the reign of the commune—by adopting this plan. He cut off the back of the book, so as to leave only the mass of leaves caused by the fire to adhere to each other, and then he steeped the book in water and exposed it, in its damp state, to the heat, at the mouth of a *calorifère*. The water evaporating raised the leaves, one by one, so that with care and caution they could be separated. Each sheet was then deciphered and transcribed, and the copy was certified by a legal officer. Thus, it is stated, that about 70,000 official Acts have been preserved. The appearance of the pages is described as curious, for the writing appeared to have been of a dull black, while the paper was of a lustrous black, resembling velvet decorations on a black satin ground, so that the various entries could be deciphered without difficulty.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

COOPER—August 2, at Mountain View, Banbridge, the wife of G. P. Cooper, Esq., solicitor, of a son.

MARRIAGES.

COTTENHAM and THOMPSON—August 4, at Christ Church, Lancaster-gate, the Hon. Walter Courtenay Pepys, youngest son of the first Earl of Cottenham, formerly Lord High Chancellor of England, to Amy Harriet, only daughter of Lieutenant-Colonel Thompson, late of Her Majesty's 58th regt., and grand-daughter of the late Lieutenant-Colonel Thompson, of Her Majesty's 27th regt.

DEATHS.

HEWITT—August 4, at No. 22 Kenilworth-square, Rathgar, aged 70 years, Matilda Eleanor, widow of the late Richard Hewitt, Esq., solicitor.

MONCK—August 2, at 77 Rathmines-road, Thomas Monck, Esq., for many years an officer of the Court of Common Pleas, Dublin.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	JULY Fri 31	AUGUST Sat. 1	Mon. 3	Tues. 4	Wed. 5	Thur 6
	Government.						
—	3 p c Consols	92⅝	92⅝	—	92¾⅞	92⅞–2	91⅞
—	New 3 p c Stock ..	91⅝⅞	91⅝⅞	—	91⅞	91⅞¾	91⅝¾⅞
	INDIA STOCK.						
—	5 p c July '80} Trafble. at	—	—	—	—	—	107½
—	4 p c Oct. '88{ Bk. of Irel.	102¼⅜	—	—	102¼	—	—
	Banks.						
100	Bank of Ireland ..	309⅝	—	—	310–½	310½	311
25	*Hibernian Banking Co.* ..	59¼	58¾	—	58¾	58¾–9	59
15	*London Joint Stock* ..	—	—	—	—	—	49½
20	*London and Westminster* ..	73	—	—	—	73½	—
3½	*Munster Bank (Limited)*	x d	—	—	8¼⅜	8¼⅜	8¼⅜
30	*National Bank*	60¼½⅝¾	60¼	—	60¼	61⅞–2	62–⅛⅜⅝
15	*National of Liverp'l (Ltd)*	—	—	—	—	—	—
25	*Provincial Bank* ..	—	—	—	88	88½	—
10	Do. New ..	—	—	—	—	35	—
10	*Royal Bank*	—	—	—	—	—	30⅜⅝
	Steam.						
100	City of Dublin	—	—	—	—	—	106½
50	Dublin & Liverpool Steam Ship Building. Co.	55½	—	—	—	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	HOLIDAY	—	—	–/6
7	*Cape Copper M. Co. (lit'd)*	—	—		26½	—	26⅝
1	Killaloe Slate Co. (lit'd) .	16/–	—		—	16/6	16/6
7	*Mining Co. of Ireland (lit'd)*	6¼½	6¼		—	—	6
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—		—	—	10⅜⅝
25	*National Assurance* ..	—	—	—	—	48¾	48⅝
9-4-7	*Patriotic Assurance* ..	—	—	—	10½	—	10½
	Railways.						
20	Cork, Blackrock & Passage	—	—	—	—	—	10⅛⅜
100	Dublin and Drogheda	—	—	—	—	—	112½
100	Dublin, W'klow, & W'ford	—	—	—	—	77½	—
100	Gt. Northern and Western	—	—	—	99	—	—
100	Gt. Southern and Western	108½	—	—	108⅜⅝	108¼⅜	109
100	Midland Gt. Western ..	80¼⅜	80	—	78¼⅜⅝	78⅜⅝	78⅝
50	Waterford and Limerick ..	—	33½	—	—	—	—
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	95	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	54	—	—
100	Gt. South'n & West'n 4 p c	100	100	—	100	—	100
10	Irish North Western A 5 p c	—	—	—	3½	3½	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c ..	52½	—	—	—	52½	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	95½	—	95⅝	95⅝	95⅝
—	Cork and Bandon, 4½ p c	—	—	—	100	—	—
—	Dublin & Meath 4½ p c ..	—	—	—	—	—	—
—	D., W., & W., 4½ p c ..	—	—	—	99⅝	—	—
—	Gt. South'n & West'n, 4 p c	99	99	—	99	99	99½ f
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 6th August, 1874.
Of Deposit—2½ per cent., 6th August, 1874.

Name Days—August 13th and 27th, 1874.

Account Days—August 14th and 28th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

Pursuant to an Order of the High Court of Chancery made in the Matter of the Estate of Edward Murphy, late of Grange Lodge, Mountmellick, in the Queen's County, Farmer and Merchant, deceased, and a Cause, John Wrafter, plaintiff; Anne Murphy, defendant, and bearing date the 30th day of May, 1874—the Creditors of the said

EDWARD MURPHY, who died in or about the month of April, 1873, are, on or before the 1st day of SEPTEMBER, 1874, to send by post, pre-paid, to Mr. JOHN A. FITZGERALD, of No. 19 Upper Ormond-quay, in the City of Dublin, the Solicitor of said Anne Murphy, the Administratrix of the deceased, their Christian and surnames, addresses, and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Order.

Every Creditor holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 6th day of NOVEMBER, 1874, at Twelve of the clock in the forenoon, being the time appointed for adjudicating on the claims.

Dated this 27th day of June, 1874.

A. T. CHATTERTON, Chief Clerk.

JOHN ROE, Solicitor for Plaintiff, No. 27 Upper Sackville-street, Dublin. 532

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF CORK.

In the Matter of the Estate of Frederick Jones, Assignee of Samuel Digby Wright, Owner;

Thomas Ross, Petitioner.

And in the Matter of the Estate of Timothy Sheehy, Administrator of Henry Wilson Wright, Owner;

Patrick Ronayne, Executor of Thomas Ross, deceased, Petitioners.

TO BE SOLD

By Order of the Landed Estates' Court, On WEDNESDAY, The 14th day of OCTOBER, 1874, At the AUCTION ROOMS of the Messrs. MARSH, SOUTH MALL, CORK, In Three Lots, The following LANDS and PREMISES, In and adjacent to The Town of Skibbereen, In the Barony of West Carbery, And County of Cork, viz.:—

LOT 1

Part of the Town of Skibbereen and portion of the Lands of Gortnaclohy and Coronea, adjacent thereto, containing 41a. 2r 14p, statute measure, held in fee, and producing a net rental of £414 3s 8½d.

This Lot is subject to a jointure of £300 a year for the life of a lady aged 70 years.

LOT 2

The Lands of Barna, held under Lease of the 29th day of April, 1748, for a term of 999 years, at the yearly rent of £20, late currency, and producing a profit rent of £115 12s 2½d.

LOT 3

An undivided moiety of the Mill, Mill-house, Cottages, and Garden of Loriga, Skibbereen, held in fee-farm, subject to £3 15s 4d per annum, being a moiety of the head-rent, and producing a profit rent of £58 4s 8d.

Dated this 19th day of June, 1874.

H. R. GREENE, Chief Clerk.

The Biddings will be taken by the Auctioneers on the 14th day of October, 1874, at the Auction-rooms of the said Messrs. MARSH, South Mall, in the City of Cork, commencing exactly at Twelve o'clock noon, and they will be submitted to Judge Flanagan, at his Chambers, on the 2nd day of November, 1874, at Eleven o'clock in the forenoon, without further notice to any person.

DESCRIPTIVE PARTICULARS.

LOT 1

The Lot embraces a considerable extent of Building Ground, which is sure to become a m st eligible investment. The Cork Steamship Company run a Steamer Weekly to the Port of Skibbereen, while the Town is about being connected by Rail with the Dunmanway Terminus of the West Cork Railway. There is excellent fishing and shooting in the neighbourhood.

LOT 2

The Lands of Barna are situate within five miles of Skibbereen, and about eight miles from the Town of Bantry. This Lot is all in the possession of one tenant, who holds under a Lease for three lives. The rent is very moderate, and is paid punctually.

LOT 3

The Mill of Loriga, with the Houses and Premises attached, lies adjacent to the Town of Skibbereen, and are let to a tenant who holds under a Lease for an unexpired term of years; one moiety of the profit rent arising thereout being payable to the owner in this matter. The Mill commands a prosperous trade, and the rent is well secured.

For rentals, maps, and further particulars of Sale, apply at the Landed Estates Court, Dublin; to

PATRICK RONAYNE, Esq., the Receiver, Hawthorn Cottage, Drimoleague;

Messrs. MARSH & SON, Auctioneers, South Mall, Cork;

HENRY T. STEWART, Esq., 33 Lower Ormond-quay, Dublin; or to

THOMAS DOWNES, Solicitor having carriage of Sale, 33 Lower Ormond-quay, Dublin; and Skibbereen.

501

BINDING "THE IRISH LAW TIMES."—SUBSCRIBERS are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d.; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions, printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates.

BY JOHN FALCONER,
Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL,
53 Upper Sackville-street, Dublin.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, August 8*, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, AUGUST 15, 1874. No. 394.

THE EFFECT OF THE LAND ACT (1870) UPON TENANCIES FOR A YEAR CERTAIN.

WRIGHT *v.* TRACEY.

THE Court of Exchequer Chamber, in its elaborate judgment in the case of *Wright* v. *Tracey* (reported in to-day's issue of our Reports, p. 142), has settled a question which affects, in a most important degree, the relation of landlord and tenant. We regret that the decision is not fortified by the authority which always follows a unanimous decision of that tribunal, but we rejoice that the law has been laid down, so far as regards the question there involved, in such a manner as to remove it out of the limits of that large class of cases where some unsettled law point exists, waiting only for a law-suit to arise and set it finally at rest. The point on which the Exchequer Chamber was called on to decide arose on the 69th section of the Land Act of 1870, which enacts that "Where any tenancy at will, or less than a tenancy from year to year, is created by a landlord after the passing of this Act, the tenant under such tenancy shall, on quitting his holding, be entitled to notice to quit, and compensation in the same manner in all respects as if he had been a tenant from year to year." By a contract in writing entered into after the passing of the Land Act, lands were let "for the term of one year certain to commence on 25th March, 1871, and to end on 25th March, 1872." The question before the Court was whether this tenancy could come under the 69th section, in other words, whether a tenancy for a year certain is less than a tenancy from year to year, and as such entitled to a notice to quit, prior to ejectment by the landlord. The majority of the Court of Exchequer Chamber, consisting of Whiteside, C.J., Palles, C.B., Fitzgerald, J., and Fitzgerald, B., held that the tenancy was not less than a tenancy from year to year, and, as such, no notice to quit was necessary. They held that a tenancy from year to year must be considered as recommencing every year, following the judgment in *Tomkins* v. *Lawrance*, 8 C. & P., 729, and in *Gandy* v. *Jubber*, 5 B. & S. 88, and that therefore a tenancy created for a year certain cannot be considered as less than a tenancy which begins afresh every year it exists. Fitzgerald, J., in a judgment of great erudition and learning, considered the position occupied, in the consideration of the law, by a tenancy from year to year, which he declared himself satisfied to have been unknown in the time of Littleton, but to have gradually arisen from tenancies at will which were then well known. In support of this opinion he cited the following passage from *Timmons* v. *Rawlinson*, 3 Bur. 1609, which may be considered as a condensation of the history of this tenancy to be found in the ancient text writers and reports:—"In the country, leases at will, in the strict legal notion of a lease at will, being found extremely inconvenient, exist only notionally, and were succeeded by another species of contract which was less inconvenient. At first it was indeed settled to be for a year certain, and then the landlord might turn the tenant out at the end of the year. It is now established that if a tenant takes from year to year either party must give a reasonable notice before the end of the year, although that reasonable notice varies according to the custom of the different counties." An argument which had been advanced on behalf of the tenant that a wide interpretation should be put upon the statute, and that the tenant should be entitled to notice to quit in cases where he is entitled to compensation, was met by the observation that in a statute of this nature, altering the established law of real property, a rigid interpretation must be put upon its language. We agree fully in the language made use of by Whiteside, C.J., in that portion of his judgment which relates to this point:—"The legislation which is to bind me to fetter the plain engagements into which parties capable of contracting have entered, must be clear and coercive. Freedom of contract is the right of civilized man. This novel legislation must be unmistakeably expressed, and plainly applicable to the matter in hand." This decision was, however, not approved of by the minority of the Court, consisting of O'Brien, J., Deasy, and Dowse, BB. It is unfortunate that judges of such eminence should find themselves constrained to differ from the decision arrived at by the majority of the Court, in a case of such importance; the cause of that difference of opinion is to be found in the ambiguous and doubtful language of the section, as to which some of their lordships expressed themselves in terms of no qualified disapproval. Indeed, Fitzgerald, J., observed that it was by no means easy to put a satisfactory construction upon it. The opinion of the minority was that the tenancy was less than one from year to year, and that the tenant was, in consequence, entitled to a notice to quit. It is remarkable that this view was to a certain extent taken by the Court of Common Pleas, from whose decision the present appeal was brought. They also held unanimously that the tenancy was less than a tenancy from year to year; but the majority of that Court (Monahan, C.J., *dissentiente*) held that the section "was not intended to have, and cannot have the effect of defeating and annulling contracts, and that as the tenant in this case has contracted to give up possession on a day named without any notice to quit, for that is the meaning of the contract, he is not entitled to any such notice, or to hold on possession in defiance of his own covenant, to the contrary." The minority in the Exchequer Chamber, however, agreed with Monahan, C.J., in thinking that the section was applicable. They held that the nature of a tenancy from year to year was correctly defined in *Oxley* v. *James*, 13 M. & W. 214, by Pollock, C.B., as "a lease for a year certain with a growing interest during every year thereafter, springing out of the original contract and parcel of it." That being the nature of a tenancy from year to year, it followed that a tenancy for a year certain was less than it, and as such entitled to the benefit of the provisions of the 69th section. Upon the whole, we think that the decision of the majority is right in point of law, as it most indubitably is in point of natural equity and justice. In the language of the Lord Chief Justice, "Reason is shocked by the demand made upon us, not to maintain contracts between man and man, but to defeat and destroy them; but it is consoling to find law enough in the books to enable us to confirm the contract here made between the parties." There is no doubt that, were it established legally that a tenant who has entered into an express agreement with his landlord to quit at the end of the year is, still, to be entitled to a notice to quit, and that the landlord is to be exposed to the tedious

Digitized by Google

delay resulting therefrom, tenancies of this sort would become rarer and rarer, and in process of time would, in all probability, become almost entirely unknown. A large portion of the land in this country is held in this manner under what is known as "dairy agreements," and the effect of their total abolition, as we have no doubt would be the case were the decision in *Wright* v. *Tracey* contrary to what it is, would be most unfortunate for both landlord and tenant. Upon the whole, we think that *Wright* v. *Tracey* (8 Ir. L. T. R., 142—not elsewhere reported), will certainly be quoted in the future as one of the most important leading cases in the yearly increasing number of decisions to which the Irish Land Act, 1870, has given birth.

EXPECTED LEGAL APPOINTMENTS.

The *Times*, in its wisdom, remarks that:—Ireland will, perhaps, be astonished, if not indignant, at the rumour that the present Government, which less than four months ago declared, by the voice of the Lord Chancellor, that the number of Judges on the Irish Bench was excessive and ought to be diminished, has resolved to appoint another Judge in the Landed Estates Court. In professional circles this report has so far gained consistency that the Solicitor-General for Ireland, Mr. Ormsby, who held that office for a very brief period before Mr. Disraeli's resignation in 1868, and who was re-appointed on the return of his Party to power in the Spring, has been confidently named as the new Judge. Such an appointment would run counter with curious directness not only to the Irish Judicature Bill, which the Lord Chancellor introduced shortly after Easter, but to the personal expressions of opinion elicited on that occasion from Lord Cairns himself and from other eminent judicial authorities. The Irish Judicature Bill, however, in spite of the solemnity of its introduction and the suspension, as was generally understood, of Dr. Ball's appointment to the Irish Chancellorship in order that its operation should be facilitated, has withered among the immature fruits of the Parliamentary tree. The appointment by Disraeli's Government of an additional Landed Estates Court Judge, after the facts which have been proved and the declarations which have been made in reference to the Irish Judicature Bill, might be pronounced to be without parallel if we did not remember that Mr. Gladstone's Government, after expressly promising not to fill up the vacant place on the Bench of the Irish Court of Exchequer, raised Mr. Attorney-General Palles to the dignity of Chief Baron just before resigning office. The excuse then was that there was no time to make any reform of the Irish Judicature, and that a refusal to elevate Mr. Palles would have simply benefited some rival at the Irish Bar.

ENGLISH JUDGES ON CIRCUIT.

Mr. Justice Brett has had scanty justice done to him by the accurate reporter who records the doings of the Western circuit. The cause of *Strachey* v. *Osborne*, tried at the Wells assize, might seem from the *Times* report to have been gone through on all sides with the gravity which the proverb attaches to the judge's office. A work of the most elaborate and universal sarcasm may, as far as the *Times* report is concerned, be consigned to the same oblivion as the most common-place statement of the law to a jury. A lord of a manor and patron of a living goes to law with a rector about cutting off some branches of a tree, opening an old path across a village green, and taking away a seat round a tree near the church-yard. This last the rector looked on as a nuisance, while the squire described himself as having lately repaired it, from the purest motives, for the general use of the tenants of his manor. Out of all this the judge contrived to find materials for a good many hard sayings. When Mr. Justice Brett spoke of the unbusiness-like way in which country gentlemen and clergymen always set about any dealings which they had with each other—when he went on to say that agents and attorneys erred as much through over-zeal as their principals through carelessness and ignorance—when he even spoke disrespectfully of "the fine speeches of counsel"—the gods in the gallery must have felt proud that they were neither landed proprietors nor members of any learned profession. It was not a bad hit when the judge said that the counsel on one side spoke of the "limbs" cut from the tree to imply that they were of the bigness of the trunk, while the counsel on the other side called them "branches" to imply that they were of the bigness of twigs. But that among many sharp sayings which the inextinguishable laughter of the audience pronounced to be the sharpest was when Mr. Justice Brett hinted that the church, the mention of which came incidentally before the court, was a "dandy church," and needed to be surrounded by a "dandy churchyard." To a *Times* reporter these things may seem unworthy of notice. Local hearers are more easily pleased. They are ready to welcome a judge who not only lays down the law, as in duty bound, but lays it down in such a way as to show himself a master, not only of law, but of dramatic sarcasm.—*Pall Mall Gazette.*

ADMISSION OF ADVOCATES IN BENGAL.

The following Rules of the High Court of Judicature at Fort William in Bengal have been made for the purpose of regulating the admission of Advocates, and are now in force:—

1. Any person who is entitled to practise as a Barrister in England or Ireland, or as an Advocate in the principal Courts of Scotland, may be admitted as an Advocate of this Court.

2. Every person applying under the aforesaid rule to be admitted as an Advocate of this Court, must produce a certificate, showing that he is entitled to practise as a Barrister in England or Ireland, or as an Advocate in the principal Courts of Scotland, together with satisfactory testimonials to his good character and ability.

3. The mode of applying to be admitted as an Advocate of this Court shall be by letter, stating the date on which the applicant was called to the Bar, whether it is his intention to practise in this Court, and [in the case of an applicant who claims to be entitled to practise as a Barrister in England] the number of Terms kept by him. The letter shall be addressed to, and left with, the Registrar of this Court, in its original jurisdiction, together with,

(1.) The certificate required by Rule 2.
(2.) Testimonials to character and ability.

4. The Registrar shall circulate the letter with the other documents to be left with him, to the Chief Justice and Puisne Judges.

5. Every person, on being admitted and enrolled as an Advocate of this Court, may, without the payment of any fee besides the admission fee, obtain a certificate of admission under the signature of the Registrar and the seal of the Court.

6. Any Advocate of this Court may, on the payment of a fee of Rs. 5 [to be paid by means of Court fee stamps], obtain a certificate under the signature of the Registrar and the seal of the Court, that his name is borne on the roll of Advocates of this Court.

7. The Registrar of this Court, on its original side, shall have the custody and care of the rolls or books wherein persons are at present enrolled as Advocates, and shall enrol the name of every person who shall be admitted an Advocate, with the date of his admission in *alphabetical* order, in a roll or book to be kept by him for that purpose, to which roll or book all persons shall have free access without fee or reward.

The *Morning Post* reports that Sir George Honyman, Bart., who within a short time after his acceptance of the post of judge in the Court of Common Pleas was taken suddenly ill, has recently recovered from his severe indisposition, and announces that he will resume his judicial duties in November next. He will spend the vacation in the south of France.

Digitized by Google

THE IRISH JUDICATURE BILL.

The *Solicitors' Journal* says that the postponement of this Bill for a year has raised the hopes of the enemies of retrenchment in both branches of the profession in Ireland, as well as of all those whose "simple creed," to use Lord Justice Christian's words, is that "as much public money as possible should be spent in Dublin." Already we see in various local newspapers speculations as to the new judge of the Landed Estates Court, and expressions of triumph at the failure of the "docking scheme." We trust that these expectations are doomed to disappointment. We cannot believe that it would be really acceptable to the good sense of the body of the profession, in either branch, whatever a few noisy people may say in the daily papers, that an admitted abuse should be continued for an avowedly political end. Even the deputation which was sent from the Irish Bar to the Lord Chancellor in the spring of this year were obliged to confess that, comparing the amount of work to be done in Ireland and England, and the judicial force in the two countries, the proposed reduction in the Irish Bench was only too moderate. If we are rightly informed the only argument ever attempted to be used was one to which it was impossible that Lord Cairns could pay any attention—viz., that the reduction, coming now, after so many places had been filled up by the late Government, would interfere with the allotment to the Conservatives of their due share of patronage.

It is said, however, and with some force, that though this may be true of the Irish bench, taken as a whole, it does not apply to the judgeship at present vacant, because the Landed Estates Court is just the one court in the country which is fully supplied with work. It is unfortunate for this argument that Judge Flanagan should have thought fit to certify that there was not more work in the court than he and his officers were well able to perform, and that Lord Cairns should have referred to this certificate in his place in the House of Lords. After this it is impossible to see how the post can be filled up without a direct "snub" to the Lord Chancellor. That "patronage," and not need, is at the bottom of the demand is manifest from the contemptuous rejection in one of the most clamorous quarters of the suggestion that the difficulty might be met by the promotion to this office of one of the Bankruptcy judges. It is true that in Ireland the Bankruptcy judges really do all the work themselves, and that neither creditors nor bankrupts would be at all satisfied at being handed over to any "delegate," but it is unquestionable that one judge would be fully able to get through all there is to do without delegation, if only it were understood that six days is a usual week's work in busy time. We have been informed, on the authority of one of these judges himself, that taking six hours as a day's work (ten a.m. till four p.m.), and sitting six days a week, he could easily get through a year's work in three months. But the advancement of one of these gentlemen, though an undeniably good appointment in itself, would not lead to "promotion" in the party generally, and therefore it is denounced just as strongly as the idea of leaving the post vacant. It is rumoured, indeed, in a sort of under-current, that it is absolutely essential to use this judgeship as a means of extricating the Irish administration from a difficulty caused by want of providence in one of the lesser appointments; we hope, however, that this is without foundation. The Attorney-General recently informed the House of Commons that the appointments to Irish judgeships were made by the Cabinet, and we should be slow to believe that, under these circumstances, there can be any ground for apprehending the perpetration of a barefaced job. Further, it must not be forgotten that the promised legislation of next year *must* provide for a decrease of the Irish judicial force certainly not less than that proposed this year; and such a provision would come with singularly bad grace from a Government which had gone out of its way to postpone its operation by themselves filling up a post which they had officially declared to be unnecessary.

If in the face of these considerations a twenty-second judge should, prior to the next meeting of Parliament, be appointed to the Irish bench, it will be a signal instance of that which the wisest and most patriotic of her sons have long recognised as the bane of Ireland: the preponderance of political expediency, in its lowest form, over all considerations of utility and consistency.

Assuming, however, as we *do* assume, that the firmness and good sense of the Government will be sufficient to keep them clear of so grave a mistake, it may be worth while briefly to consider in what respects the proposals this year submitted to Parliament for remodelling the Irish bench are susceptible of improvement.

In the first place, we are inclined to agree with Lord Justice Christian; supported as he is by the weight of Irish opinion, not in Dublin only, but in the counties; that the number of twelve circuit-going judges ought not to be diminished. But we fail to see any reason for holding that these twelve judges should be arranged in three Common Law Divisions of the High Court. It will not be forgotten that the separation, which the position of the courts and the nature and amount of the business to be transacted has created in this country between equity and common law practice, prevails but to a very limited extent in Ireland, and that an equity judge there is just as likely to have had a large experience at Nisi Prius as either of the Chief Justices.* There would therefore be neither incongruity nor inconvenience in requiring all future judges of the Chancery Division to take their share of the circuit work; and such judges would maintain the dignity, and display the majesty, of English law in the Irish counties just as effectually as if they were justices of either bench, or barons of the Exchequer. Twelve judges would, however, be too few to despatch all the Irish business; not that it bears to the English anything like the proportion of 12 to 21, but that, with so many different functions to perform, there would not thus be scope for sufficient sub-division of labour. A division of four judges is too weak to sit as a Divisional court, and at the same time detach judges to try causes and take chamber work. But two divisions would be ample to keep down all the common law business in Dublin, and by consolidating the divisions into three (one equity and two common law) a number of useless officials might be dispensed with, not only without detriment to the efficacy of the courts, but even with an increase of judicial power. By arranging in three divisions of five judges each the fifteen judges, which we think would prove sufficient for the requirements of Ireland, much wasteful multiplicity of officers would be avoided, without any sacrifice of judicial efficiency. This plan would have the further advantage of grouping cognate subjects in the same divisions, instead of giving a "fantastic annexe" to two out of the three Common Law Divisions, as proposed by the Bill of this Session, as amended. And it could be carried into effect at once, and without any interval of "transitionalism," such as was contemplated by that Bill.

* In fact, the present Master of the Rolls had a very leading circuit practice; and the only one of the present judges who could be called an *exclusively* Equity counsel is Baron Fitzgerald, a Common Law judge.

PROSECUTIONS FOR LIBEL.

From the number of charges of libel which have been lately brought before the Metropolitan Police Courts it would almost appear that malevolence is on the increase. Scarcely a week now passes without some fresh instance of an individual or a body of men invoking the protection of the Lord Mayor or of a Metropolitan Magistrate against alleged attacks upon their conduct or character, and setting the criminal law in motion for the punishment of the offenders. The old-fashioned way of dealing with such matters was to commence an action, in which operations were restricted to compelling the guilty party to pay a compensation in money, proportioned to the degree of his offence, and of the injury which it had caused. Of late, however, although we are by no means quit of actions for libel, the fashion appears to have changed. Money is no longer regarded as an effectual salve for wounded feelings. Nothing short of imprisonment is claimed by prosecutors, with many professions of moderate resentment, and of a pure desire to serve the public by ridding it of the pest of calumny. It is very

Digitized by Google

open to doubt whether the innovation is an advantage. Criminal prosecutions are things which should not be lightly undertaken. Where the calumny is of a nature requiring public correction, or is calculated to scandalize public morals or disturb the public peace, there is every reason for having recourse to this weapon in the armoury of the law. Private individuals have as undoubted a right to resort to a criminal tribunal in these cases as a landowner has to take civil proceedings against any one who steps without leave upon a foot of his land. But an extreme exercise of either right is very much to be deprecated.

The procedure at the hearing of these charges of libel is often instructive. Upon the first opening of the case the defendant is usually treated as a very grave offender indeed, whose conduct has rendered an appeal to the criminal law nothing short of a duty incumbent upon the prosecution. Soon, however, the tone is modified, and the complainant, stepping down from his moral pedestal, appears in the light of an avenger, not of public but of private injuries. The case is generally brought to an end by a suggestion from the presiding magistrate that an arrangement between the parties would be a very proper conclusion, and after a sufficient display of coyness an apology is offered and accepted. Very few of these cases go to trial, nor, apparently, is it intended that they should. Wounded pride and undue sensitiveness are generally among the springs of action, and the only result expected is that the defendant will humble himself by an expression of regret. It has been said that an apology which has to be asked for is no apology at all, and when exacted by so summary a method as indictment it can hardly be of much value as a proof of contrition. Whatever, indeed, may be be the object of these prosecutions, and whether they are dictated by anger or by a more calculating policy, they are often instituted without earnestness, and dropped almost without explanation. Perhaps their frequency is due to the wise discouragement recently offered by the law to actions of a similar nature. Without a Judge's certificate no verdict in a case of libel entitles the plaintiff to his costs of suit unless it amounts to upwards of £10, and juries have of late shown a great disinclination to give even that small amount of damages without proof of some grievances beyond the mere irritation naturally produced by angry words. There is a degree of abuse, and even of slander, to which sensible people ought to submit without flying to the law for succour, nor is much sympathy ever extended by juries to those who for insufficient reasons rush into litigation. An action has thus become rather a costly undertaking in cases of libel, and the consequence is that recourse is had to the more vindictive process of a criminal prosecution. Accordingly, a man is often assailed as a criminal because his offence is not serious enough to secure against him a verdict of £10 in a Civil Court.

The instances, however, in which Police Courts are occupied by libel prosecutions are not confined to the petty kind of charges to which we have adverted. But the gravity of the matters in dispute does not always appear to justify this special mode of procedure. Only yesterday two reports appeared in our columns of such prosecutions, in which the most intricate inquiry was necessary. One of them has ended for the present in the committal of the defendant for trial, and is, therefore, not now a fit subject for comment. In the other a gentleman named M'Dougall was accused of publishing a libel concerning the chairman of the Emma Mining Company, the unfortunate history of which is, no doubt, familiar to most of our readers. This inquiry, after a lengthy investigation of many details connected with the Company and the way in which it had been got up, diverged into the affairs of other Companies. In the end the Magistrate advised the withdrawal of the paragraph complained of, upon which the counsel for the prosecution said that an apology was all that was wanted, and the apology was accordingly given. If the only object was to obtain an atonement of that nature, it is certainly a great pity that the matter was brought before a Police Magistrate at all. The subject in dispute seems to have been far more suitable for inquiry in an action, relating, as it did, to very complicated commercial transactions. Indeed, it may well be made a matter of grave question whether it should continue to be possible for the criminal law to be put in motion by irresponsible persons merely to rehabilitate the credit and clear the character of an individual. In the theory of the law a libel against an individual is indictable because it tends to provoke a breach of the peace—a method of procuring rude and rapid satisfaction which our less law-abiding ancestors were willing enough to adopt. It is certainly rather a satire upon the theory when we find that in practice that which the law is asked to treat as a public offence may be condoned by a personal apology. An individual ought either to be prohibited from instituting or debarred from abandoning such proceedings upon his own authority. When the libel complained of is an outrage upon morality or is really an offence against public order, criminal proceedings are appropriate, but private atonement is out of place. When, however, merely private objects are in view, however reasonable those objects may be, the complainant ought to be restricted to the ample remedy which is provided for him in the Civil Courts of Law.—*The Times*.

RELIGIOUS EDUCATION OF INFANTS.

The strongest passion of human nature is self-conceit. Most men are so well satisfied with themselves that they like to look at themselves in the mirror of offspring. If a man can only have a son, name him after himself, see him growing up to look like him, fix on him his peculiar thoughts and habits, teach him his profession or business, coax or bully him to marry to suit him, to vote his political ticket, employ his doctor, and join his church or be a heathen like him, as the case may be, his happiness is complete. It is because these capabilities are to be found only in boys that men prefer male offspring. If he would look for it here, Mr. Darwin might find a stronger argument in favour of his theory of the descent of man than in the mere fact that all men have a good place for a tail, and some men can wriggle their ears. We have always regarded this characteristic of mankind as one of the meanest, in a small way, to be found in the long catalogue of human weaknesses. The only good that ever comes of it to our knowledge is, that it sometimes defeats itself by exciting opposition in the subject. The human clay sometimes is unpliable under the potter's hands. How vividly has Dickens portrayed this characteristic in "Dombey & Son," in the person of the senior Dombey. "This young gentleman has to accomplish a destiny," is the utterance of thousands of tiresome Dombeys in our world. "The earth was made for them to trade in, and the sun and moon were made to give them light; rivers and seas were formed to float their ships; rainbows gave them promise of fair weather; winds blew for or against their enterprises; stars and planets circled in their orbits to preserve inviolate a system of which they were the centre."

The paternal foresight is not confined to sublunary matters. As it has insured for the offspring material prosperity, so also it has worked out for himself, and the object of his affection and vanity, an unerring scheme of eternal welfare. Consider, then, how harrowing it must be to the paternal heart to see its precautions neglected or despised! What an ungrateful return for all the father has done and suffered, when the child proposes to work out his own salvation in his own way! How short-sighted on the part of the child when the father has saved him all the trouble of thinking for himself! We have a good deal of sympathy for the father who is a believer in "immersion," when the child hankers after sprinkling, when confession gives place to the exercise of private judgment, predestination to free will, and the faith that the world was made between Sunday and Sunday to the developments of modern science.

The law has very uniformly ordered that the child shall be brought up in the religion of his father. Of late years this has been done with great impartiality, whether the father were Catholic or Protestant, *Davis* v. *Davis*, 10 W. R. 245. True, the English Court of Chancery had engrafted upon this rule an exception, where the Catholic father had permitted the child to be brought up in the Protestant faith until the age of seven to nine years, and the child had acquired an attachment to that faith; there the father was held to have abdicated his right to direct the child's religious education; and, in ordering a scheme to be

Digitized by Google

settled for his education, the court disregarded a direction in the father's will, that the child should be brought up in the Roman Catholic faith, *Stourton* v. *Stourton*, 8 De G., M. & G. 760; *Hill* v. *Hill*, 31 L. J. Ch. 505. But the courts of law adhere very strictly to the rule as we have given it. In the most recent case (*In re Andrews*, 8 L. R. Q. B. 153, A. D. 1873), there had been an ante-nuptial arrangement between Thomas Andrews, a Roman Catholic, and Ellen Fleetcroft, a Protestant, who were about to contract marriage, that if they should have issue, the boys should be educated in the religion of the father, and the girls in that of the mother. The marriage took place in 1854, and they had issue, a son, who was baptized and brought up a Roman Catholic, and a daugher, the infant in question, who was born in 1862. This daughter, with the assent of her father, was baptized a Protestant, with Protestant sponsors, approved by him, the same year. The father died in 1863, leaving a writing, executed two days before his death, by which he directed that his children should be baptized and brought up as members of the Roman Catholic church, and in the event of his death appointed his brother guardian of his children for the execution of that direction, with power to appoint any other Roman Catholic as guardian in his stead, in case of his death or resignation. The daughter, from the time of her father's death, was maintained and educated by her grandmother, and from the age of two years had been accustomed to attend a Protestant church, and brought up in its principles, without objection or interference on the part of any one, until 1871, when the guardian claimed the custody of the infant that he might carry out her father's wishes, and caused her to be sent to a Roman Catholic school, from which, however, the grandmother afterwards withheld her. The court awarded the custody of the child to the guardian, "notwithstanding the lateness of the application, and the apparent harshness of such a proceeding towards the grandmother of the child." This, however, was put on the ground of the limited discretion of the courts of law in such matters. This case illustrates in a very forcible manner the religious impartiality of the British courts, as between two opposite faiths, and the extreme absurdity of the British distinction between law and equity.

This impartiality is placed in a still stronger light when contrasted with the severity of the same courts as between different sects of the Protestant faith. For instance, examine the case of *Thomas* v. *Roberts*, 3 De G. & S. 758, A. D. 1850. In July, 1845, one of the followers of a dissenting preacher (who styled himself the Servant of the Lord), having no property of his own, married another of the sect who had a property of about £5,000, under circumstances leading to the inference that the marriage was brought about entirely by the influence of the preacher. In February, 1846, the wife, having manifested insubordination to the chief of the sect, was deserted by her husband, who, with the chief and others of his followers, went to reside together at an establishment which they formed and called "Agapemone." They there professed and acted upon the doctrines that the day of grace had passed and the day of judgment commenced, and that by reason thereof prayer was superfluous and unnecessary. They also professed and acted upon the doctrine, that no day of the week ought to be set apart as one of peculiar holiness. Shortly after the desertion of the wife she was delivered of a boy, who remained in the care of his mother and maternal grandmother, at the residence of the latter, who properly provided for his maintenance and education. *Held*, a proper case for restraining the father from acquiring possession of the infant. It appeared in this case that no settlement was made of the wife's property; that she was one of three sisters, all of whom married followers of the Servant; and that she was between twenty-eight and thirty years of age. "Brother Thomas," for so the father was called, regarded his wife's pregnancy as a punishment for her back-sliding. He writes to his "best beloved," that "the Servant of the Lord told me that you would not be in your present state unless you had rebelled months ago; and thus you will suffer for it in not being able to go about with me as you otherwise would." This pleasant fancy excites the ire of the Vice-Chancellor, who exclaims, "one is driven with shame and indignation to hope that there may not be a second human being capable of such extravagant indecency." The Vice-Chancellor then goes on to discuss the character of the home to which the father proposed to remove the child. It had a fair outside, for on the top of the building was a flag with a lion and a lamb depicted on it, and inscribed "O hail, holy love." The Vice-Chancellor is startled at the existence of such an institution "not on the Euripus, but on the Bristol channel," and suggests that its name was "adopted in order to make the people of Somersetshire understand or guess its object; which, however, unluckily, I fear that very few either there or elsewhere in any very clear manner do." He thinks it may be described "as a Spiritual Boarding House." He thinks that "their stable, according to the description which Mr. Thomas gave me of it, must be unexceptionable. It does not appear whether the Agapemonians hunt, but they seem distinguished both as cavaliers and charioteers, They play moreover, frequently or occasionally, at lively and energetic games, such as hockey, ladies and all. So that their life may be considered less ascetic than frolicsome." The "hockey" business was resented, it seems, by the Agapemonians, six of whom deposed that it "is not a game like foot-ball, and which deponents consider very ridiculous to be obliged to refer to." This deposition winds up by the declaration that their "peace is like a river, and their strength the munition of rocks." By "rocks" is probably intended the snug little fortune which the Servant and Brother Thomas had acquired for the saints from Mrs. Brother Thomas. On the whole, we quite concur with the Vice-Chancellor when he says, "as lief would I have on my conscience the consigning of this boy to a camp of gipsies."

Similar doctrine was held in *Re Newbery*, 1 L. R. Ch. 263, A. D. 1866. A father, being a beneficed clergyman of the Church of England, appointed his widow and a clergyman guardians of his infant children; the widow became a member of the sect of Plymouth Brethren; the children, aged respectively fifteen and twelve years, were ordered to be brought up as members of the Church of England, and the mother was restrained from taking them to a chapel of Plymouth Brethren, although it appeared that the father was unsettled in his faith and associated much with dissenters, and the elder infant made an affidavit stating his attachment to the Plymouth Brethren and his desire to be brought up in that community. Vice-Chancellor Bruce says, the "proposal of the mother amounts to nothing more than the bringing up of the children to no religion at all." Turner, S. J., also remarks: "The congregation may be taught by any person who believes himself inspired at the time. But this is not the way in which children should be brought up." And the Vice-Chancellor also declares that "if this young man and young lady were to profess themselves in favour of ascribing themselves to a society of this description, I should still feel it my duty to them to prevent it."—*Albany Law Journal.*

PRISONS AND PRISONERS.

We learn that there are in Great Britain ten convict prisons for men and three for women, the male convict prisons having accommodation for 9,891 persons, the female convict prisons accommodating 1,391, the grand total being 11,282. The male prisons are, Millbank, Pentonville, Perth and Paisley, Portland, Portsmouth, Chatham, Dartmoor, Woking, Brixton, and Parkhurst. The female, Millbank, Fulham, and Woking. It appears that the first three male convict prisons—viz., Millbank, Pentonville, and Perth and Paisley, are "Close Prisons." The next three, Portland, Portsmouth, and Chatham, "Public Works Prisons," and the remaining four, Dartmouth, Woking, Brixton, and Parkhurst, are "Light Labour or Invalid Prisons." Millbank is a close prison for women. At Fulham and Woking women work in association. A convict always passes the first stage of his imprisonment, which in all cases endures for nine months, in a close prison, where he remains alone in his cell, except, of course, for the periods allotted to prayers and exercise. When this system of solitary confinement was first established at Pentonville the duration of time was fixed at 18 months but it was found that the

Digitized by Google

minds of prisoners became enfeebled by long-continued isolation, and the present term of nine months was fixed as the longest to which prisoners can with advantage be subjected. At the Public Works Prison of Chatham enormous new docks have been constructed by convict labour, a basin of an area of thirty-three acres being excavated there, while at Portland the same labour has been employed in the construction of a breakwater nearly two miles in length, and running into water 50ft., or 60ft. deep; and at Portsmouth convicts have been employed in demolishing the old fortifications and enlarging the dockyards, and new wings have been added to the prisons at Chatham and Portsmouth, all by convict labour. The earnings of these public works during the year 1871 amounted to £149,745, leaving a clear balance in favour of these prisons of £17,759, all expenses being paid, and a certain sum being set apart as prisoners' gratuities. Female prisoners have been employed in Woking on fine work for the International Exhibition, and some very neat and beautiful work has been produced in mosaic tiles at the South Kensington Museum, while a pavement of mosaic, to surround the tombs of Nelson and Wellington in St. Paul's is now in course of execution. The first Society ever established in England for the assistance of discharged prisoners appears to owe its origin to the Rev. J. T. Burt, of Birmingham, and is called the Birmingham Discharged Prisoners' Aid Society. This Society commenced its operations in 1856, and assisted chiefly persons discharged from the Birmingham Gaol, together with a few released on licence from convict prisons. In 1857 Mr. Whitby, M.P. for Bedford, with the assistance of a few friends, succeeded in establishing in London the Discharged Prisoners' Aid Society, to which he and Mr. Ranken became hon. secretaries, and the late Marquis of Westminster president. This Society has aided upwards of 8,300 men and women on their release from convict prisons. So important, indeed, are its operations, that before it has existed 20 years it will have assisted no less than 10,000 discharged convicts.

CONDITIONS IN RESTRAINT OF MARRIAGE.

It is not often that cases arise nowadays in reference to conditions, whether general or special, in discouragement of marriage, though the older reports contain many instances of strange and even grotesque restrictions imposed by testators and others. The change is due probably more to altered habits and feelings in society than to any greater clearness in the rules of law. The case, however, of *Bellairs* v. *Bellairs*, which was before the Master of the Rolls, on July 16, turned upon this point. The Rev. Henry Bellairs, by his will, made in 1861, gave his real and personal estate to trustees upon trust for sale and conversion, and the proceeds, after investment as directed by the will, were to be divided into forty shares; and the income distributed among his seven children. To two of his daughters, Laura Parker Bellairs, and Nora Maria Stevenson Bellairs, he left ten shares each. But by a codicil, dated November, 1871, he directed that on the marriage of either of his said daughters the bequest so given should cease, and in substitution thereof he bequeathed to such one of them as should have married, four shares only of his residuary estate. The testator died in 1872, and this suit was instituted for the administration of his estate. He died entitled to considerable real estate, which was sold, and the proceeds invested, and also to some personal estate. Subsequently to his death one of the daughters, Laura Parker Bellairs, married; and the question arose whether the clause of forfeiture contained in the codicil was void. It was contended that it was good, at least, so far as the fund was chargeable upon the real estate. The Master of the Rolls, however, held the forfeiture clause to be bad.

There can be no question either on moral or legal grounds as to the justice of this decision. The fund was in this case one of pure personalty, as there was a trust for conversion out and out. But it is, perhaps, doubtful whether the restraint would now have been held valid, even if the interest had been one in real estate. It is indeed stated in Jarman, vol. ii., p. 38, that "the numerous and refined distinctions on this subject do not apply to devises of or charges upon real estate," and that they owe their introduction to the ecclesiastical courts, which, in exercising their jurisdiction, borrowed many rules from the civil law; and by that law all conditions, subsequent or precedent, in restraint of marriage were held void. The courts in deciding upon such questions where personal estate has been concerned, have steered a middle course between the absolute admission and the absolute exclusion of such restrictions, though in almost all cases wide and general restraints have been discouraged, and the manifest tendency has been strongly against all conditions of this kind. There seems to be a great dearth of authority in reference to charges upon real estate. Jarman cites no authority later than Atkyns' Reports in the time of Lord Chancellor Hardwicke. In the case of *Reynish* v. *Martin* (3 Atkyns) that great judge says that though in legacies of personal estate equity follows the rule of the civil law, as carried out by the ecclesiastical courts; yet, "estates governable by the common law of this kingdom, without relation to another forum, ought not to be influenced by another law; and this being a good condition, it cannot in law be defeated, and there being a full breach of the condition, as law will not, equity cannot help." The language of Lord Hardwicke seems to indicate that even a condition of forfeiture in general restraint of marriage, in cases of real estate would be valid. It is difficult, however, to believe that at the present day either a court of law or of equity would carry out such a rule. The general principles of public policy, and the tendency to relax the stiffness of the rules of the common law would certainly override the technical rule as to the performance of conditions. Nor does the decision in *Reynish* v. *Martin* warrant such a conclusion, as the restraint in that case was not upon marriage generally, but upon marriage without consent. Many competent authorities have advocated the assimilation of the law of real property to that of personalty; and certainly in cases of this kind, which arise incidentally, there seems to be no reason why any such distinctions as to the kind of property should be made.—*Law Times.*

MALICE.

The difficult question of what constitutes malice has received further illustration in the case of *Reg.* v. *Pembliton*, 22 W. R. 553. The prisoner was indicted under 24 & 25 Vict. c. 97, s. 51, for "unlawfully and maliciously" committing damage (exceeding £5) to property by breaking a window. In fact, he broke the window with a stone which he flung at some person standing near, but the jury negatived any intention to break the window. On a case reserved the Court of Criminal Appeal held that he had not committed an offence under the statute, though they intimated an opinion that if the jury had found that when he threw the stone he knew that it was probable it would break the window, he would have been guilty. The first thing to observe on this is that the court held that, in using the word "maliciously," the statute did not mean a general unlawful intent, but an intent to do the unlawful act of damaging property. But, in the second place, in intimating (what we have no doubt they would if necessary have held) that it would have been sufficient to bring him within the statute if he had known the damage to property to be a probable consequence of his act, and yet had done it, they say in effect that there need not be a *purpose* to do the damage; it is enough if there is a *recklessness.*

The decision appears to us one of great importance, for it indicates, though it does not precisely lay down, a distinction which has been hardly enough recognised in law, and which has indeed been sometimes deliberately ignored. It would not be wrong to describe this distinction as a distinction between the quality and the quantity of the intent. It is established law and sound reason that if a man does an act which produces what may be fairly described as a necessary consequence, that is, such a consequence as any person doing the act would necessarily foresee, it is all one as though he intended that consequence, although that consequence was not the purpose or motive of his action. In the language of the law (which, if in this respect not perfectly logical, is practically convenient and could not be easily replaced by any other way of speaking) he did *intend*

Digitized by Google

the consequence. This is the effect of what the court in the present case intimated they would have held if the jury had found that the prisoner knew the probable consequence of his act to be the breaking of the window; and this is what the Court did decide in *Reg.* v. *Ward*, 20 W. R. 392, L. R. 1 C. C. R. 356, where the prisoner was held guilty of "unlawfully and maliciously" wounding a man, though he had no malice against the particular individual, and did not even design to shoot him, but fired in his direction in such a way that the hitting of him was the natural and probable consequence of his act. The probable consequence was necessarily within his contemplation, and was recklessly disregarded. There was *enough* intention to make malice, though the intention was not coupled with a purpose.

But on the other hand, if the only thing intended is altogether different from the consequence which actually follows, where the actual consequence is not only beyond the purpose but beyond the contemplation of the person doing the act, where it is not only undesigned, but is not such a consequence as he may fairly be held to have foreseen as probable, then no intention to produce the consequence can be rightly attributed, and the act cannot be said to be done maliciously.

Here, however, a qualification arises, which turns upon the quality or nature of the intent. If the prisoner in the case in question could fairly be held to have had in his contemplation that his throwing the stone would probably cause damage to property, we think we shall not be wrong in saying that he would have been held guilty, although the precise damage done was not that which he contemplated. If, for instance, throwing the stone recklessly in the direction of one window, the stone had glanced off and struck another window. This would be like the old and undoubted case of poison laid for A. and taken by B., or one person shot at and another killed. The quality or nature of the intent answers to the effect produced, or the consequence which follows is of the same nature and quality with that intended, though the precise operation is different. There is not a mere general intent to do an unlawful act; but there is an intent to do an unlawful act and produce an unlawful consequence of a particular kind; and an unlawful act of that particular kind is in fact done, and an unlawful consequence of that particular kind produced.

It appears to us that this is a true and reasonable distinction, and the one that must ultimately prevail. And it is this distinction that is so grossly violated by the old *dicta* laying down that any homicide done in the course of a felonious act is murder. We have on a former occasion stated our conviction that this technical and arbitrary rule would not now be acted upon, and we are glad to observe that in the present case Blackburn and Lush, JJ., both intimate their dissent from it. Lord Coleridge, however, guards himself against being "supposed to throw any doubt upon the authorities which have been cited to show what is sufficient to constitute malice in the case of murder; they rest upon principles of common law, and do not appear to be applicable to an offence created by statutory enactment." We cannot appreciate this reasoning. When a statute uses the term *malice*, it must be supposed to use it in the sense which it has acquired in law; and if a particular state of circumstances would prove malice at common law the like circumstances ought equally to prove it under the statute. It appears to us impossible that the construction of the words of a statute should not reflect back upon the construction of similar words in a branch of common law which is *in pari materia* with the statute. We regard the present case in that light, and look upon it as one of great and leading importance.—*Solicitors' Journal.*

LIABILITY OF CARRIERS.

A question of interest to common carriers was decided by the Court of Exchequer, Westminster, in the *Great Northern Railway Co.* v. *Swaffield*, 30 L. T. R. 562. The facts were these: On the 5th July, 1872, the defendant sent a horse, carriage paid, by the plaintiffs' railway, from King's Cross to the Sandy Station, on their line, consigned to himself at that station. On the horse's arrival at Sandy at 10.8 p.m. the same evening, there was no one there to receive it on the defendant's behalf, and, the defendant and his residence being unknown to the plaintiffs' servants at the station, the horse was, by the station master's direction, taken to an adjacent livery stables for safe custody. Shortly afterward, about 10·40 p.m., the defendant's servant arrived at the station, and asked for delivery of the horse, when he was told by the station master, who had gone to bed, but was called up, that it was at the livery stable, and could be had on payment of the livery charge, which a man belonging to the stable, who came up at the moment, said would be 6d. This the defendant's servant refused to pay. The next day the station master offered to allow the defendant to take the horse away without paying the livery charges, but the defendant refused, requiring the horse to be delivered at his house, and compensation to be made to him for lost time. The horse remained at livery until the 18th November, when the station master sent it to the defendant's residence, no demand being then made on the defendant for the livery charges. The livery stable keeper subsequently sent in his bill, amounting to £17, to the plaintiffs for the keep of the horse from 5th July to 18th November, at 17s. 6d. a week, which was admitted to be a fair and reasonable charge. This the plaintiffs paid, and subsequently sued the defendant in the County Court to recover the amount. The learned judge gave judgment for the defendant, on the ground that, the payment of the livery charges and the delivery of the horse to the defendant being voluntary acts on the part of the plaintiffs, they were precluded by their own acts from recovering against the defendant, and that there was no contract, express or implied, upon which they could found their claim. On appeal from that decision the court held (reversing the decision of the County Court judge), that as the plaintiffs were bound to take reasonable care of the horse on its arrival, when no one was there to receive it on the defendant's behalf, they were justified in sending it to the livery stable, and that, whatever question there may be as to the right to refuse delivery of the horse to the defendant's servant, except on payment of the livery charge, on the evening of its arrival, yet on the next day the defendant was clearly in the wrong in refusing to accept the station master's offer, and take his horse away; and that the plaintiffs were entitled to recover from the defendant the expenses rightly incurred by them for his benefit in the keep of the horse at the livery stable. This decision is in conformity to the decisions in *Notara* v. *Henderson*, L. R. 7 Q. B. 225; 41 L. J. 158, Q. B., and *The Cargo, ex Argos, Gaudet* v. *Brown*, in the Privy Council, 28 L. T. Rep. N. S. 745; L. R. 5 P. C. Cas. 134; 42 L. J. 49, Adm.—*The Albany Law Journal.*

SCENE BETWEEN A COUNTY COURT JUDGE AND A SOLICITOR.

The following report of a "scene" in an English Court of Justice appears in one of our legal contemporaries. We are happy to say that no Irish advocate could so forget himself, and also that no Irish judge would tamely suffer such indignity.

At the last sitting of the Hertford County Court (Mr. Josiah Smith, Q.C., Judge) an action was brought to recover the value of a lamb.

Garrold appeared for the defendant.

At the close of the defendant's case the following took place:—

His HONOUR referred to two officers of the Court, who said that a ewe would not allow a lamb to suck her of the age mentioned unless it was her own, and subsequently said he thought the preponderance of evidence was on the side of the plaintiff, and he must give a verdict for the plaintiff.

Garrold said if that were the case he should go into the question of value.

Millichamp said the lamb would not be sold for more than 25s.

Corner said the plaintiff did not want the money. He wanted the lamb.

His HONOUR.—Then I order the lamb to be given up.

Garrold.—I can only say that your ruling in this case and in a previous one to-day is anything but what I should expect from a judge. Here, Davies, is my fee [throwing down a guinea upon the table]. I won't take the money of a poor man after such ruling as this.

Digitized by Google

His HONOUR.—Such language as that is most disrespectful to the Court.

Garrold.—After two such decisions as I have heard from you to-day, there is little wonder that one should remark upon them.

His HONOUR.—I will not be catechised by you as to my decisions. I have found that the preponderance of evidence was in favour of the plaintiff, and I have decided accordingly. It would be very easy for me to shelter myself behind a rule of law, by which it is for the plaintiff always to prove his case, but instead of that I have acted in the most conscientious way possible.

Garrold.—You have sought the opinion of two officers of your own Court on the subject, and you must have been very much in doubt when you did that.

His HONOUR.—No, no; not at all. I was merely seeking out the truth, and if I had chosen otherwise I need not have taken even that trouble.

Garrold.- But you have called upon two officers of your own Court, and then you have not followed their evidence.

His HONOUR.—It is not because I call them that I am bound to believe them. This is the way in which I am rewarded because, instead of following the simple rule of law, which I might do, I have taken trouble to sift out the truth, and to decide the case conscientiously upon its merits.

Garrold.—You have to-day already in another case quoted law, and then acted beyond it directly afterwards, and now you go against your own witnesses.

His HONOUR.—You are referring to the case of master and servant, and I hold that where insolence is gross on the part of a servant it is a proper ground for dismissal.

Garrold.—But you evidently didn't know the law on the subject. You ruled two ways in almost the same breath.

His HONOUR.—I will not allow such language to the Court. It is most disgraceful.

Garrold.—I ask you to adjourn the case, and you won't do it. I could bring twenty witnesses, respectable farmers, who would show you that you are wrong.

His HONOUR.—I preside over twelve Courts, and have done so for nine years, and I never in all the other eleven met with anything one half so improper and so indecent as this. On the contrary, I have always been treated with the greatest deference and respect.

Garrold.—You have driven good practitioners away from this Court by your decisions, and you will drive away more yet.

His HONOUR.—With regard to my decisions, only once in nine years has a decision of mine been set aside, and even then I was subsequently upheld by the House of Lords.

Garrold.—Your Honour has taken care not to give much chance of making appeals against your decisions.

His HONOUR.—Am I really to sit here and listen to such affronts? I am, as one of the judges of the land, a representative of Her Majesty, and I have powers which I might exercise for my own protection and for the preservation of the dignity of the Court.

Garrold.—I say your rulings have been a constant source of annoyance and loss in this Court.

His HONOUR.—Such conduct as this is enough to incapacitate a judge from doing his duty. I have never in any of my other Courts met with such indignity.

Corner.—I hope your Honour doesn't include me in that observation.

His HONOUR.—During the comparatively short time that you have practised before me you have acted with becoming courtesy and regularity; and as to Mr. Gwillim, it would be impossible for any judge to receive more courteous and proper regard from an advocate than I do from him; but Mr. Garrold's conduct and manner to-day and on some other occasions are beyond all precedent. After a pause, His Honour said: No doubt when Mr. Garrold comes to think coolly over this matter he will express regret for the way in which he has treated the Court.

Garrold (who had been in conversation with the registrar and the high bailiff for some moments).—Oh no, he won't do any such thing. He is just telling the registrar that he withdraws from all cases in which he was engaged in this Court as an advocate.

His HONOUR.—Thank you; I am much obliged to you.

After another pause, His HONOUR said:—I was much influenced in this case in favour of the plaintiff by the demeanor of the defendant in the witness-box, which I must say did not commend itself to me.

Some time passed after this, during which his Honour was so agitated and evidently so much hurt that he was not able to continue the business. Then he said: I am exceedingly sorry now that the very exasperating circumstances which have arisen here to-day should have led me to condescend to say one syllable in reply. I regret that I at all took part in such a proceeding.

The matter then dropped, and the business of the Court went on.

VICE-CHANCELLORS' COURTS, LINCOLN'S-INN.

JULY, 30.

(From the *Times*.)

(Before VICE-CHANCELLOR SIR C. HALL.)

Re THOMPSON'S ESTATE—NALTY *v.* AYLETT.

By the Debtor's Act, 1869, sec. 4, it is provided that, with the exceptions thereinafter mentioned, no person shall, after the commencement of the Act, be arrested or imprisoned for making default in payment of a sum of money. Then follow the exceptions, among which is default by an attorney or solicitor . . . in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order. The section also provides that no person shall be imprisoned in any case excepted from the operation of the section for a longer period than one year. In the present instance, a solicitor had been ordered, on the 21st February, 1873, to pay into Court, in the above matter and cause, a sum of £200. He did not obey this order. On the 17th of July, 1873, he was committed to the Essex County Prison for contempt of Court. The 12 months mentioned in the Act of 1869 had now elapsed. There was a doubt whether the practice in such a case entitled a prisoner to his discharge as of course, or whether it was necessary to obtain an order of the Court to release him.

Mr. Pemberton, therefore, now moved for an order to discharge the solicitor from prison.

Mr. Methold appeared for the Sheriff of the county.

The VICE-CHANCELLOR, being of opinion that an order was necessary for the prisoner's discharge, made one accordingly.

At the recent Middlesex Sessions, the grand jury, on being discharged by the learned Assistant-Judge, made the following presentment:—

"We have to present to your Lordship the expense to the county and the waste of time to the grand jury involved in hearing the many frivolous cases found in the calendar, and we think power should be given to the magistrates to dispose of such cases summarily. We have also to complain of the delay occasioned by the witnesses not being in attendance when the cases are called.

"July 28." "E. BONFELLOW, Foreman.

THE LIMITS OF ETIQUETTE.—It is difficult to say, and especially so in a new country, where bad taste in matters professional ends, and where unprofessional conduct begins. We are concerned to discountenance both; the former, if unchecked, soon takes the more aggravated form of the latter. We have heard of exception being taken to the advertising of professional cards in the columns of newspapers and periodicals; but, whilst thinking this is an extreme view to take, we are inclined to doubt whether the barrister who, in an historic city in this province, placarded public places with cards, announcing the fact that he gave special attention to marine protests, has thereby developed a purity of taste in matters professional at all worthy of imitation.—*Canada Law Journal.*

Digitized by Google

BOOKS RECEIVED.

We have to acknowledge the receipt, for review, of *A Treatise on the Doctrine of Ultra Vires: being an investigation of the principles which limit the capacities, powers, and liabilities of Corporations, and more especially of Joint Stock Companies.* By Seward Brice, M.A., LL.D., London, of the Inner Temple, Esq., Barrister-at-law. London: Stevens and Haynes.

COURT PAPERS.

CONSOLIDATED CHAMBER.

Judge Fitzgerald will sit in Chamber on Friday next, to hear motions for the three Law Courts.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
P. Wright	Adjourned prove debts and vouch	
H. Dymoke	Adjourned vouch	
A. Meikle	Costs	*Forsythe*

TUESDAY.

Before the Court, at 11 o'clock.

J. F. Hickey	1st public sitting Adjourned adjudication	*Hamilton & Craig*
W. Bergin	Final examination	
G. M'Donnell	do	
P. Clarke	do	
E. Silk	do	
J. Farrar	do	
J. Creswell	Adj. final examination	
G. Marshall	do	
D. Rutledge	do	
J. J. Hennessy	do	
J. M'Crory	do	
M. Bradshaw	do	
Wallace & Magill	do	
P. Doyle	do	
Thos. Bailey	Audit and dividend	
A. Meikle	do	
S. and W. Law	do	
J. D. Burns	do	
H. Anderson	Examine witnesses	
Arrangement	do	
L. Berkley	Motion	
Thos. J. C.	Adjourned 1st composition sitting	
Same matter	Final examination	
Geo. M'Donnell	1st composition sitting	

Before the Chief Clerk, at 12 o'clock.

J. Hanna	Adjourned prove debts and reference	
Wm. Foxall	Adjourned prove debts & examine witnesses	
Flynn	Examine witnesses	*M'Govern*
Neill	Reference under order	*Fay & M'Gough*
O'Donnell	Adjourned prove debts	
O'Neill	Vouch account	

WEDNESDAY.

Before the Chief Clerk, at 12 o'clock.

J. W. Knott	Costs	*Casey & Clay*
P. Bailey	do	*Froste*
Wm. O'Dwyer	Adjourned costs	*Molloy & Watson*

THURSDAY.

Before the Chief Clerk, at 12 o'clock.

M. Baytoy	Prove debts and vouch	
D. Shea	Adjourned prove debts and vouch	
M. J. Hetherington	Prove debts and vouch	

FRIDAY.

Before the Court, at 11 o'clock.

R. M. Sadlier	2nd composition sitting & final examination	
Mason & Looby	1st composition sitting	
Same matter	1st public sitting	
J. Allison	do	
D. F. Jones		
Wm. Fitzgerald	Final examination	
J. Boyd	do	
Mathew Kilkenny	Adj. final examination	
Brooks	Confirm sale	
J. W. Knott	Audit and dividend	

Before the Chief Clerk, at 12 o'clock.

	2nd arrangement sitting	

Law and Diplomacy. — At a meeting recently held by the electors of Chichele's Professor of International Law and Diplomacy, the electors being the Archbishop of Canterbury, the Lord Chancellor, the Secretary of State for Foreign Affairs, the Judge of the High Court of Admiralty, and the Warden of All Souls' College, Mr. Thomas Erskine Holland, B.C.L., M.A. of Lincoln's Inn, Barrister-at-law, was elected to the vacancy occasioned by the resignation of the Right Hon. Montague Bernard.

The Privilege of Solicitor and Client.—In a recent issue of our Law Reports a case of much importance to solicitors was published, *The Original Hartlepool Collieries Company* v. *Moon*. It was an appeal to the Lords Justices from the decision of Bacon, V.C., whose judgment was affirmed. The question was as to whether certain letters written and sent by the solicitor of the defendant to the defendant's agent were protected from production. No doubt many solicitors, especially those whose experience is short and limited, have mistaken ideas upon this important subject. As will be seen from a consideration of the law as laid down in this case, it is not because letters relating to the subject matter of a suit happen to be written by a solicitor concerned for some of the parties in such suit, that, therefore, they are protected from production; for, as Lord Justice James pointed out, communication may happen to be made with a man who happens to be a solicitor, which would be of exactly the same character as, and neither more nor less privileged or confidential than, communications between a man and his steward or between a man and his land agent, who does not happen to be a solicitor. The circumstances, then, according to this decision, under which such letters are protected, are when they are written by a solicitor concerned for one of the parties to the suit, not only in reference to the subject matter of the suit, but moreover and especially if written with reference to the dispute between the parties to the suit, and with a view to the defence or prosecution of the suit. The distinction, then, which is clear, between the two positions, solicitors will do well to bear in mind before entering upon correspondence with third parties upon the subject matter of actions or suits, but not in reference to the defence of such. We may also here refer to another case reported in a recent issue of our reports, and which it is important that solicitors should consider: *Cotterell* v. *Stratton*, also before Lord Justice James, which raised a question in regard to the circumstances under which costs in a suit by a mortgagor for re-conveyance should be taxed on the lower scale where the entire mortgage debt may have exceeded £100.—*Law Times*.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	AUGUST Fri. 7	Sat. 8	Mon. 10	Tues. 11	Wed. 12	Thur 13
	Government.						
—	3 p c Consols	91⅞	—	91⅞-2	91⅞-2	92⅛¼	92⅛¼
—	New 3 p c Stock ..	91¾⅞⅝	91⅞¾	91⅞⅝	91⅞¾	91⅞⅝	91⅞⅝
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	107	107½	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102½	—	101⅞	—	102	—
	Banks.						
100	Bank of Ireland ..	311½	—	311½	311½	311½	311¼½
25	*Hibernian Banking Co.* ..	—	—	58½	59	59½	—
20	*London and County* ..	—	62½	—	—	63	x d
15	*London Joint Stock* ..	49½	—	49⅝	49½	49⅝	49⅝
20	*London and Westminster* ..	73½	—	—	73⅝	—	74¼½
3½	*Munster Bank (Limited)*	—	—	8⅛	—	—	8⅝
30	*National Bank*	62⅝½	62¼⅛	—	61¼⅜⅝	61⅞¾	61⅝
15	*National of Liverp'l (Litd)*	—	14½	—	—	14⅛¼	14⅛¼
25	*Provincial Bank* ..	88¼⅜½	88⅝	88	88	88	—
10	*Royal Bank*	—	—	—	—	—	30⅝
	Steam.						
100	City of Dublin	106½	106	106-½	106⅝	106½	—
50	Dublin and Glasgow ..	—	—	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	55½	—	55½
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	-/3	—	—
1	Killaloe Slate Co. (lit'd) ..	—	—	—	17/6	18/-	19/-
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	5½	—
2½	Wicklow Copper	—	—	—	—	2⅜	2½
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	—	—	10⅜½
9½	*Dublin Tramways* ..	—	—	—	6¼⅜	6½	6½
100	Grand Canal .. .	—	—	—	—	51½	—
25	*National Assurance* ..	—	—	—	48¾	—	—
9-4-7	*Patriotic Assurance* ..	10⅛⅜	—	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	67⅝
100	Dublin and Belfast Junct.	—	—	—	92	—	—
100	Dublin and Drogheda .	—	—	114½	115	—	—
100	Dublin, W'klow, & W'ford	—	—	77	—	—	77
100	Gt. Northern and Western	—	—	—	—	—	x d
100	Gt. Southern and Western	108⅜½	—	—	108⅝	108-⅞	108⅜⅞
100	Londonderry & Enniskillen	55	—	—	—	—	—
100	Midland Gt. Western ..	—	80	—	80⅝½	—	80⅝
50	Ulster	—	—	—	—	—	—
12½	Do, Quarters	—	—	—	—	—	16½
50	Waterford and Limerick ..	—	—	—	—	31	30½
	Railway Preference.						
50	Belfast and Co. Down 5 p c	—	—	—	—	—	x d
10	Do. do. 4½ p c	—	—	—	—	—	x d
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	96
100	D. & D., 4 p c Guarant'd S'k	95	—	95	—	—	—
100	D., W., & W., 6 per cent ..	—	—	129	—	—	—
100	Gt. North'n & West'n, 5 p c	—	—	—	—	—	x d
10	Irish North Western A 5 p c	—	—	—	—	3⅝	4⅝
100	Mid. Great Western, 5 p c	x d	—	—	—	111½	111½
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c ..	52	52	—	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	95¾	95¾-6	95¾	95¾
—	Dublin & Meath 4½ p c ..	—	—	—	—	—	89
—	D., W., & W., 4½ p c ..	—	—	100	—	—	—
—	Gt. South'n & West'n, 4 p c	99½ f	—	—	—	99	99½ f
—	Midland Gt. West'n, 4½ p c	—	100½	—	—	—	—
—	Do., 4½ p c	—	—	—	103⅝	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 6th August, 1874.
Of Deposit—2½ per cent., 6th August, 1874.

Name Days—August 27th, and September 15th, 1874.

Account Days—August 28th, and September 16th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

The Court of Athens has condemned the German Doctor Schlieman, who discovered, and then concealed, the famous treasure of Priam, to pay damages. Three Professors of the University of that city have been charged, as experts, to fix the value of the articles from the photographic representations belonging to the Doctor.

LIABILITY TO REPAIR HIGHWAYS.—The *Law Times* says an interesting case respecting the liability to repair highways was reported in our reports of the 25th ult. The question raised was whether the fact that a road had been set out under the award of commissioners in 1789 as a private road and repairable by private individuals, did not of itself prevent such a road from becoming a public highway, and repairable by the parish. Sufficient proof was given to support a presumption of dedication to the public before the General Highway Act 1835 (5 & 6 Will. 4, c. 50). For the Crown it was argued that no case supports the negative. Lord Denman in *Rex* v. *Wright* (3 B. & Ald. 606), said: "I think the public are not bound to inquire whether this or that owner would be more likely to know his rights, and to assert them, and that we have gone quite wrong in entering upon such inquiries. Enjoyment for a great length of time ought to be sufficient evidence of dedication, unless the state of the property be such as to make dedication impossible." The court held that the mere making of the above award did not prevent the owners of the soil from dedicating the road, so that it would become a public highway. Here the common law steps in and says that when once a road becomes a public highway, the parish or township must repair that highway. Mr. Justice Quain quoted an apposite case from Lord Raymond's Reports, p. 725, when it is laid down by Lord Holt that the inhabitants of every parish of common right ought to repair the highways; and, therefore, if particular persons are made chargeable to repair the said ways by a statute lately made, and they become insolvent, the justices of peace may put that charge upon the rest of the inhabitants. It may be worth noticing that the above Act has prescribed a certain form in which highways should be dedicated to the public after 20th March, 1836: (*Reg.* v. *The Inhabitants of Bradfield*).

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FETHERSTON-H.—August 9, at 15 Granby-row, the wife of William Fetherston-H., junior, Esq., of a son.

MARRIAGES.

O'HEA and DILLON—August 11, at Waterside, Londonderry, Henry O'Hea, Esq., of 50 Lower Baggot-street, Dublin, barrister-at-law, to Frances Lucinda, younger daughter of the late John Hawkins Dillon, Esq., of Donegal.

WALES and CONCANON—August 10, at St. Mary's Cathedral, Tuam, by the Very Rev the Dean of Tuam, John George K. Wales, Esq., second son of the late Andrew Wales, Esq., C.E., London, to Jane Blake, second daughter of Edmond Concanon, Esq., solicitor, Tuam.

DEATHS.

TODD—August 9, at 123 Lower Baggot-street, Arthur Bentley Todd, Esq., Crown Solicitor for the Counties of Roscommon, Leitrim, and Sligo, aged 54 years.

CURRAN—August 9, at 20 Gardiner's-place, Mary Rose, youngest daughter of John Adye Curran, Esq., barrister-at-law, aged 1 year and 10 months.

PUBLICATIONS:

JUST PUBLISHED, Price 3s. 6d.

THE COMMON LAW PROCEDURE AMENDMENT ACT (IRELAND), 1870,
OR
"THE REMITTING OF ACTIONS TO THE CIVIL BILL COURTS;"
WITH A CAREFUL INDEX,
And Notes of all the Important Decisions up to the date of publication, Forms of Affidavits, Notices, &c.

BY
MORGAN BUTLER KAVANAGH
AND
ALBERT QUILL,
Barristers-at-Law.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.

JUST PUBLISHED, Price 6d.

A COMPLETE ABSTRACT OF THE NEW IRISH BANKRUPTCY ACT,
WHICH CAME INTO OPERATION ON THE 1ST OF JANUARY, 1873.

WITH A COPIOUS INDEX.

BY
JAMES M. LOWRY, B.A.,
Of Lincoln's-Inn.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, August 15, 1874.*

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, AUGUST 22, 1874. No. 395.

LIFE INSURANCE LAW AND LEGISLATION.—II.

"Observe, if it is an impertinent and irrelevant question, how likely it is that the assured, the man who is bargaining for his policy, will have his prudence or his caution lulled asleep, and will not be so alive to the duty of answering truly as he would be, meaning to act honestly, in regard to matters which he could not help feeling were essentially to be answered, in order to enable the company to form a judgment upon the subject." So, in *Anderson* v. *Fitzgerald* (4 H. L. 484), does Lord St. Leonards point out the ensnaring operation of conditions in contracts of insurance vitiating the policies by reason of false statements, whether, according to that decision, the statements be material or immaterial to the insurance (*et vide Casenove* v. *Brit. Eq. A. Co.*, 6 C. B. N. S. 437; *Towle* v. *Nat. Guardian A. Co.*, 30 L. J. Ch. 900). The doctrine so laid down, on which we commented in a previous paper (*ante*, p. 427), is not the only one deducible from the decision of the House of Lords leading to consequences of the greatest harshness; for that case is, also, an authority in favour of holding that falsehood, within the provisoes in question, is not limited to meaning untruth to the knowledge of the affirmer, but includes untruth not within his knowledge (see especially, *per* Lord Brougham, and Parke, B.: so, see *Duckett* v. *Williams*, 2 Cr. & M. 348). We would not, indeed, much commiserate a policy-holder

> "Who having, unto truth, by telling of it,
> Made such a sinner of his memory,
> To credit his own lie,"

should suffer for a misstatement believed to be true; but many cases may be supposed well calculated to enlist the sympathy, where, wholly in the absence of moral falsehood on the part of the person affected, a policy would be vitiated. In the recent case of *Macdonald* v. *The Law Union F. and L. Ince. Co.* (L. R. 9 Q. B. 328), it appeared that M., being about to marry K. M. T., a lady of fortune, it was proposed that he should insure her life. He, accordingly, effected a policy of insurance on her life, which contained the usual proviso that, if the declaration delivered as the basis of the insurance were not in every respect true, the policy should be void. To one question he answered, that she had not been proposed at any other office. That, however, was untrue; but as the jury found, in an action by M. on the policy, although K. M. T. knew it was false, M. was ignorant of its falsehood. It was held that M. was not entitled to recover. And we may add that the result would have been alike if the untruth of the statement had not been known to K. M. T., either. How innocently a policy-applicant might happen to misstate matters the most material, relating to himself or to family history, might be suggested by reference to the fact that, in a number of instances, medical advisers have a knowledge of matters that they never mention even in their professional interviews with their patients—matters often that it would be cruel to repeat, and from any allusion to which serious evils might arise, and which Sir Dominic Corrigan (in a paper adverted to *ante*, p. 414) contends that a medical adviser should not communicate to an insurance company, even though he be authorized by the person applying for insurance to communicate all that he knows as to his constitution, inasmuch as such consent is given in ignorance of what may be revealed, and the information may be of such a nature as should not be communicated to any one, or sometimes even to the patient himself. "Cases occur to us," observes Sir Dominic, "in which the seeds of insanity, the first deviations from soundness of mind, begin to show themselves, and which we are able to extinguish with attention to the general health, and with the aid of the patient's own reason. Surely, these things that we withhold, for his own good, even from the patient himself, we never would be justified in communicating to others. I have known the fond mother conceal from her own child that she was dying of cancer, and lay it as an obligation on her medical adviser, when on her deathbed, that he should never reveal the nature of her disease, in order that her child should not have the fear of hereditary taint before her. The medical adviser would not be justified in revealing the nature of her illness; and he would not be an honest man if, in order to avoid that, he answered untruly, or had recourse to evasion." But, the baneful legal results consequent upon such a laudable reticence—a reticence which, surely, should be protected by the law of the land—may be illustrated by the facts of the following case, which was laid, in 1861, before an eminent counsel (then practising at the Irish bar) for his opinion:—C., a solicitor, effected a policy on his life in an office, which we forbear from particularizing, professing to receive diseased lives for an advanced pecuniary consideration, and was charged 2s. 6d. extra premium, as he suffered from incipient hernia. The company inquired, *inter alia*, "Have you ever had any complaint of a serious nature? If so, let full particulars be given, *so far as within your knowledge*, with regard to the time and nature of the complaint, and the name of the medical practitioner employed (if any) in consequence." Answer: "In the autumn of last year I suffered much from indigestion and flatulence; and from the month of March last I was under the care of Dr. J. M., of Dublin." "Have you, at any time during last ten years, suffered from any ailment, though, *in your opinion*, not of serious character?" Answer: "In 1851 I had a severe nervous complaint, owing to an unexpected decision in a heavy law suit." He signed a declaration, as the "basis" of the insurance, stating: "I have never been afflicted with gout, spitting of blood, consumption, or rupture, and am at present in a good state of health, and not afflicted with any of the aforesaid diseases, or any other disease that tends to shorten life"—he did not add, "*to my knowledge or belief*," a formula which should be invariably adopted in those declarations. Now, in 1859, he did in fact complain of flatulence and indigestion; but those were only symptoms of a cancerous tumour, of which he was not apprised by his physician, since such apprisal might have been attended with injurious or, perhaps, fatal consequences. An issue had been inserted in his stomach, and the disease abated. C, it was stated, was examined by the company's medical adviser, who pronounced him insurable. An insurance was effected as a security for a debtor, who (like C, himself) was unaware that C was suffering from a permanent and malignant disease. C afterwards died of cancer. Counsel was of opinion that the company was not liable, on the authority of *Anderson* v. *Fitzgerald* and the cases there

Digitized by Google

cited. An action was, however, afterwards taken against the company; but the result, unhappily, justified the opinion that counsel had given on the case. It should be added that the company had omitted to consult C.'s medical adviser; and that their own medical officer, strange as it would seem, had, as was sworn, acquired no notice of the disease, notwithstanding the insertion of the issue. In a recent American case, *Swifts* v. *Mass. F. & L. Ince. Co.* (Dec. 1873), an action had been brought on a policy of insurance insuring the life of plaintiff's husband. In the application plaintiff was asked the question: "If any of plaintiff's husband's family, his father, mother, brothers, or sisters had ever been afflicted with insanity, pulmonary or scrofulous diseases?" and she answered "No." She was then asked what disease her husband's mother died of, and she answered scrofula; and what his sister died of, and she answered disease of the blood. The husband was asked the question of what disease one of his brothers died of; he replied he did not know, and the agent put it down unknown. The husband was also asked the question: "Had he ever had the scrofula or any symptoms of it, that he was aware of?" and he answered "No." It was proved that the husband had been troubled, for some time before his death, with a swelling in the groin, and had been confined to his bed, and had had this trouble before he made the application. He, also, had an abscess. The plaintiff was non-suited on the trial. It was held, reversing the judgment of the Court below, that although the answer of plaintiff to the question as to whether any of the family of her husband had been afflicted with any pulmonary disease, scrofula, &c., was untrue, her answers to other questions gave the company notice of the existence of scrofula in the family, and showed that she was mistaken in her first answer. This could not void a policy. That the answer of the husband that he had never had any symptoms of scrofula, was not a warranty; he may have been sick and have had a swelling and sores, but he might not have known they were indications of scrofula. It was a question for the jury. That the husband's answer, that the disease his brother died of was unknown, was the language of the agent and not his; he could only mean by it that it was unknown to him, not to professionals. The case should have been submitted to the jury.

The present state of the law is, certainly, well calculated to lend force to the observations of Lord St. Leonards, in *Anderson* v. *Fitzgerald*:—"A policy ought to be so framed that he who runs can read. It ought to be framed with such deliberate care that no form of expression by which, on the one hand, the party assured can be caught, or by which, on the other, the company can be cheated, shall be found upon the face of it; nothing ought to be wanting in it the absence of which may lead to such results. When you consider that such contracts as these are often entered into with men in humble conditions of life, who can but ill understand them, it is clear that they ought not to be framed in a manner to perplex the judgment of the first judges in the land, and to lead to such serious differences of opinion among them." Judging from the prevailing practice, and the enforcement of the strict letter of the law by life insurance companies in honest cases, it would seem as if to the majority of the companies (as to Ellesmere, in "Friends in Council") the hissing of collected Europe—provided the hissers could not touch them—would be a grateful sound rather than the reverse. Life insurance law as it is can only be ameliorated, as it should be, by legislation. In its main object, provision for those whom death deprives of their bread-winner, Life insurance entails thrift, self-denial, and forethought on the part of the policy-holder; and thus he assists in rendering more firm and stable the very groundwork of the state. But seeing how unhappily calculated to discourage its adoption are those provisoes, considering the medical aspects to which we have adverted, and remembering that those provisoes inflict upon the family of the assured the loss not only of the sum assured, but of all the sums, possibly a great portion of the savings of a man's lifetime, which have been paid for the policy itself, may we not well accede to the suggestion that there should be a statute of limitations in regard to defences against life insurance policies? "The necessity for such a provision is more than ever apparent," observes the *Albany Law Journal;* "if there is any defence to a policy, the company can discover it in six years as well as in sixty. A policy is valid enough as long as the insured lives and pays. When he dies, the company wakes up to its wrongs. Now, we say, let them wake up inside of six years, or a still fewer number. Let us have a statute of repose, after which we shall feel some confidence that if we happen to die, and the officers, agents, and lawyers of the companies shall have left any margin for losses, our heirs, representatives or assigns may recover some of the money we shall have paid the companies."

NOTANDA.

Summary Procedure on Bills of Exchange Act; motion inter partes for leave to defend; copy of affidavit not served.—*Plunket*, for defendant, moved on notice (directed by Palles, C. B.) for leave to take defence to an action under the Summary Procedure on Bills of Exchange Act. *Walker*, for the plaintiff, objected that no copy of the affidavit on which the motion was grounded had been served. FITZGERALD, J.—The motion need not be on notice under the statute. I shall hear it as of course, if the objection be insisted on; if the objection be waived I shall let the motion stand until the next Chamber sittings, a copy of the affidavit to be furnished meantime. Motion adjourned accordingly (*Dillon* v. *Eastwood*; Con. Ch., Aug. 7, 1874).

Remitting action under C. L. P. A. Act, 1870, *s.* 5; *notice of motion framed under s.* 6.—*Jacob Geoghegan*, on behalf of the defendant, moved to remit an action of contract under C. L. P. A. Act, 1870, s. 5. *Houston*, *contra*:—The notice of motion is for an order that the proceedings be stayed, unless security for costs given. There is no jurisdiction to make that order under s. 5; and the case does not come within s. 6. Deasy, B., in a recent case (unreported), held the same objection fatal. FITZGERALD, J.—I shall read the notice omitting the alternative as to security for costs. Order made to remit, under s. 5 (*Macdermot* v. *Cox;* Con. Ch., August 7, 1874).

Appeal from Quarter Sessions; adjournment; Civil Bill Act (14 & 15 *Vict.*, *c.* 27), *s.* 127.—Appeals from dismisses on the merits, pronounced by the Chairman at Quarter Sessions. One of the actions was brought to recover £40 damages, for that the defendant, in the execution of his office as justice of the peace, within his jurisdiction, did maliciously, and without reasonable and probable cause, on April 16th, 1873, at Belfast, sentence the plaintiff to six months' imprisonment, with hard labour; and also, for having declined to send the accused forward for trial before a jury. The second action was for a like amount—for that the defendant refused and declined to accept sureties, offered to him for the prosecution of plaintiff's appeal, against the sentence passed by him on plaintiff, on the 16th April, 1873. The appeals had been entered for hearing at the previous assizes, and were adjourned till the present assizes in consequence of the absence of Mr. Macaulay, solicitor, who was a

Digitized by Google

necessary witness. The adjournment was had on the application of the appellant, and was taken at his peril; see previous notice, *ante* 137, and note thereto, *ante* 165, referring to authorities, which, however, were not now cited. *Kisbey*, for the respondent:—The under section 127 of the Civil Bill Act, must be to appeal, the assizes next after which such decree or dismiss has been pronounced, but not after such assizes. The form of recognizance was, also, made out in conformity with the terms of this section. There is no clause in the Act of Parliament to give the chairman or the judge of assize, any power to adjourn an appeal from the Court at which it was originally entered for hearing, being the first after the decision had been given in the Court below. Under these circumstances, the Court has no jurisdiction. In an unreported case Fitzgerald, B., held that he could not hear an appeal, under the L. & T. Act, 1870, because it had been adjourned from a previous assizes. It may be said that a hardship would result; but, that might have been avoided by the appellant submitting, at the previous assizes, to a dismiss without prejudice. *Mr. Rea*, attorney for the appellant, contended that his lordship had power to adjourn an appeal from one assizes to another, in a case in which a necessary witness was unavoidably absent. If this were not so, justice might at any time be defeated, by the party principally interested tampering with a witness, giving him drink, or making him sick, so that he would not be able to attend to give his evidence. The same jurisdiction exists to hear an adjourned appeal as to hear a record made a *remanet*. The appellant could not have been remedied here by allowing a dismiss without prejudice, for, being an action against a magistrate, notice had to be served under the statute, which would in such case be of no avail. We are not affected with any laches, and had no control over the cause of the adjournment. KEOGH, J.—The postponement from the last assizes was at the risk of the appellant; and the entry placed upon the books, as directed by the Court, is as follows:—"Adjourned, *Hughes* v. *O'Donnell*, and *Same* v. *Same*, till next assizes, at the request of the appellant, who takes the adjournment at his own peril; with liberty to the respondent to contend, at the hearing of the appeal on the next assizes, that the judge had no power to adjourn the hearing." It is plain that neither side was taken short, as both parties knew what they were doing. The whole question, then, turns on the Act of Parliament. [His Lordship read the section.] It is, no doubt, a grievance that, a necessary witness not being able to attend at one assizes, the case could not be adjourned till the next; but, it is one of those things in which a grievance may exist without any remedy. Here the appeals were postponed in consequence of a matter over which the appellant had no control whatever—the illness of Mr. Macaulay; and Mr. Rea could have done nothing but what he did, his only chance being to have the cases adjourned at his own risk. I quite agree that there is a hardship in the case; but the Act says that the appeal shall be heard "at the assizes next after such decree or dismiss shall have been so made or pronounced." But for that section or Act I would have no more power to hear a case than would any other person in the court. Therefore, my jurisdiction is entirely depending upon that section of the Act of Parliament I would only have to consider whether I am the judge of the assizes after such decree or dismiss was made, which, in point of fact, I am not. But it does not stop there, it goes on to say, "and not after next assizes." So that, from that, I am merely the creature of the section of the Act of Parliament, and according to the words of that section I have no jurisdiction to hear these appeals, except at the next assizes after the decree or dismiss had been pronounced. The object of the Act, no doubt, was that a remedy should be applied, and that justice should be brought home without delay, by having a speedy termination of the whole thing. If a wrong has been inflicted on the parties, I cannot help it. I would be glad to hear the appeals, but I cannot do it. I shall, therefore, enter "no jurisdiction" (*Hughes* v. *O'Donnell; Same* v. *Same;* Antrim Assizes, July 22, 1874).

Special jury, certificate for; delay in application.—*Byrne*, Q.C., applied for a certificate for a special jury under the following circumstances:—The action, one of ejectment, was tried at the Maryborough Assizes, before the Lord Chief Justice, and a verdict directed by him for the plaintiff. Owing to the confusion attending the close of the commission, the counsel for the plaintiff did not apply for the certificate. *Battersby*, Q.C., opposed the application. WHITESIDE, C.J., held that he must refuse the application. It should have been made at the close of the trial, or within a reasonable time afterwards. Considering that there was abundant time for making the application at Maryborough, he could not deem it reasonable to institute the motion in the next assize town (*Sir C. Coote* v. *Corbett and Meredith;* Carlow Assizes, July 13, 1874).

Execution against goods of tenant; sheriff paying year's rent to landlord; bankruptcy of tenant; notice of act of bankruptcy.—On November 14, 1873, Greatry recovered judgment against Kenirey, and on the same day delivered a writ of *fi. fa.*, for the amount thereof, to the sheriff of the county of Waterford. A seizure was effected on November 15. On November 18, the goods were advertized to be sold on the 24th. Kenirey had committed an act of bankruptcy, by absconding, on November 1st, of which notice was served upon the sheriff and execution-creditor on the morning of November 24th, before the hour of sale. Previous to the service of that notice, Kenirey's landlord had required the sheriff to pay him a year's rent, under the statute of Anne in that behalf. The sheriff proceeded with the sale on the 24th, and out of the proceeds paid the landlord the year's rent due. On November 25th a petition in bankruptcy against Kenirey was presented by other creditors, upon which, on November 28th, he was adjudicated. *Houston*, on behalf of the assignees, moved that the sheriff should be ordered to bring in a moiety of the year's rent so paid, on the ground that the landlord was only entitled to distrain for half a year's rent, and to prove for the balance; B. & I. Act, 1857, s. 321. *Purcell*, Q.C. (with him *W. Anderson*), for the sheriff.—The sheriff was bound by the statute of Anne to pay the year's rent to the landlord. When the notice was served on the sheriff of the act of bankruptcy, there was no adjudication, and no change in the legal rights of the parties; therefore, the goods were in *custodia legis*, and the landlord could have maintained an action against the sheriff if he refused to pay over the year's rent. The sheriff had no right to act on the notice, as *non constat* that the act of bankruptcy would be established, or that an adjudication would be obtained; and he was bound to proceed, notwithstanding the notice; *Gill* v. *Wilson*, 3 Ir. C. L., 544. MILLER, J.—He had another course. He might have declined proceeding to sell until he saw the result of the notice. But as he chose to proceed, he must take the consequence. His liability to the landlord does not prevent his being liable, also, to pay over the amount to the assignees, which I shall order him to do. *Purcell*, Q.C.—The landlord would have been entitled in bankruptcy, not only to be paid half a year's rent in full, but also to prove for the balance; and so the sheriff, on bringing in the money,

Digitized by Google

ought to be allowed to prove on the bankrupt's estate for that sum. *Ordered accordingly.* (*Re Kenirey;* Ba., May 1, 1874).

Discharge of bankrupt from arrest, for debt proved in bankruptcy; election; (20 & 21 *Vict.*, c. 60), *s.* 226.—Motion that a judgment, marked by the plaintiff on December 19, 1862, a writ of *ca. sa.* issued on foot thereof, and all proceedings thereunder be set aside, and that the defendant be discharged from custody. The defendant had been a commission agent, and in February, 1862, the plaintiff, a London merchant, issued a summons and plaint against him to recover the amount of two bills of exchange. The writ was served February 12th, and on the 15th a trader-debtor summons was served on the defendant, under the B. & I. Act, 1857, s. 105. On the 18th he filed a declaration of insolvency, of which notice was given to the plaintiff's attorney. On the 1st of March the plaintiff, as petitioning creditor, filed a petition for adjudication against the defendant. On the 11th he filed a proof of debt setting forth the bills, and the defendant was adjudicated bankrupt. On the 1st of April a meeting was held for choice of assignees; and Robert M. Wardlaw, the plaintiff's Dublin agent, was appointed trade assignee, Wardlaw and plaintiff alone *proving* and *voting*. The meeting for final examination took place on the 7th of April, and was adjourned *sine die*, with protection for thirty days. On the 6th of December a petition of appeal was presented, against the order of the Court of Bankruptcy refusing to pass the examination, and on the 17th a case by way of answer was filed. On the 19th, judgment was marked and execution issued, and on the 31st defendant was arrested. *Heron*, Q.C. (with him *Sidney*), in support of the motion.—The only point raiseable is whether the application should be made to the Bankruptcy Court or to this Court. We submit that it is rightly made. What is said apparently to the contrary in *Ransford* v. *Barrett*, 7 Dow.! 807, cannot be supported. That case is referred to in *Woodward* v. *Meredith*, 2 D. & L. 135; *Thompson* v. *Harding*, 3 C. B. N. S. 254. They referred to 20 & 21 Vict. 60, ss. 133, 134, 141, 262. *Dillon, contra.*—There was nothing amounting to an election within the 263rd section. There was no estate to administer in bankruptcy, and as the creditor could derive no benefit, it would be mere mockery to say that proving, where nothing could be realised, amounted to an election, so as to have the effect of preventing the creditor pursuing his action. Such proof could not be pleaded in bar. *Ransford* v. *Barrett* is in point. The report in Dowling is at variance with another report, 3 Jur. 655. *Thompson* v. *Harding* is in our favour. [PIGOT, C.B.—That is a case in which the defence could be pleaded.] Section 148 draws a distinction as to the immunity given: and only the Bankruptcy Court should adjudicate in the matter. There the case was stamped with fraud. But here this Court should not interfere. The Bankruptcy Court can expunge the proof or annul the adjudication. [FITZGERALD, B.—Though the defence be not pleaded, this Court has an equitable jurisdiction over its process. Rescinding the proceedings is not equivalent to withdrawing the immunity. He does not require protection.] I do not deny this jurisdiction; but if it depends upon the fact and effect of election, the jurisdiction would more properly be exercised by the Court of Bankruptcy; section 133. As the question is doubtful no costs should be given, and they should be put under terms to bring no action; *Woodward* v. *Meredith*, 2 D. & L. 135. *Heron*, Q.C., in reply.—But for *Ransford* v. *Barrett* there could be no doubt; and any such doubt is relieved by the report 3 Jur. 655. The Court has full jurisdiction; *Geikie* v. *Hewson*, 5 Sc. N. R. 485; s.c. 4 M. & G. 618. The arrest was made to stop the appeal. It is idle to say that this object was not in view, and therefore costs should be given. [FITZGERALD, B.—The only question to be considered is how the wrong done by the execution-creditor should be rectified.] *Ordered*, that the judgment and *ca. sa.* be set aside and vacated, with costs, and that the defendant be discharged from custody, he undertaking to bring no action. No costs of motion (*Girond* v. *Burke*, Exch., Jan. 13, 1863, before the full Court. See *Johnston* v. *Germaine*, 6 Ir. L. T. R. 121).

Ejectment for non-payment of rent; averment that defendant holds as tenant to plaintiff; meaning and proof of averment.—On an ejectment for non-payment of rent, averring that the defendant held as tenant to the plaintiff, it appeared that the plaintiff held for a term of years under a lease made in 1773, out of which a woman named Felton was the owner of a term created by sub-demise, made in 1793, for rent due under which the action was brought. Leonard, a defendant, was the owner of a term created by sub-demise, out of the last-mentioned term; and the defendant Arnold—the only defendant named in the writ—was in possession of the lands as tenant to Leonard. The writ followed the form in the schedule to the C. L. P. Act, 1853, and was addressed "to all persons concerned." Leonard, who alone took defence, pleaded that Arnold did not hold as tenant to the plaintiff as alleged. Held, that the averment in the writ means "holds *immediately* from or under the plaintiff; that it is in that sense material and traversable; and that as issue had been taken upon it, the averment should be proved in that sense, which not having been done, a verdict should be entered for the defendant (*Billing* v. *Arnold;* Ex., Nov. 5, 1873).

LORD O'HAGAN ON THE OPERATION OF THE LAND ACT.

At the meeting of the British Association, at Belfast, Lord O'Hagan presided in the Section of Economic Science and Statistics, and after making some remarks on the judicial and economic value of statistics, and paying a just tribute to the services of Dr. N. Hancock in that department of inquiry, went on to say:—"You will, I am glad to learn, have an opportunity of hearing a paper on Land Tenure, prepared by Sir George Campbell, the late Lieutenant-Governor of Bombay, who is eminently qualified to speak with authority on that momentous subject, and to whom the people of this country owe serious obligations for the counsel and assistance which his great ability and large experience in another land enabled him to afford during the discussions which preceded the passing of the Irish Land Act. Of that Act, generally, I have no purpose to speak here. It has been in operation for too brief a time, and its provisions have yet been too little interpreted by judicial exposition to warrant a confident pronouncement on many points connected with it. I believe that it has already been of signal advantage, and will yield far greater benefits hereafter. But I refer to it now only that I may say a word of its purchase clauses, which—and the best mode of giving them vitality and effect—are worthy of the attention of all who care for the prosperity of Ireland. As to those clauses there was no controversy in Parliament; they passed with universal approval through both the Houses. They recognized, with all the authority involved in so rare a unanimity of acceptance, the value of diffused proprietorship of land amongst our agricultural classes. It is impossible to overestimate their importance to the progress of this country in industry and order. Yet they have a very inadequate operation, and remain almost a dead letter on the statute book. I learn from the report of the Commissioners of Public Works that, since the passing of the Act, 338 tenant farmers have purchased their holdings, comprising an acreage of 22,116 acres, of which the annual rent amounted to £13,141, at a gross cost of £319,522, including advances from the Commissioners of £192,006. The report informs us

Digitized by Google

further that the applications of tenant farmers for loans under the statute have diminished instead of increasing, and that the purchases of one year have been 206, whilst only 106 were made in that which followed. These facts are disappointing in a high degree, and I call attention to them in this place that, if possible, the causes of the disappointment may be ascertained and done away, and free and fruitful action given to legislative provisions, amongst the very best which have ever been vouchsafed to us. Of course, I cannot here discuss so large a question; but I may indicate my own opinion that, in order to the effective working of those provisions, it will be necessary to facilitate still further the transfer of land in small proportions, by cheapening conveyances, and validating titles, at a small expense; and that, for this purpose, it will be essential to extend the operations of the Record of Title Office beyond the narrow sphere within which Parliamentary opinion confined it when it was originally designed, and to make it effective, as it has never been since it was opened, by the application of the principle of compulsion, without the aid of which old habits, ignorant dislike of innovation, and powerful class interests, will continue to nullify its influence. The purpose of the Legislature to secure a complete and permanent register of all dealings with property in the soil, is of high policy and plain necessity, and must not be baulked by the supineness or the obstinacy of individuals whose own best interest will be promoted when they are forced to aid in carrying out that purpose. In addition, it will be necessary to reconsider the fiscal arrangements of the office, as well as the Landed Estates Court to which it is attached, and to localise their action by the establishment of district registries, of easy access for small transactions, and with fees too moderate to bar approach to them. These seem to me the outlines of a reform long desirable, but heretofore difficult, from the *vis inertiæ* of some and the active antagonism of others, which should promptly be undertaken by Parliament, and has already, in principle, received its sanction. by its general approval of the bills introduced by Lord Cairns during the past session. It is essential to Ireland, if we would have the action of a beneficent law no longer paralysed, and the passionate eagerness with which the Irish people covet the possession of the soil indulged, legitimately, and within the limits of the law; so that, instead of finding it often identified with agrarian crime, we shall see it become subordinate and ancillary to the equitable settlement of the country, and the lasting contentment of its people, by prompting them to obtain, through honourable industry and manly effort, that position of secure and independent proprietorship, which, according to all our experience of human nature, will lead them to identify their individual interests and objects with their duty to the State, and make them loyal and law-abiding citizens."

THE PROPOSED NEW RULES OF COURT AND THE PRACTICE IN ENGLAND.

We publish the following compendium of the practice under the new Judicature Act and Rules for England, taken from the *Solicitors' Journal*. Although the Irish measure has been postponed *in toto* for the present, we are safe in saying that the practice ultimately, and perhaps soon to be established in Ireland, will be much the same as that which we now find is to prevail in England.

The proceedings in an action, for the most part, naturally fall into certain obvious divisions:—

I.—Proceedings for bringing the proper parties before the court.

II.—Proceedings for ascertaining the real points in controversy between the parties; in other words, pleadings.

III.—Proceedings for enabling each party duly to arm himself for the controversy with his opponent, including the whole subject of discovery.

IV.—Proceedings, the object of which is to prevent injustice or unnecessary hardship to either party, in consequence of the inevitable delay in finally deciding upon the merits of the case, such as interlocutory injunctions, and other like protective orders.

V.—Proceedings (*a*) for deciding the facts in dispute.
(*b*) For applying the law to them so as to obtain the final judgment of the court.

VI.—Proceedings for enforcing the judgment of the court.

VII.—Proceedings on appeal.

VIII.—There must still remain various miscellaneous matters of procedure not easily brought under any general head, but not, on that account, of less importance.

I. *Proceedings for bringing the proper parties before the court.*

Every action will commence with a writ of summons. The operation of the Bills of Exchange Act is not interfered with, but in all other cases there is to be but one uniform period of eight days for the appearance to a writ served within the jurisdiction. No writ is to be issued for service abroad without an order for the purpose. The writ is to be in force for a year; and if it cannot be served within that time, leave may be obtained to renew it.

But the writ is not to be a mere summons to appear, such as the writ of summons issued for twenty years past in the common law courts. It must, by section 2 of the schedule, be "indorsed with a statement of the claim made or of the relief or remedy required in the action."

The Rules (order II., rule 2) provide that in this indorsement, "it shall not be essential to set forth the precise ground of complaint or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the court or judge amend such indorsement so as so extend it to any other cause of action, or any additional remedy or relief." And a large collection of forms of indorsements are given in a schedule in which the grounds of complaint are stated for the most part in very general terms. We give a specimen of them taken quite at random:—

"Defamation.—The plaintiff's claim is for damages for libel. The plaintiff's claim is for damages for slander.

"Distress.—Replevin.—The plaintiff's claim is in replevin for goods wrongfully distrained.

"Wrongful distress.—The plaintiff's claim is for damages for improperly distraining. [This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value].

"Ejectment.—The plaintiff's claim is to recover possession of a house, No. , in street, or of a farm called Blackacre, situate in the parish of in the county of

"To establish title and recover rents.—The plaintiff's claim is to establish his title to [here describe property], and to recover the rents thereof."

[The two previous Forms may be combined."]

But important as the mode of bringing the proper parties before the Court is, it is even more important to determine whom you may and whom you must bring before the Court in any action, and for what purpose you may bring them.

This is perhaps the point at which there has hitherto been the greatest difference of practice between the Common Law and Chancery Courts, and at which therefore reform was most absolutely essential. In the Common Law Courts the narrowest possible rules have heretofore prevailed as to the joinder of parties. The business of a Common Law action was to settle by one judgment for plaintiff or defendant the rights of those particular parties. If A. and B. are plaintiffs, A. and B. must be jointly interested in the relief sought. If C. and D. are defendants, there cannot be judgment to one effect against C. and to another effect against D. But provided the parties to any claims are the same, and they claim always in the same right, there has for many years been the utmost latitude as to the joinder of causes of action. In Chancery, on the other hand, while the combination of several separate controversies in one suit has been held open to objection on the ground of multifariousness, the object has always been to do complete justice to all parties with respect to the subject matter of the suit; and all rules as to parties have been directed to secure this result. Under the new procedure the widest latitude will be allowed with regard both to the joinder of claims and the joinder of parties. By section 22

Digitized by Google

of the schedule several causes of action may, subject to rules, be joined in one action. And by section 23 it is not necessary that all the defendants shall be interested as to all the relief sought. And the Rules (Order XVI.) follow this up by provisions to the following effect:—

"1. No cause of action shall, unless by leave of the court or judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for any breach of contract under which the same or any part thereof are held.

"2. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court or judge, be joined with any claim by him in any other capacity.

"3. Claims by or against husband and wife may be joined with claims by or against either of them separately.

"4. Claims by or against an executor or administrator as such may be joined with claims by or against him personally; provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor on administration.

"5. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant."

It will further be open to a defendant for the future to set up in an action, by way of counter-claim, not only claims hitherto the subject of set-off, but all such as would till now have been the subject of a cross action at law or a cross bill in Chancery.

All these provisions are, however, subject to the rules laid down in sections 20 and 22 of the schedule, and worked out in detail in the Rules, that where distinct controversies are inconveniently joined an order may be made to separate them.

With respect to parties the Rules (Order XV.) provide that—

"1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

"2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

"3. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

"4. Subject to the provisions of the Judicature Act, and the schedule thereto, and these rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

"5. Subject as last aforesaid, in all probate actions the Rules as to parties heretofore in use in the Court of Probate, shall continue to be in force."

The schedule (section 9) further provides that any party, plaintiff or defendant, may be struck out or added as may be necessary, "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action." The representation of parties in the same interest, hitherto unknown in the Common Law Courts, is provided for in the schedule (section 10).

By section 11 of the same schedule it is provided that partners may sue or be sued in the name of their firm. And as the enactment is new and not unimportant, it may be convenient to look a little forward and see how such a suit is to be carried through to its conclusion. In any such case, by the same section, any party may apply for a disclosure of the names of the partners. And in the cases of partners plaintiffs such disclosures may, under the Rules (Order VI., Rule 2), be demanded on notice as of right. A writ against a firm may be served either upon one or more of the members or at their principal place of business. The partners in such case are to appear in their individual names. But the action is to proceed against the firm as such. And in the case of a judgment against the firm execution may issue (Order XXXVII., Rule 8)—(*a*) against any property of the partners as such; (*b*) against any person who has admitted on the pleadings that he is or has been adjudged to be a partner; (*c*) against any person who has been served as a partner with the writ of summons, and has failed to appear. If the judgment creditor claims to be entitled to execution against any one else as a partner, he may apply for an order to that effect; and a judge may make such order if the liability be not disputed, or direct an issue if it be.

It not unfrequently, however, becomes important that the decision of a question arising in an action should be binding not only upon the original parties to the action, but also upon some other person, and therefore that such third person should be called upon to intervene in the action, and dispute the point in which he is concerned if he think it desirable to do so. Thus, to take the examples pointed at in the forms appended to the Rules (Schedule B, form 1), the defendant may be sued as surety, and he may be entitled to contribution from another person as co-surety. He may be sued as acceptor of a bill of exchange by an indorsee, and he may have accepted it for the accommodation of the drawer, who is no party to the action. He may be sued upon a contract which he has made merely as agent for another person, who is bound to indemnify him against liability. In any such case, according to the provisions of section 12 of the schedule, and the later rules of Order XV., a notice, analogous to a writ of summons, may be served upon the third person concerned. If he chooses not to appear, the judgment in the action will be conclusive against him of what it decides. If he does appear, and desire to intervene, the court, or a judge, may give him leave to defend.

Again, by the death or bankruptcy of a party, or the devolution of an estate or otherwise, fresh persons may become interested in the matters in controversy in addition to or in lieu of those originally affected. This case is provided for by section 17 of the schedule and by the Rules (Order XLV). The machinery provided for introducing the requisite new parties is very like that now in use in the Court of Chancery.

The two cases to which we have just referred, together with the right of any person interested in the estate to intervene in a probate action, that of a person interested in the *res* to intervene in an admiralty action *in rem*, and that of a landlord to appear and defend in an action of ejectment against his tenant, appear to be the only instances in our future procedure of intervention by third persons in an action; a subject which occupies so large a space in some of the Foreign Codes of Procedure.

While speaking of the subject of the bringing of parties before the court it may be observed that proceeding in default of appearance will in future be simplified in one or two respects. First, it will not be necessary, in any case or in any court, to enter an appearance for a defaulting defendant, but proceedings may go on as if he had appeared. And secondly, in an action of detinue or for damages a writ of inquiry may issue upon the indorsement of the writ without as heretofore filing a pleading.

II. *Proceedings for ascertaining the real points in controversy between the parties.*

Unless the defendant in entering his appearance has given notice that he wants no further information, the plaintiff must deliver a statement of his claim within six weeks after appearance. But it is open to the plaintiff to deliver his statement of claim at any earlier period, even to

Digitized by Google

serve it with the writ if he pleases; and he may deliver one although the defendant has not desired it. If the defendant does require a statement of claim, and the action is for an ordinary money claim, an economic method of pleading is afforded to the plaintiff by Rule 4 of Order XX. by which—

"Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed, or partly written and partly printed," &c.

The defendant will have eight days only to deliver his defence. The plaintiff will have three weeks to reply, and no subsequent pleadings will be allowed without leave. But all these periods may be enlarged by leave.

Under section 18 of the schedule, it will be remembered, all pleadings are required to be printed. The Rules (Order XVIII., Rule 2) propose to allow any pleading to be delivered in manuscript which does not exceed three folios of seventy-two words each in length. This is one of the points to which we have referred, as to which an amending Act must be passed before effect can be given to the Rules.

The same thing is true of another matter of far greater importance. By the same section 18 of the schedule every pleading must be both *filed* and *delivered* to the opposite party. The Rules propose to dispense with the compulsory filing of all pleadings, and allow the parties simply to deliver them to one another. But if and when a judgment is entered, then by Order XXXVI., Rule 1, it is provided that "the party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action; such copy shall be in print, except such parts (if any) of the pleadings as are by these Rules permitted to be written."

The effect of this may perhaps be stated in the language familiar to common law practitioners by saying that whenever a judgment is signed, the record, if any, must be made up, but made up by the simple process of handing printed documents to the officer entering the judgment.

So far as to times and the mere mechanism of pleading. We must now look at the substantive rules of pleading. The schedule left this matter at large, only saying that pleadings should be "statements as brief as the nature of the case will admit." The rules on the subject of pleading are of considerable length. The fundamental rule (Order XVIII., rule 1,) is as follows:—

"Every pleading shall contain as precisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statements being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary."

This rule of course implies the abolition of all the technicalities of common law pleading, common counts that disclose nothing, conclusions of law stated as propositions of fact, repetitions of the same facts in several counts on several pleas for the purpose of asserting several views of their legal effect. And in succeeding rules such nuisances as pleas in abatement and new assignments are specifically abolished.

On the other hand, this rule is quite consistent with the system of pleading hitherto in use in the Admiralty and Probate Courts.

It may seem too exactly to describe the system which, in theory at least, prevails in Chancery. And undoubtedly the terms of the rule differ little from those now in force as to the bills in Chancery. But before concluding that the pleading of the future will be what bills and answers have been, some further points have to be looked to.

In the first place, Chancery pleading, at least on the defendant's side, has been very materially affected by the incongruous mixture, in one sworn answer, of two radically distinct things, pleading and discovery, the statement by a defendant of his own case, and the furnishing by him to the plaintiff of the materials requisite for developing or proving his. For the future this will be otherwise. Each party will in his own pleading, without any oath, state his own case in his own way. And each will be compelled to give to the other on oath the discovery to which he may be entitled.

Secondly, among the pleading rules contained in order XVIII. are the following:—

"14. Every allegation of fact in any pleading, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

"17. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

"18. Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in a subsequent pleading, if any, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, or such joinder of issue may except any facts which the party may be willing to admit, and shall thus operate as a denial of the facts not so admitted."

Two things are here laid down—first, that each party is taken to admit that which he does not deny; secondly, that that denial is not to be by a general joinder of issue in the first instance, but that each party must handle the case in detail once at least. It would be necessary to consider the bearing of these rules maturely, or rather perhaps it will be necessary to test their effect in practice, before saying how far they will be found to conflict with the traditions, and to modify the practice of equity draughtsmen.

Thirdly, one of the rules we have cited in terms forbids pleading evidence, a somewhat indefinite prohibition. But the following rules are more specific:—

"21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

"22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

"23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

"24. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative."

These rules, if really enforced, must tend to control the outrageous verbosity too often in practice found to characterise Chancery pleadings.

The several points we have indicated must all be considered in forming any judgment of the future system of pleading.

With respect to the amendment of pleadings, the effect of the rules in order XXIV. seems to be, in short, that as plaintiff may amend his statement of claim without any leave for the purpose, within the time limited for reply, that is to say, within three weeks after defence, or if no defence is delivered within four weeks after appearance. And the defendant has a similar right with regard to any set-off or

Digitized by Google

counter-claim in respect of which he is proceeding. In all other cases the court, or a judge at chambers, or the judge at the trial, may order an amendment.

By section 19 of the schedule "where in any action it appears to a judge that the statement of claim or defence, or reply does not sufficiently disclose the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge." The rules contain no further provision on the subject of settling issues.

Issues of law may be summarily raised on the pleading by means of demurrer. Under the rules of Order XXV.,

"Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the court as against the party demurring."

A demurrer is to be delivered in the same way and within the same time as a pleading. A demurrer to one part of a pleading, and an answer to another part may be combined in one document. A judge may either give leave to plead and demur to the same matter, or may reserve leave to plead in case the demurrer be overuled. Either party may enter the demurrer for argument.

III. *Proceedings for enabling each party to arm himself for the controversy.*

By far the most important class of proceedings under this head are those relating to discovery and inspection.

There is no point with respect to which the procedure of the Common Law Courts is more defective than discovery. The right to interrogate can only be obtained by an order, and upon an affidavit the necessity for which often defeats justice. And the allowing or disallowing interrogatories has always been treated by judges as a matter of discretion, not of right. The affidavit requisite for obtaining discovery of documents is not less embarrassing.

Under section 25 of the schedule and Order XXVIII. of the Rules the plaintiff may as of right deliver interrogatories with his statement of claim, or at any time, down to the close of the pleadings, and the defendant may, in like manner, deliver them with his defence or down to the close of the pleadings. At any other time an order to interrogate must be obtained. An interrogatory may, within four days, be objected to and struck out if objectionable; or objection may be taken to answering it. And the objection will be dealt with summarily.

With regard to discovery of documents, by Rule 9 of Order XXVIII., an order for it may be obtained without any affidavit.

As to inspection of documents, section 26 of the schedule provides that each party shall be entitled on notice to inspect any document referred to in the pleadings or affidavits of his opponent, and the Rules provide in detail for working this out. In other cases an order for inspection must be obtained upon an affidavit showing the right to inspect.

If either party disobey an order for discovery or inspection, he will not only be subject to attachment, but if a plaintiff he will be liable to have judgment of *non pros* against him, and if a defendant to have his defence struck out, and judgment by default entered.

A further provision empowers either party to use in evidence one or more of the answers of his opponent without putting in the rest, subject to a discretion in the Judge to require the rest to be put in if really so connected as to make this just.

IV. *Proceedings for the protection of the parties against injury pending the final issue of the action.*

The power of making interlocutory protective orders has hitherto belonged almost exclusively to the Court of Chancery. All branches of the Court will, under the new system, have the same authority in these matters; and the powers of the Court will be considerably larger than those of the Court of Chancery hitherto. In view of the great importance of this branch of procedure, we think it well to bring together the several provisions of the Act, the Schedule, and the Rules, so that their combined effect may be the better appreciated.

By section 25, sub-section 8 of the Act—

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and condition as the Court shall think just; and if an injunction is asked either before, or at, or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable."

By the schedule, section 43—

"When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured."

"44. It shall be lawful for the court or a judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as to the court or judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature, or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once."

"45. It shall be lawful for a court or a judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid, to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid, to authorise any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient, for the purpose of obtaining full information or evidence. The court or a judge may also, in all cases where it shall appear necessary for the purposes of justice, make any order for the examination upon oath, before any officer of the court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any action or other proceeding to give such deposition in evidence therein on such terms, if any, as the court or a judge may direct."

By the Rules (Order XLVII.) an order under the above sub-section of the Act, or section 44 or 45 of the schedule, may be obtained by the plaintiff at any time after writ issued, and by any other party after appearance. The same order contains the following further provision:—

"Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise, as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit, or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such court or judge may direct, and that upon such payment into court being made, the property claimed be given up to the party claiming it."

Digitized by Google

V. *Proceedings for* (a) *deciding the facts in dispute, and* (b) *applying the law to them.*

How much diversity there has hitherto been as to this branch of procedure in the several groups of courts, and how many defects demand a remedy in every single one of them, must be only too familiar by painful experience to most of our readers.

Under the proposed new procedure the mode of trial will not depend upon the particular division or court in which a case may be pending, but upon the choice of the parties or the discretion of the judge.

First, then, as to the tribunal. An action may be tried (and it must be observed that the word trial is used to include the hearing of a cause after evidence has been taken on affidavit, as well as a trial by oral evidence)—

(*a*) Before a judge or judges.
(*b*) Before a judge with assessors.
(*c*) Before a judge and jury.
(*d*) Before an official or special referee.
(*e*) Before such a referee with assessors.

The plaintiff may choose any of these modes of trial.

But the defendant may apply within four days after notice of trial for an order to change the mode of trial. Or he may give notice that he desires any issues of fact to be tried by a jury. On this point the provisions of the Act, the Schedules, and the Rules are as follows. We leave them to speak for themselves :—

By section 56 of the Act the power to refer is "subject to such right as may now exist to have particular cases submitted to the verdict of a jury." By section 31 of the schedule the defendant may "upon giving notice that he desires to have any issues of fact tried before a judge and jury be entitled to have the same so tried." By Order XXXII., rule 21, "the court or a judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury."

Different questions of fact may, by section 32 of the schedule, be ordered to be tried by different modes of trial. By sections 56 and 57 of the Act questions or issues of fact may be referred to referees official or special, and by Order XXXII. it is further provided that

"22. The court or a judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a judge with a jury.

"23. Trials with assessors shall take place in such manner and upon such terms as the court or a judge shall direct.

"24. In any action the court or a judge of the division to which the action is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly."

So far as to the tribunal. Now, as to the method of proving facts :—

(*a*) *Primâ facie* all evidence is to be *viva voce* evidence.

(*b*) But the parties may agree to take the evidence by affidavits.

(*c*) Or particular points may be ordered to be proved by affidavit, the rest of the evidence being taken orally.

Where the evidence is to be oral the plaintiff may give a ten days' notice of trial as soon as issue is joined. If he does not do so within six weeks, the defendant may. Notice of trial cannot be countermanded except by consent or by order. And, practically, either party may enter the cause for trial.

When the evidence is to be by affidavit, then, under Order XXXIII., within fourteen days after the consent so to take the evidence, the plaintiff must file his affidavits and deliver a list. The defendant has a like fourteen days for his affidavits; and the plaintiff seven days for those in reply. As soon as the evidence is thus complete, notice of trial may be given. And the cross-examination of witnesses, if any, will take place at the trial.

We may add that, if a new trial become necessary, it may be ordered on the particular question as to which there has been a miscarriage, and not necessarily of the whole action.

So far as to the determination of the facts. But how of the application of the law to them? By Order XXXII. rule—

"17. Upon the trial of an action the judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a court or judge."

If the judge does not feel justified in directing judgment at a trial, or if he directs one subject to leave to move, then the final judgment of the court must be obtained by motion for judgment; and the rules of Order XXXV. will then apply—

"1. Except where by the act or the schedule thereto, or by these Rules, it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

"2. Where at the trial of an action the judge or a referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

"3. Where at the trial of an action the judge or referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties."

It will be observed therefore that in all such cases the old fashion Rule *nisi* will be dispensed with.

By the same order it is provided that if the judge directs a wrong judgment upon the facts found the party aggrieved may move to set aside the judgment and enter the right one. But in this case, and in the case of a motion for a new trial, the rule will be only to show cause.

Lastly, it will not be necessary in every case that the whole cause should be disposed of in one judgment or order. The old common law notion of only one judgment in one action is got rid of, for by the same order—

"8. Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact."

"10. Upon a motion for judgment, or for a new trial, or any other motion made under the provisions of the 48th section of the Act, the court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit."

It will be further remembered that under section 40 of the schedule any party may, at any stage of an action, apply for any order to which, on the admissions of fact in

Digitized by Google

the pleadings, he may be entitled; and such application may be made summarily by motion (Order XXXV., r. 11).

VI. *Proceedings for enforcing judgments.*

This is a subject dealt with at some length in the Rules. But the result may be shortly stated. Hitherto different courts have had different methods in many instances of enforcing their judgments. Thus sequestration has been a mode of execution in use in Chancery and in the Probate Court, but not in the Common Law Courts. The attachment of debts has been limited to the Common Law Courts. The Probate Court could not make a charging order upon stock. For the future every form of execution will be available in any branch of the court in which a judgment may be recovered for the enforcement of which the particular process is appropriate. For the most part the rules as to the issue and execution of such process remain as they have been. But some changes are made: thus, by Order XXXVII., Rule 15, upon a judgment for a sum of money or costs execution may issue forthwith until it be stayed. And as a judgment may be entered immediately after a verdict or its equivalent, the old fourteen days of grace will be abolished.

VII. *Proceedings on appeal.*

It will be remembered that by sections 19 and 49 of the Act an appeal to the Court of Appeal will lie from every judgment or order except one made by consent, or one as to costs only when they are in the discretion of the court. By section 50 of the schedule "all appeals shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary." By section 57 of the schedule a year is limited for appeal against a final, and twenty-one days against an interlocutory, decision.

The chief provisions of the Rules as to appeals are, first, that notice of appeal shall be a fourteen days' notice against a judgment, and four days against an interlocutory order. And the corresponding periods for a cross notice, in lieu of a cross appeal, by respondent, are eight days and two days.

Upon matters of fact oral evidence taken in the court below is to be brought before the Court of Appeal by production of the judge's notes, or by such other means as the court shall direct.

VIII.—*Miscellaneous matters of Procedure.*

We shall point out, under this head, a few matters which appear to us to be of special importance.

In Interpleader the present practice of the Common Law Courts is to be adopted in all branches of the court.

The action of ejectment will undergo substantial change, in that pleadings will for the future be delivered in it as in other actions. But the Rules (Order XVIII. rule 12) expressly protect a defendant, who is in possession by himself or his tenant, from the necessity of pleading his title except where his defence is equitable.

The vexed question upon which the Courts of Queen's Bench and Common Pleas have been so long at variance, as to when a cause of action is to be regarded as having arisen within the jurisdiction, in such a sense as to justify proceedings against persons out of the jurisdiction, is dealt with by Order X., rule 1.

"Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the court or judge whenever the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction."

The law as to payment into court in satisfaction is altered by allowing it to be made at any time after service of the writ, without waiting for the time of pleading. (Order XXVII., rule 1.)

The power of stating special cases is preserved, and special cases will be printed. (Order XXX.)

The common law practice as to the consolidation of actions is adopted for all divisions of the court. (Order XLVI., rule 4.)

The common law course of obtaining rules *nisi* upon ordinary practice motions is abolished, and notice and motion are substituted. The notice in ordinary cases is to be two days' notice.

By Order XLVIII.

"2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorised by these rules.

"3. Except where by the practice existing at the time of the passing of the Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these rules it is otherwise provided, no motion shall be made without previous notice to the parties affected thereby. But the court or judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge may think just; and any party affected by such order may move to set it aside."

The practice as to applications in chambers is substantially unaffected.

IRISH AND SCOTCH PEERAGES.

The Select Committee of the House of Lords appointed to consider the state of the representative peerages of Scotland and Ireland have made their report, and it must be freely admitted that it is a harmless document. The recommendations made by the Committee are few and simple, and if we must doubt whether all will be sanctioned by Parliament, there will be little difficulty in assenting to those which are probably the most important. The Committee suggest that the number of the Scotch representative peers shall be increased from 16 to 21, and that of the Irish representative peers from 28 to 32—alterations which would at once add nine members to the House of Lords, the greater number of whom might be expected to attend assiduously the debates and divisions of that chamber. The Committee further recommend that Irish and Scotch peers should not be disabled from sitting in the House of Commons for any constituency in the United Kingdom; but it must be added that the Scotch peers, who are principally interested in this proposal, view it with indifference, if not with feelings of positive repulsion. Lastly, the Committee suggests that Her Majesty should be advised to renounce the prerogative of adding new peers to the peerage of Ireland under the limitations and conditions of the Act of Union. The report contains some other recommendations, but they touch only the formal business of elections, and need not be particularly stated. Three other questions came before the Committee, upon which the report is silent. It will be remembered that Scotch representative peers are elected for each Parliament, while Irish representative peers are elected, as vacancies occur, for life. In the draught report of the chairman, Lord Rosebery, it was proposed that the Irish, like the Scotch peers, should be elected at the beginning of each Parliament; but this suggestion the Committee declined to support. Lord Stanhope then proposed that Scotch representative peers should be elected, like the Irish, for life; and this, again, failed to obtain adhesion. In the end, this anomalous treatment of the two peerages was laid aside as a difficulty not admitting of a solution. A second question was raised by Lord Rosebery in a recommendation that any representative peer should be enabled to resign his seat as a representative, and the minutes of the Committee would seem to show that this proposal had been approved with some modifications, but as the proposal does not appear in any shape in the final report we must conclude that the minutes are in this respect misleading. Lastly, Lord

Digitized by Google

Rosebery proposed that the cumulative vote should be adopted in the election of representative peers, so as to give the minority a chance of representation; but this suggestion was rejected on a division of the Committee by ten to seven—the division following strictly the demarcation of parties in the composition of the Committee. It cannot be surprising that there should be some difficulty in persuading Conservative peers to consent to a modification of an arrangement which gives them a phalanx of more than forty steady and trusty voters in party contests; yet we may confess to being a little struck by the illustration of the strength of party attachments afforded in the fact that Lord Stanhope was one of the majority in this division.

The corner-stone of the case of the Scotch and Irish peers is that their ancestors were created hereditary peers of Parliament, and yet those who have duly succeeded to them are not peers of Parliament. It must be obvious that those Irish peers, 19 or 20, who have been created since the Union suffer no wrong in not being admitted to the House of Lords, for this disability was in existence when their peerages were created; and those other Irish peers, some 24 in number, who have no connexion either by property or family with Ireland, and whose ancestors accepted from Mr. Pitt merely titular distinctions, cannot expect any sympathy because they are not entitled to sit at Westminster. The Scotch peers and the older Irish peers are undoubtedly in a different position; but neither do they suffer any injustice. Their ancestors were entitled to sit in the Parliaments of Scotland and of Ireland respectively, and, as those Parliaments have ceased to be, the rights to sit in them have necessarily vanished.

THE PUBLIC MANAGEMENT OF PRIVATE BUSINESS.

There was less private business during the Session which is just over than there has been for many years. Nevertheless 287 petitions for private bills were filed, and 228 bills were brought in. Some have been thrown out, others compromised and withdrawn, for all the world as if they were actions in a Court of Law. 187 bills, probably not one of which was worthy to occupy the attention of Parliament, passed. Gas and water concerns, and tramways and railways, which happened to be wanted, or which were thought to be wanted by the inhabitants of various localities, together with 42 miscellaneous wants of miscellaneous societies or individuals, were the subjects upon which hon. members were required to exercise their legislative powers. Now, we have little hesitation in saying that few of those 187 bills were of a nature to unduly tax the powers of a board of guardians or a town council, or the assembled magistrates at quarter sessions. A good many of them might have been satisfactorily dealt with by a county court judge; and, with regard to not a few of those that did not pass, it would probably not be too much to say that the machinery appointed to dispose of them was the true and sole reason of their ever coming into existence.

But Parliament, because it calls itself "omnipotent," must have a finger in every pie. The convenience and time of men of business from one end of the country to the other are sacrificed to this mania of Parliament for doing everything itself. Witnesses come up by scores from Caithness or from Galway, to explain matters which only concern Caithness or Galway, to a committee sitting in Westminster. Upon every one of the great lines of railway, solicitors and agents may be said to be domiciled. They live upon the wing, and are always on their way up to London. Even those persons who are least friendly to the scheme proposed by Mr. Butt and his supporters must admit that there is some force in the Irish complaint, that it is hard to have to cross the Channel in order to get leave to make a bridge, and that not a drop of water can be got by Cork or Belfast to drink nearer than Westminster. This state of things is bad enough. But not long ago it was far worse. Unfitted as Parliament may be to enter into the wants and wishes of some small and remote district, which few hon. members have ever heard of until the bill is brought in, it was still less fitted for the investigation of conjugal disputes. Nevertheless, until the establishment of the Court over which Sir James Hannen presides, Parliament arrogated to itself the monopoly of divorces. The dirty linen of the nation could only be washed by the Legislature. One of the three estates of the realm insisted upon its exclusive right to listen to all disreputable stories. Parliament has now wisely perceived that applications for divorce are private and not national concerns, and has handed them over to be adjudicated upon by a Court of Law. In like manner election petitions, which are really actions at law, involving the question whether as the law stands a man has or has not been duly elected for a particular place, have been transferred from the jurisdiction of the House of Commons to that of the Judges. No doubt there was a great deal more to be said for the House of Commons maintaining its control over election petitions than can be alleged on behalf of Parliament keeping to itself the management of much of the private business which it now insists upon performing. But nevertheless it is generally admitted that the Judges do the work far better than ever a Committee did. And the only weighty objection which the new system has met with has been founded upon the contention—by no means undeserving of attention—that a power too unlimited has been given to the Election Judge, by letting him not merely unseat a member who has obtained a majority of votes, but to seat a member who is, perhaps, supported only by a very small minority. But what danger would there be in empowering a Judge or a Board to entertain the question whether a scheme for supplying with water—Broadstairs, we will say, as a Broadstairs Water Bill was introduced this Session and lost—is or is not reasonable and unobjectionable?

Delay, Bungling, and Expense are, notwithstanding the best intentions, we fear, too often the three characteristics of the present mode of doing private business in Parliament. Now, of these three, Expense is the one which most urgently calls for attention. Very few people who have not been personally concerned in a private bill have any conception of the waste, and, in some instances, the scandalous and shameful waste, of money. The costs, the fees to counsel and agents, are often out of all proportion to the work to be done. Over and over again a most beneficial local improvement is abandoned, because the expense of getting a bill passed will be too great. The time for putting an end to a system under which much of the business of Parliament has become vestry business, seems to us, and we believe, to almost every intelligent person in the country, to have come. Parliament does not do it well, does not do it cheaply, does not do a great deal of it which ought to be done at all, and the effort to do it materially weakens the strength of the Legislature for the transaction of those great national affairs which are its proper and, which ought to be, its sole business.—*The Echo.*

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

LANDED ESTATES COURT JUDGESHIP.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I have read an article in the London *Times* upon what to it appears the impropriety of the Government appointing a second Judge to the above Court unless it could be shown that delay has taken place in the business of the Court, and which must necessarily inflict injustice on Irish suitors. This idea appears very reasonable, and I will now, with your permission, endeavour "to show cause," as they say in legal parlance, against this view at present entertained by *The Times* in reference to the subject of the appointment of a second Judge, and with this object I beg to trouble you with the short history of a proceeding in that Court the particulars of which I have had an opportunity of ascertaining, and which will go far to

Digitized by Google

establish that *bonâ fide* delays have arisen in the conduct of the business since the lamented death of Judge Lynch, when it was determined (whether rightly or wrongly, I don't know), by the late Government that the vacancy should not be filled up. The delay I fancy is entirely owing to arrears of business, as I cannot assign any other reason, knowing as I do that this matter has been repeatedly brought up before the learned Judge for his final decision, which, after a protracted delay (as you will observe from what is stated below), was only given early last month, and the order has never been yet made up, so that the judgment will be practically of no avail to the suitors until the middle of November next.

As you are aware, a few simple facts are worth hundreds of arguments; they are as follows:—The proceedings were taken in the Landed Estates Court to confirm certain sales of property which took place in Belfast in November, 1872. An objection to the final Schedule of Incumbrances was filed in same month by mortgagees claiming to be incumbrancers, and their claim was argued before the late Judge Lynch on the 11th December, 1872; the facts were all admitted, and the arguments were mere questions of law. It became necessary to bring the matter before the learned Judge Flanagan, and the objection was re-argued on or about the 17th June, 1873, and Judgment reserved. The Judge's attention was drawn to the delay by Junior Counsel in *January* last, and again in *July*, when he gave his Judgment at last, but up to the present hour his order has not been made up. A sum of about £300 has been "locked up" in Court, and must now remain till November next.

The owners of the property are unable to wind up the estate, although all charges and incumbrances have been paid off long since, and feel much aggrieved at the vexatious delay which has occurred.

I think it will be admitted that, in a matter of this kind, had there been two Judges sitting (as is strictly required by the Act of Parliament), it never could have occurred.

The suitors are poor people, and since the month of November, 1872, when they were informed by their legal advisers here that in three months at least judgment would be given—their rights ascertained—and the money in their pockets, yet here we are in the middle of August, 1874, with our judgment simply a "dead letter" until November next! The advisers of the owners are almost afraid to meet their clients, all in consequence of the "order" not being made up.

Surely this is a monstrous state of things. I am satisfied many other suitors are "sailing in the same boat," and such should be invited to make known their complaint through your widely read paper, which would probably be copied into other journals with your able comments, and might probably be read by nearly all of the members of Mr. Disraeli's Administration, which would direct their attention to such a grievance and give the Irish people redress, as this is a good time to have matters of this kind investigated in the recess, when the Ministers can give the subject their fullest consideration preparatory to legislative action.

I should mention that the Act passed in the present session amending the Jurisdiction of Quarter Sessions in Ireland, giving power to the Chairman to hear questions of title, &c., in their Courts not heretofore "triable," is looked upon as most important, and is a step in the right direction, and when we obtain a further "instalment of justice," in the shape of an amendment of "The Civil Bill Acts," giving jurisdiction to the amount of £50 (the same as in the English Courts), and the establishment of Local Bankrupt and Admiralty Courts in towns like Belfast, Cork and Limerick, and after such measures have received a fair trial, then would be the proper time to use the "pruning knife" to the Irish Courts, and the Government would not likely be held guilty of taking further "leaps in the dark." I am perfectly convinced if we had such extended jurisdiction in the Civil Bill Courts, as these tribunals are eminently satisfactory to the public, as speedy and inexpensive justice is administered throughout the country, that the cry of "overmanning of the Irish Bench" would really be felt, and would soon become such a "burning question" that it would be dealt with promptly and efficiently, as the amount of business that would be transferred from the Superior Courts to the less costly tribunals would be so considerable, and would so much diminish the business of Dublin, that it would be perfectly plain to any one conversant with such things, what could or could not be done in making the Irish Bench thoroughly satisfactory to the Irish people.

Yours, &c., A. R. D.

Belfast, August 13th, 1874.

BANKRUPTCY (IRELAND) AMENDMENT ACT, 1872.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I would wish to call the attention of the profession to a very serious defect in the Bankruptcy (Ireland) Amendment Act (1872), with respect to debts contracted by a *non-trader* before the passing of the Act (6th August, 1872).

In order to make a non-trader a bankrupt, the debt must be at least £40, and *contracted after* the passing of the Act (sec. 22), so that unless £40 of the debt had been contracted since the 6th August, 1872, a non-trader cannot be adjudicated a bankrupt, no matter what act of bankruptcy he may commit. A trader-debtor summons is not available either, because, although a trader-debtor summons can be issued against a *non-trader*, and the summons will not be dismissed on the ground that the debt was contracted before the passing of the Act, yet the failing to pay, secure, or compound for the said debt, within the prescribed time, will not be such an act of Bankruptcy as would support an adjudication. So that such a creditor is entirely without a remedy, as a bill of sale or assignment would cover the debtor's goods, and thus defeat the creditor's only remedy, namely, an execution by the sheriff.

Can any of your readers suggest a remedy?

PRACTITIONER.

SESSIONAL EXAMINATION, 1874.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—It is rather disappointing to the apprentices, who were examined last month, that the publication of the list of those who may have passed should be so long delayed. There was an understanding that an alphabetical list would have been promulgated in a few weeks, to be followed, after some time, by the customary classified list. Neither has yet appeared.

There is a very general feeling amongst apprentices that it would be extremely unfair if no classified list should be given; and as no such list appeared of those who passed last November, there is a strong apprehension that similar negligence may be again displayed.

Hoping some members of the Council may see this communication, and take action in the matter,

I remain, Sir,
AN APPRENTICE.

DIGEST OF RECENT ENGLISH DECISIONS.

MASTER AND SERVANT.

Service for "twelve months certain:" notice: continuance of service beyond the twelve months.—The defendant agreed to serve the plaintiff as a traveller and agent "for twelve months certain," after which time either party should be at liberty to terminate the agreement by giving the other a three months' notice. *Held* (by Bramwell and Pigot, BB., Kelly, C. B., dissenting), that at the close of the twelve months the agreement could be determined by either party without any notice, and that the stipulation as to a three months' notice only applied in case the engagement was prolonged beyond the twelve months. *Langton* v. *Carleton*, L. R., 9 Ex. 57.

RAILWAY.

Railway company: negligence: invitation to alight: overshooting platform: contributory negligence.—On the approach of a train to a station, a porter called out the name of the station, and the train was brought to a standstill. Hearing

Digitized by Google

carriage-doors opening and shutting, and seeing a person alight from the next carriage, the plaintiff, a season-ticket holder accustomed to stop there, stepped out of a carriage; but, the carriage in which he was having overshot the platform, he fell on to the embankment and was hurt. It was night, and there was no light near the spot, and no caution was given, nor any thing done to intimate that the stoppage was a temporary one only, or that the driver intended to back the train. *Held*, upon a reservation in which it was agreed that the court should "be at liberty to draw inferences both as to negligence by the defendants and want of reasonable care of the plaintiff, and upon the facts generally," that there was evidence from which a jury might reasonably find negligence on the part of the company's servants, and no evidence of contributory negligence on the part of the plaintiff. *Weller* v. *London, Brighton and South Coast Railway Co.*, L. R., C. P. 126.

STATUTE OF FRAUDS.

Sale by auction: memorandum in writing: entry in sales book by auctioneer's clerk.—The plaintiff sent a mare to be sold by auction at the defendant's repository. The defendant advertised the mare for sale by auction on the 28th of March, 1872, and circulated a printed catalogue of the horses to be sold at his sale, with conditions of sale annexed, in which the plaintiff's mare was described as lot 49. The defendant had a sales ledger, which was headed "Sales by auction, 28th March, 1872," in which the plaintiff's mare was also numbered 49; but neither the catalogue nor the conditions of sale were annexed to the sales ledger, nor were they referred to therein. On the 28th of March, 1872, the lots described in the catalogue were put up by the defendant for sale under the conditions. The plaintiff's mare was put up for sale and knocked down to M. for £33, and thereupon the defendant's clerk wrote in the columns of the sales ledger left blank for this purpose, the name of M. as purchaser and the price. M. afterward refused to take the mare:—*Held*, that the catalogue and the conditions of sale were not sufficiently connected with the entries in the sales ledger, to make a note or memorandum in writing of a contract by M. to satisfy section 17 of the Statute of Frauds. *Semble*, that the entry by the clerk was not by an authorized agent so as to bind the purchaser. *Pierce* v. *Corf*, L. R., 9 Q. B. 210.

A Canada Law Court.—A correspondent of the *Canada Law Journal* gives an account of a visit he recently paid to a court in Ohio, which he calls the Court of Common Pleas, but which he says corresponds to a county court in Canada. He vouches for the strict accuracy of his narrative. After describing the court room and the jurors, he says—The case (it was the trial of a citizen for burglary) had been going on all the day before; counsel had already "made augument" three different times; the prisoner's counsel was just winding up an address, the magnitude of which was obvious from the pile of manuscript in which it was transcribed, and to which constant reference was made, and it was stated that the State prosecutor and judge would follow at proportionate length. The long suffering of the jurors was, however, made intelligible when we were told they were professionals. In other words, that they made a business of serving on juries, and thereby earned a competent livelihood. It was also darkly hinted that a suitor had facilities for retaining a jury, as well as a counsel—and a judge. There was a judicial bench in the Court of Common Pleas, but at present it was unoccupied. An elderly gentleman was sitting on a cane-bottomed chair, facing the wrong way, and warming his back at the open fire. His chin was resting on the chair-back, and he was meditating profoundly. He occasionally rose, traversed the room, his hands in his pockets, and expectorated thoughtfully. This was the judge. The prisoner sat by his counsel at a small table in front of the jury. We looked in vain for a dock. They have more delicacy about those matters in the States. There was another gentleman at this counsel's table who attracted observation. His chair was tilted back against a pillar; his feet rested on the back of another chair before him. He was so placed that the judge was seated directly opposite him, and was forced to contemplate the soles of his boots. This gentleman was dressed in the seediest apparel; he picked his teeth with a pen-knife; he expectorated continuously; he was lean and sallow. We thought he might be a crier of the court, or a personal friend of the burglar. What was our surprise when, on the defendant's counsel drawing his tedious oration to a close, he lowered his feet from their elevation, brought his chair to the horizontal, and rose with the obvious intention of haranguing the jury. He was, in truth, the State prosecutor. He first took from the table a dirk, which, with other murderous articles, had been found upon the prisoner. He examined it deliberately, felt its edge, held it up for the jury to observe, and commenced his address with the calmness and self-possession of the practical speaker. The opening of his speech was almost word for word as follows:—'You have heard tell, gentlemen of the jury, of the Gordian knot. Alexander, gentlemen, Alexander the Great, wanted to untie that Gordian knot, but he could not do it, nohow. So what did he do? He just whipped out his sword and cut that knot right square through. Now, gentlemen, we have a Gordian knot to untie, and a tough one too. But I won't trouble you to untie it. I'll just slither it right clean through with this dagger. You have likely seen instruments of this sort before. They are only found on two classes of men—Texan Rangers and Italians; and when you find one of these on a man, you know he's a *rascal and a scoundrel, like this fellow here*.'" And so on. The writer was seized with a disposition to mirth which, he says, attracted the attention of the usher of the court, who was "eating an apple with a pocket knife, which had evidently cut a good deal of tobacco," and he thought it well to retire before he had compromised his character by laughing in the face of justice.

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Sadlier	Prove debts	
Harley Keough, Bros.	Prove debts and vouch	
Beresford	Adjourned reference	
Arrangement	Prove debts	*Larkin & Co.*
do	do	*Heally & White*
do	do	*Fay & M'Gough*
Flynn	Adjourned prove debts	
Hanlon	Settle title and posting	
Brown	Adjourned prove debts	

TUESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Kennedy	Composition and final examination	
M'Crory	do	
Boyton	Composition	
Wood	1st public sitting	
M'Kenzie	do	
Mason	1st public sitting and composition	
Brady	2nd composition sitting	
Stewart	Final examination	
Brady	do	
Bell	Final examination and choose assignee	
Cannon	Adj. final examination	
Foak	do	
Silk	do	
Coyne	do	
Bailey	Motion	*Neilson*
O'Dwyer	Audit	
Bailey	Adj. audit and dividend	
Meikle	do	
Law	do	
Parker	do	

Digitized by Google

Before the Chief Clerk, at 12 o'clock.

Dillon	Adjourned vouch	
Arrangement	Adjourned prove debts	
O'Donnel	Reference	
Arrangement	Inquiry, 138 G. O.	*Fay & M'Gough*

WEDNESDAY.

Before the Chief Clerk, at 12 o'clock.

O'Reardon and Murphy	Vouch assignee's acct.	
Lynam	Costs	*Perry & Co.*
Ferguson	do	*Perry & Co.*
Flynn	Cost of charge	*Larkin & Co.*
Arrangement	Prove debts	*Larkin & Co.*
Roche	Costs	*Lett*

THURSDAY.

Before the Chief Clerk, at 12 o'clock.

Nolan	Prove debts	
Barton	do	
Foxal	Adjourned prove debts	
Shea	do	
Hetherington	do	
Arrangement	Inquiry	*Molloy & Watson*

FRIDAY.

Before the Court, at 11 o'clock.

Campbell	1st public sitting	
M'Caud	do	
Flannagan	do	
Sullivan	do	
Kilcullen	do	
Magrath	Composition	
Duggan	Final examination	
Donovan	do	
Nolan	Final examination and choose assignee	
Leahy	do	
Dwen	do	
Hollan	Adjourned do	
Hagarty	Confirm sale	
———	Show cause against adjudication	*Plunket*

Before the Chief Clerk, at 12 o'clock.

Hanna	Prove debts & reference	
Arrangement	Prove debts	*Cronhelm & Co.*
do	Adjourned inquiry	*Casey & Clay*

ADJUDICATIONS IN BANKRUPTCY.

Rowan, J. W. and R., trading as A. Rowan and Co., and J. W. Rowan and Co., St. Paul's-mills, Belfast, flax spinners. Sittings, *Tuesday, September* 8, and *Friday, September* 25. *Seed and Lynch*, solrs.

Russell, Michael, Ballyporeen, Tipperary, baker and grocer. Sittings, *Tuesday, September* 8, and *Friday, September* 25. *Stewart*, solr.

Tomlinson, Samuel, Passage West, Cork, baker. Sittings, *Friday, September* 4, and *Tuesday, September* 22. *Scallan*, solr.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.

DANE—August 15, at Newbold-terrace, Leamington, Anna, second daughter of the late William Auchinleck Dane, Esq., solicitor, of Killyreagh, County Fermanagh, aged 19 years.

HITCHCOCK—August 19, suddenly, Love Hitchcock, widow of Robert Hitchcock, Esq., late Master, Court of Exchequer in Ireland, aged 73 years.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	AUGUST Fri. 14	Sat. 15	Mon. 17	Tues. 18	Wed. 19	Thur 20
	Government.						
—	3 p c Consols	—	92	92	92	91⅞	92
—	New 3 p c Stock	91⅞	91⅞	91⅞	91⅞	91⅞	91⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	107¾	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102¼	102⅞	102	—	101¾	—
	Banks.						
100	Bank of Ireland	—	311	311	310½	—	310½
25	*Hibernian Banking Co.*	59½	—	59½–9	59	59½	—
20	*London and County*	61⅞	—	—	—	—	—
15	*London Joint Stock*	—	—	—	—	50	50
20	*London and Westminster*	—	74¾	—	—	—	—
3½	*Munster Bank (Limited)*	—	—	8⅛	8⅛	8⅛	8⅛
30	*National Bank*	61⅞	61¾	62–1¾	61¾–2	61⅞	—
15	*National of Liverp'l (Ltd)*	—	—	—	—	14⅞	—
25	*Provincial Bank*	—	—	88½	88½	88½	88½
10	*Royal Bank*	30⅝	30⅞	30½	30⅞	30½	30⅝
15	*Union of London*	45⅝	—	—	—	—	—
	Steam.						
100	City of Dublin	106½	—	—	—	105	105½
50	Dublin and Glasgow	—	—	—	—	63	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	—
10	Dundalk (Limited)	—	—	—	6⅛	6	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	–/6	—	/6 /4½	–/3
1	Killaloe Slate Co. (lit'd)	—	—	18/3	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	—	5¾
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10½	—	10–½	—	—	10½
9½	*Dublin Tramways*	6¼ x d	—	—	—	6¼	6
100	Grand Canal	—	—	—	—	52	—
7½	*M'Swiney & Co., limited*	—	—	7⅛	—	—	—
25	*National Assurance*	—	—	—	—	—	48¾
9-4-7	*Patriotic Assurance*	—	—	10⅝	—	—	—
	Railways.						
50	Belfast and Northern Cos.	x d	—	—	—	—	67⅞
100	Dublin and Belfast Junct.	—	—	93	—	93⅝	93⅝
100	Dublin and Drogheda	—	—	—	113½	—	115
100	Dublin, W'klow, & W'ford	77⅛	—	77⅛	77¼	77⅛	77⅛
100	Gt. Northern and Western	—	97¾	—	—	98½	—
100	Gt. Southern and Western	108¾	109	109	109⅞	109⅞	110
100	Londonderry & Enniskillen	—	—	—	54	55	—
100	Midland Gt. Western	80½	—	80½–1	81	81	81
100	Waterford & Cent. Ireland	x d	—	—	—	—	—
50	Waterford and Limerick	30½	—	—	—	30½	30½ 30
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	94 x d	94	—	—	—	—
100	Do. do. 4½ p c	x d	—	—	—	—	—
100	Do. do. 4½ p c	x d	—	—	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do., 4½ p c	—	—	—	—	105	—
100	D., W., & W., 6 per cent	—	—	129½	—	—	—
50	D., W., & W., 5 p c (1860)	54⅝	—	—	54⅝	54⅝	—
100	Gt. South'n & West'n 4 p c	—	—	100	—	100½	—
10	Irish North Western A 5 p c	—	4⅛	—	4	4	4⅛
100	Watfrd. & Ct'l Irel, 6 p c rd	x d	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	—	52	—	—	—
50	Do., new red, 1873, 5 p c	52½	52	—	—	52	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	96½	—	—	96½	97
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	100½	—	—	—
—	D., W., & W., 4½ p c	—	—	—	—	—	100
—	Gt. South'n & West'n, 4 p c	—	99	—	—	99	—
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Waterford & Central 5 p c	—	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	98	98	98	—	98
—	Do., 4½ p c	—	—	—	—	—	—
—	Ulster 4 p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4 per cent., 20th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.

Name Days—August 27th, and September 15th, 1874.

Account Days—August 28th, and September 16th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BINDING "THE IRISH LAW TIMES."—Subscribers are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions, printed uniformly with The Irish Law Times, and bound up with The Law Times, or bound up separately, at proportionate Rates,

By JOHN FALCONER,

Office of The Irish Law Times and Solicitors' Journal, 53 Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, John Falconer, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, August 22*, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, AUGUST 29, 1874. No. 396.

IRISH MUNICIPAL ELECTIONS.

THE new code of Irish Election Law ushered in by the Local Government (Ireland) Act, 1871, and followed up by the Ballot Act and the Corrupt Practices at Municipal Elections Act, 1872, has been recently upon its trial; and we are not surprised to find that many mistakes have occurred, and many practical difficulties arisen, in the endeavour to collect and apply enactments so comprehensive, yet so detached and intricate. When we recollect that this new legislation embraces, as regards Ireland, not a limited class of towns only, but applies to all the towns whose governing bodies are constituted under the Towns Improvement (Ireland) Act, 1854, the Reformed Corporations Act of 1840, the Lighting and Cleansing Act of 1829, as well as to a number of towns under local Acts, we must express our regret that our law-makers should not have taken some trouble to make it intelligible to those for whom it was intended. The principles which underlie this unwieldy mass of confused legislation are, however, sufficiently simple; we shall endeavour to point them out. Take, for instance, the case of a town under the 9 Geo. IV., c. 82. By section 14 of that statute it is provided that the body of Commissioners shall go out of office on the 31st July, after three years' service, and be succeeded by other Commissioners. How is the necessary triennial election to be conducted? This question has in this present year received in different places a different answer, and, as a consequence, the validity of the elections therein respectively held is now in question.

It will be found, however, on referring to the statutes, that "so much of sections 12 and 16 as prescribes the mode of election of Commissioners," is, by the Ballot Act, expressly repealed. Now, section 16 is the section which prescribes the mode of election of Commissioners at the triennial meetings; and it will be found on examination that the only other provisions contained therein are those which fix the first Monday in July as the time for holding the meeting for such election and the following day for the polling, and those which require the Chairman of the out-going Commissioners, who presides at such election, to certify the result to his colleagues. Given, therefore, the day for the meeting and the person to preside over it, we must search elsewhere for directions as to the mode in which the elections are now to be carried out. Other parts of the very same statute, which repealed the old, make provision for the new practice: but these provisions are presented in a fragmentary and inaccessible shape upon the face of the statute book; they are, however, intelligible.

The provisions in question are two-fold in character, and we shall deal with them separately—viz., first, those which relate to the *nomination*—and, secondly, those which relate to the *taking of the poll*, in the event of a contested election. In England, at the time that the Ballot Act, 1872, was passed, the then existing practice at nominations for municipal elections was regulated by the Municipal Corporation Act, 1859 (22 Vict. c. 35), and that practice was not altered by the Ballot Act; in fact, to prevent the possibility of mistake upon the subject, an express provision is inserted at the end of section 20, that—"A municipal election shall, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if this Act had not passed." As regards Ireland, however, the case was different; for there, at the time of the passing of the Ballot Act, different statutes in different places (viz., the Lighting and Cleansing Act of 1829, the Reformed Corporations Act of 1840, the Towns Improvement Act of 1854, with the statutes therein incorporated, besides various specific local Acts), regulated the mode of nomination in each of the several classes of towns; and, with respect to Ireland, the Legislature thought fit to adopt a policy of assimilation and uniformity. Accordingly, we find that in applying Part II. of the Ballot Act to Ireland, the expression "*municipal borough*" is defined to include all the above classes of towns (section 29), and that by section 23 it is enacted that some of the provisions of the English "Municipal Corporation Act, 1859" (22 Vict., c. 35), that is to say, sections 5 and 6, and certain specified parts of sections 7 and 8, should extend and apply to every "municipal borough" in Ireland, and should be substituted for any provisions then in force in relation to the nomination at municipal elections. In effect, it extends to Ireland such of the provisions of the English Act as require a seven days' notice of election to be given in a certain specified form informing the electors of the approaching election, of their right to nominate candidates, and of the mode of doing so; such as require that the nomination papers, containing the names and descriptions of the parties nominated, &c., and duly signed by the nominator, be sent to the "town clerk" (this term is also defined) at least two days before the election; that the town clerk shall publish same; that, if required so to do, the town clerk shall provide and fill in the proper nomination papers; that, in the event of a contest, the candidates be taken from the persons so nominated as aforesaid, and from them only; and such provisions as specify the course to be pursued in the case where either no candidates have been duly nominated as aforesaid, or the number of candidates so nominated does not exceed the number to be elected. Such is the existing law..

So far we have dealt with the first point—viz., the present mode of nomination at the triennial election of Commissioners in towns under 9 Geo. IV., c. 82, as well as at other municipal elections, and have briefly indicated the course to be pursued under the existing statutes. Any departure from the course here pointed out makes the election illegal and irregular.

As regards the second point—viz., the *taking of the poll* in the event of the election being contested, it is unnecessary to say more than that the same must be conducted in pursuance of the Ballot Act (35 & 36 Vict., c. 33), sections 20, 23, and the 1st schedule thereof, Part II., sections 64 & 66, in the like manner, so far as circumstances permit, as in the case of a contested parliamentary election; and the necessary modifications are dealt with in the said schedule. The statute speaks for itself, as regards this matter, intelligibly enough; and we observe that, just as with respect to the nomination at a municipal election, it left untouched the previously existing provisions as to the time of the holding thereof, so, as regards the interval to elapse between the nomination and the poll, the Act expressly exempts municipal elections from the provisions it

Digitized by Google

contains with respect thereto in the case of parliamentary elections.

Apropos of the subject of uniformity and assimilation, we wish to call attention to the fact that the "register of voters" referred to in the Ballot Act, does now, except in the case of towns having special local acts, mean the register of voters directed by Part II. of the Local Government (Ireland) Act, 1871, section 27. We are aware that a mistake has arisen upon this head, and the cause thereof was that when the latter Act was first passed, the section in question (27) was made to apply only to such towns as were under the Towns Improvement Act, 1854, or special acts incorporating the same in whole or in part, and that the provision in the Ballot Act extending the operation of that section to other towns, has escaped observation as being introduced in a most unusual and unexpected place. However, the fact remains that by section 66 of the 1st schedule to the Ballot Act, Part II., after referring (*inter alia*) to the register of voters previously prescribed by section 27 of the said Local Government (Ireland) Act, 1871, it is enacted that in relation to other municipal boroughs the phrase "register of voters" shall mean "*a list which the town clerk of every municipal borough is hereby authorized and directed to make in like manner in every respect as if the provisions of the said section were applicable to and in force within such municipal borough.*"

We have stated shortly how municipal elections should now be conducted both as regards the nomination and as regards the taking of the poll; we have not space to deal at present with the question how departures from this course can be taken advantage of to set aside the election, within what time, and in what way.

THE BRITISH ASSOCIATION AT BELFAST.

LAST week the Section of Economic Science and Statistics, presided over by Lord O'Hagan, discussed questions of Legal Reform, notably that of Land Tenure; and the propositions laid down in the paper of Sir George Campbell form a new point of departure, which, however, will not readily be adopted in the elder and longer settled countries of Europe, however appropriate for such places as India and the various States of America. This week the Section devoted itself to Economic Science purely, and we are happy to learn that the professors of this somewhat repulsive science applied their theory to practice so well, that they have succeeded in doing what all the motives of interest, philanthropy, and even religion, had failed to perform. As our readers are aware, a strike and lock-out has lasted at Belfast for seven weeks, and, as strikes and trade unions were among the subjects discussed, it was inevitable that some suggestions for solving the difficulty should be offered. At the discussion which took place deputations of both masters and men were present, and it was at length proposed that mediation between the two parties should be attempted. The result was eminently satisfactory. At the closing meeting of the Association the President was able to announce that an arrangement had been arrived at, that the strike was at an end, and that the men were to resume work.

The Belfast meeting of the Association was pronounced by all the speakers to have been in all respects unusually successful, ut this achievement may be its crowning glory. One of the workmen stated that the strike had already cost them a sum of £200,000, and to have put an end to this disastrous loss will be a pleasant reminiscence to leave behind in a city where the Association has been most hospitably entertained. As might be expected, indeed, much was due to the spirit in which the masters and men were already disposed to meet each other, and the two deputations stated their respective cases on Tuesday with a promising moderation. Nothing was really needed but such a mediation as would enable the two parties to understand each other better, and the economists of the Association have had the satisfaction of providing the necessary means for mutual explanation.

THE IRISH JURY SYSTEM.

The Select Committee appointed to inquire and report on the working of the Irish Jury System before and since the passing of the Act 34 & 35 Vict., c. 65, and whether any and what amendments in the law are necessary to secure the due administration of justice, have considered the matter to them referred, and have agreed to the following resolutions:—

That the Juries (Ireland) Act, 1871, should be amended, but that it is indispensable to the proper administration of justice in Ireland that the system of providing juries should be such as to insure absolute impartiality in the formation of the panels of jurors.

That in some instances the rating qualification of jurors fixed by the Jurors Act (Ireland), 1871, is too low; and that it should be raised, and should in some instances be higher than the qualification fixed in the temporary Act amending the said Act.

That it is desirable to add to the number of persons qualified to serve on juries by qualifying some persons who may not have a rating qualification, such as the sons of peers, of baronets, of grand jurors, and of magistrates, officers of either the army or navy while not on actual service, freeholders, and leaseholders.

That collectors of rates and stamp distributors should cease to be exempt.

That publicans should be exempt from service on juries.

That all persons who have been convicted of perjury should be disqualified.

That the list of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions.

That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the jurors' books, has not worked well, and requires alteration.

That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books, having regard—

(*a*) To the convenience of jurors as to the locality to which they shall be summoned, so that as far as may be the jurors shall be summoned from within the jurisdiction of the court in which they shall be required to serve.

(*b*) The number of names in the jurors' books; and

(*c*) The number of previous attendances of the jurors; and that the sheriff should enter against the name of each juror summoned the date of each summons, and the juror's attendance, and should, as far as possible, not summon any juror a second time who had served on a jury until he had first summoned all those whose names are on the jurors' book.

That summonses for the attendance of jurors should be served by the constabulary, but with power to the judges of assize, by order, to substitute service by post in any particular venue.

That a right of peremptory challenge in civil cases in the superior courts, and in all trials of indictments for misdemeanours and *ex officio* informations, be allowed to each party to the extent of six challenges.

That the judge should have power, in criminal as well as civil cases, to order a view.

That all paid officials should be remunerated for the duties performed by them in relation to the jury lists according to a fixed rate.

That it is desirable to amalgamate the jury lists of counties of cities with those of the counties.

That the occupation of a house, or house and buildings without land, when rated to a certain value, should be a

Digitized by Google

qualification of a juror in counties; such value to be defined for each locality, according to the circumstances of the same.

That it is desirable to abolish the market juries.

That it is desirable that juries should be selected by ballot from the panel in criminal as in civil trials.

THE PRINCIPLES OF LIFE ASSURANCE.

The following interesting discussion took place on this subject on Wednesday, at the Belfast meeting of the British Association:—Mr. SPRAGUE, after referring to the recent failures of the Albert and European offices, traced the causes of insolvency in life insurance offices to—1, companies charging insufficient premiums; 2, conducting their business recklessly, insuring a large number of damaged lives at the ordinary rate; 3, losses incurred by injudicious investments; and 4, the expense of conducting business might be excessive and quite out of proportion to the profits. He approved the recent Act requiring the publication of accounts, and strongly condemned the system on which some offices published new policies as part of their assets, which should rather be considered liabilities. Skilled actuaries, by the proper publication of accounts, might be enabled to warn the public, but at all events policies recently effected should be struck out of every balance sheet. The principle he should lay down would be that when all the assets were less than the liabilities the company must certainly be insolvent. For the more effectual detection of insolvency in doubtful cases, he recommended that the present Act should be amended so as to require all companies to make a separate return of the policies which were recognized as assets in their balance sheets. If that were done, actuaries would be able to speak with confidence respecting many companies in respect of which there was at present much doubt. It would be clearly to the advantage of the public that insolvent companies should be exposed, for they were really obtaining money under false pretences. The question was whether this duty should be intrusted to private persons or to a public department. *The Times* newspaper had an action for libel brought against it for having proclaimed the insolvency of the European Life Office, and was forced to apologize besides paying the company's costs. It was subsequently proved, however, that the company was at the time hopelessly insolvent. He would authorize the Board of trade, on the application of any person interested, on a *prima facie* case been made out, to hold an inquiry, with closed doors, regarding the solvency of any life office, and if the society proved to be insolvent a report to that effect should be laid before the House of Commons.

Mr. SAMUEL BROWN, actuary, thought this was a most important subject. It affected no less a capital than four hundred millions sterling, accumulated for the benefit of wives and children. The amount of premiums received by assurance offices was between 12 and 13 millions, and the income derived from investments amounting to 100 millions could not be less than four millions per annum. Mr. Sprague was qualified to speak on the subject with the authority of a master, but he did not agree with him as to the interference of the Government. It was dangerous in principle and ineffectual in the results. He had more confidence in compelling companies to publish their whole accounts. The great evil was that offices endeavoured to obtain new business at a cost which would not pay the expenses.

Dr. FARR said he had been consulted as to the feasibility of a Government scheme of life assurance, which he thought might be carried into effect with perfect security, but it was a measure which would have no chance of success. The result, however, was that adopting the system pursued at the Post Office, anybody could insure his life for the sum of £100. He believed the greater part of all the great offices were perfectly solvent. With regard to those which were in a precarious position, the only thing that could be urged upon them was to stop at once. The policy-holders would then at least secure some part of the benefit which had been promised to them, but if they went on to the bitter end, like the Albert and European, that would become absolutely impossible. In the case of the Albert, the shares amounted to £20, and a call of £10 per share had been expended in the costs of winding-up.

The discussion was continued by Mr. Sheppard, Mr. Ryalls, and Mr. M'Mullan.

Mr. HAMILTON, as a director of one of the old-established companies in the city of London, deprecated Government interference, but no sound company would, he argued, flinch from the publication of complete balance-sheets in such a form that every person might be able to form a positive opinion whether an office in which he wished to insure was in a sound and proper condition. He thought the recent Act might be extended with that view.

Mr. SPRAGUE, in his reply, said he should not insist on the action of the Board of Trade, but he did not see why an inquiry should not be made into the solvency of an insurance office just as in the case of an unseaworthy ship, and if it were found insolvent it should be closed.

Lord O'HAGAN considered the paper a most valuable one on a most important subject, intimately affecting the welfare of most of our families. The Section and the public were greatly indebted to Mr. Sprague, who was a very high authority on the subject, for introducing it to their notice. He had no doubt his paper would command from the Government and the public all the attention it deserved.

THE NEW ACT ON VENDOR AND PURCHASER.—The statute to amend the Law of Vendor and Purchaser and further to simplify Title to Land, which received the Royal assent on the 7th instant, will facilitate the transfer of land. The principal feature, after the 31st of December next, will be that 40 years instead of 60 be substituted as the root of title to land. In the completion of any contract for sale of land, made after that day, and subject to any stipulation to the contrary in the contract, 40 years shall be substituted as the period of title which a purchaser may require, in place of 60 years, the present period of such commencement, but an earlier title may be required in similar cases in which an earlier title than 60 years may now be required. Rules are laid down for regulating the obligations and rights of vendors and purchasers in the following manner:—Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee to assign shall not be entitled to call for the title to the freehold; recitals, statements, and description of facts, matters and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions; the inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents or title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents, such covenants for production on the purchaser can and shall require to be furnished at his expense, and the vendor to bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser, and when the vendor retains any part of an estate to which any document of title relates, he is to be allowed to retain the same. Trustees, who are either vendors or purchasers, may sell or buy without excluding the application of the regulations mentioned. Further, the new statute enables the legal personal representative to convey the legal estate of mortgaged property. Upon the death of a bare trustee of any corporeal or incorporeal hereditament, of which he was seized in fee-simple, such hereditament is to vest like a chattel real in the legal personal representative, and when any freehold or copyhold hereditament is vested in a married woman, as a bare trustee, she may convey or surrender the same as if she were a *femme sole*. After the commencement of the Act, for which there is no day fixed unless it mean the 31st of December next, protection and priority by legal estates and tacking are not to be allowed. The Act is not to apply to Scotland.

Digitized by Google

CHARGE OF FRAUD AGAINST A BANKRUPT.

On Thursday, at the Northern Divisional Police Court, Dublin, before Mr. C. J. O'Donel, Ludlow Berkeley, provision merchant, Old Chapel lane, city of Cork, was brought up on remand in custody of Inspector Cooke, of the Detective Police Force, charged under the 11th section of the Bankrupt Act with not having made a true disclosure of his assets and personal property, and concealment of property within four months previous to his adjudication. The prosecution was directed by the Hon. Judge Harrison, and founded on evidence given before his lordship in the Bankruptcy Court, the bankrupt's book!keeper having admitted, on cross-examination, that the books were falsified to the extent of £1,400. There was a special charge of suppression of a sum of £300.

Mr. Purcell, Q.C., and *Mr. W. H. Kisbey*, instructed by *Mr. John L. Scallan*, appeared on behalf of the assignees in support of the prosecution. *Mr. George Perry*, instructed by *Messrs. Fottrell and Son*, appeared for the bankrupt.

The evidence which was given in the Bankrupt Court was repeated for the purpose of establishing that there had been a wilful suppression of property, which brought the case within the criminal jurisdiction of the Bankruptcy Court. The bankrupt, when arrested in Court by Detective-officer Cooke, stated that all he had in his possession was a sum of £150, which he gave up, in addition to a sum of £500 which had been seized by the messenger. The assignees alleged that in addition to these meneys there was a still further sum concealed.

The defence was reserved.

The prisoner was committed for trial to the Commission. Bail refused.

IMPLIED WARRANTIES.

The law of implied warranty has received another illustration in the late case of *Thorn* v. *The Mayor and Commonalty of the City of London* (L. Rep. 9 Ex. 163). From the special case which was stated for the opinion of the Court, it appears that the defendants, who were authorised by the Blackfriars Bridge Act, 1863, to build a new bridge across the Thames in place of the one they had removed, engaged an engineer to prepare plans and specifications of the bridge as well as of the mode of its construction. Thorn, relying on these plans and specifications, contracted with the defendants to perform the work according to these plans and specifications. He made no special or independent examination to discover whether the work could be done as specified, nor did the defendants in any way interfere in the dealings between the contractor and the engineer. The work was begun on the 7th June, 1874. As it proceeded it was found necessary in order to carry out the plans, to incur various expenses which were not anticipated by, or known to, the plaintiff at the time of entering into the contract, although, as it was admitted in the special case, it would have been easy matter of inference to a civil engineer of ordinary professional skill. The bridge ultimately built was that originally designed. The contractors now maintained that the corporation had guaranteed the reasonable fitness and sufficiency of the plans and specifications, as prepared by the engineer for the purposes of the works, and, further, that the works could reasonably be carried out in conformity with the same. The question for the Court to decide was whether upon the facts stated there was any, and (if any) what, implied warranty on the part of the defendants. The question at issue was thus simplified and, we shall find, on turning to the judgment, that the learned judges were unanimous in their decision in favour of the defendants. The gist of Lord Chief Baron Kelly's judgment was that there was no authority for holding that any warranty was implied in the present case, or that any such warranty could be implied without making such changes in the contract of the parties as would virtually have the effect of making quite a new contract, and a different one from that into which they entered. "It surely," observes his Lordship, "is a contractor's business to ascertain whether the work can be done in the time. . . . How has the plaintiff any right to complain, if, instead of arming himself with all the knowledge necessary to enable him to determine whether it was wise and prudent to take the contract, he enters into it without taking any of these steps in the matter?" Baron Amphlett is equally direct in his denial of plaintiff's right to recover. "To say that a contractor who has chosen to rely on the name and reputation of the person employed by the other party, when he finds that he should not have done so, can make the principal liable, is going far beyond any case that has been cited. I can see no implied warranty such as is contended for." There is a maxim recognised in our Courts, both of Common Law and Equity, which might be appropriately referred to in this case. *Vigilantibus non dormientibus jura subveniunt.* Plaintiff could have avoided the extra expense which has been cast upon him, had he not been content with an *ex parte* representation made by defendants' engineer. Under those circumstances it would be pushing the doctrine of implied warranty to an extreme length, to say that such a warranty existed in the present case.—*The Law Times.*

A POINT IN BASTARDY LAW.

Bastards, unless boasting a royal father, have generally found this a hard world, getting their fair share neither of creature comforts, nor of home delights, nor of social attention; but their good day has at length come after centuries of disadvantage. Mr. Arnold has decided that a bastard, who in the eye of the law has hitherto been deemed to be *nullius filius*, may now have two fathers, and may be entitled to support from both of them. This remarkable change in the position of bastard children has been brought about by a series of amending statutes, and by that haphazard style of law-making for which the British Parliament is so justly celebrated. The Act 4 & 5 Wm. IV. c. 76 (the Poor Law Amendment Act) by section 57 declared that every man who, after August 14, 1834, should marry a woman having a child at the time of such marriage, whether legitimate or illegitimate, should be liable to maintain such child as part of his family until the child attained the age of sixteen years, or until the death of the mother. In fact, the husband took his wife with her incumbrances, and was made subject to the grand legal principle, *Qui sentit commodum sentire debet et onus.* Then in 7 & 8 Vict. c. 101, s. 5, a proviso was inserted that no order on a putative father for payment of money for the support of his bastard child should be valid after the child attained thirteen years, or after the marriage of the mother, or after the death of the child. So far the law was consistent in its action, for on the marriage of the mother it shifted the duty of supporting the child from the putative father to the husband of the mother. But this proviso was repealed in 1872 by 35 & 36 Vict. c. 65, s. 2. schedule 1, and section 5 of that same Act declared that no order on the putative father should be in force after the child attained thirteen years or died, with power to enlarge the time to sixteen years. Consequently the law now is, that the second contingency contemplated in the proviso to 7 & 8 Vict. c. 101, s. 5, namely the marriage of the mother. does not put an end to the validity of the order. It appears, therefore, that where there is a subsisting order on the putative father of a bastard for contribution towards its support, and the mother of the child contracts marriage with another man, the order on the putative father remains in force, while at the same time the husband of the mother is also bound to maintain the child as one of his own family. So the child has two persons to look to for its support—a putative father, and a stepfather.

Mr. Arnold having solved this little problem of legislation *In re William Holder*, at the Westminster Police Court, last week, was also called upon in the same case to decide the question, whether the law compelled him to enforce the order on the putative father by distress or imprisonment under 7 & 8 Vict. c. 101, s. 3, or whether he was invested with a discretion in the matter. Upon the authority of an opinion expressed in "Lumley's Poor Law Acts," the magistrate thought that he had such a discretion, and that where the putative father was manifestly impecunious, and the child derived maintenance *aliunde*, he was justified in abstaining from the issue of further process against the putative father. Mr. Arnold very properly remarked that the money payable under the order was in

Digitized by Google

the nature of a debt, and that the course which would be pursued if the claim had been one recoverable in the County Court might fairly be followed in his Court. In other words, if the defendant could pay he should be imprisoned for default, but that he should not be imprisoned for mere non-payment. The summons against Holder was, therefore, dismissed, it being of course open to the mother of the child to move the Court of Queen's Bench for a *mandamus* to compel the magistrate to enforce the order by distress or imprisonment.—*The Law Journal.*

A COUNTY COURT JUDGE FINED FOR ASSAULT.

County court judges in England sometimes curiously forget their position, as will appear by the following extraordinary scene which occurred at the petty sessions lately held at Rhyl, and arose out of a charge of assault, preferred by a hackney car-driver named Powell against Mr. Robert Vaughan Williams, who holds the appointment of county court judge of the district, which includes Chester and most of the towns of North Wales. It appeared that on Friday last the complainant was driving a vehicle which came into collision with the defendant's carriage in one of the streets of Rhyl. Defendant then struck Powell with his whip, and this was the assault complained of. When the case was called on, the defendant rose, and delivered an angry address, which he concluded by ordering the plaintiff into custody for a period of seven days. This seemed rather too much for the magistrate who presided, and the chairman (Mr. Dixon) said the case must be taken in the ordinary way. In the meantime, a solicitor made an observation which still further aggravated the county court judge, who forthwith threatened him with seven days' incarceration. Nevertheless, the case was proceeded with, and the upshot was that the bench ordered the judge to pay a fine of £5, which his honour indignantly declined to do, whereupon the bench gave him the alternative of fourteen days' imprisonment. This terrible punishment was, however, averted by the kind offices of a friend, who paid the fine.

THE BRUSSELS CONGRESS.

We publish the following report of the proceedings of the Brussels Congress, given in the *République Française*—the substantial accuracy of whose account is not definitely impeached by a recent official statement emanating from the Congress, and which contains a very interesting account of the discussion of the important question of irregular levies. The line taken by the representatives of the various Powers is in each case such as the military or geographical position of the country would have led us to expect. Speaking roughly, it may be said that the strong and warlike European Powers were engaged on one side, and those which are either weak, or, whether naturally or by compulsion, pacific, on the other. It was proposed by Russia that belligerent rights should be strictly limited to such troops as (1) have at their head a person responsible for his subordinates, and are also subject to the command-in-chief; (2) wear a certain external and distinctive badge noticeable at a distance; (3) bear arms openly, and (4) conduct their operations conformably to the laws, customs, and proceedings of war. A further proposition that all armed bands not fulfilling the above condition should be "judicially dealt with" was, "in a spirit of conciliation," withdrawn by the Russian delegate; but this concession did not avail to secure the acceptance of the main proposal. It was opposed by the delegates of Spain, Switzerland, and Belgium, and with the greatest force by the two latter. Colonel Hammer, the representative of Switzerland, "referred to the rising of the population of entire valleys at the beginning of this century without organization or command," and said that "no Swiss would admit their being declared beforehand to be non-belligerents." Baron Lambermont (Belgium) said that "the operation of the proposed rules required serious consideration. Second-rate States, whose forces at the outbreak of the war would always be numerically inferior, could not," he said, "renounce a sentiment which produced heroes," and he added that "Belgium, desiring an arrangement which would enable it to employ all its forces under any circumstances, could not as yet enter into any engagements on that subject." The difficulty of rearranging the usages of war to the mutual satisfaction of the strong and the weak is now fully revealing itself.

SUPREME COURT OF MISSOURI.

WASHINGTON ADAMS, DAVID WAGNER, HENRY M. VORIES, THOMAS A. SHERWOOD, WM. B. NAPTON, Judges.

July Term, 1874.

MAGGIE M. HARRIMAN *et al.* v. ASA M. STOWE.

Appeal from the Circuit Court of Jackson Co.

1. When a suit is brought by a wife jointly with her husband, for injuries sustained by the wife in consequence of the negligence or unskilfulness of defendant, the wife is a competent witness, she being the substantial party in interest.

2. The declarations of a person suffering from injuries recently received as to the cause of the injury made to a physician called in to see the injured party, are admissible as a part of the *res gestae*, it appearing that the physician was cautioned by the court not to reveal anything prohibited by the statute.

3. While, by the maxim *respondeat superior*, the principal is alone responsible for the mere nonfeasance or omission of duty of an agent, the agent is also responsible for his own misfeasance, negligence, or positive wrong.

Karnes and Ess for appellant, Johnson and Botsford for respondents.

Wagner, Judge, delivered the opinion of the Court.

The plaintiff, a married woman, in conjunction with her husband, brought this action for damages against the defendant for injuries sustained by her in falling through a hatchway, which it is alleged was constructed by defendant, and by him, negligently, carelessly, and wrongfully left insecure and unprotected.

The answer denied the allegation of negligence, and as a further defence set up that the house where the hatchway was built was the property of defendant's wife, and that defendant in doing the work was acting as her agent. There was a replication as to negligence and carelessness, but it was admitted that the property belonged to defendant's wife.

The verdict and judgment were for plaintiff, and defendant appealed. Upon the trial the plaintiff, Mrs. Harriman, was offered as a witness and excluded by the Court. As she was the substantial party in the case under the statute, she was a competent witness, and the ruling of the Court was erroneous. (*Tingley* v. *Cowgill*, 48 Mo., 291; *Fugate* v. *Pirce*, 49 Mo, 441.) But the plaintiff is not here as a complainant, and if the judgment is affirmed the error does not injure her. On the trial E. W. Schauffler was sworn as a witness for the plaintiff, and stated that he was a practising physician, and as such attended on the plaintiff. The defendant objected to his giving any testimony, because under the statute he was incompetent. This objection was overruled.

The witness was then asked to state in what condition he found the plaintiff when he was called in. This question was objected to by the defendant, for the same reason as above given. The Court sustained the objection, but permitted the witness to answer under the following restriction:—"In answering the question you will not reveal any information you may have received from the plaintiff while attending her in your professional character, which information was necessary to enable you to prescribe for her as a patient in your capacity as physician or surgeon." The witness then gave testimony tending to show that plaintiff was injured about noon, what her injuries were, that he was her physician before that time, and that he was called to see her between one and four o'clock of that day. At the same time she stated to him that the trap-door in the

Digitized by Google

kitchen had been left in an insecure condition, and that she stepped on it and fell through.

The statute says that a "physician or surgeon" shall be incompetent to testify "concerning any information which he may have acquired from any patient while attending him in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or do any act for him as a surgeon" (2 Wag. St. p. 1,374, s. 8). As the Court restricted the witness from giving any information forbidden by the statute, the only inquiry is, whether the evidence was admissible on any other principle. The general rule is that evidence, in order to become a part of the *res gestae*, should consist of declarations made contemporaneously, or nearly so, with the main event by which it is alleged that the principal transaction occurred (*Brownell* v. *Pacific R. R. Co.*, 47 Mo., 239.)

But in the *Insurance Co* v. *Mosely* (8 Wall., 397), where the question was carefully and ably considered, it was declared that though generally the declarations must be contemporaneous with the event, yet where there are any connecting circumstances they may even, when made some time afterward, form a part of the whole *res gestae*.

So in the *Commonwealth* v. *M'Pike* (3 Cush., 181) the indictment was for manslaughter, the defendant was charged with killing his wife.

It appeared that the deceased ran up stairs from her own room in the night, bleeding and crying "murder." Another woman, into whose room she was admitted, went at her request for a physician. A third person, who heard her cries, went for a watchman, and on his return proceeded to the room where she was. He found her on the floor bleeding. She said the defendant had stabbed her. The defendant's counsel objected to the admission of this declaration in evidence. The objection was overruled. The Court decided that the evidence was properly admitted. It was said that it was of the nature of *res gestae*. It will be observed that the declarations were not contemporaneous, but that considerable time must have elapsed between the time the act was committed and the declarations were made; but the screams of the injured woman, her running into another room, her being found bleeding upon the return of the person who went for the watchman, all formed connecting links, and rendered the declarations equally as satisfactory as if they had been made at the time the wounds were given. In the present case the witnesses came within a short time after the plaintiff received the injuries, he found her suffering, and she told him how she was hurt—namely, by falling through the trap-door.

The accident and the declarations formed connecting circumstances, and in the ordinary affairs of life no one would doubt the truth of these declarations or hesitate to credit them as evidence. I can perceive no valid objections to their admissibility. The instructions given by the Court submitted the case with unquestionable fairness. For the defendant the Court declared the law:

First. Before the jury can find for the plaintiffs it devolves on the plaintiffs to prove that the defendant constructed the trap-door and hatchway mentioned in plaintiff's petition, carelessly, negligently, and unskilfully, or so left it; and that Maggie M. Harriman, the plaintiff, fell through the trap door and hatchway, and that such falling was occasioned by the careless, negligent, and unskilful construction of said trap-door and hatchway by the defendant, or in so leaving it.

Second. If the jury believe from the evidence that the defendant, in the construction of said hatchway and trap-door and in leaving it, exercised such care as an ordinary prudent man would exercise doing similar work to prevent injuries to persons passing over the same, then they will find for the defendant, and it devolves on the plaintiffs to prove that defendant failed to exercise such care.

These instructions were sufficiently favourable to the defendant, and there is nothing in those given by the Court on the part of the plaintiff which in any wise conflicts with or militates against them.

But it is urged with great pertinacity here that the defendant, in doing the work, was acting as the agent of another, and that, therefore, he is responsible to his principal only and not to the plaintiff.

The well settled principle of law is that where an agent is employed to perform or superintend work, the principal is responsible to third persons for injuries caused by the neglect or nonfeasance of the agent in doing the work. (*Morgan* v. *Bowman*, 22 Mo. 538). And this principle obtains though the agent exceeds his powers or disobeys his instructions, provided he does the act in the course of his employment. (*Douglas* v. *Stephens*, 18 Mo. 362; *Minter* v. *Pacific Railroad*, 41 Mo. 503; *Garritzen* v. *Duenckle*, 50 Mo. 104).

In such cases the doctrine of *respondeat superior* applies, and the liability is cast upon the master who employed the agent and caused the work to be done. (*Barry* v. *St. Louis*, 17 Mo. 121; *Clark* v. *H. & St. Jo. R. R.*, 36 Mo. 202.

Judge Story says the distinction, ordinarily taken, is between acts of misfeasance or positive wrongs and nonfeasance or mere omissions of duty by private agents. The law on this subject as to principals and agents is founded upon the same analogies as exist in the case of masters and servants. The master is always liable to third persons for the misfeasances and negligences and omissions of duty of his servant in all cases within the scope of his employment. So the principal in like manner is liable to third persons for the like misfeasances, negligences, and omissions of duty of his agent leaving him to his remedy over against the agent in all cases where the tort is of such a nature that he is entitled to compensation. The agent is personally liable to third persons for his own misfeasances and positive wrongs, but he is not in general liable to third persons for his own nonfeasances or omissions of duty in the course of his employment. His liability in these latter cases is solely to his principal; there being no privity between him and such third persons; and the privity exists only between him and his principal. Therefore the general maxim as to all such negligences and omissions of duty is in cases of private agency *respondeat superior*. (Story on Agency, section 308), and such is the general doctrine (2 Kent Com. 10 Ed. 878 note; Pars Countr. 5th Ed. 66; *Calnn* v. *Holbrook*, 2 Const. 126; *Denny* v. *Manhattan Co.* 2 Denio 118; 1 Bl. Com. 413.)

The true distinction as stated by Story is between acts of misfeasance or positive wrongs and nonfeasances or mere omissions of duty. In the latter case the master or principal is alone liable to third persons; whilst in the former the responsibility rests upon both the principal and agent. Thus in *Wright* v. *Wilcox* (19 Wend. 343), Cowen, J., speaking for the Court, says: "In a case of strict negligence by a servant while employed in the service of his master, I see no reason why an action will not lie against both jointly. They are both guilty of the same negligence, at the same time and under the same circumstances; the servant in fact and the master constructively by the servant his agent." Lord Holt in his celebrated judgment in *Lane* v. *Colton* (12 Mod. 488; S. C. Ld. Raymond 646,655), says that for the neglect of the servant third persons can have no remedy against him, but that the master is alone chargable. But for a misfeasance or actual tort an action will lie against the servant because he is a wrong-doer. The same views are confirmed in numerous adjudge cases (*Cary* v. *Webster*, 1 Strange, 480; *Montford* v. *Hughes*, 3 E. D. Smith; *Snidam* v. *Moore*, 8 Barb. 358; *Phelps* v. *Wait*, 30 N. Y. 78.)

The present case seems to be one, not of mere nonfeasance or omission, but of strict negligence or wrong. The agent undertook and proceeded to build the trap-door, but did it so negligently as to cause the injury; under such circumstances the action would be maintainable against the agent and the principal also. The answer states and the pleadings admit that the house, upon which the work was done, was the property of defendant's wife, and that he was acting as her agent. But it is not averred, nor does the case anywhere show that it was her separate estate. If she simply owned the fee-simple, as is inferred from the pleading, then the defendant, in constructing the trap-door, was acting for himself as well as for his wife, for the uses, rents, and profits of the wife's really belong to the husband during coverture.

Under any view that we can take of the case, we think that the action was properly brought, that the judgment was right and should be affirmed. The other judges concur.

Digitized by Google

CRUELTY BY THE WIFE.

In the Divorce and Matrimonial Causes Jurisdiction at Melbourne, his Honour Mr. Justice Stephen, on June 2, in the case of *Terry* v. *Terry*, gave judgment :—

Mr. Justice Stephen said : In this case the husband has petitioned for a decree of judicial separation on the ground of cruelty of his wife. Petitioner and his wife were married in December, 1858. They have had many children—seven now living. The youngest was born in March last, after the institution of the suit. Almost from the commencement of their married live they lived in a state of discord, generally occasioned by the husband's pursuit of what he calls spiritualism causing frequent absence from his home, and his wife's attempts to prevent him from leaving. She, in the course of these attempts, continually laid violent hands upon him, and the husband and wife became engaged in the most unseemly struggles. These occurred sometimes in their house, so as to attract the attention of neighbours ; and sometimes at night, in the public roads and streets. There is no doubt upon the evidence that the wife occasionally struck the husband. There is more doubt whether he was ever actually guilty of that extremity towards his wife. But where two people are engaged in violent struggling, as described in the evidence in this case, it is difficult, and generally not very important, to decide whether blows were struck, or how particular injuries were inflicted. In this, as in most similar cases, both parties were to blame ; but the wife was guilty of repeated attempts to interfere by force of hand with her husband's undoubted right of going where he pleased, and she is responsible for the consequences. I do not think it necessary to decide between the opposite versions of their matrimonial quarrels which have been given in evidence. There is really less discrepancy between the two than might have been expected in a narrative of a perpetual succession of violent struggles and altercations extending over many years. Even according to the respondent's own statement, I think she was in the wrong, and apparently quite unconscious of what the law requires from a wife in her conduct towards her husband. It is to be regretted that a case of recrimination has been made by the answer affecting the character of a third person—a case which has failed of any proof. It was chiefly based upon a letter which came into the possession of the respondent, and was the occasion of some of the later and most violent altercations with her husband. This letter never reached the hands of the person referred to, if, indeed, it were really intended for her. The petitioner's account of the matter is not very intelligible. The relation between himself and this young person, as a mesmeric patient, must, in the absence of any proof whatever to the contrary, be deemed innocent ; she, it would appear, placed herself in that relation with the knowledge and approbation of her parents. I am inclined to agree with the view presented by counsel that the letter is rather to be characterized as silly than improper. At all events the letter was never sent. The jealousy of the respondent was naturally excited by this letter and the relations—to her unknown or but partially known—between her husband and the person in question. But even this cannot excuse the respondent in the eye of the law for the violence of her conduct, and her attempted interference by force of hand with her husband's liberty of action. There have been several cases in which the Court in England has made a decree of judicial separation on the ground of the wife's cruelty, and this sometimes in a suit instituted by the wife for the restitution of conjugal rights, and sometimes in a suit by the husband, as here. The principle upon which the Court acts is very clearly stated in the case of *Forth* v. *Forth*, cited at the bar from 36 L. J., P. and M. 122 ; also in *Pickard* v. *Pickard*, 3 Swa. and Tris. 528 ; 33 L. J., P. and M. 158, before the same learned judge. "How is it possible," the Court asks, "that submission, which is the wife's lot in marriage, can be maintained by the husband if she becomes the assailant? The mutually dependent duties of the marriage state suffer a hopeless confusion in such an inversion of parts. . . . Cohabitation on the terms of the marriage contract ceases to be longer possible. But, worse than all, the man is incited to the retaliation of force, perhaps driven to violence in self defence ; and if, holding its hand, the Court refuses to relieve him from the perils of provocation, what security is there for the safety of the wife herself?" Acting upon these principles, I am prepared to make a decree in this suit for judicial separation. But, as in the case of *Forth* v. *Forth*, the decree will be upon the terms of an allowance by the husband for his wife. If the petitioner is willing that the present allowance, as fixed by interlocutory order at 30s. a week, should be continued, I will make the decree upon those terms. If not, the amount may be fixed by a reference to the Master, and the decree will be suspended in the meantime. In my opinion there are no facts proved which would, upon the authorities, justify me in interfering with the husband's custody of his children, as the wife is a wrongdoer. The decree will, however, contain a direction that she is to have reasonable access to the children. The order for the allowance should be until further order, and the amount should be fixed with due regard to the maintenance of the infant, which is at present left in its mother's charge. The petitioner must pay all the costs of the suit.—*Australian Jurist Reports.*

LIFE INSURANCE COMPANIES.

Messrs. Malcolm and Hamilton, assistant secretaries to the Board of Trade, have drawn up a report on the returns of life insurance companies, which will form a new era in life insurance. "By a careful study of this document," says the *Standard*, "any intelligent person can select an office, with reasonable confidence that the sacrifices he makes for his family will not be lost to them ; while the knowledge that this can be done will, without doubt, exercise a most beneficial restraint upon imprudent companies. The report tells us that 'of each pound entrusted to them by the assured some companies spend as little as 1s., others spend 2s. 6d., others 5s., others 10s., and others the whole ; and a few not only do this, but get into debt. A premium will be seen on reflection to consist of four items ; the net premium, or portion set aside to meet the policy ; (2) agents' commission ; (3) office expenses ; and (4) profits. The agents' commission never comes into the company's hands, and clearly, therefore, ought not to be included in the assets. The office expenses are paid in rent, salaries, and the like, and equally clearly are not to be reckoned in estimating the future solvency of the company. And to quote from the report, if the companies take credit for any portion of the profits, they necessarily confer undue benefits upon present members to the injury of new members, and the process resembles that of a spendthrift anticipating for present use the income to be derived in future years from a settled estate.' Really, then, in valuing the assets of a company, the net premium alone ought to be included. Yet the report informs us, 'it will hardly be believed that the Board of Trade could have submitted to them for acceptance under the Life Assurance Companies Act, 1870, valuations in which the future profit, future expenses, and even future commissions have been turned into present value, and the whole represented as profit.' "

RECENT DECISIONS.

Wright *v.* Treacy (8 Ir. L. T. Rep. 142).

The *Solicitors' Journal* says :—A somewhat curious question, and one of no little importance to a rather large class of tenants in Ireland, was decided by the Court of Exchequer Chamber in that country in the case of *Wright* v. *Tracy*. Section 69 of the Landlord and Tenant (Ireland) Act, 1870, provides that "where any tenancy at will, *or less than a tenancy from year to year*, is created by a Landlord after the passing of this Act, the tenant under such tenancy shall, on quitting his holding, be entitled to notice to quit and compensation, in the same manner in all respects as if he had been a tenant from year to year." In the above case the question arose whether a tenancy for one year certain, created after the passing of the Act, was within the section, and this of course depended upon whether such a tenancy was "less than a tenancy from year to year." The majority of the Court were of opinion that it was not less than a tenancy from year to year, and consequently that a notice to quit was not required to determine it. Two of

Digitized by Google

the learned judges who came to this conclusion appear to have founded it upon the consideration that tenancy from year to year had its origin in tenancy at will, and that although it cannot be determined without a notice to quit, it is still "in its nature" a tenancy at will. The grounds upon which Palles, C.B., based his decision are not to be very easily gathered from his short judgment. He is reported to have said, "there is little difference of opinion among the members of the court as to the meaning of a tenancy from year to year; it is for one year certain, with a springing interest arising out of the original contract." This appears to be somewhat inconsistent with the view taken by Whiteside, C.J., who founds his opinion on the doctrine that a tenancy from year to year is to be treated as recommencing every year. We venture to think that if the decision can be supported at all it must be on this last ground; for as between a tenancy which determines absolutely at the end of the year and a tenancy only determinable at the end of the year, there would seem to be little reason for doubt that the former is a less interest than the latter. But it is worthy of notice that the doctrine that a tenancy from year to year recommences every year rests mainly on an opinion expressed at *nisi prius* (*Tomkins* v. *Lawrence*, 8 C. & P. 729), and that although the judges of the Queen's Bench applied it for a particular purpose in *Gandy* v. *Jubber* (12 W. R. 526, 5 B. & S. 78), the Exchequer Chamber apparently disapproved of this application of the doctrine. One noteworthy result of the Irish decision is that there are now three conflicting descriptions of a tenancy from year to year, each of which is supported by high authority. There is, first of all, the curious opinion of the English Court of Exchequer Chamber, in the undelivered judgment in *Gandy* v. *Jubber* (9 B. & S. 15), that the true nature of a tenancy from year to year created by express words "is that it is a lease for *two* years certain, and that every year after it is a springing interest arising out of the first contract, and parcel of it." Next we have the decision of the Irish Exchequer Chamber, in the recent case, that a tenancy from year to year is "a tenancy for one year certain and no more." And, lastly, there is the description (which we take to be the correct one) cited by Parke, B., in *Oxley* v. *James* (13 M. & W. 214), and adopted by Wood, V.C., in *Cattley* v. *Arnold* (1 J. & H. 660), of an estate from year to year as "a lease for a year certain, with a growing interest during every year thereafter, springing out of the original contract and parcel of it."

DIGEST OF RECENT ENGLISH DECISIONS.

CONVERSION.

Goods sent by mistake: intention to appropriate the goods.—The plaintiffs sent to the defendant an invoice for barley, which stated that the barley was bought by the defendant of the plaintiffs through G. as broker, and also a delivery order, which made the barley deliverable to the order of the consignor or consignee. The defendant had not in fact ordered any barley of the plaintiffs. G. called on the defendant, who showed him the documents, and told him it was a mistake. G. said that it was so, and asked the defendant to indorse the order to him, for the purpose, as he said, of saving the expense of obtaining a fresh delivery order. The defendant indorsed the order to G., who possessed himself of the barley and disposed of it, and then absconded. On the trial of an action of trover for the barley, the jury found that the defendant had no intention of appropriating the barley to his own use, but indorsed the order for the purpose of correcting what he believed to be an error, and returning the barley to the plaintiffs: *Held*, that the defendant, having indorsed the order without any occasion to do so, and without authority, was liable. *Hiort* v. *Bott*, L. R., 9 Ex. 86.

LANDLORD AND TENANT.

Recognition by mortgagee of tenancy created by mortgagor: sale by mortgagee under power: covenants or stipulations running with the reversion: Stat. 32 Hen. 8, c. 34: damages.—On the 30th of June, 1872, one Bridgett, by an instrument not under seal, demised to the plaintiffs standings for three lace-machines in a room in a factory at Nottingham, the tenancy to commence on the 24th of June, the rent to be payable quarterly, the lessor to provide steam-power, and to pay all rates and taxes, and the tenancy to be determinable by either party on six months' notice, to expire at midsummer. At the time of making this demise the premises were under mortgage to a building society. Interest being in arrear, the mortgagees, on the 24th of August, gave notice to the plaintiffs not to pay any more rent to Bridgett, the mortgagor; and early in September, pursuant to the power contained in the indenture of mortgage, the mortgagees contracted to sell the premises to the defendant, possession to be given on the 25th of December. The conveyance, however, was not executed until the 14th of February, 1873. On the 28th of September, 1872, the mortgagees (protesting that the plaintiffs were not entitled to notice) gave them notice to give up their standings at Christmas, and in November, 1872, and February, 1873, they received from them the quarters' rent due respectively at Michaelmas and Christmas. In the meantime some conversations took place between the plaintiffs and the defendant as to the former continuing in the factory upon altered terms; but no terms were ever agreed to, and no rent was received by the defendant. On the 24th of March, 1873, the defendant demanded possession of the portion of the factory occupied by the plaintiffs; on the 15th of May he cut off the supply of steam-power; and on the 22nd the plaintiffs brought their action. *Held*, that the defendant was not bound by the contract between Bridgett and the plaintiffs, it not being under seal, and therefore not within the stat. 32 Hen. 8, c. 34, and consequently, in the absence of adoption by him or of some new contract of tenancy between him and the plaintiffs, not liable in this action. *Semble*, that the plaintiffs, if entitled to a verdict, would only have been entitled to damages for being deprived of steam-power from the 15th to the 22nd of May. *Semble*, that the receipt of rent by the mortgagees from the plaintiffs was as against them a recognition of a subsisting tenancy under the agreement with Bridgett. *Smith* v. *Eggington*, L. R., 9 C. P. 45.

WATER.

Trespass: duty of landowner: collecting water: mining.—The defendants' mines adjoined and communicated with the plaintiff's; and in the surface of the defendants' land were certain hollows and openings, partly caused by and partly made to facilitate the defendants' workings. Across the surface of their land there ran a water-course, which, in the year 1865, was diverted by them into another channel. In November, 1871, the banks of the water-course (which were sufficient for all ordinary occasions) burst in consequence of exceptionally heavy rains, and the water escaped into and accumulated in the hollows and openings, where the rains had already caused an unusual amount of water to collect, and thence by fissures and cracks passed into the defendants', and so into the plaintiff's mines. If the land had been in its natural condition, the water would have spread itself over the surface and have been innocuous. The defendants were not guilty of any actual negligence in the management of their mines. At the trial of an action brought by the plaintiff to recover the damage he had sustained, the learned judge directed a verdict for the plaintiff, holding that the case was governed by *Fletcher* v. *Rylands*, L. R., 3 H. L. 330, and that the defendants were absolutely liable; and rejecting evidence offered by the defendants, that every reasonable precaution had been taken to guard against ordinary emergencies. *Held* (reversing the judgment of the court below), that the case was not, beyond all question, governed by *Fletcher* v. *Rylands*, L. R., 3 H. L. 330, that the water coming from the natural overflow, and that coming from the diversion of the water-course might possibly admit of different considerations; that if the evidence tendered had been recieved, there might have been questions for the jury, and that under all the circumstances there ought to be a new trial. The opinion of the jury at such trial ought to be taken as to whether what was done by the defendants was done by them in the ordinary reasonable and proper mode of working the mine. *Smith* v. *Fletcher*, L. R., 9 Ex. (Ex. Ch.) 64.

Digitized by Google

CORRESPONDENCE.

CIVIL BILL COURT ADMIRALTY JURISDICTION.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Your correspondent A. R. O. seems to be under a misapprehension on this subject, as he appears to think legislation would be required to establish local Admiralty Courts at the principal provincial ports. He says: "When we obtain a further 'instalment of justice,' in the shape of an amendment of 'the Civil Bill Acts,' giving jurisdiction to the amount of £50 (the same as the English Courts), and the establishment of local Bankrupt and *Admiralty* Courts in towns like Belfast, Cork, and Limerick, then," &c.

Permit me to point out that no amendment of the Civil Bill Acts would be necessary for the purpose of establishing such Courts. The Court of Admiralty (Ireland) Act, 1867 (30 & 31 Vic., c. 114), gives jurisdiction to "Local Courts" up to £200, and above that sum by consent of the parties. By section 2 "Local Courts" are defined as the Courts of the Recorders of Cork and Belfast respectively, and also "the Court of any other Recorder, or of any Chairman of Quarter Sessions in Ireland, to whom jurisdiction in Admiralty cases shall be given by virtue of this Act." Accordingly, by the 84th section power is given to the Lord Lieutenant in Council to declare by proclamation that any other Recorder or Chairman shall have jurisdiction in Admiralty cases within such district as may be assigned to him thereby.—Yours truly,

HORACE WILSON.

Ballymoney, 23rd August, 1874.

MAGISTRATES ACTING AS COMMISSIONERS OF THE COMMON LAW COURTS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I desire to know if magistrates can act as such commissioners, and if they can, to draw attention to the gross impropriety of their acting in that capacity.—Yours,

FAIR PLAY.

REVIEWS.

Self-preparation for the Final Examination. Containing a complete course of Study, with Statutes, Cases, and Questions: and intended for use, during the last four months, of those Articled Clerks who read by themselves. By JOHN INDERMAUR, Solicitor, &c., &c. London: Stevens and Haynes. 1874.

A Digest of the Questions asked at the Final Examination of Articled Clerks in Common Law, Conveyancing, and Equity, from the commencement of the Examinations in 1836 to the present time; with Answers, arranged as far as practicable, in the same order as the text books from which they are taken: also a Common Law and Equity Time Table; and the Mode of Proceeding, and Directions to be attended to, at the Examination. By RICHARD HALLILAY, Esq. Eighth Edition, by H. WAREHAM PURKIS, Solicitor. London: "Law Times" Office, 10, Wellington-street, Strand. 1874.

WE have had occasion lately to notice two little books by Mr. Indermaur, entitled respectively, "Epitome of Leading Cases in Common Law," and "Leading Cases in Conveyancing and Equity." The first of the volumes above is, like the others, written to assist law students in preparing themselves for the Final Examination for Solicitors, without the assistance of a teacher, and is sufficiently well calculatad to perform its intended office. But we should warn apprentices in this country that the course therein pointed out will not suffice for them here, inasmuch as the course of books in which Irish apprentices are examined by the Incorporated Law Society of Ireland is much larger than that necessary to be studied in England, since Irish apprentices are expected to be very familiar with the practice of all the courts except that of the Admiralty Court, and consequently must make up the different handbooks of these practices, such as the volumes of Messrs. Smith, Madden, Bewley and Naish, Dix, and Kisbey, and the Irish Land Acts. Nevertheless, as our examination includes nearly all the subjects of the English course, except Criminal Law, Mr. Indermaur's book will be a useful assistance. He recommends the final preparation to continue for four months, and divides off the work for each month very judiciously, and gives specimen lists of questions in the various subjects, with reference to text books for the answers. Strangely enough, however, while he recommends the student to read Elphinstone's Introduction to Conveyancing, he gives a reference in each conveyancing question to Prideaux or one of his own Epitomes. This seems an oversight or a want of completeness in the introductory part, while he does not mention any book on Evidence or Contracts, which always form a large portion of the examination.

The other book at the head of this notice, a Digest of Questions by Mr. Hallilay, is so well known to students, that it scarcely requires to be noticed beyond stating that there has appeared a new edition, noted up most accurately to the latest changes in the Cases and Statute Law; it is, however, in its main points only applicable to Ireland, and thus in some way dangerous to an Irish student, unless he is on his guard as to the differences in the practice of our Courts and in our Land Laws. Mr. Hallilay's book, however, forms a most accurate legal *vade mecum*, and is, in truth, in a modest way, a complete digest, in the form of question and answer, of statute and case law. It is invaluable to students preparing themselves for any of the legal examinations, whether at the Universities, the King's Inns, or the Incorporated Law Society, and would be very useful in a country office on occasions when reference to counsel is impossible in the more abstract questions; the Conveyancing and Equity portions being particularly well done.

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
William J. Coyne	Prove debts and vouch	*Leachman*
Mary A. Boyton	Prove debts	*Oldham & Eaton*
Richard M. Sadlier	do	*Kavanagh*
James D. Beresford	Reference	*Oldham & Eaton*
Robert Courtney	Settle title and posting	*D. & T. Fitzgerald*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Arthur G. Hay	2nd composition sitting	*Mathews*
Michael Reilly	1st public sitting	*Perry & Co.*
Thomas Sturgeon	do	*Lynch*
Robert Crane	do	*Cronhelm & Co.*
Benjamin Norman	do	*Fitzgerald*
Same matter	1st composition sitting	*Goff*
Henry Page	Final examination	*Molloy & Watson*
John Chamney	do	*Molloy & Watson*
Ludlow Berkeley	do	*Scallan*
John Brooks	do	*Casey & Clay*
William Bergin	do	*Rynd*
Thomas Clarke	do	*Casey & Clay*
Same matter	Examine witnesses	*Casey & Clay*
Wallace & Magill	Final examination	*Neilson*
Banbridge Extension Railway Co.	Motion	*Murland*
James Nolan	do	*Davis & Montford*
Anne Travers	do	*Burton*
Same matter	do	*Larkin & Co.*
S. & W. Law	Audit and dividend	*Beauchamp*
Thomas Bailey	do	*Scallan*
Joseph Parker	do	*Oldham & Eaton*

Digitized by Google

WEDNESDAY.

Before the CHIEF CLERK, at 12 o'clock.

Peter Wright	Costs	*Oldham & Eaton*
———	do	*Cronhelm & Co.*

THURSDAY.

Before the CHIEF CLERK, at 12 o'clock.

John Ryan	Vouch account	*Meldon & Sons*
John Kennedy	Prove debts	*Mathews*

FRIDAY.

Before the COURT, at 11 o'clock.

John Keane	1st public sitting	*Fottrell & Son*
Owen Dunne	do	*Scallan*
Same matter	1st composition sitting	*Rynd*
S. W. Tomlinson	1st public sitting	*Scallan*
William Moreland	do	*Lynch*
Same matter	1st composition sitting	*Benner*
James Quirey	2nd composition sitting	*Casey & Clay*
Same matter	Final examination	*Thompson*
Folliott Barton	2nd composition sitting	*Leachman*
Samuel Hood	do	*Leachman*
Same matter	Final examination	*Perry & Co.*
James F. Hickey	do	*Goff*
R. K. Thompson	do	*Sinnott*
David F. Jones	do	*Mathews*
Thomas Coppinger	Examine witnesses	*Hamilton & Craig*

The following at 12 o'clock.

Michael Ryan	Sale	*Larkin & Co.*

Before the CHIEF CLERK, at 12 o'clock.

James Quirey	Prove debts	*Casey & Clay*
John Brady	do	*Casey & Clay*

ADJUDICATIONS IN BANKRUPTCY.

Boland, Catherine, Parsonstown, King's County, widow, grocer. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *Hamilton & Craig*, solr.

Connor, Luke, Roscommon, county Roscommon, grocer and spirit dealer. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *Stuart.*, solr.

Darcy, Henry, Belfast, county Antrim, spirit dealer. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *Neilson*, solr.

Ginney, Hugh S., Killyleagh, county Down, merchant. Sittings, *Tuesday*, *September* 15, and *Friday*, *October* 2. *Oldham and Eaton*, solrs.

Heeney, Patrick, Mell, near Drogheda, county Louth, canvas manufacturer. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *Perry and Co.*, solrs.

Kappoch, Michael, Navan, county Meath, merchant and shopkeeper. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *Jones*, solr.

M'Bride, James, Londonderry, city and county of Londonderry, merchant, trading as James M'Bride and Co. Sittings, *Tuesday*, *September* 15, and *Friday*, *October* 2. *Mathews*, solr.

O'Brien, Thomas, King-street, Fermoy, county Cork, iron and hardware dealer, seedsman, and general merchant. Sittings, *Friday*, *September* 18, and *Tuesday*, *October* 6. *O Connell*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	AUGUST Fri 21	Sat. 22	Mon. 24	Tues. 25	Wed. 26	Thur 27
	Government.						
—	3 p c Consols	92	—	92	92⅛¼	—	—
—	New 3 p c Stock	91⅛	91⅝¾	91⅝	91⅝¾	91⅛	91⅛
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	107⅞	108	—	—	—	—
—	4 p c Oct. '88 { Bk. of Irel.	102	102½	—	—	—	102½
	Banks.						
100	Bank of Ireland	310½	309½	—	309½	309	309
25	*Hibernian Banking Co.*	59⅝	59⅞ 60	59⅝	—	59⅝	59⅞–9
15	*London Joint Stock*	50⅛	—	—	—	—	50⅛
3½	*Munster Bank (Limited)*	8⅝	—	8⅝	—	8⅞	8⅝¾
80	*National Bank*	61⅞ 62	—	62	62⅛	62⅛¼	62⅛¼
25	*Provincial Bank*	88⅛¼	88¼	—	—	88¼	—
10	Do. New	—	—	—	—	—	35½
10	*Royal Bank*	—	—	30½	—	—	—
	Steam.						
100	City of Dublin	105	—	105½	—	105	105
50	Dublin & Liverpool Steam Ship Building, Co.	—	—	—	55	—	—
10	Dundalk (Limited)	—	—	—	—	—	5½ 6
	Mines.						
1	Killaloe Slate Co. (lit'd)	—	18/	—	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10–⅛	10⅛	10⅛	10⅛	—	10⅛¼
46-3-1	Commercial Buildings	—	—	—	48	—	—
9½	*Dublin Tramways*	5⅞ 6	—	—	—	—	6⅛¼
100	Grand Canal	—	—	—	—	—	x d
7½	*M'Swiney & Co., limited*	—	—	—	—	—	x d
9-4-7	*Patriotic Assurance*	—	10½	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	67⅝¾	67½
100	Dublin and Belfast Junct.	94	—	—	—	94½	x d
100	Dublin and Drogheda	115	115	—	—	—	x d
100	Dublin, W'klow, & W'ford	—	—	—	—	—	75½ xd
20	*Do.—issued at £35*	—	—	—	—	—	x d
100	Gt. Northern and Western	98½	—	—	—	—	—
100	Gt. Southern and Western	—	109⅞	110	110	—	108¾ xd
100	Do. do. free of Stamp	—	—	—	—	—	x d
100	Londonderry & Enniskillen	—	56	—	—	—	—
100	Midland Gt. Western	81	—	—	81	80½	80½
50	Ulster	63⅞	—	64⅝	—	—	—
50	Waterford and Limerick	30–⅛	30–⅛	30–⅛	—	31⅝	31⅝
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	94	—
100	Do. do. 4½ p c	102½	—	—	—	102½	—
6¼	Cork & Bandon, 5½ p c	—	—	—	—	—	x d
5	Do. do. 4 p c	—	—	—	—	—	x d
10	Cork and Macroom 5 p c	—	—	—	—	—	x d
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do., 4½ p c	105	—	—	—	—	—
100	D., W., & W., 6 per cent	—	—	—	—	—	x d
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	x d
50	Do. do. (1864)	—	—	—	55	55	x d
50	Do. do. (1865)	—	—	—	—	—	x d
100	Gt. South'n & West'n 4 p c	—	—	100½	—	—	x d
10	Irish North Western A 5 p c	—	4½	—	—	—	—
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	—	x d
100	Do., B 5 p c	—	101½	—	—	—	x d
100	Do., C Guaranteed 5 p c	—	—	—	—	—	x d
100	Mid. Great Western, 5 p c	—	—	111	—	—	111½
100	Ulster 4½ Per Cent. Stock	100½	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c	—	—	—	—	—	—
	Railway Debentures.						
—	D., W., & W., 4½ p c	100	—	—	—	—	—
—	Gt. South'n & West'n, 4 p c	—	—	—	98½	—	—
—	Irish Nth Westn 1st C 5 p c	100½	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	98	—	—	—	100	—
—	Do., 4½ p c	—	—	—	—	102	—
—	Waterford & Central 5 p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—3½ per cent., 27th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.

Name Days—September 15th and 29th, 1874.
Account Days—September 16th and 30th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.

DOWSLEY—August 20, at New Ross, William Dowsley, Esq. solicitor, in his 81st year.

MACCARTHY—August 22, at 8 Eglinton Park, Kingstown, County Dublin, Elizabeth, the dearly-beloved, revered, and lamented wife of Denis Florence MacCarthy, Esq., M.R.I.A., barrister-at-law.

WALKER—August 24, at his residence, 118 Kennington-road, London, James Walker, Esq., solicitor, eldest son of Andrew Walker, Esq., J.P., Sligo, aged 56 years.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, August* 29, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, SEPTEMBER 5, 1874. No. 397.

EJECTMENT FOR NON-PAYMENT OF RENT.

The decision of *Campion* v. *Campion* in the Common Pleas, reported in the last issue of our Reports (8 I. L. T. R. 147) is deserving of careful consideration, commenting as it does on the recent decision of *Billing* v. *Arnold* in the Court of Exchequer, which brought a point of grave importance to landlords into prominence. It was solemnly decided in the latter case (8 Ir. L. T. 450; Ir. R. 7, C. L. 531) that, the ordinary averment in the statutory form of ejectment for non-payment of rent, that the defendant holds *as tenant* to the plaintiff, means as *immediate tenant* to the plaintiff, and that, if the defendant traverse the averment that he holds as tenant to the plaintiff, the latter must fail in his ejectment unless he prove that the defendant holds as his *immediate tenant*. In *Billing* v. *Arnold*, the plaintiff was the owner of a long term of years in the lands which were the subject of the ejectment. A woman named Fitton was Billing's immediate tenant. A man named Leonard was Fitton's tenant, and the defendant Arnold was tenant to Leonard. The writ was directed to Arnold as defendant, and followed the common statutory form. It averred that Arnold held the lands as tenant to the plaintiff. It was held, upon a traverse that Arnold held the lands as tenant to the plaintiff, that the plaintiff, under the above circumstances, could not recover, and that a verdict had for him should be changed into a verdict for the defendant. Now, section 194 of the Common Law Procedure Act, 1853, provides that the writ shall be directed "to the immediate tenant *or any one tenant in possession.*" Thus the Act itself, when it means "immediate tenant," says "immediate tenant," and when it means "tenant," *simpliciter*, says "tenant." Now, the form in the schedule uses the word "tenant," and it is both reason and common sense to hold that the word "tenant" is the *genus* including the *species* "immediate tenant" and "mediate tenant." Any person, whether a scholar or a person of common sense, would, we venture to think, say to this, *res ipsa loquitur*. And, indeed, Mr. Baron Fitzgerald observes:—"Having regard, however, to the words in the 194th section, "or any one tenant in possession,' I, speaking for myself only, am certainly not prepared to say that the summons and plaint in ejectment must follow the precise words, of form No. 15, and allege that the defendant named holds 'as tenant to the plaintiff.' My impression is, that it may name as defendant any one person in possession of all others whose right to the possession is dependent on that of the plaintiff's immediate tenant; but then it must not allege that any such person holds 'as tenant to the plaintiff,' though it may and ought to allege that his possession is under the contract of tenancy." The learned Baron evidently felt that the words, "or any one tenant in possession," must be accounted for, and endeavours to avoid the difficulty by justifying an alteration in the statutory form—which is certainly tantamount to imputing ignorance to the Legislature. The learned Barons considered themselves coerced to this conclusion by the case of *Keene* v. *M'Blaine*, 17 Ir. C. L. R. 654. Now we submit with great respect that, unless the reasons suggested by the language of section 194 of the Common Law Procedure Act, 1853, and by the general language of the statutory form, have been answered in *Keene* v. *M'Blaine*, the Court of Exchequer should not have followed that authority. We are informed by Deasy, B., in *Billing* v. *Arnold*, that to hold the word "tenant" to mean "mediate tenant" rather than "immediate tenant," would be to use the word "tenant" in a "non-natural sense." We have already observed that the word "tenant" is a generic term including the denominations of mediate and immediate tenant, and we fail to perceive that because a *genus* contains its proper *species*—that result is to be termed a "non-natural" one. The *ratio decidendi* in *Billing* v. *Arnold* has been recently very ably examined by MORRIS, J., in *Campion* v. *Campion*, 8 Ir. L. T. R. 147. In that case, the pleader having been instructed to draw a plaint in ejectment for non-payment of rent against one *Campion*, who was a *sub-tenant*, and fearing that, if he named Campion as tenant to the plaintiff, he might share the fate of the plaintiff in *Billing* v. *Arnold*, averred that one *Edmond Stack* (*the immediate tenant*) held the lands as tenant to the plaintiff—and this although Campion was named as defendant, and it did not appear from the title of the writ that Stack was a defendant at all. The defendant demurred on the ground that it did not appear that the defendant held the lands as tenant to the plaintiffs, or that there was any contract of tenancy between him and the plaintiff. The Court of Common Pleas (MONAHAN, C.J., and MORRIS, J.), overruled the demurrer on the ground that even if the writ were irregular (which it was not), the proper course would have been to have applied to have it amended or set aside, and they held that it was a regular writ within section 195 of the Common Law Procedure Act, 1853. But while adopting this course, the Court took occasion to animadvert severely both on the *rationale* and practical consequences of *Keene* v. *M'Blaine* and *Billing* v. *Arnold*. After referring to section 194 of the Common Law Procedure Act, Mr. Justice Morris observes:—"From that enactment, I conclude that the writ should be directed to either the 'immediate tenant,' by which description I understand the tenant holding immediately from the plaintiff, or to any one 'tenant in possession,' by which I understand any tenant in the actual possession whose tenancy is dependent on the 'immediate tenant's' right to possession—the object being to enable the landlord to be always in a position of certainty as to how to bring his ejectment, although he could not and ought not be expected to be always in a position to determine who was legally his 'immediate tenant.' I fail to perceive the analogy between ejectment for non-payment of rent, in which possession of the land *merely* is sought, and an action of covenant for rent against an assignee where the rent is sought as a debt due by the alleged assignee. Some such analogy seems to me to be a ground for the decision in *Keene* v. *M'Blaine*, a case which has led to no inconsiderable amount of technical and unmeritorious litigation." And the same learned and able Judge observes:—"For myself, sitting in this Court, I should be quite prepared to decline to follow *Keene* v. *M'Blaine* or *Billing* v. *Arnold;* and I regret that neither case reached the Court of Exchequer Chamber." This is the opinion of the Common Pleas, and we have reason to believe that the same opinion prevails in the Queen's Bench. It is of very great importance to suitors that

Digitized by Google

this question should be speedily determined by the Exchequer Chamber; for, assuming for the sake of argument that the Court of Exchequer was correct in following *Keene* v. *M'Blaine*, if that decision be affirmed on appeal, plaintiffs in ejectment will then know that they cannot rely upon the form provided for them by the statute, and that even the Legislature may lead them astray; and if, on the other hand, the Court of Appeal should reverse the decision of the Exchequer, the same plaintiffs will then know that after all it is safe to follow the form which Parliament in its wisdom has provided for them, and that by holding that the generic term "tenant" includes the species "immediate tenant" and "sub-tenant," they are not using the term in a "non-natural" sense. In discussing this interesting question, we must confess that the high legal reputation and great learning of the Court of Exchequer induced us to examine the decision of a Court which is so pre-eminent that all its decisions challenge attention and carry a weight and authority universally respected and acknowledged.

NOTANDA.

Money lodged in Court, under garnishee order; motion, by judgment-creditor, to draw out of Court; jurisdiction.—Money had been lodged in the Court of Common Pleas, by a judgment-debtor, pursuant to a garnishee order made by that Court. Subsequent orders were obtained by other parties to attach the money so lodged; and they had drawn out of the fund the amounts of their several claims. *Crean*, on behalf of a judgment-creditor who had attached the fund under an order of the Court of Queen's Bench, now moved to draw the residue of the fund, to satisfy his claim. The motion was on notice to all the other judgment creditors, having been so directed by FITZGERALD J., on a previous day, and was grounded on an affidavit stating that the other claims had been satisfied. There was no appearance *contra*. [FITZGERALD, J.—Your cause is in the Queen's Bench, but the others are in the Common Pleas, and the money is there lodged. Have I jurisdiction?] The judge in Consolidated Chamber can transact business in relation to causes pending in any of the Courts of Common Law. FITZGERALD, J.—I can make an order in the matter; but, so as to entitle you to it you must move on an affidavit and notice of motion in the same Court in which the money is lodged (*Curtin* v. *Fitzgerald;* Con. Ch., Aug. 28, 1874).

Substitution of service; plaintiff residing in Liverpool; service through registered letter.—*Martin*, on behalf of the plaintiff, moved to substitute service of a summons and plaint, by sending a copy in a registered letter to the plaintiff in Liverpool, or by serving him there in person. The action (in the Q. B.) was for £96 14s. 6d. for goods sold, and on accounts stated; and for £100 damages, for non-acceptance of a cargo of timber sold to defendant. The plaintiff deposed that on June 12, he agreed to sell to defendant a cargo of timber, to be shipped in Dublin for Liverpool; that on July 4 it was shipped from Dublin to the defendant, and the bill of lading was forwarded to him; that the defendant received the cargo, and paid the freight and a portion of the purchase-money on account, but notwithstanding repeated applications the balance had not been paid; that the contract of sale was entered into by the plaintiff's acceptance in Dublin of the offer of the defendant, contained in letters (referred to) of the defendant written from Liverpool, and that the cause of action arose within the jurisdiction; and that if an order was made to substitute service by sending a copy of the writ by post to the defendant, at an address (stated) in Liverpool, it would be received. *Reede and Goodman* v. *Pipon*, 8 IR. L. T. R. 18, was cited. FITZGERALD, J.—I shall grant a conditional order to substitute service, by sending a copy of the writ in a registered letter to the defendant in Liverpool; but it is not to be made absolute without a motion to the Court, as my own opinion is that there is no jurisdiction to make such orders, as I have previously to-day had occasion to observe (*Kelly* v. *Mason;* Con. Ch., Aug. 28, 1874).

Practice; report of Chief Registrar; objections to report.—Motion to confirm the report of the Chief Registrar in this matter, and that a person therein named should bring in £600. *Perry*, moving, stated that objections to the report had been filed, but submitted that the proper course for the objector was to have moved by way of appeal to vary the report. *Houston*, for the objector, *contra.* MILLER, J.—The practice of the Court is as stated by Mr. Perry. The objector should serve notice of motion to vary the report, and I shall require the officer to assign his reasons. Adjournment till October 6; notice to be served meantime if the objector so advised (*Re J. Nolan*, a bankrupt; Ba., Sept. 1, 1874).

Poor-rate; exemption of building for public purposes; Town Hall.—Action for £6 for poor-rates, on half the profit rent received for the plot on which the Town Hall of Sligo had been built. *Bird*, on behalf of the plaintiffs. *Mr. C. Sedley*, attorney for the defendant. The CHAIRMAN.—Those questions, under the Poor Law Acts, have connected with them more variety of decisions, and more conflicting judicial opinions, than any other questions in law. In England there are a considerable variety of decisions, many of which are quite irreconcilable with each other. Down to the case known as the *Mersey Dock Commissioners' Case* (which was finally decided in the House of Lords), it was difficult to know what was the law, in a certain respect, in England. However, the decision in that case settled the law as regards England; and if this case was to be decided by the English law, the town hall would be rateable property. But the language of the English and Irish poor law is very different in respect to this matter. By the English Poor Law Act, the 43rd of Elizabeth, "every inhabitant resident, occupier of lands, houses, coal mines, tithes, &c.," was made liable for the payment of poor-rates. There was no exception of any body or any description of property. It does not even say open coal mines or otherwise—showing how very different in its language and objects is the English poor law when compared to that of Ireland. Under the English law a coal mine was rateable from the time it was opened, and in Ireland it has to be opened seven years. Seeing that no property was exempt in England, it became a question whether or not the property of the Crown was excluded. But, in consequence of the law that the Crown was not bound by any Act of Parliament, unless specially mentioned, it was held that all property held by the Crown was not rateable—that the Royal palaces were not rateable—that the post-office and public buildings of that kind were not rateable, or any place occupied by the public servants for public purposes. Those decisions came to be extended until of late, some public buildings being held to be rateable, and in other cases public institutions were held not to be rateable. There was, therefore, a great conflict of opinions till the whole matter was settled. Now, the Scotch law is precisely the same as the English law, and almost in the same terms, and it contains no exceptions. It is the 8th & 9th Victoria. Before that there was some conflict of decisions in Scotland. However, it was settled by a decision in the case of *Graham* v. *The University of Edinburgh*, L. R. 1 Sc. Ap. 354. In that decision the University of Edinburgh was held to be rateable according to the language of the Scotch law, which

Digitized by Google

is merely a following of the English poor law. Lord Westbury, in his usual lucid style, gives the meaning of the only exemptions under those laws. He says:—"The true ground of exemption was ascertained and expressed by this House in the *Mersey Dock Case*, and it was found to rest altogether upon this fact, that the poor law did not include the Crown, the Crown not being named in the statute. The result, therefore, was that Crown property and property occupied by the servants of the Crown, and for the purposes of the administration of the Government of the country, became exempt from liability to poor-rate. The confusion and looseness involved in the words 'National objects' were thereby removed." So that now the only property not rateable in England or Scotland is property such as is thus described by Lord Westbury, viz.:—Crown property, or property occupied by servants of the Crown for the administration of the affairs of the country. When all this confusion was settled the Legislature came to settle the Irish Poor Law Act, and in doing so, it is remarkable that they departed from the language of the English and Scotch Poor Law Acts. By the Irish Poor Law Act it was declared that the following hereditaments should be rateable:—"All lands, buildings, and open mines; all commons and rights of commons, and all other profits to be had or received or taken out of any land; and in the case of land, or building or buildings used exclusively for public, scientific, or charitable purposes, half the annual rent derived by the owner or other person interested in the same; all rights of fishery, all canals, navigations, and rights of navigations; all railways and tramroads; all rights of way and other rights or easements over land; and the tolls levied in respect of such rights and easements; and all other tolls." This Act then goes on to say that no turf, bog, or bank, used exclusively for the purpose of cutting or saving turf, or for making turf-mould therefrom, shall be deemed rateable under this Act, unless a rent or other valuable consideration shall be payable for the same. The Act then goes on to say:—"Provided, also, that no mines which have not been opened for seven years before the passing of this Act shall be deemed rateable, until the term of seven years from the time of opening it shall have expired, and no mines hereafter to be opened shall be deemed rateable until seven years after the same shall be opened." This is all quite different to the English Act, for every one of those things which are exempt in express terms by this Irish Act, would be rateable under the language of the English Act. It appears to me that the object of the Legislature in introducing those different exemptions was:—First, to prevent the same conflict of law which arose in England; and, secondly—the Legislature recognizing that Ireland was partially a disturbed country, where very little capital was invested for public purposes—it was thought that in this way people would be induced to invest money for the opening of mines, erection of public buildings, infirmaries, hospitals, &c. But, at all events, if this Town Hall is a public building—if it is a building dedicated to public purposes, it is exempt from being rated, and is specially exempt by the language of the Act. Then the question arises—What is a public building? We now know that if it were the property of the Crown, or used by the servants of the Crown for general public business, it would not be necessary to exempt it, for it would be exempt on the principle laid down in the English law. It is particularly plain from the collocation that the words "public purposes" refer to all places in public use, such as a church, a chapel, a burial ground, &c., which are all exempt. Now, how are those things used for general and public purposes? A church or chapel is dedicated to and used by a particular sect in the community; an hospital is intended for the benefit of a certain district; and a burial ground, in like manner, for the benefit of a particular locality. Therefore, the fact is evident that the words "other buildings used for public purposes," in companionship with those I have mentioned, must mean any general or public purpose. Now, if any one in Sligo was asked to show a stranger the public buildings of the town, I take it the very first building he would point to would be the very handsome Town Hall which has lately been erected in this town. I think, when the Legislature was laying down the language of the Act, it intended to use it in the ordinary sense which the public in general would understand. It would be ridiculous to think that it should be used in a different sense to the ordinary acceptation of its meaning. I think the question has been decided in a case which, at the time, was very fully and well discussed. It was a case in which the guardians of the poor of the Londonderry Union sought to make the Bridge Commissioners of the Londonderry bridge pay rates on the tolls receivable by the bridge. The bridge was built at the expense of the city of Londonderry and the two adjoining counties. It was not built with the public funds generally, and the question was whether or not the tolls of the bridge were rateable under the Irish Poor Law Act. As I happened to be the adviser of the Bridge Commissioners, I am pretty well acquainted with the arguments of the case. I argued the question before Mr. Coffey, an able and painstaking chairman, and after a considerable time was spent in arguing it, Mr. Coffey decided against my arguments, and held that the Commissioners were liable. We appealed, and had a case stated for the Court of Queen's Bench, but that court affirmed the decision of Mr. Coffey. But the Bridge Commissioners were not satisfied with that decision, and they brought the question into the Court of Error. It was argued there on the same grounds as in the court below, and before seven judges, three of whom concurred with the former decisions, and four differed, the majority holding that the bridge tolls were not liable to be rated. As no appeal was taken from that decision to the House of Lords, it is the law of this country. The bridge was a common public highway, which had been built at the expense of a particular district. The judges held, as it was used for public purposes, it was not to be rated. The present Lord Chancellor delivered a very able judgment, in which he pointed out the difference there existed in this respect between the English and Irish Poor Law Acts. Believing, myself, that the judges in the majority were right, and the other judges wrong, I therefore think this Town Hall is not rateable, being a public building, erected for public purposes. With reference to Mr. Sidley's arguments, in which he adverted to the fact that several rooms in this Town Hall were hired to private parties, from whom the Corporation received a profit rent—contending that the Corporation were liable to pay rates because of receiving such profit—that very argument was used in the case of the *Queen* v. *Smyth*, L. J. 26 M. C. The question there was whether the post-office of Manchester was not rateable, because the post-office authorities had hired out a certain portion of the building for a profitable consideration. They had allowed certain merchants to have the use of pigeon holes, for each of which they were paid two or three guineas a year, thereby obtaining a considerable revenue. It was there argued that a portion of this post-office, on that account, was rateable. But it was decided by Lord Campbell that, where a building was used generally for public pur-

Digitized by Google

poses, it would be exceedingly difficult to draw the line between where it was and where it was not a public building. His lordship held it was simply a public building, and as such was not rateable. In my opinion, when (as in that case) money obtained for the hiring out of a public building is devoted to public purposes, it clearly makes it a public building, and not such a one as could be rated. The money received by the owners of the Town Hall, in like manner, was devoted to public purposes, and did not go into the pocket of any private individual—therefore, upon the authority of the cases I have cited, I hold that the Town Hall is a public building, and the owners are exempt from rates, and the liability remains with the landlord. I shall, therefore, decree the defendant for the rates on half the profit-rent he received. In the similar case brought by the Corporation against the proprietor of the plot on which the Model School is erected, for borough rates the same principle applies; and I shall, also, in that case give a decree (*Sligo Board of Guardians* v. *Wynne;* Sligo Q. S., before *J. P. Hamilton*, Q.C., Jan. 19, 1874.)

FRAUDULENT MISREPRESENTATIONS OF AGENTS.

Few points in the law have been the subject of more perplexing doubts and conflicts than the question of the liability in tort of a principal for such misrepresentations of his agent as are known by the agent to be false, but not by the principal. In America it has generally been held that an action of deceit may be maintained against the principal; but the cases are at variance as to the ground of liability. In England the whole subject has until recently been in a very unsettled state; and it is not yet free from difficulties.

The American courts, in most cases, have implicitly followed the doctrine of *Hern* v. *Nichols* (1 Salk. 289); but generally with little or no investigation of the proper limitations of that case. This is somewhat remarkable, as *Hern* v. *Nichols* is but a briefly reported Nisi Prius decision. The case was this: The plaintiff, in an action of deceit, set forth that he had bought several pieces of silk for ——— silk, whereas it was another kind of silk, and that the defendant, well knowing this deceit, sold it to him for ——— silk. On trial, upon not guilty, it appeared that there was no actual deceit in the defendant, who was the merchant, but that it was his factor beyond sea; and the doubt was, if this deceit could charge the merchant. And Holt, C.J., was of opinion that the merchant was answerable for the deceit of his factor, though not *criminaliter*, yet *civiliter*; for, seeing somebody must be a loser by this deceit, it is more reason that he that employs and puts a trust and confidence in the deceiver should be a loser than a stranger. And upon this opinion the plaintiff had a verdict.

Among the American cases, *Jeffrey* v. *Bigelow* (13 Wend. 518) is often referred to. The facts in this case, in brief, were that one Stevens, an agent of the defendants, had sold to the plaintiff sheep infected with the scab, which fact was at the time known to the agent, but not to the defendants. The fact of the disease was known to one Hunt, who, at the sale, was a partner of the defendants, to whom he had before the action assigned all his interest. In an action on the case for fraud the defendants were held liable, both for the loss of the sheep sold by their agent, and of others that had become infected by them. Much was said in the opinion of the court to the effect that Hunt, being a partner, his knowledge was notice to his co-partners, the defendants; also that Stevens was a general agent in relation to the sale; and the doctrine of Lord Holt, *supra*, of trust and confidence reposed in the agent, was adopted. Hunt's connection with the case does not appear to be important; for as partner he was only a general agent of the firm, and there was no evidence that he had in fact communicated his information to the defendants.

The leading case in Massachusetts is *Locke* v. *Stearns* (1 Met. 560). This was trespass upon the case in the nature of deceit. One of the defendants, who were partners, had sold divers quantities of meal as linseed meal, when in fact it was a mixture of linseed and teilseed meal; the latter being inferior in quality to the former. The judge charged the jury that if one of the defendants sold the meal to the plaintiff, knowing that teilseed meal was inferior in quality and value to linseed meal, this knowledge would bind all the defendants; and the charge was sustained. After mentioning that the deceit was resorted to for the defendant's benefit, the ground taken in *Hern* v. *Nichols* was again referred to with approval. And it was also said to be a general rule that one partner is liable for damages sustained by the deceit or other fraudulent act of his copartner, done within the scope of his authority; citing *Rapp* v. *Latham* (2 Barn & Ald. 795); and *Willet* v. *Chambers* (2 Cowp. 814).

The case of *Bennett* v. *Judson* (21 N. Y. 238), though holding a similar doctrine, marks a departure from the above cases in the ground of liability. That was an action for fraud in the sale of land by the defendant's agent. "There is no evidence," said Comstock, C.J., delivering the judgment of the Court, "that the defendant authorized or knew of the alleged fraud committed by his agent Davis in negotiating the exchange of lands. Nevertheless, he cannot enjoy the fruits of the bargain without adopting all the instrumentalities employed by the agent in bringing it to a consummation. If an agent defrauds the person with whom he is dealing, the principal, not having authorized or participated in the wrong, may no doubt rescind when he discovers the fraud, on the terms of making complete restitution. But so long as he *retains the benefits* of the dealing he cannot claim immunity on the ground that the fraud was committed by his agent, and not by himself."

This ground, as we have stated, was suggested in *Locke* v. *Stearns* (*supra*); and had it not been for the ruling that the defendant in *Jeffrey* v. *Bigelow* (*supra*), was liable for the loss of other sheep than those sold by him, that case would also have been covered by the rule in *Bennett* v. *Judson*. A rule similar to that in *Jeffrey* v. *Bigelow*, in not confining the liability of the principal to the profit derived by him, was declared in *White* v. *Sawyer* (16 Gray, 586). "No question is made by the defendant's counsel," said the court, "of the correctness of the doctrine that a principal is liable for the false representations of his agent, although personally innocent of the fraud. It is settled by the clear weight of authority." The point was therefore not considered in the case. And the same is true, so far as appears from the opinion, of the other point, extending the damages beyond the profit derived.

All of the other American cases are like *Judson* v. *Bennett;* the defendant being held liable where he has received a benefit from the act of his agent. In none of them is it suggested that his liability is to be pushed beyond this point. In *Cook* v. *Castner* (9 Cush. 266) the action was in assumpsit to recover the consideration paid in a transaction brought about by the fraudulent representations of one of the defendants, who were partners. Here, of course, the measure of damages is plain; and this is, doubtless, the proper form of action for such cases.

But while most of these cases were decided upon the ground taken in *Judson* v. *Bennett*, some of them also refer to the doctrine of *Hern* v. *Nichols* (see *Davis* v. *Bemis* and *Sandford* v. *Handy*, 23 Wend. 260). Mr. Justice Nelson, in *Sandford* v. *Handy*, after quoting the language of Lord Holt, says that the agent is "held out as fit to be trusted, and his fidelity and good conduct in the matter thereby recommended. (*Attorney-General* v. *Siddon*, 1 Tyrwh. 46, Smith's Mer. Law, 70; Story's Comm. Agency, § 465). And where one of two innocent persons must suffer by the fraudulent act of a third, the one who enables such third person to commit the fraud must bear the loss." The first part of this language seems to be only another way of putting the doctrine of *Hern* v. *Nichols*. The trust and confidence reposed in the agent is manifested by holding him out as such.

Let us now turn to the English cases. The question has there more frequently arisen as to the liability of corporations for misrepresentations of their directors or other managers. In *Dodgson's case* (3 De Gex & S. 85), the plaintiff had been induced to purchase shares in a failing

Digitized by Google

concern by the fraud of the directors, and brought a suit in equity to have his name taken off the list of contributories in winding-up proceedings. But the Vice-Chancellor held that the fraud of the directors could not affect the general body of shareholders, *i.e.*, the company. This case was followed by Vice-Chancellor Parker, in *Bernard's case* (5 De Gex & S. 289), who there said: "*Dodgson's case* shows that the directors cannot be the agents of the company to commit a fraud; and, therefore, even if Mr. Bernard had been induced to take shares by the misrepresentation of the directors, that was no reason why he should not be a contributory." In *Brockwell's case* (4 Drewry, 205), Vice-Chancellor Kindersley held the contrary on similar facts; but this case was soon after overruled by the Lord Chancellor and Lords Justices on appeal. (*Mixer's case*, 4 De Gex & J. 575). "Clearly," said the Lord Chancellor, "there was fraud, and gross fraud, on the part of the directors, and I have no doubt that Mixer was induced by fraud to take his shares. I think, however, that it was a fraud on the part of the directors which cannot be attributed to the company."

These being cases of rescission, are, it is true, explainable on the ground of *laches* and change of position, or participation in the profits of the corporation or company. In *Dodgson's case* the shares were purchased in 1846, and the claim to be relieved was not made until 1849, though the plaintiff had received no dividends. In *Bernard's case* the complainant had received dividends on his shares for several years. In *Mixer's case* the Lord Chancellor said: "Supposing it to have been a fraud on the part of the company, I do not think that the appellant is now entitled to avail himself of it and rescind the contract. (See *Parbury's case*, 3 De Gex & S. 43). It is a settled rule that a contract obtained by fraud is not void, but that the party defrauded has a right to avoid it if he does so while matters can be replaced in their former position. In each case we must look to see whether the contract has been acted upon. If it has been acted upon by the party defrauded, so that others who are interested cannot be restored to their former rights, the contract cannot be rescinded, and nothing remains to the party defrauded but a reparation in damages." See also *Nicol's case* (3 De Gex & J. 387), where, apart from considerations of the above character (which prevented recovery), the Lord Chancellor and Lord Justice Turner were at variance as to whether the company could be chargeable with the misrepresentations of the directors in the course of the business. (See further, *Parbury's case*, 3 De Gex & S. 43; *Bell's case*, 22 Beav. 35; *Holt's case*, *ib.* 53; *Burnes* v. *Pennell*, 2 H. L. Cas. 497; *Deposit Life Assurance Company* v. *Ayscough*, 6 El. & B. 761; *Barrett's case*, 3 De Gex, J. & S. 30.)

However, these cases clearly establish the principle that a party to a joint-stock company, or other association, can neither maintain a bill in equity against the company to be relieved from liability, nor defend an action on his subscription, by alleging the false representations of the company or its agents, unless, first, he repudiates the contract promptly before the rights and interests of others have been affected by his action; or unless, secondly, all the other members of the company interested united in the false statements. As to this last point, see the suggestion of Knight-Bruce, V.C.:—"If it were established that the only other persons interested in these affairs were the persons who made the alleged misrepresentations, the case might be different." (*Parbury's case*).

The first qualification deserves a passing notice. *Bell's case* (22 Beav. 35) illustrates it. There the objects of the company, into membership of which the plaintiff had been drawn by false representations of the directors, had at the time totally failed, and the company had become insolvent, and practically at an end; and it was held that the plaintiff was not liable as a contributory. The Master of the Rolls observed that the doctrine of *Parbury's case* was this: that where certain persons set on foot a project, and by fraudulent representations induce others to become shareholders, and incur liabilities, there, as between those who are equally innocent shareholders, all are liable to contribute towards payment of the debts of the concern. Their rights lay against those who had made the misrepresentations. But no authority could be found making parties liable to contribute in cases such as this. See also *Ayre's case* (25 Beav. 513), where, through false statements, a person having taken shares in a company insolvent at the time, and, upon discovering the fact, having repudiated his shares, was held not to be a contributory.

But if the person claiming relief purchased his shares from a third person, and not from the company, he will be bound to contribute, though he were induced to make the purchase by the false representations of the company. Nor in such case, clearly, would he have a right of action for deceit against the company. (*Peek* v. *Gurney*, 22 W. R. 29, in the House of Lords. See *Ayre's case* (*sup.*); *Duranty's case*, 26 Beav. 268.) And this would doubtless be true, though the vendor of the shares were also guilty of fraudulent representations, unless the vendee had repudiated and rescinded the sale. (*Ibid.*)

The opinion of the Court of Chancery (with the exception of that of the Vice-Chancellor in *Brockwell's case* (*sup.*), which, as has been stated, was overruled) is uniform in these cases that the company or corporation cannot be made liable to an action for the unauthorized fraudulent representations of its agents; and that the latter are not authorized by their mere position to make false statements concerning the condition of their principals. Of course, if the company subsequently ratify the misrepresentations at a meeting of the shareholders, the fraud will then be fixed on them (*Nicol's case*, *supra*; *New Brunswick Railway* v. *Conybeare*, 9 H. L. Cas. 711), but even then the party defrauded will not be able to escape liability to contribute in winding up if the rights of others, innocent persons, have intervened or been affected by his action, or if he have participated in any benefits of the concern. His remedy is by an action of deceit against the agent, or the company, or both. It is worthy of notice, also, that in one of the above cases (*Mixer's case*) the ruling that the company is not liable for the false representations made by its agents without express authority was made in appeal in chancery; which gives the decision the same authority as the decisions of the Exchequer Chamber at law.

The decision of the Vice-Chancellor in *Brockwell's case* was based principally upon the language of the Lord Chancellor and of Lord St. Leonards in *National Exchange Company* v. *Drew* (2 Macq. 103, 125, 139). That was a Scotch case—an action to recover the amount of a loan. The facts, in short, were that the defendants had been induced by the false representations of the plaintiff's manager to buy shares in the plaintiff's enterprise upon a loan of money by the plaintiffs for the purpose; the object being to bolster and raise up the shares of the company in the market. The shares became valueless; and the company sued to recover the amount of the loan. Judgment was given for the defendants.

Although this case contains expressions to the effect that such companies are bound by the false representations of their agents, made in the course of their business, it is to be observed, as stated by Lord Brougham and Lord St. Leonards, that the company had the benefit of the fraud of their manager. It appears, also, that the defendants had acted upon a report made to the shareholders at a regular meeting; and (as Lord St. Leonards said) the first act that takes place at such meetings is that, if there is not a rejection of the report, there is an adoption of it. And the representation was, therefore, the company's; and though the shareholders were ignorant of its untruth, it was a matter within their own peculiar knowledge, and not within that of the defendants. So that, on the principle of cases referred to in the note to *Pasley* v. *Freeman* (Leading Cases), the company might well be chargeable with fraud. (See also *New Brunswick Railway Company*, 9 H. L. Cas. 711, 725).

Besides, this was an action of contract; and it may be doubted if, in such cases, the defence of fraud is to have the same force as in an action by the defendant for the fraud. It is often true that innocent misrepresentations are sufficient to defeat a recovery in contract; but, to maintain an action of deceit, the false statement must have been made with knowledge. (See *Western Bank* v. *Addie*, L. R. 1 H. L. Sc. 145, 158, 167; *New Brunswick Railway Company* v. *Conybeare*, 9 H. L. Cas. 711, 740). So, too, a concealment of material facts will defeat an action upon a contract; but nothing short of an active misrepresenta-

Digitized by Google

tion, it is held, will support an action for deceit (*Peek* v. *Gurney*, 22 W. R. 29).

New Brunswick Railway Company v. *Conybeare* (8 H. L. Cas. 711), was a suit for the rescission of a contract for the purchase of shares, on the ground of fraud in the defendants' agent. It was held that the facts were not sufficient to sustain the bill; but Lord Cranworth takes occasion to allude to the distinctions between actions of this kind and actions of deceit. Referring to his opinion in *Ranger* v. *Great Western Railway Company* (5 H. L. Cas. 72, *infra*), he said: "My lords, to that opinion I entirely adhere; and I think it would have been applicable in this case if it had been proved that there had been a fraudulent representation or concealment by the directors in order to induce Mr. Conybeare to purchase, not shares in the market (that is a very different thing), but shares *belonging to the company*—namely, forfeited shares, if the directors, or the secretary acting for them, had fraudulently represented something to him which was untrue. I then adhered to the opinion which I had expressed in the former cases, that the company would have been bound by that fraud. But the principle cannot be carried to the wild length that I have heard suggested—namely, that you can bring an action against the company upon the ground of deceit because the directors have done an act which might render them liable to such an action. That I take not to be the law of the land, nor do I believe that it would be the law of the land if the directors were the agents of some person, not a company. The fraud must be a fraud that is either personal on the part of the individual making it, or some fraud which another person has impliedly authorised him to be guilty of."

The case of *Ranger* v. *Great Western Railway Company*, to which his lordship referred, was a similar suit for rescission, in which the allegations of fraud failed. The opinion there expressed (to which, in *New Brunswick Railway Company* v. *Conybeare*, he says he adheres) was to the effect that, if an incorporated company, acting by an agent, induces a person to enter into a contract *for the benefit of the company*, that company can no more repudiate the fraudulent action of the agent than an individual could.

It thus appears that there was little ground upon which to support the decision of Vice-Chancellor Kindersley in *Brockwell's case*.

Cornfoot v. *Fowke* (6 Mees. & W. 358), though constantly cited in these cases, is in point only in its *dicta*. Besides being an action in contract, the misrepresentations alleged in defence were false to the knowledge of the principal, but not to the knowledge of the agent. It was held (Lord Abinger, C.B., dissenting) that the plea of fraud was not supported. There was nothing to show that the principal had caused the agent to make the untrue statement, or that he knew that any misrepresentation had been made. And, therefore, according to the majority of the court, fraud could not be imputed to him.

There are many other cases of contract in which this subject is considered; but their application to actions of deceit, as has been suggested, is doubtful, and they will not be further pursued. (See *Wilde* v. *Gibson*, 1 H. L. Cas. 605).

In 1867, the precise case of the liability of a principal in an action in tort for representations of an agent, false to the knowledge of the latter, but not to that of the former, arose simultaneously in the Exchequer Chamber and in the House of Lords; and each court proceeding independently of the other, the former held the principal liable, and the latter held the contrary: *Barwick* v. *English Joint Stock Bank* (15 W. R. 877, L. R. 2 Ex. 259); *Western Bank* v. *Addie* (L. R. 1 H. L. Sc. 145). But the cases are not necessarily in conflict.

In *Barwick* v. *English Joint Stock Bank* the facts, in brief, were these:—The plaintiff required a guaranty of the responsibility of one J. D., which the defendants' manager gave, to the effect that the cheques of J. D. should be paid, on receipt of certain money (from the Government) from J. D., "in priority to any other payment, except to this bank." J. D. was at the time of the guaranty largely indebted to the bank, which fact was not communicated to the plaintiff; and the defendants declined to honour the cheque of J. D., though drawn after he had received and deposited the money referred to. The plaintiff now brought an action against the bank for the false representations of the manager; and it was held that there was evidence to go to the jury that the manager knew and intended that the guaranty should be unavailing, and fraudulently concealed from the plaintiff the fact of the indebtedness of J. D. to the bank. It was also held that the defendants would be liable for such fraud in their manager.

This, it will be noticed, was not the case of a representation of fact in which the defendants were not interested, since, by the manager's fraud, they obtained and appropriated to themselves a deposit of money in favour of their debtor; and this is the turning-point of the case, as appears from the opinion of the court. "It was contended on behalf of the bank," said Mr. Justice Willes, in delivering the judgment "that inasmuch as the guaranty contains a stipulation that the plaintiff's debt should be paid subsequently to the debt of the bank, which was to have priority, there was no fraud. We are unable to adopt that conclusion. I speak sparingly, because we desire not to anticipate the judgment which the constitutional tribunal, the jury, may pass. But they might, upon these facts, justly come to the conclusion that the manager knew and intended that the guaranty should be unavailing; *that he procured for his employers, the bank, the government cheque*, by keeping back from the plaintiff the state of Davis's (J. D.'s) account, and that he intended to do so. If the jury took that view of the facts, they would conclude that there was such a fraud in the manager as the plaintiff complained of."

Again, after commenting upon *Udell* v. *Atherton* (7 H. & N. 172) (in which he said that the court were divided rather upon the proper application of the law to the facts than upon the principle involved), the learned justice proceeded to say: "With respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, *and for his master's benefit*, no sensible distinction can be drawn between the case of fraud and any other wrong. The general rule is, that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service, and for the master's benefit, though no express command or privity of the master is proved;" citing *Laugher* v. *Pointer* (5 Barn. & C. 547, 554.)

The nature of the action is still more clearly shown in a subsequent part of the opinion in this case. It had been objected that the count in fraud should not have described the fraud of the manager as that of the bank; to meet which objection a count for money had and received had been included in the declaration. The court replied: "I need not go into the question whether it be necessary to resort to the count in case for fraud, or whether, under the circumstances, money having been actually procured for and paid into the bank which ought to have got into the plaintiff's hands, the count for money had and received is not applicable to the case,"—thus indicating that the action was, in substance, an action for money received to the plaintiff's use. (See *Clarke* v. *Dickson*, El., B. & E. 148.)

The case above referred to (*Western Bank* v. *Addie*, L. R. 1 H. L. 145), was a Scotch suit, to rescind a contract for the purchase of shares, and for restitution *in integrum* (*i.e.*, to the party's position before the contract), or, alternatively, for damages for the false representations of the defendants' manager. There being no direct fraud on the part of the bank itself, it was held that the action could not be maintained; and the determination as to the alternative claim for redress was not affected by the fact that the plaintiff was a member of the company, and had been for a long time. Nor would it have been an answer to this suit of redress, as the Lord Chancellor stated, that a recovery might prejudice those who had innocently acquired their shares after the plaintiff had acquired his. The ground of decision was that the fraud of the manager alone, though committed in the course of his business, could not be made the ground of a liability in tort on the part of the defendants. This conclusion was reached upon a review of all the important cases, and with a view, as the report states (p. 151), of laying down the proper rule of law. The case is therefore of great importance and authority.

The Lord Chancellor said that the sound distinction to

Digitized by Google

be drawn from the authorities was this: "Where a person has been drawn into a contract to purchase shares belonging to a company by fraudulent misrepresentations of the directors, and the directors, in the name of the company, seek to enforce that contract, or the person who has been deceived institutes a suit against the company to rescind the contract on the ground of fraud, the misrepresentations are imputable to the company; and the purchaser cannot be held to his contract, because a company cannot retain any benefit which they have obtained through the fraud of their agents. But if the person who has been induced to purchase shares by the fraud of the directors, instead of seeking to set aside the contract, prefers to bring an action for damages for the deceit, such an action cannot be maintained against the company, but only against the directors personally."

Lord Cranworth, who delivered the only other opinion concerning the principle involved, stated the doctrine in the same way. "An attentive consideration of the cases," says he, "has convinced me that the true principle is that these corporate bodies, through whose agents so large a portion of the business of the country is now carried on, may be made responsible for the frauds of those agents to the extent to which the companies have profited from these frauds; but that they cannot be sued as wrong-doers, by imputing to them the misconduct of those whom they have employed. A person defrauded by directors, if the subsequent acts and dealings of the parties have been such as to leave him no remedy but an action for the fraud [as where, by delay, the rights of innocent persons have intervened], must seek his remedy against the directors personally."

It would seem that such a decision, coming from the court of final resort, should have put to rest all further doubt. But the question has very lately arisen again in the Queen's Bench; and that court has (except upon the suggestion, *infra*) apparently declined to follow the rule declared by the House of Lords (*Swift* v. *Winterbotham*, 21 W. R. 562, L. R. 8 Q. B. 244.

The case professes to have been decided upon the authority of *Barwick* v. *English Joint Stock Bank* (*supra*). But that case does not support it. The action was for a false and fraudulent representation, jointly against the agent who had made it and against the principal. And the latter was held equally liable. The false statement consisted in an affirmation of the solvency of Sir William Russell. The matter was indifferent to the defendants. The representation was not made for the purpose of obtaining a benefit for the banking company; nor does it appear that any advantage was derived from it. The case is, therefore, unlike *Barwick* v. *English Joint-Stock Bank*, and opposed to the ground taken in that case, as well as in conflict with the decisions of the Court of Chancery and the House of Lords; unless the fact that the court held that the communication camplained of (which was in writing), was in reality the representation of the banking company, affords a distinction. The inquiry was made concerning a customer of the defendants; and the reply was signed, "J. B. Goddard, Manager." And the court say, "We think it clear, therefore, that the communications were in fact, and were intended to be communications between the banks." The fact inquired of was peculiarly within the knowledge of the defendants; and upon the ruling that the signature of the manager was, in fact, the signature of the bank, the case would not, perhaps, be inconsistent with *Western Bank* v. *Addie*. But this ruling as to the manager's signature was decided, on appeal to the Exchequer Chamber, to be wrong; and the case was reversed (*Swift* v. *Jewesbury*, 22 W. R. 319).

Lord Coleridge, C.J., who delivered the principal opinion, said that this decision did not conflict with *Barwick* v. *English Joint-Stock Bank*, "because, he observed, "there can be no doubt that a different set of principles altogether applies where an agent of a corporation, or a joint-stock company, at any rate, in carrying on its business, *does something of which the company takes advantage*, or profits, or may profit, and it turns out that the action of the agent is fraudulent."

The latest case, decided within six weeks of the present writing, was determined in the Privy Council. (*Mackay* v. *Colonial Bank*, 22 W. R. 473.) There the defendants had derived a benefit from the fraudulent misrepresentation of their manager, made within the general scope of his authority; and upon this precise ground the defendants were held liable. The court declined to give any opinion as to the rule where no advantage had been derived by the principal.

We find, then, no English case in which a principal has been held liable in tort for the unauthorized and fraudulent representations of his agent alone, except where he has derived a benefit from them. And even where an advantage has been obtained, it is questionable, as we have suggested, if this form of action be proper. The action, where the benefit is pecuniary, is in substance an action for money had and received; and if the suit be in tort, it can only be allowable, it would seem, so far as it conforms, in the amount of damages recoverable, to the proper form of action. See *Mackay* v. *Colonial Bank* (*sup.*), where to an objection that an action for money had and received might lie in such cases, the court say, that, granting *that*, the question to be tried would be in substance the same, and add, what perhaps has been the real justification of these cases, that the time has passed when much importance is to be attached to mere forms of action. In other words, the plaintiff, being entitled to a remedy of some kind, will not be put to the expense of being sent to the technically proper action. It may be observed, also, that by taking the benefit of the agent's fraud, the principal adopts it; and he may, therefore, be liable in an action for deceit, perhaps in the same way that he would have been had he at first authorized the misrepresentation of a fact peculiarly within his means of knowledge.

We conceive, therefore, that the ground taken in *Hern* v. *Nicols* for supporting actions of this kind—the trust and confidence reposed in the agent—is not sustained by the later English authorities, the proper ground for such cases being the fact that the principal has received a benefit, as he had there, from the fraud of his agent; and that, if this be not the case, the principal can only be liable when he has authorized, or ratified, or joined in, the false statement.

If this be true, it follows that the doctrine of *Jeffrey* v. *Bigelow*, and of *White* v. *Sawyer*, referred to near the beginning of this article, extending the damages beyond the amount of the benefit received by the principal, is not sound. It is difficult to deny, however, that the rule in these cases would be correct if an action of deceit were the proper form of suit in such cases.

Aside from the authorities, it is not easy to understand the cases which suggest (where the representation is made in a transaction not for the principal) that the defendant's liability arises from his putting a trust and confidence in the agent, or, what is the same thing, in holding him out as agent. It is submitted that he does no such thing without giving the agent express authority to make the representation complained of; except, perhaps, in those cases where he derives a benefit from the agent's act. A principal holds out his agent as authorised to transact his (the principal's) business, and not that of third persons, in which the principal has no concern. It is hardly conceivable that he should have any other purpose in the appointment of an agent; and everybody knows it. Consequently, when the plaintiff goes to the defendant's agent for information in a matter which has no relation to the defendant's business, he knows, if he is a man of common sense, that that is outside of the legitimate purpose of the agency, and that he must rely, if at all, upon the responsibility of the agent in case false information be given.

If the principal expressly authorise the agent to make the statement, the case is more difficult; but we conceive that the same principles should apply as if the principal had himself made it. If he is aware of its falsity, or, perhaps if it is a matter peculiarly within his own means of knowledge, he will be liable for permitting his agent to commit the fraud on the plaintiff. But on what principle he could be held liable for a misrepresentation made as to a matter indifferent to him, where he is innocent of any improper motive in allowing the agent to speak for him, is not easily understood. If he were himself to make the statement, he would not be liable; why, then, should he be liable for allowing another to do so for him? The plaintiff is no worse

Digitized by Google

off by inquiring of the agent than if he had inquired of the principal.

It is said that the principal is liable, under the rule that of two innocent persons he who enables a third person to commit a fraud upon the other must suffer the loss (Nelson, J., in *Sandford* v. *Handy*, 23 Wend. 260). But is it true that the principal has enabled his agent to commit a fraud on the plaintiff? In most cases it is not. The plaintiff has made inquiry of the agent, not because of his authority to give the desired information, but because he *possessed* that information. He treats him for such purpose not as an agent, but as one acting on his own responsibility. If it be replied that he acquired his information by reason of his situation in the defendant's employment, the answer to this is, that such a connexion between the defendant and the plaintiff is too remote. The rule of liability between innocent persons is subject to the rule of proximate and remote cause..

Now, in all probability the plaintiff knew nothing of the fact that the agent had authority to make the representation. The presumption is, as we have seen, that it was outside of his ordinary powers, to the plaintiff's knowledge; and he would seldom stop to inquire into the matter. At all events, the burden of proof should be upon him to show that, in acting upon the representation, he relied upon the defendant's grant of authority.

The rule, if there is such a one, that a principal is supposed to know what his agent knows, is, we conceive, confined to the case of contracts and sales. It probably means no more than this: that, mutual assent being essential to binding transactions in contract, that is wanting where a material misrepresentation has been made by one having a right to make the contract. The injured party has not agreed to do or accept the thing for which the principal seeks to bind him; and thus the principal is bound by the fraud of his agent. It is not because of the fraud of the agent; since the same result would follow in many cases where the agent himself was innocent, as in cases of mistake.

In the early law, under the old writ of deceit, where we are to look for the true significance of the action of deceit, we find that it was necessary to prove fraud directly upon the defendant. And there is a case in the Year Books (9 Henry VI., 53, pl. 37; s. c. Brooke's Abr. *Accion sur la Case*, pl. 8) involving the very question now under consideration. If we translate it correctly, it was, in substance, as follows:—

Writ of deceit by A. against B. and C., in the sale of Rummney wine, said C. knowing it to be sour and unfit for use. Rolf, for the defence, having taken certain objections to the writ (one of which was that no warranty was alleged), which were overruled, pleaded for B. that the wine was not sour, upon which issue was joined. For C., he pleaded that he sold the wine *by B., his servant*. To which Martin, J., replied; But "of your own knowledge you deceived" the plaintiff—Rolf. "If I have a servant, who is my salesman, and goes to a fair with an unsound horse, or other merchandise, and sells it, will the party [pty] have an action of deceit on the case against me? Clearly not."—Martin, J., "You say true; for you did not command him to sell the thing to him, nor to any person in particular. But if your servant, by your covin and command, sell one bad wine, he shall have an action against you; for it is your own sale. And if the case should be that you did not bid your servant sell to that very person, then you can say that you did not sell to the plaintiff."

Rolf did not appear to take much comfort from this last morsel, replying that it would be a risky thing to put that into the mouth of the common people. This was A.D. 1430.

Mr. Justice Nelson, indeed, says that this case was overruled by Lord Holt in *Hern* v. *Nicols* (*Sandford* v. *Handy*, *sup.*) But the report of that case does not show anything of the kind, except in the ground of the decision, which has itself been overruled, as we have seen. The point decided in *Hern* v. *Nicols* is distinguishable from the case in the Year-book, on the ground that the defendant had there obtained a benefit from the agent's act. And though this was also the fact apparently in the other case, that was decided at a time when the form of action precluded any notice of such fact. This old case, therefore, also supports the position that the action of deceit is not the proper proceeding, even where the defendant has derived a benefit from his agent's misrepresentation.

There is one more difficulty worthy of notice, presented by the class of cases in which it is held that the principal is liable in tort for the acts of misconduct of his agent in the course of his employment, though he be acting without authority, or contrary to the express instructions of his principal. (See Willes, J., in *Barwick* v. *English Joint Stock Bank*, 15 W. R. 877, 265; *Whitmore* v. *Pearson*, 16 W. R. 649; *Burns* v. *Poulsom*, 22 W. R. 20; *Limpus* v. *London Omnibus Company*, 1 Hurl. & C. 526). But these cases are not easily understood except upon the principle of a special public policy, which finds it important to hold the master responsible for the extraordinary conduct of his agent within the line of the agency. In *Limpus* v. *London Omnibus Company* (*supra*), which was a case of misconduct by an omnibus driver, Mr. Justice Willes refers the right of action against the principal in part to the impecuniosity of that class of servants. "There ought to be a remedy," he says, "against some person capable of paying damages to those injured by improper driving." This is, doubtless, the real ground of the master's liability in such cases. But we submit that a public policy which points to a state of facts which varies with almost every case, and often fixes a liability where there is no need of it (for agents are often responsible), should not be extended to a new and different class of cases.

But there is a better reason for limiting this rule of public policy. The negligence or misconduct of an agent for which the cases hold the principal liable, probably never involves any deep moral turpitude. If the conduct of the agent were of such character, the principal would not be held liable. For instance—to take a case often put —if a servant shoeing a horse should maliciously prick him, he, and not the master, would be liable; though it would be otherwise if it were not intentionally done. And it is immaterial that the act, in cases of this kind, may have been intended for the benefit of the principal. See the language of Blackburn, J., in *Limpus* v. *London Omnibus Company* (*sup.*), quoted with approval by Brett, J., in *Burns* v. *Poulsom* (*sup.*).

The action for deceit more nearly resembles this class of cases. The allegation always is that the representation was made "falsely and *fraudulently*." A lie is charged, and charged to have been told with the base motive of injuring another. The proof need not be so strong in all cases; but fraud, actual or constructive, must be made out. Now it can no more properly be held that such a misrepresentation binds the principal, than that the other-mentioned malicious misconduct of the agent does; and as the rule of public policy does not extend to the latter class of cases, it should not to the former.

It is to be observed that it is no answer to the action that the defendant is a corporation. It is settled that a corporation, though having no soul, is liable for the authorised deceit of its agents. (See *Brokaw* v, *New Jersey Railway Company*, 3 Vroom, 328; *Vance* v. *Erie Railway Company*, *ib.* 334, 335; *Fogg* v. *Griffin*, 2 Allen, 1; *Ranger* v. *Great Western Railway Company*, 5 H. L. Cas. 72; *Addie* v. *Western Bank*, L. R. 1 H. L. Sc. 145; *Mackay* v. *Colonial Bank*, 22 W. R. 180). But this would probably be otherwise where the misrepresentation was made before the incorporation of the body. In such case the action should be against the individuals personally. (See *Addie* v. *Western Bank*, *supra*).—*American Law Review*.

Powers of Appointment.—Among the recent statutes passed was one to alter and amend the law as to appointments under powers not exclusive. By deeds, wills, and other instruments, powers are frequently given to appoint real and personal property among several objects, in such a manner that no one of the objects of the power can be excluded by the donee of the power from the share of the property, but without requiring a substantial share of such property to be given to each object. It is now enacted that appointments are to be valid notwithstanding that one or more of the objects may be excluded.

Digitized by Google

MASTER AND SERVANT.

We take the following communication on this subject from the *Central Law Journal*:—

The responsibility of one man for the contracts or wrongs of another is a subject which has given rise to numerous controversies, and upon which the law in some respects is not fully settled. *Master and servant* is one comprehensive relation under which these questions have arisen; another, is *principal and agent*. Between these two connexions the line is not very distinctly drawn, and to some extent, indeed, they may be considered as equivalent or synonymous. In general it may be said that the technical meaning of the word *servant*, substantially in correspondence with its popular meaning, is that of an employment somewhat inferior to an *agency*. A servant is one rather employed to perform some service, wit no further *trust* than that necessarily involved in such service; while an agent, in addition to the work which he is to perform, is often or generally entrusted with property of the principal. The servant acts under a *naked power;* the agent has a *power with an interest.* Partly as the result of this difference, legal controversies which grow out of the relation between master and servant are more frequently cases of wrong; those which pertain to agency are actions of *contract*, including, however, the wrong of *fraud*, which may be said to constitute the connecting link between tort and contract.

Some recent cases turn upon the point, what is necessary to constitute the technical relation of master and servant. In *Brady* v. *Giles*, 1 M. & Rob. 494, Lord Abinger left it to the jury whether the person guilty of negligence was the servant of the defendant. In *Lackawanna* v. *Chenewith*, 52 Penn. St. 382, a railroad company was held liable for an injury where the plaintiff was allowed to attach a freight car to a passenger train, though contrary to the "instructions and rules" of the road, and though agreeing to "run all risks," and although he agreed to attend to the brakes on his car; the last circumstance did not make him their servant. In *Flinn* v. *Philadelphia*, 1 Hous. 469, where the defendants, a railroad, were accustomed, when live stock carried upon the road was attended by the owner, to issue a free drover's ticket, upon his paying the freight and releasing them from all liability for the transportation, also to make a discount of 25 per cent. upon the freight, and the plaintiff, a drover, was injured by a collision, he was held to be a *passenger*, not a *servant* of the road, and to have a right of action. In *Williamson* v. *Wadsworth*, 49 Barb. 294, the civil engineer and travelling agent of a manufacturing company was held to be a *servant* within the meaning of a statute which makes stockholders personally liable for debts due to their labourers, *servants* and apprentices. One who makes temporary use of the services of another's servant may be liable for the acts of such servant. *Wood* v. *Cobb*, 13 Allen 58.

The same liability arises though a person is not the owner or manager of a steamboat, and has no authority to hire, control, or discharge its employees, if it is navigated by him or for him. And if navigated by him or for him jointly with another person, the acts and negligences of such employees are, in law, those of him and his associates, jointly and severally. *Fay* v. *Davidson*, 13 Minn. 523.

Evidence of the contract between the plaintiff and the defendant corporation, in which the plaintiff agreed to keep defendant's horses and to furnish them with hay and other things, and to board a man in case the defendant should require a man to take care of the horses; and evidence that B was in the defendant's employ, and that he was sent to take care of the horses by another of the defendant's servants, and in accordance with the recommendation of the defendant's general superintendent, is sufficient to leave to the jury the question whether B was the defendant's agent while furnishing hay to the horses, and consequently rendered the defendant liable for B's negligence. *Stone* v. *Western*, 38 N. Y. 240.

The defendant, having hired a horse and carriage from the plaintiff, intrusted the horse to A, the servant of B, an innkeeper, to be fed. In consequence of A's not replacing the bit, the horse became unmanageable, and the horse and carriage were damaged. Held, A was to be considered as the defendant's servant, and the action was maintained. *Hall* v. *Warner*, 60 Barb. 198.

A gas company, having been notified that gas was escaping from pipes which it had introduced into the cellar of a house at the request of A., the occupant, sent S., one of its servants, to ascertain where the leak was. He lighted a match in the cellar, and caused an explosion, which severely injured A.'s child, seven years old, who was in the house. Held, an action by the child against the company should be sustained, although the pipe was put in by the plaintiff's father, as the duties of S. extended to finding the leak, and the accident originated in the improper method of examination. *Lannen* v. *Albany, &c., Co.*, 46 Barb. 264.

Where money was sent by express to B., in care of K., with the consent of B., and K. delivered the money to F., who absconded with it, and the jury found that F. was not the agent of the person sending the money: Held, it must be taken that B. consented that K. should act for him and that the person sending the money was not responsible if K. failed to deliver the money to the right person. *Sykes* v. *Bates*, 26 Iowa 521.

V. was a passenger on a street horse-car, and, on its arrival at a point of intersection with a steam-railroad, the crossing was occupied by a train of steam-cars, and the horse-car stopped to wait the passage of the train. After the train had crossed the street, the flagman of the steam railroad signalled the driver of the car to go forward, and he did so, and at the same time the train backed and struck the car before it had quite crossed the track, injuring V. Held, in an action against the horse-railroad, the fact, that the driver had been directed to obey the signals of the flagman, and did so obey them, did not make the flagman an agent of the horse-railroad. *Chicago* v. *Volk*, 45 Ill. 175.

One receiving his share of the crop for work on land is not a servant. *Burgess* v. *Carpenter*, 2 S. C. 7. See further, *Killion* v. *Power*, 51 Penn. St. 429.

The distinction between *servant* and *contractor* has given rise to very numerous cases relating to the liability of an alleged master for the wrong or neglect of his employee. The decided weight of modern authority is, that a contractor is not a servant, chiefly upon the ground that he assumes an independent responsibility, and is not under the control of his employer with reference to the mode of executing his contract. It is obvious, however, that servants working for stipulated wages are still contractors; and the numerous and conflicting cases upon the subject have turned upon the precise relative position of the parties, on terms of mutual agreement which established one or the other of these relations. That the employee follows an independent occupation in which he may be presumed skilful is not decisive against the employer's liability. Thus, in *Brackett* v. *Lubke*, 4 Allen 138, the employee was a carpenter, hired to repair an awning, which afterwards fell upon the head of a passenger in the street, and the defendants, the employers, were held responsible. In *Sadler* v. *Henlock*, 4 Ell. & B. 570, Lord Campbell says: "What difference can it make that Pearson was an independent labourer to be paid by the job. The defendant might have said 'Fill up the hole in the road, *but not as you are now doing it*, lest when a horse goes over the place he may be injured.'" Ib. 579. In the same case (Ib. 578), Crompton, J., says: "It is only on the ground of a contractor not being a servant that I can understand the authorities" that the work, in the prosecution of which an injury was done, was performed upon the land of the defendant, and, more especially, that it naturally or necessarily produced what the law deems a *nuisance*, are considerations which have sometimes had much weight in charging the owner of such property for the negligence of even a *contractor*. See *Chicago* v. *Robbins*, 2 Black 418; *Storrs* v. *Utica*, 17 N. Y. 104; *M'Camus* v. *Citizens, &c.*, 40 Barb. 380; *Silvers* v. *Nerdlinger*, 30 Ind. 53. As has been already remarked, however, the weight of authority recognises the distinction between the contractor and a servant; and the leading case of *Bush* v. *Steinman*, 1 B. & P. 404, in which it was noticeably disregarded, may be considered as now overruled.

While the liability of the master for the mere *negligence* of his servant seems perfectly well settled, the cases are not entirely reconcilable with reference to his liability for *wilful wrongs* of the servant, though done in connexion with the master's business. The strong tendency, however, of the more recent decisions is, to hold the master equally

Digitized by Google

responsible for both classes of injury. The question has of late been most frequently raised in actions against railroad companies for acts of force, unjustifiable in kind or excessive in degree, committed by their conductors or other officers from violation of the rules of the company.

In *Seymour* v. *Greenwood*, 30 L. J. Ex. 378; 7 H. & N. 358, Williams, J., well expresses the principle of liability upon which the most recent cases seem to proceed. "It is argued that, though it cannot be denied that the defendant authorized his guard to superintend the conduct of the omnibus, generally, and that that authority must include an authority to turn out any passenger who misconducts himself, yet that it gives no authority to turn out an unoffending passenger. But by giving the guard authority to turn out an offending passenger, the defendant necessarily gave him also authority to judge for himself who should be considered an offending passenger." Acc. *Goff* v. *Great*, 3 El. & El. 672, where the act complained of was the arrest of the plaintiff for the benefit of the company, there being authority to arrest a passenger for travelling without payment of his fare, and the court held that the station-master and the policeman had implied authority to arrest those whom he believed to be guilty, and if there was a mistake, it was a mistake made within the scope of their authority.

But in the late case of *Pultoon* v. *The London, &c.*, L. R. 2 Q. B. 534, the important distinction was made that when a railroad company would itself have no right to arrest, a wrongful arrest by one of its employees would not render the company liable, as where the plaintiff was detained in custody by two policemen, under the orders of the station-master, for non-payment of the freight of a horse, the company would have a right to detain the horse, but not to arrest the owner, and therefore the action for false imprisonment did not lie.

Some other leading cases will show the course of authority upon the same subject.

The general rule is laid down that a master is liable where an act, though done without special orders, is one which the servant was justified in doing, and was unskilfully done. *Gilmartin* v. *N. Y.*, 55 Barb. 239.

The plaintiff's horse, in charge of his servant, who was guilty of negligence, was killed in consequence of a span of horses belonging to the defendant, which had run away with its coachman, it running against a feed waggon. Held, although A was guilty of no fault or negligence, the action was maintainable if A caused the injury by running against the waggon, though solely with a view to his personal safety, if the act was a prudent one for the purpose of stopping the horses. *Wolfe* v. *Mersereau*, 4 Duer 473.

A master is responsible where his servant, while felling trees by his order, and in the scope of his business, either wilfully or negligently trespassed upon land of the plaintiff. *Luttrell* v. *Haden*, 3 Sneed, 20. The defendant gave a general direction to his servant to clear the snow from a roof, which was done by throwing it into the street, whereby a man was killed. Held, under a statute which authorized an action for an injury causing death, the master was responsible. *Althof* v. *Wolf*, 2 Hilt, 344.

A city railroad is liable for the forcible and malicious ejection of a passenger from the platform of a car, it being left to the driver to determine whether a passenger is unlawfully on the platform. *Meyer* v. *Second*, 8 Brown, 305. So an action was maintained where the defendants, omnibus proprietors, directed their guards to remove disorderly passengers; and one of the guards, erroneously considering the plaintiff disorderly, ejected him carelessly and with excessive force. *Seymour* v. *Greenwood*, 7 H. & N., 356.

On the other hand it has been sometimes held, though this can hardly be considered the prevailing rule, that if the servants of a railroad, exceeding their authority, unlawfully expel a passenger from the cars, the company is not liable; nor for any unnecessary violence in ejecting a passenger. *Hibbard* v. *N. Y.*, 15 N. Y., 455.

The defendant, owner of a bridge, employed A. as toll-keeper. A vicious dog of A. bit the plaintiff, but the defendant had not personally kept or harboured the dog, nor authorized the keeping of him, nor was the dog necessary for the business in which A. was employed. Held, the defendant was not liable. *Baker* v. *Kinsey*, 38 Cal. 631.

An action was held not maintainable under the following circumstances:—The infant son of the plaintiff asked leave of B., the defendant's servant, to ride on a wagon which B. was driving. B. said he might ride when he got up the hill. A. caught hold of the wagon between the front and hind wheels. B. started the horses into a trot, and A. was thrown down under a wheel and badly hurt. *Wright* v. *Wilcox*, 19 Wend. 343.

And the general rule has been laid down that a master is not responsible for the wilful or criminal wrong or trespass of his servant. *Jones* v. *Hart*, 2 Salk. 440; *Coleman* v. *Riches*, 16 Com. B. 104; *Hubbersty* v. *Ward*, 8 Exch. 330. Or that the injury must arise in the execution of some service, lawful in itself, but negligently or unskilfully performed, and not be a wanton violation of law by the servant, though occupied about the master's business. *Moore* v. *Sanborne*, 2 Mich. 519.

This was the point decided in the leading case of *M'Manus* v. *Crickett*, 1 E. 109, where the Court of King's Bench went into an examination of all the authorities, and after much discussion and great consideration, held that, by committing a wilful wrong, the servant virtually abandoned his master's business, who, therefore, was not liable to the party injured —and text books of authority have favoured this view. See 2 Greenl. Evi. 52, 168; 2 Kent, 5th ed. 258; 1 Sharsw. Blackstone, 431.

The plaintiff, having purchased a railroad ticket, applied to A., the employee charged with that duty, to have his baggage checked, and by abusive language and threatening gestures provoked a quarrel, in which A. struck him with a hatchet. Judgment for the defendant. *Little* v. *Wetmore*, 19 Ohio St. 110. An incorporated district is not liable in trespass for illegal service of a horse of the plaintiff, by one of its officers, for alleged violation of an ordinance which did not actually occur. *Fox* v. *Northern*, 3 W. & S. 103.

A leading case on this subject is *Coleman* v. *Riches*, 16 Com. B. 103. That was action against a wharfinger for the act of A., his servant. A. fraudulently and falsely signed a receipt, acknowledging the delivery of certain wheat of B. at the wharf, to be shipped to the order of the plaintiff, whereby the plaintiff was led to pay the price to B. It appeared that the plaintiff was accustomed, with the knowledge of the defendant, to pay for all wheat delivered for him at the wharf, upon the seller's producing the defendant's receipt. It was held that the act of A. was not so far within the scope of his authority or course of employment as to render the defendant liable to the plaintiff for the loss sustained by the payment made to B. JERVIS, C.J., says, p. 117: "The defendant's agent had only authority to give receipts for goods which had, in fact, been delivered at the wharf. . . . Numerous actions were brought . . . against news-agents for libels contained in newspapers sold by their servants over the counter; the liability of these persons was put . . . . upon the ground that the servant was acting strictly within the scope of his employment, and consequently the master was liable for his act. So, where bakers have been held to be liable criminally for the excessive and exorbitant use of alum in making bread. . . . So, also, in the various cases against brewers for the illegal use of drugs in their trade. So, in the case of a servant negligently driving his master's carriage. . . . . When Board gave a receipt for wheat which had never been delivered, . . . he was not acting for his master, but contrary to his duty, and against his master's interest." (See also *Grant* v. *Norway*, 10 Com. B. 665; *Hubbersty* v. *Ward*, 8 Exch. 330). In the same case—p. 119—CRESWELL, J., pointedly says: "He was not employed to represent that to be true which he knew to be false."

F. H.

LADY LAWYERS IN AMERICA.—Mrs. Belva A. Lockwood, the lady lawyer of Washington City, is still pushing business. She has recently entered suit for Mrs. C. Susan Raugh, against Thomas Leake, for $630, borrowed money. It is said that Leake engaged to marry Mrs. Raugh, and she loaned him the money, and also gave her note to enable him to set up in business preparatory to the consummation of the marriage; but that he left and went to another city, and refuses now to fulfill his part of the contract by marrying her.

Digitized by Google

IMPRISONMENT FOR DEBT.

The primitive rule of law among all nations has been that the debtor shall answer for his debt with his person, that inability to pay or insolvency is a crime, and the insolvent little (if at all) better than a thief. The rule of law which has been accepted in modern times is the reverse of the primitive rule in all these respects; for (putting fraud aside) the debtor shall now answer for his debt with his property only and not also with his person, his inability to pay or insolvency is a civil result only, and an insolvent person is in no respect regarded as a criminal. This inversion of the law corresponds to an inversion of the morality or manners of the respectively contrasting epochs; for the laws, which are powerless to create institutions without morality as their basis, are also powerless to keep institutions alive when morality has forsaken them. Or, to quote from the speech of M. Jourdain which he made upon the occasion of the abolition of imprisonment for debt in France, in 1867, "If you could maintain this institution during yet a few years, and keep it alive amongst your laws, you could not keep it alive amongst the manners of your people. It is a dead branch; if you avert the axe from it, it will of itself detach and fall off from the tree." This passage expresses very aptly the lesson which the history of the institution of imprisonment for debt, as given by M. Hardouin, teaches.

Amongst the Jews, imprisonment for debt was a prevalent institution; but among that people, the chief traces of it are to be found in the provisions mitigating the cruelty of it, *e.g.*, in Exod. xxi. 2, "If thou buy a Hebrew servant, six years he shall serve, and in the seventh he shall go out free for nothing." Again, in Levit. xxv. 39-47, "And if thy brother that dwelleth by thee be waxen poor, and be sold unto thee, thou shalt not compel him to serve as a bondsman, but as a hired servant; and as a sojourner he shall be with thee, and shall serve thee until the year of jubilee. And if a sojourner or stranger wax rich by thee, and thy brother that dwelleth by him wax poor, and sell himself unto the stranger or sojourner by thee, after that he is sold, he may be redeemed again; one of his brethren may redeem him." Similar passages will be found in Deuteronomy xv. 7-8.

Amongst the Indo-Chinese, it appears, from the digest of Hindu Law, that a creditor might adopt various modes of enforcing payment of his debt, and among them the following mode, which was called the forcible mode, namely, "he might imprison the son or wife of the debtor, or imprison his cattle, or way-lay the debtor at his house, and, by means of stripes and otherwise, compel him to pay."

Amongst the Egyptians, it appears that imprisonment for debt existed before the reign of Sesostris or (as some think) of Bocchoris, for it is attributed to each of these monarchs as a signal merit that he abolished the institution, substituting for it the following institution, which, it will be seen, has not altogether abandoned the remedy against the person of the debtor, namely—The debtor was infamous, and, upon his death, was deprived of the rights or solaces of burial, which to a religious people were more valuable than all worldly honours; whence it customarily happened that the debts were paid through the pious fears of the relatives of the deceased man.

Among the Greeks, it appears that the Thebans had a law enabling a debtor to deliver his children to the creditor in satisfaction of his debt; that the like law prevailed among the Athenians, but was abolished by Solon, who also (following, it is said, the law of Egypt) abolished altogether the institution of imprisonment for debt.

Among the Romans, the law of debt, as is well known, was peculiarly severe, and remained unmitigated until a comparatively late epoch. We find in Gaius iv. 21-25, that a Roman creditor was in certain cases furnished with a mode of execution called "*per manus injectionem*," whereby he arrested the person of his debtor, and, unless the debtor produced a responsible person (*vindex*) to answer for the debt, led him to his own house, and put him in chains (*domum ducebatur ab actore et vinciebatur*). A debtor who failed to pay might also be handed over to his creditor (*addictus*), and when that happened became *in mancipio*, *i.e.*, in a condition of free-bondage, in which he differed little from a slave. The following passage from Livy vii. 19, expresses graphically, but without exaggeration, the unhappy condition of insolvent Roman debtors:—*Sorte ipsâ obruebantur et nexum inibant. Deinde et qui ante nexi fuerant, creditoribus tradebantur et nectebantur alii. Fremebant se foris pro libertate et imperio dimicantes domi a civibus captos et oppressos esse.*" And Tacitus, in his Sixth Annal, alludes to this *fenebre malum* as having proved "*seditionum discordiarumque creberrima causa.*" It is this severity of the original law of debt that accounts for the expression in Justinian's Institutes, iv. 6, 40:—"*Eum quoque qui creditoribus suis bonis cessit, si postea aliquid adquisierit, quod idoneum emolumentum habeat, ex integro in id quod facere potest creditores cum eo experiuntur: inhumanum enim erat spoliatum fortunis suis in solidum damnari.*" The condition of Roman debtors was in fact such as to frequently call for the direct interference of the State, which, in numerous instances, reduce the rate of interest by one half, as we find in Livy vi. 16, "*Haud aequè laetæ patribus, semunciarium tantum ex unciario foenus factum,*" and we find the like phrase in Livy vii. 27. And by the Lex Poetelia Papinia, 323, B.C., the *nexum* was abolished at least for Rome, so that debtors could no longer, in virtue simply of their own engagements, be reduced into slavery; but imprisonment for debt under the decree or judgment of a court of justice survived that law, and the better opinion is, that the law in question did not extend to Italy until the first century before the Christian era.

Upon the fall of the Republic and the accession of the Emperors, a new application was given to the mode of execution for debt by imprisonment of the person. The farmers of the imperial taxes (*publicani*), scattered all over the Roman world, applied it in a manner which is said to have been most pitiless, and perhaps the execration which has attached, and which still continues to attach in the popular mind to the tax-gatherer, is an evidence of the relentless severity of his procedure. And imprisonment under a decree or judgment of the Courts continued under the Empire as under the Republic, with this one mitigation, that the creditor was bound to allow his debtor when in prison, to be supplied from without with the provisions necessary for his sustenance, and exposed himself to a penal action in case he refused to do so.

With the accession of Constantine, Christianity succeeded to Polytheism as the State religion, and the influence of the bishops was extended in some instances successfully in procuring the deliverance of prisoners for debt from their imprisonment. A law of Valentinian and of Valens II. (385 A.D.) confirmed this privilege to the bishops. But subject to such occasional relaxations, the institution of imprisonment for debt remained even until the reign of Justinian, and it also survived all the legislation of that monarch. At the most the treatment of the debtor while in prison was rendered a little more humane.

With the arrival of the dark and barbarous middle ages, the severity of the primitive law of debt revived, accompanied with imprisonment and torture, and its subsequent mitigation is to be attributed to three causes, and to be distinguished by three epochs, namely, the establishment of the feudal system, the epoch of the Crusades, and the institutions of Saint Louis. It is said that the mother of Saint Louis (Blanche of Castille) procured, by her entreaties in one solitary instance, the release from the private prison of the metropolitan of Paris, of some peasant girls who were confined therein for debt. Her son endeavoured to extend this mitigation generally to deserving persons innocently insolvent. In the first place by two separate ordonnances in 1254 and 1256, he forebade the officers of his own government to apply the process of arrest to debtors either as a mode of execution for debt or as a means of compelling the appearance of the debtor in court. But owing to the weakness of his government, and to the circumstance that the great lords and the ecclesiastics exercised almost coordinate jurisdictions, the royal ordonnances were by no means as efficacious as their generality might suggest; indeed, it has been said that they proved entirely inefficacious. Even the trades-people of the towns claimed to assert and succeeded in asserting their right to imprison their debtors in private prisons of their own, that seeming to be the most expeditious manner of obtaining payment of their debts. And ultimately in the ordonnance de

Digitized by Google

Moulius, in 1566, the right of imprisonment for debt was expressly recognized.

It was not in fact until the 18th century in France (and the same remark is true of England), that the expediency of abolishing imprisonment for debt began to be mooted. In particular, in France, by a series of decrees dated respectively the 15th September, 1791, the 15th August, 1792, and the 30th March, 1793, imprisonment for debt was abolished in all cases excepting in the matter of public accountants who were debtors to the State, but the institution was again revived in 1797 by a series of ordonnances of that year. This wavering policy was again repeated in France about a generation later; a decree of the 9th March, 1848, having again suspended the institution, but which was subsequently re-established. Ultimately, however, by a law of the 22nd July, 1867, the institution, after lengthened and animated debates in the Legislative Assembly and in the Senate, was abolished, and the present state of the law of France upon the matter was definitively settled, as M. Hardouin thinks; but the law has had as yet but a short period of trial, and it is not impossible among a people so lively as the French that the settlement of the question may be re-opened, and that at no very remote date.

In England, after the efforts of Daniel Defoe, Edmund Burke, and Sir Samuel Romilly had been exerted with little effect towards the abolition, or, at all events, the mitigation of the law of imprisonment for debt; the work was taken up by Lord Brougham about the year 1830, who demanded that the remedy should be confined to cases of fraud, contumacy or contempt, and bad faith, and not extended to the case of innocent but unfortunate debtors; he argued that the imprisonment, while it was in no respect a satisfaction of the debt, was also both in itself and in its associations demoralizing; the soul of man was being sacrificed to the rights of property. But the efforts of Lord Brougham were also, in the first instance, unsuccessful. The objections to the abolition of imprisonment were chiefly two, namely, that it would encourage men to break their engagements, and that it would greatly restrict commercial transactions by removing the securities for payment, and generally by undermining the confidence of traders. But more recently the principles for which Lord Brougham contended have been accepted, arrest on mesne process having been abolished in 1838 and arrest on final process in 1868, with the exceptions enumerated in the respective statutes abolishing the same, and which exceptions are in substance cases of fraud, contumacy or contempt, and breach of trust.—*The Law Magazine and Review.*

EXTENT OF RIGHT TO LIGHT ACQUIRED BY THE DISPOSITION OF THE OWNER OF TWO TENEMENTS.

The rule is well known that where the same person owns a house having the enjoyment of certain lights, and also land adjoining, and sells the house to another person, "although the lights be new, he cannot, nor can any one who claims under him, build upon the adjoining land, so as to obstruct or interrupt the enjoyment of those lights." (*Swansborough* v. *Coventry*, 9 Bing. 305). The principle upon which this rule was based in the case where it seems to have been first laid down (*Palmer* v. *Fletcher*, 1 Lev. 122), was that no man shall derogate from his own grant. Both at law and in equity it seems, however, always to have been assumed that the extent of the light thus impliedly granted was the same as that of the ordinary right to light against a third person, as to which, to use the words of Mellish, L.J., the courts "had, long before the Prescription Act, held that it did not entitle the owner to every ray of light that might happen to come through the windows, and that he could not maintain his action for the obstruction of light unless he could make out that the comfort of his house was diminished by the deprivation of light, or that he was prevented, if he was the owner of business premises, from carrying on his business in the same manner as he was accustomed to carry it on before."

In the recent case of *Leech* v. *Schweder* (22 W. R. 633, L. R. 9 Ch. 463), an ingenious attempt was made to introduce a distinction between the rules of law and of equity on this subject. The plaintiffs were the sub-lessees of business premises held under a lease from the Skinners' Company. The defendant, under a subsequent agreement for a lease from that company of an adjoining plot, had, as the plaintiffs alleged, obstructed the light coming to the windows of their premises, and they filed a bill to restrain him from interfering with their lights. The Master of the Rolls thought that the lease from the Skinners' Company, containing the general words "together with all . . . . *lights*, easements, advantages, and appurtenances whatsoever, thereto belonging or in anywise appertaining," constituted a grant of "all the lights of the house" as they existed at the time of the lease from the Skinners' Company, and that since the ordinary covenant for quiet enjoyment provided that whatever had been granted should be enjoyed without any molestation or disturbance, the defendant, who had notice of the tenancy of the plaintiffs, took his plot of land with notice of a restrictive obligation attached to it; and that upon the principle of *Tulk* v. *Moxhay* (2 Phil. 774) a court of equity would interfere to prevent any violation of such obligation. The learned judge, therefore, thought it was not incumbent upon hin to ascertain whether there existed that material interference with the plaintiffs' light which in the ordinary case of adjoining owners is necessary to enable an action to be maintained at law, or an injunction to be obtained in equity in case of obstruction of lights. If any interference whatever were proved, it constituted a breach of the covenant, and an injunction ought to be granted to restrain it.

While the Master of the Rolls was at great pains to explain and illustrate the doctrine of the court with reference to restraining breaches of covenants in deeds of grant "in aid of the enjoyment and possession granted," he seems to have rather taken for granted that this doctrine was applicable to the case before him. He does not seem to have discussed at length the preliminary question as to whether, under the circumstances of the case, the lease conferred any special right to light. On appeal, the Lords Justices were clearly of opinion that there is no difference in the extent of the implied right to light acquired by the disposition of the owner of two tenements and that acquired by twenty years user. Was there then, they inquired, any express grant in the deed of a greater right than this ordinary easement? They held that there was not; that the use of the word "lights," among the general words in the lease, "meant nothing but the ordinary right to light, namely, that well-known easement which has been known and has existed in the law from time immemorial," and that the covenant for quiet enjoyment, in its ordinary shape, could not in any way enlarge the rights granted in the previous part of the deed. It is, as James, L.J., put it, nothing more than a covenant that the grantor shall have that which has been purported to be granted to him.

The effect of the decision is that the question of infringement of right to light, is to be tried on exactly the same principles, whether such right may have been acquired, by prescription or by the disposition of the owner of two tenements, and whether the question arises at law or in equity.—*Solicitors' Journal.*

RECENT DECISIONS.

COMMON LAW.

GORRIS *v.* SCOTT, Ex. 22 W. R. 575, L. R. 9 Ex. 125.

Neglect of Statutory Duty.

The short point in this case was, that although, according to *Couch* v. *Steel* (2 W. R. 170, 3 E. & B. 402), an action lies against one who neglects a statutory duty at the suit of a person injured by the neglect, yet that general proposition must be limited to the case where the mischief which the plaintiff has suffered is the kind of mischief which the statute was intended to prevent. The plaintiff, therefore, whose sheep had been washed overboard, was held not entitled to maintain an action against the shipowner, on the ground that if certain precautions had been observed which were enjoined by the Privy Council under the Contagious

Digitized by Google

Diseases (Animals) Act, 1869, solely with the view of preventing the spread of disease, the loss would not have occurred. The point is new (for the case of *Blamires* v. *Lancashire and Yorkshire Railway Company*, L. R. 8 Ex. 283, referred to by Pollock, B., has really nothing to do with it), but the decision is reasonable and logical, for the action in such cases is based on the frustration of the intended purpose by the illegal neglect; or, in other words, the plaintiff complains of his not having *that* benefit which the statute intended to confer on him.—*Solicitors' Journal.*

REVIEWS.

The Supreme Court of Judicature Act, 1873, with Explanatory Notes. By Freeman Oliver Haynes, of Lincoln's Inn, Barrister-at-Law, Late Fellow of Caius College, Cambridge. London: Wm. Maxwell and Son. Dublin: Hodges, Foster, and Co., and E. Ponsonby. Calcutta: Thacker, Spink, and Co. Melbourne: C. F. Maxwell. 1874.

The Judicature Act for England has attracted many commentators, and, doubtless, will receive more attention when it, together with the rules, comes into force. So great will be the change in the English system that the old practitioners, of both branches of the profession, in the Common Law Courts, will positively be more at a loss than the beginners, for the principles and practice are to be so much changed that the old learning will be useless and probably dangerous, unless it be used so as to avoid the habit and manner of the old practice. Under these circumstances, then, each edition of the Act, annotated by competent lawyers, is a boon to the profession, who must perforce understand, or try to understand, the essential changes in the theory of our law. Equity and law have not been completely fused, even by the latest action of the Legislature, and herein lies the chief difficulty; if the distinction between legal and equitable estates, for instance, had been abolished, the carrying on of a suit would have been simplified, but we venture to think that the relations have been made only more delicate and complicated in their management in suits. The practitioner, therefore, will gladly welcome the assistance which he can obtain with very little trouble from the notes which Mr. F. O. Haynes has appended to the above-mentioned edition of the Act. It was compiled before the Rules were uttered, and consequently does not go into the details of practice, but is therefore the better suited for giving the reader a clear idea of the altered form of legal procedure. It is unnecessary to say that the points of divergence and analogy are clearly and learnedly pointed out by the editor, whose reputation is a guarantee for the value of his work; but it is important to observe that while Mr. Haynes writes from an Equity lawyer's point of view, he finds much to commend and little to blame although it was asserted while the Act was *in transitu* that Equity principles and interests were being sacrificed to Common Law claims and barbarism. Had Mr. Haynes been a *Nisi Prius* advocate, we fancy he would have found fault with some sections which he views now with complacency, particularly those leaving the right of new trials and appeals, bills of exceptions, and costs, in the hands of the Judges exclusively. It is felt, at least in Ireland, that these particular provisions would have a tendency to fetter and weaken the independence of the Bar, and we trust will be considered when our measure may come on for discussion. Although we do not remember to have seen this question mooted by the English legal journals—and it does not of course strike a lawyer accustomed only to practice in the Equity Courts—we should imagine that it can hardly have been passed *sub silentio* by English practitioners.

Judicial Reform.—The *Daily News* says:—The Government have another opportunity of taking up a thread dropped by their predecessors, for judicial reform will not be complete till there is an English official who corresponds with the Procurator Fiscal of Scotland.

COURT PAPERS.

OFFICE HOURS DURING VACATION.

COMMON LAW COURTS.

Offices open every day from 11 to 1 o'clock.

CONSOLIDATED CHAMBER.

Every Friday up to 16th October.

CHANCERY OFFICES.

On Tuesdays and Fridays from 11 to 3 o'clock up to 14th October.

Public Record Office.—Every day from 11 to 4 o'clock.

LANDED ESTATES COURT.

Offices open on Tuesdays and Fridays from 12 to 2 o'clock up to 10th October.

Record of Title Office.—Every day from 11 to 1 o'clock.

PROBATE COURT.

Offices open every day from 11 to 2 o'clock, except Saturday, on that day 11 to 1 o'clock.

BANKRUPTCY AND INSOLVENCY.

Offices open every day from 12 to 2 o'clock. The Court sits at 11 o'clock on Tuesdays and Fridays.

DEEDS REGISTRY OFFICE.

Every day from 10 to 4 o'clock.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Richard M. Sadlier	Prove debts	*Kavanagh*
James D. Beresford	Reference	*Oldham & Eaton*
John Kennedy	Prove debts	*Mathews*

TUESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Rehan	1st public sitting	*O'Brien*
Michael Russell	do	*Stewart*
J. W. & R. Ronan	do	*Lynch*
Patrick Mooney	do	*Perry & Co.*
Robert Courtney	2nd composition sitting	*Perry & Co.*
Thomas J. Curtis	do	*Stewart*
Same matter	Final examination	*Jones*
John Mason and P. Looby	do	*Casey & Clay*
James Allison	do	*Casey & Clay*
Stephen Rickard	do	*Findlater & Co.*
Richard Bell	do	*Boyd*
Aaron Boak	do	*Stewart*
Eyre Silk	do	*Hartigan*
———	Application to dismiss debtor summons	*Cronhelm & Co.*
The following at 12 o'clock.		
Arrangement	Sale	*Larkin & Co.*

Before the Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Robert Courtney	Prove debts	*Perry & Co.*
Same matter	Title and posting	*D. & T. Fitzgerald*
George P. Magrath	Prove debts	*Hickie*
Patrick Hanlon	do	*Scallan*

Digitized by Google

WEDNESDAY.

Before the Court, at 11 o'clock.

———	Show cause against adjudication	*Morton & Plunkett*

Before the Chief Clerk, at 12 o'clock.

Joseph W. Savage	Reference	*Adams*

THURSDAY.

Before the Chief Clerk, at 12 o'clock.

Patrick Mooney	Prove debts	*Rynd*

FRIDAY.

Before the Court, at 11 o'clock.

James Harbinson	1st public sitting	*Murray*
Patrick Dillon	do	*Meldon & Son*
John M'Crory	2nd composition sitting	*Scallan*
Same matter	Final examination	*Fottrell & Son*
John Woods	do	*Oldham & Eaton*
Hugh M'Kenzie	do	*Larkin & Co.*
Patrick Mason	do	*Mathews*
William Cresswell	do	*Mathews*
Joseph Cresswell	do	*Mathews*
John R. Duggan	do	*Larkin & Co.*
John Nolan	do	*Larkin & Co.*
Robert Grogan	Application for certificate	*Mathews*
Michael Broderick	Confirm sale	*Hamilton & Craig*

The following at 12 o'clock.

Arrangement	Sale	*Barlee*

Before the Chief Clerk, at 12 o'clock.

John M'Crory	Prove debts	*Scallan*

ADJUDICATIONS IN BANKRUPTCY.

Gleeson, John, Killarney, county Kerry, baker. Sittings, *Tuesday, September* 22, and *Friday, October* 9. *Casey and Clay*, solrs.

Marsden, John, Annalee House, Cootehill, county Cavan, farmer. Sittings, *Tuesday, September* 22, and *Friday, October* 9. *Rynd*, solr.

O'Sullivan, Michael, Clonakilty, county Cork, draper. Sittings, *Friday, September* 25, and *Tuesday, October* 13. *Larkin and Co.*, solrs.

Quigley, Edward, Clonmany, county Donegal, grocer. Sittings, *Friday, September* 25, and *Tuesday, October* 13. *Kernan*, solr.

DIVIDENDS IN BANKRUPTCY.

Gilmore, Robert, Londonderry, draper and tailor. 1st and final dividend, 7s. 3d. in the £. C. H. James, official assignee. *Cronhelm and Tobias*, solrs.

Jermyn, Joseph, Belturbet, Cavan, grocer. 1st and final dividend. 11½d. in the £. C. H. James, official assignee. *Hamilton & Craig*, solrs.

Meikle, Archibald, trading as A. Meikle and Co., Temple-lane, Dublin, rectifying distiller. 1st dividend, 7⅝d. in the £. L. H. Deering, official assignee. *Forsythe*, solr.

O'Connor, Richard, Queen-street, Dublin, grocer. 1st and final dividend, 2s. 2½d. in the £. C. H. James, official assignee. *Stuart*, solr.

O'Donnell, John, Mohill, Leitrim, spirit dealer. 1st dividend, 2s. 11d. in the £. L. H. Deering, official assignee. *Hamilton and Craig*, solrs.

Richardson, Samuel M. J., Stephen's-green, Dublin, draper. 1st dividend, 5s. in the £ on new debts; 2nd dividend, 1s. 11d. in the £ on old debts. C. H. James, official assignee. *Molloy and Watson*, solrs.

Smyth, James, Banbridge, county Down, hardware merchant. 1st dividend, 1s. 4d. in the £ new debts; and a dividend of 5¾d. in the £ on old debts. C. H. James, official assignee. *Browning*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	August Fri 28	Sat. 29	Mon. 31	Sept. Tues. 1	Wed. 2	Thur 3
	Government.						
—	3 p c Consols	92–⅛	—	92¼	92¼	—	92–⅛
—	New 3 p c Stock	91⅞¾	91⅞⅜	91⅞⅞	91⅞⅞	91⅞	91⅝⅞⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	108⅞⅜	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102⅛		102⅛⅛	102½	102⅛	—
	Banks.						
100	Bank of Ireland	308½	—	—	307	306	306½
25	*Hibernian Banking Co.*	59⅞⅞	59⅞	59⅞60	60	60⅛⅛	—
3½	*Munster Bank (Limited)*	—	8½	—	—	8½	—
30	*National Bank*	62½	—	62⅝⅞	—	63½	63½
15	*National of Liverp'l (Ltd)*	14⅛	—	14⅛	—	—	14⅛⅜
25	*Provincial Bank*	—	—	89	90	90⅛⅜	—
10	*Royal Bank*	30⅛	30⅛	—	30⅛	—	30⅛
	Steam.						
100	City of Dublin	105–¼	—	—	105⅝⅞	106	106½
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	55	—	—	—
10	Dundalk (Limited)	6	—	5⅞⅞	5⅞	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	–/6	–/6
7	*Cape Copper M. Co. (lit'd)*	27	—	—	—	—	—
2½	Wicklow Copper	—	—	2⅞	2⅞	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	10⅛⅛	10⅛⅛⅛	10⅛	—
9½	*Dublin Tramways*	6⅞	—	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	67½	—	—	—	—	67
50	Cork and Bandon	25	—	25–4⅞	24⅞	—	—
100	Dublin and Belfast Junct.	91½	—	—	—	—	—
100	Dublin and Drogheda	—	113½	—	—	113	113
100	Dublin, W'klow, & W'ford	75⅞	76	76⅛⅛	76⅛	—	—
100	Gt. Northern and Western	—	—	—	—	98½	—
100	Gt. Southern and Western	108⅞	108⅛	108⅛	108⅛	108⅛⅛	—
100	Midland Gt. Western	—	80⅞	—	80½	—	—
50	Waterford and Limerick	—	—	31⅛	31⅛–2	31⅛–2	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	94	94	—	—
100	Do. do. 4½ p c	—	—	—	—	—	102⅞
100	D., W., & W., 6 per cent	129½	—	—	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	54	—	53½	54
50	Do. do. (1865)	53½	—	—	—	53⅞	—
100	Gt. South'n & West'n 4 p c	—	—	—	—	—	99
100	Mid. Great Western, 5 p c	111½	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	x d	—	—	—	—
100	Do., 4½ p c	—	x d	—	—	—	96–½–7
50	Do., new red, 1860–72, 5 p c	—	50⅞	—	—	—	—
50	Do., new red, 1873, 5 p c	—	x d	—	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	97	—
—	D., W., & W., 4½ p c	—	100	—	—	100	—
—	Gt. South'n & West'n, 4 p c	—	—	—	—	—	98⅞
—	Irish Nth Westn 1st C 5 p c	—	—	—	100½	—	100
—	Waterf'd & Limerick 4½ p c	—	—	99½	100	—	—
—	Do., 4½ p c	—	—	—	102½	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 27th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.
Name Days—September 15th and 29th, 1874.
Account Days—September 16th and 30th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

COCHRANE—August 31, at Charlemont-place, Armagh, the wife of George C. Cochrane, Esq., solicitor, of a son.

MARRIAGES.

MARTIN and GUBBINS—At the Parish Church, Bruff, County Limerick, by the Rev. George Gough Gubbins, Rector of Kilpeacon, uncle to the bride, assisted by Rev. T. Dickson, Vicar of Bruff, John Robert Martin, Esq., Cayuga, County of Haldimond, Canada, barrister-at-law, and Crown Attorney for the County, second son of Richard Martin, Esq., Sheriff of that County, and grandson of the late Colonel Richard Martin, M.P., of Ballinahinch, in the County Galway, to Sally, youngest daughter of Joseph L. Gubbins, Esq., of Ballincollon House, in County Limerick, and granddaughter of the late George Gough Gubbins, Esq., of Wardstown Castle.

O'BRYEN and PATRICK—August 26, at Southport, Lancashire, by the Rev. B. S. Clarke, D.D., Vicar of Christ Church, Henry Hewitt O'Bryen, Esq., son of R. H. O'Bryen, Esq., solicitor and Notary Public, Queenstown, to Maggie, only daughter of J. G. Patrick, Esq., Craigton House, Glasgow.

DEATHS.

MEADE—August 29, at the residence of her mother, Marymount-terrace, Dalkey, after a long and lingering illness, Lucie Agnes, youngest and dearly-beloved daughter of the late Stephen Meade, Esq., solicitor, formerly of Limerick. Australian and American papers please copy.

OWEN—September 1, at 23 Dunville-avenue, Ranelagh, Charlotte, the eldest surviving daughter of the late George T. Owen, Esq., solicitor, of the City of Dublin, aged 70 years.

Printed and Published by the Proprietor, John Falconer, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, September* 5, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, SEPTEMBER 12, 1874. No. 398.

ELECTORAL RIGHTS OF IRISH PEERS.

IT might have been supposed that the rights of Irish peers with regard to their electoral capacities would by this time have been sufficiently clear, as it has been the subject not only of statutory enactment, but also of judicial decision. But the late case of *Lord Rendlesham v. Haward* (L. R. 9 C. P. 252) apparently indicates that there still exists in some minds a certain degree of doubt on the subject. The appellant resided in the eastern division of the county of Suffolk, and claimed a right to be placed on the register of voters for that division. This claim was refused by the revising barrister, and Lord Rendlesham appealed, and the Court of Common Pleas unanimously upheld the decision of the revising barrister. The appellant, it appears, was an Irish peer, and was not, and never had been, a representative peer, or a member of the House of Commons, and he was subject to no other incapacities, but was otherwise duly qualified as an elector, except for the fact of his being an Irish peer.

As to when peers were first excluded from voting at elections for members of the Lower House does not exactly appear, but some returns preserved by Prynne and other antiquarians show that they did actually exercise the privilege in the earlier periods of our constitutional history. The statute laws in force with regard to the political position of the Irish peers are the 4th article of the Act of Union (39 & 40 Geo. III., c. 67), and a Resolution of the House of Commons of the 27th April, 1802, which was also made a standing Order of House. By the former of these it is enacted that, "Any peer of Ireland shall not be disqualified from being elected and serving for any county, city, or borough, unless he shall previously have elected to sit in the House of Lords; but so long as he sits in the House of Commons he is not entitled to the privilege of peerage;" and by the latter it was resolved, that "no peer of this realm, except such peer of that part of the United Kingdom called Ireland as shall for the time being be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain hath any right to give his vote in the election of any member to serve in Parliament. From these it follows, that any Irish peer, not being one of the twenty-eight representative peers, has a right to sit for any constituency in Great Britain, and that if elected he has a right to vote at any election for a member of the House of Commons, but otherwise he has no electoral capacities at all.

The Act of Union has, in fact, enacted, that if an Irish peer has been elected a member of the Lower House, he loses for the time being his status as a nobleman, and is reduced to that of a commoner. He, of course, enjoys all the rights incident thereto; amongst others, that of voting at elections. Were it not for this 4th article, an Irish peer would be in exactly the same position as a Scotch peer, and though not sitting in the House of Lords as a representative peer, he still could not sit for a constituency. Irish peers then, it appears, may be divided into three classes, so far as their Parliamentary rights are concerned—1st. The twenty-eight representative peers, who sit in the House of Lords, and enjoy all the privileges of peers; 2nd. Those peers who have been elected for any constituency in Great Britain, who sit in the Lower House, and enjoy, for the time being, all the electoral rights of commoners; and 3rd. The remainder of the peers, who sit in neither House of Parliament, and have no electoral capacities whatever.

This last class, to which the appellant belonged, appears to occupy a somewhat anomalous position, yet such are their real rights, as follows from the construction of the statutes, and also from the decision in the *Droitwich Case* (2 Knapp & Ombler's Sl. Cas. 65), with reference to Lord Southwell. In the recent report of the Select Committee appointed to consider the state of the representative peerages of Scotland and Ireland, it was recommended that Irish and Scotch peers should not be disabled from sitting in the House of Commons for any constituency in the United Kingdom. It may possibly occur to some future Committee to suggest that all Irish and Scotch peers, except the representative peers, should have the right of voting at Parliamentary elections, as well as offering themselves as candidates at those elections. If that suggestion were acted upon, there would be no anomaly in the proceeding; while it would give to some noblemen an interest in political elections, who at present have no seat in the Upper House, and no Parliamentary connexion whatever.

NOTANDA.

C. L. P. A. Act, 1870, *s. 6; question of title; visible means.*—Motion that action be remitted to the Recorder of the City of Dublin, unless security for costs given. The action was for £100 damages, for assault and battery; and £50, for breaking and entering plaintiff's chamber and ejecting her. The defendants deposed that the plaintiff had no visible means; that they did not commit the acts complained of; but that one of them, acting for his son, asked the plaintiff, she then being a trespasser in his son's house, to withdraw, and, she having refused, endeavoured to remove her, using no unnecessary force. The plaintiff replied that she was entitled to a share in a valuable leasehold interest in a house and 21 acres of land at Garrymoyle, county Wexford; that the defendants entered her sleeping-room in Lower Mecklenburgh-street, Dublin, and dragged her off her bed, and down the stairs, scratched her arms, and took her veil and gloves from her trunk and tore them. Plaintiff's statement as to the assault was corroborated by J. Wall and Sylvester Stamp. The latter deposed also that he and one J. F. Hickey were in partnership, carrying on business as grocers in the house in Mecklenburgh-street, where he still resided; that Hickey having absconded, leaving him in sole possession of the house, he induced his sister the plaintiff to come there on a visit, where she lawfully was at the time in question. The defendants rejoined that they did not know what share plaintiff might have in the premises in Garrymoyle, but that she and her brother were living in a state of abject misery in Mecklenburgh-street, where they slept on the boards with no bed of any kind; that it was untrue that Sylvester Stamp had any right to the house or carried on a partnership there, said house having been taken by J. F. Hickey under a lease (referred to), and that one of the defendants, and not said Sylvester Stamp,

Digitized by Google

was left in possession by said Hickey; that Hickey was afterwards adjudicated bankrupt; that Sylvester Stamp was allowed to sleep in the house as part of his remuneration, but had no right to bring any one else there, and the plaintiff had no pretence for remaining there.—*Perry* in support of the motion. *Plunkett contra.*—Fitzgerald, J., was of opinion that no *bonâ fide* question of title was shown to be involved; he was not satisfied that the plaintiff had visible means to pay the costs, the value or extent of her share in the lands not being stated; and neither did he think that she reasonably ought to recover more damages than the Recorder could decree for. *Motion granted.* (*Catherine Stamp* v. *Joseph W. Hickey*, *John Hickey*, and *Joseph Hickey;* Con. Ch., Sept. 4, 1874.)

Habeas corpus ad testificandum; affidavit of attorney for applicant that witness can give material evidence.—*Keogh*, on behalf of the prosecutor in this case, moved for a writ of *habeas corpus ad testificandum*, to enable the prosecutor and five or six other persons, in custody in Londonderry gaol, under sentence of six months' imprisonment, to be brought before the magistrates of Kilrea sessions, and examined relative to a charge of assault, brought against the defendant Graham. The motion was grounded on an affidavit by Mr. Rea, the prosecutor's attorney, who stated that on the 17th of last March, as Darragh (the prosecutor) and other persons were returning from a Roman Catholic chapel at Magherafelt, they were assaulted by a number of Orangemen, amongst whom was the defendant, Graham. A summons on behalf of Darragh was taken out against Graham. It should have been heard on the 21st of March, but was postponed for various causes until after the spring assizes. At those assizes only four persons who were connected with the riot were tried, when Barry, J., made strong observations on the circumstance that others connected with the riot had been allowed to go unpunished. Since the 3rd of August the magistrates at Kilrea had been investigating the transaction, and they had declined to commit the defendant Graham without proof that he had laid hands on Darragh. He, also, deposed that "the evidence of the persons in gaol was material, and was needed for the investigation before the magistrates."—Fitzgerald, J.: In order to warrant me in granting a writ of *habeas corpus* to take prisoners out of gaol in order to give evidence, I must be satisfied that their testimony is material and necessary for the party seeking the writ. You have only the affidavit of the attorney stating (it may be from something which was told to him by some one or other), that the witnesses can give material evidence. There is no affidavit to that effect by the prosecutor himself, or the witnesses, or by some one—a policeman, for instance, who was present—having actual knowledge of the circumstances of the case, enabling him to say that the evidence sought is material. You may renew your application on a further affidavit. I must see how the evidence is material. (*Darragh* v. *Graham;* Con. Ch., Sept. 4, 1874. The motion having been renewed, Sept. 6, on a further affidavit by Mr. Rea, a writ issued to bring up two of the witnesses)

L. & T. Act, 1870; *compensation for disturbance; discretion of Chairman as to amount awarded; reviewing amount, on appeal.*—Appeal from the decision of the Chairman, allowing three years' compensation for disturbance. The tenancy commenced in 1869. The appellant's case was, that under the terms of the agreement the tenants were not allowed to break up the land, and that he served them with notice to quit in consequence of their having done so contrary to the agreement; and further, that they were only tenants for a year certain. The respondents proved that the tenancy was from year to year, and that they were to be at liberty to break five acres of land.—*Robinson*, Q.C., for the appellant, contended that, even if there were a tenancy from year to year, the breach of agreement was sufficient, under the 18th section, to bar the tenants' right to compensation; and further, that if the claimants were entitled to compensation, the amount granted was excessive for a tenancy commencing in 1869. *H. Macdermott*, for the respondents, *contra.*—Fitzgerald, J., held that the tenancy was one from year to year, and there was liberty to break the land to the extent of at least three acres, which the tenants had not exceeded. Therefore, the 18th section did not apply. With regard to the amount allowed, he confessed that if he had tried the case originally he might have felt inclined to allow only two years' compensation. On the other hand, others might perhaps allow still more than three years. On the whole, he would be very slow to interfere with the discretion which was properly vested in the Chairman, and which he had seemed to use not unwisely or excessively in this case. He would, therefore, affirm the decree below, with costs. No expenses of witnesses (*Lord Mountmorris*, App., *v. Hamilton & Kyne*, Resp. Galway Summer Assizes, 1873.)

B. A. Act, 1872, *s.* 73; *Bankrupt in prison under warrant of Court of Bankruptcy; warrant to bring him up for examination; expenses.*—Motion that a warrant should issue under B. A. Act, 1872, s. 73, to bring up the bankrupt, in order that he should be personally examined as to his affairs, at the first public sitting. He had been arrested under a warrant granted by Harrison, J., under the B. & I. Act, 1857, as having been about to leave the country; and he had made no application to surrender. *Perry*, on behalf of the petitioning creditors, moved on an affidavit of an assistant to Octavius O'Brien (agent for the bankruptcy), stating that the bankrupt was at present a prisoner in the county gaol of Tullamore, in the King's County, under a warrant of this Court, dated Aug. 11, 1874; and that it was absolutely necessary, as he was informed and believed, that the bankrupt should be personally examined as to his affairs at the first public sitting, which was fixed for Sept. 8; and that, accordingly, a warrant should issue, directing him to be brought up to this Court on that day for examination.—Miller, J.: I shall allow the warrant to issue, but the petitioning creditors' solicitor must give an undertaking to pay the expenses incurred by bringing up the bankrupt, as there is no other way of providing for them. *Order accordingly* (*Re J. Beahan*, a bankrupt; Ba., Sept. 4, 1874).

Practice; attesting witness to will refusing to make any affidavit; subpœna ad testificandum.—*O'Riordan*, on behalf of the deceased's widow, who was desirous of obtaining letters of administration with the will annexed, moved for liberty to issue a writ of *subpœna ad testificandum*, requiring the surviving attesting witness to attend in order to be examined *vivâ voce*. The witness admitted that the will had been duly executed, but refused to make the ordinary affidavit for the purpose of administration being taken out. Warren, J., granted the application, under 20 & 21 Vict., c. 79, s. 29 (*Goods of Dorgan;* Prob., Jan. 12, 1874).

Solicitor to the Corporation.—The committee appointed to report upon the salary and duties of the city solicitorship have agreed to recommend to the Council that the salary shall be £800 per annum, and £150 per annum for an assistant, with offices in the City Hall; the gentleman appointed to devote his whole time and attention to public business.

The resignation of Mr. Vaughan Williams, as judge of the North Wales County Courts, has been sent to the Lord Chancellor.

Digitized by Google

JUDICATURE COMMISSION.

Fifth and Final Report of the Commissioners.

To the Queen's Most Excellent Majesty.

We, your Majesty's Commissioners, appointed by your Majesty under the royal warrants annexed, to make inquiry (*inter alia*) into the operation and effect of the present constitution of the Central Criminal Court, the Courts of Quarter Sessions, and the present arrangements for holding the assizes in England and Wales, with a view to ascertain whether any and what changes and improvements may be advantageously made so as to provide for the more speedy, economical, and satisfactory dispatch of the judicial business now transacted by these courts and at the assizes respectively; and also as to the duties of the several officers, clerks, and other persons of or connected with the courts in the said warrants mentioned, or any of them, their salaries, fees, and emoluments, with a view to ascertain whether any, and if any, and what alterations may advantageously be made therein, do most humbly present—this our final report to your Majesty upon the matters thus referred to us.

We should in the first place state, that we had under our consideration for some time the subject of the expediency of the appointment of public prosecutors in England and Wales, and while we entertain no doubt that the creation of such an office would materially add to the efficiency of the administration of criminal justice in this country, we are not agreed among ourselves as to the best method of constituting this office.

A committee of our members, to whom we referred the consideration of the question, has made a report in favour of the appointment of public prosecutors, with the details of a scheme for the constitution of the office, its duties, and remuneration; but the Lord Chief Justice of England dissents from the details of this scheme, and has given his reasons in a separate memorandum. Coupled with this fact, there exists a doubt whether the subject is strictly within the terms or powers of our commission. Under these circumstances, we think we shall best discharge our duty by submitting to your Majesty the report of our committee, and the memorandum of the Lord Chief Justice of England, which are respectively subjoined to and form part of this report. The evidence and other information we have obtained will be found in the first appendix.

The Report.—*Preliminary Observations.*

The committee has had before it the evidence taken before the committee of the House of Commons, ordered to be printed on 9th August, 1855. It has taken some evidence as to the mode in which criminal justice is administered in the colony of Victoria, in which the law is substantially the same as that of England; and also some evidence as to the mode in which the investigation of criminal charges is practically conducted by the procurator fiscal in Scotland, from which it appears that the criminal law in Scotland is radically different from that in England; and the practice in that country could not be adopted here without very extensive changes in the law.

The Committee has been furnished by the Home Office with much valuable information, and with a confidential statement of the scheme at present under the consideration of the Government.

It is unnecessary to say that particular attention has been bestowed on this scheme, and that, as far as possible, the suggestions now made are framed so that they may be considered along with it. Much of that scheme consists of provisions for taxing and regulating the costs of prosecutions, a matter which does not fall directly under the notice of the committee. Indirectly it does, for the extra expense of any scheme proposed is an important element in considering whether the good to be expected from the change is worth what it will cost.

The committee proceeds on the assumption that it is agreed that it is desirable that no part of the cost of bringing an offender to justice should be borne by the person injured. It is not possible to prevent some inconvenience which must be borne by those who are witnesses in a criminal case; it should, however, be made as light as possible, and no additional burthen should be cast upon them. And in considering the expense which would be occasioned by any scheme of this kind, the costs which are now incurred by private persons, and which would under the scheme be borne by the Government, ought not to be considered as extra expenses of the scheme, though they would increase the charge upon the Treasury.

The committee has not taken into consideration those proceedings which are instituted with a view to a summary conviction. This report is confined to proceedings instituted with a view to a criminal trial by jury. Nor has the committee inquired whether or not any improvement could be made in the present course of administering criminal justice in England; but has considered the scheme for public prosecutors as applicable to the existing criminal procedure. Should any changes be made hereafter in the criminal law, any scheme for public prosecutors now framed may be altered so as to adapt it to those changes.

It is the opinion of the committee that it is desirable that there should be some scheme adopted for providing public prosecutors in England and Wales.

Whatever scheme is to be adopted, it seems desirable that there should be no interference with the prerogative of the Crown and the powers exercised by the Attorney-General as representing it; and as little interference as possible with the powers of private persons to institute prosecution. And that the new scheme should (at first, at least) be concurrent with the existing procedure. Should a scheme for public prosecutors be framed and work so as to give satisfaction, it is probable that private prosecutions would cease to be instituted, as is practically the case in Scotland, where, as it seems, the right of a private person to institute a prosecution exists, but has only been exercised once in the last fifty years.

Proposed Classes of Cases to be conducted by the Public Prosecutor.

The first question to be considered is, what class of cases should be conducted by public prosecutors, and consequently at the public expense. There seems to be three classes of cases:

1st. There are matters not really of a criminal nature, involving only civil rights, but for which the remedy is by an indictment. Such, for instance, are indictments for not repairing or for obstructing a high road. These should be conducted by and at the cost of the parties interested. The public prosecutor should have no power to take up such cases.

2nd. There are cases such as indictments for common assaults, and for libels on private persons, and for public nuisances, and others which might be suggested. These are often in their nature proceedings to obtain redress for private wrongs, which, if instituted at all, should be instituted at the cost of the party aggrieved, but sometimes are of such a nature that the interests of public justice require that the injured party should be protected. In cases, therefore, within this class, the public prosecutor should not intervene, unless directed to do so by some superior authority. It is a point of importance to determine who that superior authority should be, and that will be considered hereafter.

3rd. The third class would embrace all other cases, whether technically called felonies or misdemeanours, for, as a general rule, all cases that are proper subjects for criminal proceedings at all, are proper cases to be conducted by a public prosecutor.

The present state of the law as to the allowance of costs is not such as to afford any satisfactory guide in defining what cases should fall within these three different classes. It will be found that costs have been allowed or not in different Acts of Parliament without much regard to principle. Probably, the only practical course is to define as far as practicable that class of cases in which, by the law as it now stands, a proceeding really instituted merely to obtain redress for a private wrong, may be criminal in its form, and to enact that in such cases a public prosecutor should not intervene without directions from a superior authority.

Digitized by Google

Intervention of the Public Prosecutor.

The first matter which your committee took into consideration was whether it was desirable that the public prosecutor should intervene in the earlier stages of the prosecution, and the result of their consideration is that, as in the great numerical majority of cases his intervention would not be required, it was not desirable as a general rule that he should so; but that it was desirable that there should be discretionary power in some superior authority to direct that a public prosecutor should intervene at any stage.

Mode of appointing Public Prosecutor.

The next subject to which your committee directed its attention was, what was the best practical mode of appointing public prosecutors, and what class of persons they should be.

The opinion of the committee is that the metropolis should form one district, and that the rest of England and Wales should be divided into districts, within each of which there should be a sufficient number of local public prosecutors resident who should be attorneys. The boundaries of those districts must depend upon the nature of the place, and whether it is densely peopled or not, and that must be left as a matter of detail to be settled by the Government, either in the Act, or by a power taken in it, to appoint and vary them from time to time.

In country districts, there almost always is at least one attorney who is a suitable person for the office of public prosecutor, and who has been induced to settle within the petty sessional division in the hope of uniting in himself the offices of clerk to the justices, to the highway board, to the guardians of the poor, and so on; these are offices of which each taken by itself is not of much emolument, but which taken together are a sufficient inducement to make a respectable man settle in the district, the more especially as the possession of those offices, being a voucher for his respectability, tends to procure his employment in civil business. It seems, therefore, desirable that the public prosecutor in country districts should (at least by preference) be the clerk of the justices, and that he should be at liberty to hold other civil situations and to practise in civil matters. In cases in which the intervention of a public prosecutor before the justices is ordered, the clerk to those justices could not well act, but there would be no difficulty in such cases in substituting another public prosecutor.

The Salaries of Public Prosecutors, and restrictions as to practising.

It seems clear that no public prosecutor ought to be allowed to practise privately in criminal cases at all, and that he should be paid by a salary.

In all cases it seems advisable that the local public prosecutors should be paid by fixed salaries, and not by fees, so as to avoid any imputation of a bias to bring cases improperly into court. It is not likely that in fact public prosecutors would be biassed by such an unworthy motive, but it is almost certain that it would be imputed to them.

The cases in which a special inquiry or prosecution is ordered by the chief public prosecutor, probably must be an exception to this rule on account of the difficulty of fixing a salary for services so uncertain in their amount, and so irregular in their occurrence.

Employment and Retainer of Counsel.

Counsel should be employed always at assizes, and in general at quarter sessions, and those counsel should in general be selected by the public prosecutor, who is responsible for the satisfactory conduct of the case. In special cases the chief public prosecutor might give directions as to who were to be employed; but it is not thought desirable that there should be a standing counsel for all prosecutions, either at the assizes or at quarter sessions. It may perhaps be different at the Central Criminal Court.

Power to Secretary of State to regulate Procedure.

As unforeseen matters may arise, it would be advisable to take by statute, powers to the Secretary of State with the concurrence of the law officers of the Crown, to make from time to time rules to regulate the practice in cases of prosecution.

Preservation of existing Procedure in certain Cases.

It is advisable that, in the first instance, as little change should be made in the general law as possible.

The powers of the Crown, acting by the Attorney-General, to prosecute as heretofore should be untouched.

So should the system of criminal information by a private relator in the name of the Queen's coroner and attorney by order of the Court of Queen's Bench, a power which is anomalous in theory, but which, as worked for many years, is of practical benefit.

And the powers of a private prosecutor should be preserved. If the public prosecutors conduct themselves (as it is to be expected that they will) so as to acquire public confidence, it may be expected that private prosecutions will fall into disuse, as they have in Scotland.

It should, however (in order to prevent unseemly altercations in court), be provided that where a public prosecutor does take up a prosecution he should, in all cases, have the conduct of the prosecution either before the justices or at the trial, in preference to any private prosecutor.

The system of coroners' inquests may for the present be allowed to remain, but it should be provided that the finding of a coroner's jury should not any longer have the effect of an indictment, but only authorise the issuing of a warrant by the coroner to bring the accused before a magistrate, and operate as instructions to the police and the local public prosecutor to investigate the charge.

6th June, 1873.

The following is the memorandum of the Lord Chief Justice of England mentioned in the report:—

THE MEMORANDUM OF THE LORD CHIEF JUSTICE OF ENGLAND ON THE ADVISABILITY OF APPOINTING A PUBLIC PROSECUTOR.

I concur with the other members of the committee in the opinion that the appointment of a public prosecutor is desirable, but I am unable to concur in recommending in all its details the scheme for constituting the office of public prosecutor which has been submitted for our consideration.

Every act which the law constitutes a crime is, as such, an offence, not against the individual who may have been injured by it, but against the community or State. Where, therefore, an offence has been committed, it ought not to be left to the will or the ability of an individual to institute a prosecution, but such prosecution should be instituted by, and on behalf of, the State, through its appointed officer; in other words, the public prosecutor. And not only is this clear in principle, but it holds good also in point of practical expediency. For, so long as the prosecution of an offender is left to the individual injured, not only may offences be condoned which ought to be prosecuted to conviction and punishment, but prosecutions may, and frequently do, fail from the want of means, or of legal knowledge or care in the prosecutor, or in those to whom he has committed the conduct of the prosecution.

The English system, differing in this respect from that of Scotland, and of all the nations of the Continent, leaves the prosecution of offences to individuals, without further security for the due conduct of the proceeding than the binding over of the intending prosecutor by the committing magistrate.

The Attorney-General is, indeed, in theory the public prosecutor, and has so far the control over the proceedings in criminal cases, that he has power, by entering a *nolle prosequi*, to stay all further proceedings in a prosecution. But the only instances of prosecutions by the State are those for treason or sedition, or where the Attorney-General files an information *ex-officio* for offences against the Crown or Government, or where prosecutions are instituted by public departments, as by the Post Office or the Mint, for offences in which such departments are specially concerned, or where prosecutions for injuries to private individuals are taken up by the Government by reason of their peculiar gravity and importance, or of

Digitized by Google

special circumstances rendering it desirable that the Government should come to the assistance of and take the place of the individual prosecutor. Even in such cases the action of the Government is not determined by any legal authority, but depends on the will of the Commissioners of the Treasury. This system, which thus leaves the prosecution of offenders in general to private prosecutors, is not only faulty in principle, but not unfrequently defective in its results.

It seems to me that both in theory and in practice every prosecution, however small the offence, should be subject to the control, and, if necessary, to the action of a public officer or officers appointed by and responsible to the State.

It is no doubt true that, to a very considerable extent, the present system, practically speaking, answers its purpose. In the great majority of cases, especially as regards the more common offence of larceny, the proofs are clear, and may be collected without difficulty. The evidence is got up, and the witnesses are got together, and brought in the first instance before the magistrate, and afterwards before the court by the local policeman. The evidence having been given, the prisoner is in the first place committed, and the evidence having been repeated on the trial, a verdict of guilty is pronounced, the prisoner receives sentence, and justice is satisfied. But, even in these apparently simple cases, it seems to me that this mode of proceeding is scarcely satisfactory. It is, as it strikes me, scarcely consistent with the proper administration of justice in criminal cases, that the police, whose proper functions are to prevent or detect crime, and to apprehend offenders, should be entrusted with the duty of getting up prosecutions, and of communicating with the witnesses. I have a high opinion of the police in general, but my experience satisfies me that their zeal sometimes leads them too far, and that the getting up of the prosecution should not be left to them after the first stage of the proceeding—certainly not without proper control.

With this reservation, however, if all offences were of the simple class just referred to, there would be but little necessity for any material alteration in the present system. But cases of a more complicated and difficult character too often present themselves, in which the detection of the criminal, or the proof of the crime, is of greater difficulty, and calls for a greater command of knowledge and skill. It is true that in the more serious and difficult cases the private prosecutor in general employs an attorney. But it is optional with him to do this, and the attorney is not always conversant with criminal law; he has generally other business to attend to; he is satisfied with the evidence on which the prisoner has been committed, when some link in the proof is yet wanting to establish conclusively the guilt of the accused.

There can, I think, be no doubt that offenders frequently escape, not only by reason of want of ability in their discovery or detection, but also through deficiency of knowledge, skill, or care in bringing the case into court.

It seems to me, therefore, that every prosecution should be either under the entire direction or control of the public prosecutor, or at all events within the reach of it—the simple class of cases, because no prosecution should be left to the uncontrolled management of the police—the heavier ones by reason of their gravity and importance—and offences of every class, where difficulty of proof presents itself in order to prevent the prosecution and punishment of offenders from being frustrated by want of knowledge, skill, or care in conducting the proceedings.

It is obvious that, according to the gravity or difficulty of the particular case, the interference of the public prosecutor may be called for in a greater or less degree. In the simple class of cases, the mere supervision of a subordinate functionary would be sufficient. In the more important or difficult cases, the active intervention of functionaries of a higher order may be essential to the efficient conduct of the prosecution.

I entirely concur in thinking that an officer should be appointed as the chief public prosecutor. A single officer could not possibly superintend and direct prosecutions all over the country, and it follows that in any effective scheme the country must be divided into a given number of districts, and an officer appointed for each of them. It would no doubt be possible to leave each of such officers independent of any other; but I have no hesitation in thinking that the appointment of one chief public prosecutor, who should have the general control of all public prosecutors throughout the country as his deputies or subordinates, would be infinitely preferable.

But the main point on which I differ from the proposed scheme has reference to the distinction recommended to be made between town and country districts as regards the qualification of the officers to be appointed. I cannot concur in recommending the adoption of such a distinction. If men of superior legal attainments and experience are to be appointed for urban districts, or for counties having a mining or manufacturing population, I can see no reason for appointing officers of inferior capabilities for agricultural districts. It is true that offences are less frequent in agricultural and less densely populated parts of the country; but the offences committed in the latter are frequently by no means of a less grave character, or less difficult of detection and proof. To provide that the magistrates' clerks shall in these districts be the public prosecutors would be to leave things just as they are at present. Almost all the prosecutions in the rural districts are now conducted by the magistrates' clerks; and though in the ordinary run of cases these gentlemen do their work efficiently, the system has not worked satisfactorily, as appears to be evidenced by the general demand for the institution of public prosecutors. The position of the justices' clerk is no doubt a guarantee for the respectability of the practitioner, but is scarcely a sufficient test of the knowledge and ability required in a public prosecutor.

The only distinction which should be made, as it seems to me, between town or other populous districts, and purely agricultural counties, is this, that offences being less frequent in the latter, the districts committed to the local officers might be larger, and the number of these officers consequently smaller. But, as regards the qualification, there should be no distinction whatever. What is wanted is the superintendence, control, and direction, whenever required, of a superior capacity and judgment. To leave the conduct of prosecutions in the hands in which it at present remains would, so far as concerns the district to which this principle is proposed to be applied, have the effect, I cannot help thinking, of marring altogether the efficiency of the proposed institution.

It may be said that it would always be open to these officers to apply to the chief prosecutor for advice or directions; but there might not always be sufficient time to admit of such a proceeding, and the number of such applications from a number of officers distrustful of their own competency, and fearing the responsibility of acting on their own judgment, might prove very embarrassing.

Another part of the proposed scheme in which I am unable to concur is that which leaves any doubt as to the power or duty of the public prosecutor to intervene from the earliest commencement of a criminal prosecution.

At present, where a crime has been committed, the detection of the offender is for the most part left to the police, who generally take the matter into their own hands. The result is by no means always satisfactory. Sometimes, led on by an indiscreet zeal, they arrest, or cause to be kept in imprisonment, persons against whom there is no proof, and who are afterwards discharged, or against whom, on their being brought to trial, the proof breaks down. On the other hand, it sometimes happens—more especially in the rural districts—that the police, from want of skill or intelligence, prove inefficient in tracing and apprehending persons who have committed crime. To make the system of public prosecutions complete, every case should at the earliest moment be brought to the knowledge, and be subject to the direction and control, of the public officer of the district, and it should be competent to him to intervene at any stage, though, in the great majority of instances, he might deem it unnecessary to do so earlier than for the purposes of the trial.

The system which I would venture to recommend would be this:

There should be a chief public prosecutor—an officer of the state. He should be a barrister of standing and attain-

Digitized by Google

ments, experienced in the practice of criminal courts. He should hold his office during good behaviour. If he were made removable at the pleasure of the Government, it would be difficult to induce members of the Profession of sufficient standing and qualifications to accept the office.

The whole of England and Wales should be divided into a given number of districts, according to the number and character of the population, and for each of these a public prosecutor should be appointed. All these should be subordinate to the chief public prosecutor, and act as his deputies, and be bound to obey his directions; they should be removable at his discretion, with the concurrence of the Secretary of State of the Home Department.

London and the area comprised within the jurisdiction of the Central Criminal Court, or possibly one extending over the whole of the metropolitan counties of Kent, Surrey, and Essex, should constitute a district of itself. For this district a sufficient number of public prosecutors should be appointed, and those should constitute the immediate staff and council of the chief prosecutor, should assist him with their advice, and under his directions conduct all prosecutions within the district in question.

All persons holding the office of deputy public prosecutor should be barristers or attorneys of a given standing. They should be paid by salaries, not by fees, and be required to give up all other practice. It should be their duty in all cases of more than ordinary difficulty to communicate with the chief public prosecutor, and act under his instructions.

It should be the duty of the police, as soon as a crime is known to have been committed, or a person suspected of a crime has been apprehended, to report the same to the local public prosecutor; and it should be made incumbent on the magistrates' clerks to transmit the depositions, as soon as taken, to that officer, with any remarks which the case may appear to them to call for. A slight addition to the salaries of these clerks would compensate them for this new duty. It should not only be competent to the public prosecutor, but made incumbent upon him, to intervene in the conduct of the case at any moment that the circumstances may seem to him to require it. In every case which proceeds to trial it should be his duty to look through the depositions, and to see that the proofs are complete before the case comes into court. If further evidence should appear to be required, it should be his duty to take the necessary steps for procuring it, if possible. It should be his business to prepare the brief and instruct counsel—in short to do all that the attorney employed by a private prosecutor now does. It should be his duty to attend at all assizes and sessions held within his district, and to conduct the prosecutions on such occasions.

It is obvious that to discharge all these duties the local prosecutor would require a staff of two or three clerks; no man could efficiently perform them without assistance. All this would no doubt entail considerable expense, but it must be remembered that all the costs now allowed on taxation to attorneys concerned in prosecutions would be saved; so that it may be doubted whether, while a more efficient administration of justice would be introduced, the country would not on the whole be a gainer in a pecuniary point of view. Even if this should not prove to be so, if a new system by which the prosecution of offenders is to be transferred to a public prosecutor, instead of being left to the management of private individuals, is to be established, the question should not be considered as one of pounds, shillings, and pence, but should be looked at solely with reference to the means by which this department of the administration of justice can be most effectually carried on. No economy can be more ill-judged than that which would make the prosecution of offenders with a view to the suppression of crime a matter of pecuniary consideration. Our business, as it seems to me, is to suggest the means by which the prosecution and conviction of offenders may be most effectually carried on and insured, leaving to the Government and the Legislature to determine whether our recommendation shall be carried out or not. Of one thing I am assured, that it would be better to leave things as they are than to substitute for the existing system anything which shall not be a comprehensive and thoroughly efficient institution in the place of it.

If a public prosecutor should be appointed, invested with the powers thus proposed to be conferred on him, it seems to follow that in all cases within his authority the power should be given him to put an end to the prosecution at any stage up to the time of the accused being given in charge to the jury. The power, now vested in the Attorney-General, of entering a *nolle prosequi* should, therefore, in such cases be vested in the public prosecutor, nor should it be competent to the Attorney-General to interfere with his discretion in this respect by the exercise of his power. In other words, the power should be transferred from the Attorney-General to the new officer.

I concur in thinking that all prosecutions in which the Government is immediately concerned should be left to the Attorney General, without interference on the part of the public prosecutor, except so far as the Government may call for the services of the latter officer. I agree that the power of the Attorney-General to file *ex officio* informations should be left untouched, and that it should be competent to the Government to leave the conduct of Government prosecutions to its own officers; but the cases in which at present the Government occasionally takes up the prosecution as being beyond the means of private individuals, or of too much importance to be entrusted to them, should, if a public prosecutor is appointed, be left entirely to him, as of course all prosecutions instituted by him will be conducted at the public expense, and it must be assumed that the public prosecutor will take care that all prosecutions will be vigorously and efficiently conducted. But I think it essential that it shall still be competent to the Government to call on the law officers to conduct the prosecution on the trial. It is becoming and proper that in the prosecution of great crimes the Crown should be represented by its own officers. Indeed the only ground for not attaching the office of chief public prosecutor to that of the Attorney-General appears to be the impossibilty of that great officer, with the multifarious duties which he had to discharge, being able to give to the new office the attention which it would necessarily require. But I would disconnect him as little as possible with the administration of criminal justice in matters in which he has hitherto been concerned in it; and I think it would be highly desirable that the chief public prosecutor should be at liberty in cases of unusual importance to seek the advice of the law officers and to take their opinion on points of difficulty.

I am not insensible of the inconvenience which might result from the distribution of briefs at the sessions and assizes being placed in a single hand, nor do I think that this should be left to the uncontrolled powers of the local prosecutor, or, indeed, of the chief prosecutor himself. But I think there would be no difficulty of making an arrangement by which any possibility of abuse would be obviated.

A. E. Cockburn.

Court of Queen's Bench.
26th May, 1873.

PUBLIC PROSECUTORS.

The *Times*, commenting on the recommendations of the Judicature Commission respecting the appointment of public prosecutors, supports the plan advocated in the memorandum of the Lord Chief Justice of England in preference to the one proposed by the Committee of the Commissioners appointed for the purpose. The Committee in 1873 (the *Times* says) were evidently influenced by their consideration of the "extra expense of any scheme proposed as an important element in considering whether the good to be expected from the change is worth what it will cost." We at once suspect the tone of this remark. It savours of the instinct for cheap display, which is one of the pests of the day. With this view they recommend that the public prosecutor in country districts should be the clerk to the justices. They believe that a "moderate salary" would be sufficient to induce the clerks of justices to undertake this additional duty, and that in cases of special magnitude this moderate salary might be supplemented by additional remuneration. The Lord Chief Justice agrees with his colleagues in the necessity for a Chief Public Prosecutor, and for professional prosecutors, debarred from other legal work, in town districts; but he wholly disagrees from the

Digitized by Google

proposal to invest the country justices' clerks with the new office. He sees no reason why men of inferior capabilities should be appointed for the country districts, where criminal offences are, in his opinion, of a no less grave character, or less difficult of detection and proof. We think, with the Lord Chief Justice, that the recommendations of the committee on this point would, if adopted, have the effect of marring the efficiency of the whole institution. What we want is superior judgment, capacity, and, to a certain extent, experience on a particular subject, and if we can secure this the nation will be ready to pay for it. We want no additional cheap and ineffective officialism. We agree with the Lord Chief Justice in thinking that all persons holding the office of deputy public prosecutor should be lawyers of a given standing, paid by salaries, not by fees, and required to give up all other practice.

The *Post* asserts that the advantage of Sir Alexander Cockburn's plan is that it is at once simple and comprehensive. It makes provision for an adequate and competent staff of prosecutors throughout the country; it exacts a guarantee for their devotion to their duty, and it provides them with a Central Council to which they can look for guidance in cases of difficulty and embarrassment, and by which their actions can be controlled. No better arrangement could be made for securing uniformity, or for giving the country confidence in the system of public prosecution which it has long desired. It will be met by the objection of cost, but that is a consideration that should not for a moment be allowed to stand in the way of a plan which promises so well. There is no worse economy than that which shrinks from undertakings of undoubted public utility on the ground of expense, or which defeats them by niggardliness. It is not economy, it is extravagance.

HISTORICAL SKETCH OF THE OFFICE OF SERJEANT-AT-LAW.

The antiquity of the office of Serjeant-at-law is as ancient as the law itself, and the degree is older than most others. It is said the order flourished before the Conquest. In early times serjeanties were of different kinds. It was the custom to hold lands in serjeanty in various parts, and it appeared to be the special office of those who were created such to defend the rights of the Sovereign. Inferior offices, such as coroner, keeper of the peace, &c., were held by serjeanty. Another class of serjeanties were to attend to the personal requirements of the Sovereign or to perform some particular service relating to war not requiring personal military service. Later on this last species of serjeanty was termed "petty serjeanty," to distinguish it from the others. Serjeanties were also created by some of the great vassals of the Crown, but in later times the term was confined to tenures of the King, designated as "tenures by Knight's service," whilst others were treated as socage tenures.

About the time of the Conquest the order is supposed to have been introduced. Men who had studied the laws in Normandy came to this country with the King, and thus obtained a writ, by the advice of his council, to the degree. They administered the law generally in counties, and it is said the King had serjeants in every county to prosecute pleas of the Crown, but there is no doubt that about this time many cities possessed the privilege of appointing their own administrators of justice.

In the reign of Edward I. the Courts of King's Bench and Exchequer were ambulatory Courts, and followed the King wherever he by chance might go. The Court of Common Pleas, on the other hand, was stationary. Dissatisfaction soon arose among suitors owing to the difficulty of procuring counsel to conduct their cases, and this gave rise to the passing of a statute authorizing 140 persons to act indiscriminately as attorneys and advocates, an arrangement which does not appear to have been very satisfactory, and complaints in parliament were made of the inconvenience of these ambulatory courts to no avail.

Westminster was declared by Magna Charta to be the seat of justice, though Coke observes that this was only declaratory. Early in the reign of Henry II. it was found expedient to appoint Justices to go circuits for the trial of causes, and it would appear that Serjeants-at-law were called on to act when their services were required, as also were the Sheriffs, though it is difficult to say at this period whether one and all, more or less belonged to some religious order who, as an historian observes, "being bound by their order to shave their heads, were, for decency and comeliness, allowed to cover their bald pates with a coif, which has ever since been retained." Whitelock says, it is a mistake to suppose that the Court of Common Pleas was established by Magna Charta, and Coke and others agree that the origin of the Court is unknown. Serjeants are mentioned in the Year Books as early as Edward I., and by Bracton, and in the Mirror of Justice, said to be written before the Conquest.

In the superior courts of Normandy litigants themselves were allowed to plead by their "conteurs," but on the introduction of the Norman system into the superior court of England parties were not allowed to conduct their own causes, but were compelled to engage persons conversant with the law to conduct their suits. These officers were termed "countors," and the amount of fees received by them seems to have induced the conversion of the office into a serjeanty, which was effected by Royal Mandate in respect of serjeants practising in Aula Regia, otherwise the Court of Common Pleas, and by letters patent in respect of those practising in Dublin. They were called narratores, countors or conteors, because the count or declaration comprehended the substance of the original writ and the foundation of the suit. Respecting the position of serjeant at this period, Lord Campbell observed, "If immemorial usage be relied upon, we must remember that serjeants, counters, and other counsel existed in England long before the time of Edward 1st; and there seems every reason to believe that they communicated directly with the parties."

We here introduce the well-known prologue in the "Canterbury Tales," by Chaucer. The Serjeant is addressed as the "Sire Man of Lawe," and is thus described:—

> "A serjeant of the lawe, ware and wise,
> That often hadde yhen at the parvis,
> Ther was also, full riche of excellence,
> Discret he was and of gret reverence,
> He semed swiche, his wordes were so wise,
> Justice he was ful often in assise
> By patent and by pleine commissioun.
> For his science and for his high renoun.
> Of fees, and robes had he many on,
> So gret a pourchasour was no wher non
> All was fee simple to him in effect,
> His pourchasing might not bin in suspect.
> No wher so besy a man ther n'as,
> And yet he semed besier than he was.
> In termes hadde he cas and domes alle,
> That fro the time of King Will were a falle.
> Thereto he coude endite and make a thing,
> There coude no wight pinche at his writing;
> And every statute coude he plain by rote,
> He rode but homely, in a medlee cote,
> Girt with a seint of silk with barres smale;
> Of his array tell I no longer tale."

Lord Campbell remarks, "The purvise is well known to have been a sort of exchange at St. Paul's, where all ranks met to do business, and the Serjeants-at-law, like Roman patrons, gave advice to all who came to consult them. Afterwards each Serjeant-at-law had a pillar in the cathedral assigned to him, where he stood and communicated with his clients.

Lord Campbell further observed, as to this custom, that there was nothing discreditable in it; and that some provincial counsel are still said to "keep the market" in the towns where they reside. The practice of taking instructions directly from the client was followed by the most eminent members of the English Bar up to a recent period. Not only young students, but even such as Sir Edward Coke and Sir James Astham then were, took instructions from their clients in person.

Serjeants appear originally to have been *Servientes regis ad Legem*, but since the reign of Edward I. the term *regis* has been omitted, in recognition of their services to the Commonwealth, except in those cases where the services of Serjeant have been specially required by the king. They were recognised by name and office in the statute of Westminster. The Judges of the courts of law by custom, and in order to enable them to hold assizes, must be of the rank of Serjeants; but Barons of the Exchequer need not be of

Digitized by Google

the degree of the coif, except for the last reason. The coif distinguished the latter from the cursitor barons.

There is no doubt, therefore, that the office of Serjeant has existed from time immemorial. The Serjeant called by the king's writ from the graver persons among the apprentices was of long experience, and though he was not bound to attend his court, except at his pleasure, he, nevertheless, swore "not to delay the people." Neither could he be estranged from the court so that he could not plead. The Serjeant's duty originally was to frame the pleadings in each cause for which he was responsible for deceit or interruption of the due course of justice. Hence the ancient rule of the Serjeant's hand having to be put to all pleas, His coif could not be taken away from him by the court because it was given him by royal writ. By their oath they were bound to serve if called upon. "The oath," says Lord Coke, "consisteth on six parts :—(1) That he shall well and truly serve the king and his people as one of the king's Serjeants-at-law ; (2) that he shall truly counsel the king in his matters when he shall be called ; (3) and duly and truly minister the king's matters after the course of the law to his conning ; (4) he shall take no wages or fee of any man for any matters where the king is party against the king ; (5) he shall as duly, as hastily, speed such matters as any man shall have to do against the king in the law, as he may lawfully do without delay, or tarrying the party of his lawful process in that belongeth to him ; (6) he shall be attendant on the king's matters when he shall be called thereto."

The dignity of the appointment had to be kept up at a very great expense, or what may be considered in those days as a considerable outlay for grand feasts. Connected with this, Serjeants-at-law were allowed, by the sumptuary laws of the period, at the time they took their estate upon them, to enjoy greater privileges, by way of giving liveries to their dependants, than knights and others, and, among a chosen few, they were allowed more broad-cloth in their riding gowns or coats than any body else. There is no doubt that the form and ceremonies of making new Serjeants varied very little for centuries. The description of a call in the reign of Henry VIII. differs very little from the one described in that of George III. It would appear, indeed, that the most ancient calls were the most magnificent and sumptuous, inasmuch as we read that in Henry VII.'s time the King and all his household attended at Lambeth Palace on the call of three serjeants. Their feasts and entertainments were most lavish and sumptuous, and were frequently attended by royalty and the principal nobility, the Lord Mayor and aldermen, the judges and principal officers of state. In the seventeenth century, the custom was to take the usual oaths at the Chancery bar, to proceed (conducted by their respective societies) to Gray's Inn, and perform the ceremony of counting before the judges, to walk in their party-coloured robes (accompanied by officers and others of the societies) to Westminster Hall, where, at the bar of the Court of Common Pleas, they counted again and gave rings to all the judges and serjeants, and afterwards entertained them and the nobility at dinner. It frequently occurred that at the Chancery bar or at the Common Pleas, at the time of the inauguration, addresses were delivered by the Lord Chancellor or one of the Lord Chief Justices. The addresses on these occasions by Lord Bacon, Lord Keeper North, and others, are well known for the large amount of learning they contained. Sir Philip Yorke, afterwards Lord Hardwicke, was the first who counted in English. He was a strong opponent of throwing open the practice of the Court of Common Pleas to the profession generally.

In Lord Hardwicke's time (1775) the last general and regular call took place. On this occasion there were fourteen gentlemen made serjeants, and the instalment was conducted with great pomp and ceremony. On taking the oaths of allegiance and supremacy they attended the courts at Westminster and counted before all the judges and presented rings, after which, in their bar gowns and full bottomed wigs, they met the Judges and ancient Serjeants in their scarlet and purple robes, in the Parliament Chamber of the Middle Temple Hall, and the Benchers and others, in their gowns, when they partook of biscuits and mulled wine. They then proceeded to the Hall, and were addressed by the Lord Chancellor, Lord Hardwicke, in appropriate terms, and had their coifs and hoods placed on them by the Judges, after which they donned their party-coloured robes and tabard and walked to Westminster Hall, accompanied by their colts, clerks, and other attendants, when they again "counted" and more rings were presented to judges, members of the royal family, and the principal officers of State. The whole proceedings ended with a sumptuous dinner in the Middle Temple Hall, where the nobility, judges, and others, according to their respective ranks, took their seats. On a table by itself was a baron of cold beef, with the royal arms planted upon it, which should have been carried in the procession, but was forgotten. The general expenses of the call came to about £185 each, but this is no criterion of the actual cost, inasmuch as presents, far exceeding this sum, in the aggregate, were made to friends at Westminster and on circuit.

In 7 & 8 Hen. IV. (1406), a Bill was presented to the Commons for certain restrictions upon dress, and practically upon hoods (chaperons), "Provided always that the justices of one bench and the other and *the King's Serjeants* may use their hoods as seeming to them best for the honour of the King, and of their estate ;" but it is provided that no esquire, apprentice at law, clerk within the King's hall, or aboding with other lords, of the realm, not being advanced, shall use furs of grey, &c.

It is uncertain at what date rings were first presented, but the origin of mottos dates only from the reign of Elizabeth. Chief Justice Wray, in the nineteenth year of the reign of that Queen, stated that the motto "*Lex Regis Præsidium*" on the rings of Serjeants Bendloes, Powtrell, and Mead, who were said to be the only three serjeants then living, were the first that he had met with. In the second year of George III., on the call of Baron Gould and another, the celebration by means of a feast was dispensed with, and a payment of £100 in lieu of the usual feast and fine of £10 accepted, but wine and biscuits had to be sent as usual. The call of sixteen serjeants in the reign of Charles II. seems to be the largest on record. It is said that William Bendloes was once the only serjeant for part of the time of Philip and Mary and part of Elizabeth's reign. It is possible, or more than probable, that this was owing to the writs abating after the death of Mary, as in 1 Elizabeth four serjeants were arguing in the Common Pleas.

On the other hand, the serjeants possessed privileges to which the apprentices and others were not entitled. The distinction between a serjeant and an ordinary advocate was that serjeants were sworn not to attend to the behests of the crown alone, but to serve the king's people against the king, while apprentices were called for no particular object, and were not sworn. They had exclusive right of practice in one particular court, and their services were always brought into requisition in the leading and better class of business in the profession. Though not by the oath were they bound to serve the king, but in several instances Parliament compelled them to defend the Throne, and also called upon them to attend at the trial of petitions in the House. They were exempt from knighthood, which by the common law of the period, was imposed upon persons having a pecuniary standard, and was considered by many more a burden than an honour. In the reign of Henry VI. a serjeant having refused to appear to receive the order of knighthood, pleaded his privilege, which was accepted. No serjeants were knights till the latter part of the reign of Henry VIII. Serjeants had also an exclusive right of practising in the Marshalsea Court—a Court for the trial of causes for the recovery of small debts, abolished by the County Court Act, but this right was taken away by statute in the reign of Henry VIII. They were exempt from being empannelled at the grand assize. They signed all pleas, and were frequently consulted by the judges on points of law, and were eligible to sit as judge at assize. The appointment was always considered one of rank and distinction.

Serjeants-at-law were known and recognized as a body having precedence in ancient times. Their leading at the bar was established by custom and ancient usage. In former times the King's premier serjeants, and the King's ancient serjeant took precedence of the King's advocate, attorney, and solicitor-general ; but in 1814, the Attorney

Digitized by Google

and Solicitor-General, by Royal Warrant acquired precedency and priority of rank over the premier and ancient serjeants. This occurred more from accident than otherwise; Serjeant Shepheard, who was the King's ancient serjeant, being appointed solicitor-general, would have led the attorney-general. It was, therefore, necessary to make some alteration. By special order of the Prince Regent, the Queen's premier serjeant and the Queen's ancient serjeant rank next the solicitor-general, and the Queen's advocate next after the Queen's serjeant.

A Serjeant once offered to move before the Attorney-General Sir Francis Bacon, who indignantly appealed to the Court, on which Chief Justice Coke remarked that, "No serjeant ought to move before the King's attorney, when he moves for the King, but for other motions any Serjeant-at-law is to move before him, and when I was King's attorney I never offered to move before a serjeant unless it was for the King." The order of precedency among advocates is now as follows:—1, Queen's Advocate-General; 2, The Attorney-General; 3, The Solicitor-General; 4, Queen's Counsel; 5, The Serjeant-at-Law; 6, Barrister-at-Law. The patent of precedence places a Serjeant on the same footing as a Queen's Counsel, ranking next after the one last appointed. The Common Serjeant of the City of London not being admitted to his office by virtue of the King's writ has no right of audience; but he takes precedence of those who are neither Serjeants or Queen's Counsel, and he sits within the Bar at *Nisi Prius* with a silk gown. Serjeants who have been knighted do not precede others who are not.

In 23 Car. II., Sir Edward Turner, Speaker and Solicitor-General, is said to have been the first King's counsel. Sir F. North is also said to have been the first King's counsel. He was called upon to argue on behalf of the Crown in a case before the House of Lords, in the place of the Attorney-General, who being an assistant of the House was not privileged to argue, on the termination of which he was made a "King's Counsel" which gave him preaudience within the bar. Lord Bacon was made a King's counsel extraordinary, but without patent or fee, or a kind of *individuum vagum*.

The coif is the badge of the Serjeants. It is composed of lawn, and worn on their heads under their caps when created. They possess the privilege of wearing it in the presence of royalty. Robes, in various forms and colours have been used from time immemorable to distinguish the advocates and administrators of justice. Party coloured robes were much in vogue in Chaucer's time, which gave rise to his "Parson's tale." They were used to ensure due respect being paid to persons and office. Lord Clarendon observed that if they were laid on one side the people would soon lay aside their respect. The judges, serjeants, and attorneys all had their party coloured robes both for winter and summer, and their robes were considered essential to the law itself.

In 1765 was published a pamphlet by E. Wynne, entitled "Observations touching the Antiquity of the Degree of Sergeant-at-law." The body of the work was by some other hand, as is stated in the advertisement to it as follows:—"If the project that occasioned these observations had not stopped almost as soon as it was conceived, these papers, I am pursuaded, would have been published by the author." Wynne merely annotated it. The paper had reference to a scheme to be brought before the House of Commons "to lay open the Court of Common Pleas, and to empower all barristers to practise in that Court as serjeants do now." This proposition was laid before the judges by Lord Chief Justice Willes in the form of a Bill, "That it be enacted that all barristers may practise in the Court of Common Pleas as the serjeants do now, and (as the consequence of that probably will be, that there will be no more serjeants), that it be likewise enacted, that for the future any barrister of such a standing as shall be thought proper, may be a judge of any of the Courts of Westminster, and be put into any of the Commissions on the respective circuits, though not a Serjeant-at-Law, and without being called to the degree of Serjeant at-Law.

No change however took place, and things went on as they were till the 25th April, 1834, when in order to facilitate the general dispatch of business in the courts at Westminster, a royal mandate of His Majesty the late King William IV. directed that the right of practising, pleading and audience in the Court of Common Pleas, during term should cease to be exercised exclusively by serjeants-at-law, which order was obeyed by the judges. The court in its sittings after term was open to the whole profession and it might have been difficult to distinguish the difference between this class of business from that conducted during term. The mandate provided also that serjeants-at-law should take precedence next after King's Counsel. This mandate was carried into effect and remained in force for upwards of three years, when the serjeants petitioned Her present Majesty to cause the legality and expedience of the document to be investigated. The petitioners urged that the mandate only contained the sign manual of His Majesty, was not sealed or countersigned; that the Crown alone had not the power to alter the constitution and practice of the Courts; that the prescriptive privileges of serjeants could only be abrogated by Act of Parliament, and that the benefits expected to accrue from the change had not been realised. The petition was accompanied by a memorial to the Lord Chancellor Cottenham, stating more at large the grounds of objection. It stated that the document was deficient in form and solemnity to give it legal effect; that the power exercised was not known to the law; that it had only lately been deemed necessary to pass an Act of Parliament to enable serjeants to be called in vacation in order to be made judges; that nothing but an Act of the Legislature could alter the distinctive character of the court, and citing authorities in favour of that proposition.

In consequence of these representations the subject was referred to the Judicial Committee of the Privy Council, and on the 10th of January, 1839, Sir William Follett opened the case for the petitioners followed by Mr. Austin, the Attorney and Solicitor-General representing the Crown. Mr. Austin, in the absence of Sir William Follett, finished his reply on the 9th of May, and the Court adjourned, but no judgment was ever given. However, on the 18th of the following June, the Lord Chancellor brought in a Bill for opening the Court of Common Pleas, which passed the House of Lords but was thrown out in the Commons. The question then remained in abeyance till 1846, when it was enacted by the 9 & 10 Vict., c. 54:—"That from and after the passing of this Act all Barristers-at-law, according to their respective ranks and seniority, shall and may have and exercise equal rights and privilege of practising, pleading, and audience in the said Court of Common Pleas with the said Serjeants."

The preamble ran thus, that:—"Whereas it would tend to the more equal distribution, and to the consequent dispatch of business in the Superior Courts of Common Law, and would, at the same time, be equally for the benefit of the public if the right of barrister-at-law to practise, plead, and to be heard extended equally to all the said courts, but by reason of the exclusive privilege of serjeants-at-law to practise, plead, and have audience in the Court of Common Pleas during term time, such object cannot be effected without the authority of Parliament."

This put an end for ever to the exclusive right of serjeants to practice in the Court of Common Pleas, and threw the court open to the Bar generally. Though it does not appear how the order of precedence was arranged, as there was no Order of Council on the subject, the serjeants took rank next after the Queen's Counsel last made, but in private society a Serjeant took precedence of a Queen's Counsel. Stript of every privilege, short of having their coif taken from them, the only refuge left was the outer bar. This indignity they suffered for some years, till, in 1864, a kind of body intermediate between the inner and outer bar, they naturally preferred to identify themselves with the former. They accordingly presented a petition to the Lord Chief Justice of the Queen's Bench to be allowed seats within the bar, with the Queen's Counsel, which hitherto had been exclusively occupied by those having a patent of precedence. His lordship considering that similar privileges were accorded in the other courts granted the application.

Serjeants were always included in the commission of assize, but it has been the custom of late years to join all Queen's Counsel on the commission with the judges and serjeants, and the 13 & 14 Vict. c. 25, enables Queen's

Digitized by Google

Counsel and others having a patent of precedence not being of the degree of the coif to act as judges of assize for the dispatch of civil and criminal business.

The High Court of Justice Bill of Lord Hatherly (1870) did not touch the rank and office of serjeant at all. But the Supreme Court of Judicature Act passed last year by section 8 provides, that "henceforth no person appointed a judge should be required to take or have taken the degree of serjeant-at-law."

In Ireland the Crown appoints three Barristers to the rank of Serjeants who take precedence of the Queen's Counsel, except the Attorney-General and Solicitor-General. It is a patent office to which a small salary is attached. They are Crown officers, and included in the Commission. They never had exclusive right to practise in the Court of Common Pleas in Dublin. The full number in Ireland were three, but in 1627 the number was increased and one chosen from the silk gownsmen. They therefore rank higher than Queen's Counsel. The office dates from 1326. The office of King's Serjeant *Serviens Domini Regis* ceased in 1627, and that of Prime Serjeant, with an annual fee of £10, substituted in its place, which in its turn was abolished in 1805. In Charles the First's time, the coif was granted to the judges.—(Condensed from *The Law Magazine and Review.*)

BILLS OF EXCHANGE AND PROOF IN BANKRUPTCY.

The ordinary rule as to proof by holders of bills of exchange, the parties to which become bankrupt, is clear enough; but incidents may arise in connection with the transfer of negotiable instruments which may suggest difficulties and doubts as to the remedies of holders against particular funds, and against the estates of the parties. One phase of this question has been discussed in the recent cases of *Ex parte Brett* (25 L. T. Rep. N. S. 252), and *Re Baumann* (30 L. T. Rep. N. S. 803), where the bills of exchange were accepted specially, that is to say, the acceptance was conditional, and a question of some importance arose in both cases, namely, were such acceptances securities as against the estate of the bankrupt. In Brett's case the acceptance was in this form :—"Accepted, payable at the Imperial Bank (Limited), on the delivery up of the bills of lading and policy of insurance of certain skins." Now, if that was to be taken as an unconditional acceptance, the holders would have been entitled to retain all shipping documents and yet prove for the whole amount of the bill. If, on the other hand, it was a conditional acceptance, the holders were bound to deduct the proceeds of the goods represented by the shipping documents, or hand over those documents to the trustee. The distinction, it will be seen, is a very important one, because, in the one case, the estate of the bankrupt gets the benefit of the goods, and in the other does not. Consequently, it is interesting to trustees to know when they can claim to have the goods drawn against deducted or handed over, and we will briefly examine what has been decided on the subject of conditional acceptances.

A case which bears upon this subject generally is that of *Smith* v. *Virtue* (30 L. J. 56, C. P.) No bankruptcy supervened there, and the question simply was whether the holder was bound to give up the bill of lading on the very day the bill was due. The acceptance was in this form, "Accepted—payable on giving up bill of lading for seventy-six bags of clover seed per 'Amazon.'" Had the bill of lading and the bill of exchange been presented at the bank where the latter was made payable, the bill of exchange could have been paid. This was not done, and the defendant subsequently refused payment on the ground that he was prevented from sending the cargo on to a market—that the acceptance was conditional, and the handing over of the bill of lading a condition precedent necessary to be performed before the holder of the bill of exchange could sue for its non-payment. In delivering judgment in favour of the plaintiffs, Chief Justice Erle said, "The matter to be decided is the meaning of the qualified acceptance the defendants came under. I am clearly of opinion it is a conditional acceptance. I think the defendants could not be called upon to pay unless the bill of lading was delivered to them." The other judges (Justices Byles and Keating) were equally clear that it was a conditional acceptance.

In the case of *Ex parte Brett* the drawers of the bills were the original owners of the goods, and they made a consignment of them to Howe for the purpose of getting them sold in this country, and drew bills on him. On these facts Lord Justice Mellish observed, "It is quite clear that Howe, as between himself and the drawers of the bills, was under no obligation to accept the bills; and, according to the ordinary course of mercantile business, he would refuse to make himself liable to accept them unless he got the security of the goods, and his accepting in this special form was simply a mode of giving himself a security on the goods without depriving the chartered Mercantile Bank of their security in case the acceptances were not paid." Lord Justice James thought that the effect of the acceptances was to make the goods the property of the bankrupt, just as if it had been a contract of sale.

This view of the legal effect of acceptances against goods was adopted in the case of *Re Baumann*, which really involved this very question. The acceptances in that case were against consignments, and the Lords Justices held that they were conditional acceptances, although the condition was not quite so plainly expressed as in *Ex parte Brett*. This observation shows that an express condition, or its equivalent in terms, may make a conditional acceptance, and the Courts will not regard with extreme strictness the terms of the condition. "Now," said Lord Justice Mellish, "The question to be determined is, what is the consequence of that. We held in *Ex parte Brett* that the consequence was that the holder of a bill in such circumstances could only prove after deducting the value of the goods. We thought that the mere fact that the condition did not come completely to an end on the payment being refused at maturity did not make any difference, but that notwithstanding the payment was refused, the goods were still, as between the holder of the bill and the acceptor, to be considered the goods of the acceptor subject to the payment of the bill." Then he quotes the observations of Lord Justice James in that case, and proceeded to consider the further question raised by *Re Baumann*, whether the acceptor before bankruptcy, or his trustee after bankruptcy, could be affected by the terms of a letter of hypothecation of which he had no notice, and to the terms of which he had never consented. That letter of hypothecation authorised the bank with which the bills of exchange and shipping documents were pledged, to realise in the event of the bankruptcy of the acceptor, and charge the usual merchants' commission. On the bankruptcy of the acceptor taking place they did sell, not in the ordinary course, simply employing a broker, but employing merchants, and where they acted on their own behalf they charged their own commission as merchants, which they deducted from the proceeds, and sought to prove for the unsatisfied portion of the amount for which the bill of exchange was drawn. The trustee refused to be bound by the letter of hypothecation, and rejected the proof for the merchants' commission. His decision was supported by Mr. Registrar Roche, and on appeal by the Lords Justices. Lord Justice Mellish said :—"I am of opinion that the effect of the contract contained in the conditional acceptance, and to which the bank agreed by taking the conditional acceptance, cannot be varied or altered by the terms of the letter of hypothecation; and that consequently, as between the trustee and the bank, the goods must be considered subject to the payment of the bill of exchange as if they had been the property of the debtor, and that the bank can only prove after realising the goods and deducting the proper charges which a mortgagee or pledgee of goods would be entitled to deduct upon a sale, and can only prove for the balance. That being so, it follows at once that it is utterly impossible that they can charge any commission for themselves." And on the evidence of usage, his lordship concluded that money paid to merchants as commission on the sale could not be charged against the bankrupt's estate.

We consider that these decisions are of very great importance. It would be a most unreasonable state of things if acceptors on the faith of particular consignments, who accept subject to a condition stated on the face of the bill, were to be held to have no claim to have their liability

Digitized by Google

satisfied out of the consignments. A consignee under acceptances against the particular consignment has an insurable interest—an equitable interest in the whole cargo. The goods are his subject to the payment of a lien given on shipping documents. This being so, and he becoming bankrupt, it is law and equity that pledgees should not be allowed to make a profit out of the estate, or to make charges agreed to be allowed by drawers of bills pledging them, but not consente l to by the acceptors and not sanctioned by the custom of trade.—*Law Times*.

THE TICHBORNE ESTATES.

An Act of Parliament has just been printed, resulting from the litigation of the "Claimant" as to the Tichborne and Doughty estates, and its object is to raise moneys on the property. The statute is to be received in evidence in all Courts, and was sanctioned by the Court of Chancery in a suit which was instituted for the protection of the person and property of the infant heir, Sir Henry Alfred Joseph Doughty Tichborne, against the proceedings of the "Claimant." The act is a very long one, extending to 106 folio pages. There are various recitals of the property in settlement from the year 1806, and the description of the estates and rentals occupies nearly 30 pages. The property is situate in Southampton, Middlesex, Lincoln, Buckingham, and Dorset. One of the objects of the Act is to raise money to meet the costs and expenses of the recent litigation which was commenced in the year 1866. After a detail of the Tichborne and Doughty estates the Act declares that it is desirable that trustees should be appointed to carry out the provisions of the statute, and the court had approved of Henry Lamplugh Wickham and the Hon. Edward Ignatius Arundell, who were willing to act. Under the order of February, 1873, the costs, charges, and expenses had been settled at the sum of £91,677 12s. 2d., as appeared by the certificate of Mr. Bird, the chief clerk of Vice-Chancellor Bacon. It was necessary to obtain an Act to accomplish the objects, and hence the present statute, which in 24 sections shows the manner in which the funds are to be raised under the sanction of the Court of Chancery by the trustees appointed, and for the other purposes set forth by the statute.

RECENT DECISIONS.

EQUITY.

Charitable Bequest—Perpetual Continuance.

THOMAS *v.* HOWELL, V.C.M., 22 W. R. 676, L. R. 18 Eq. 198.

It is rather curious that while the cases deciding that particular objects are or are not charitable within the meaning of the Act of Geo. II. are legion, there should be comparatively so little authority on the question whether, in addition to the object of a bequest being one of those recognized as charitable, there must be the element of perpetuity in order to bring the bequest within the scope of the Act, so as to subject it to the necessity of being paid exclusively out of that part of the testator's estate which consists of pure personalty. From an early period it seems to have been suggested, rather than positively laid down, as one of the essentials of a charitable bequest, that it must have perpetual continuance. Thus in *Attorney-General* v. *Price* (17 Ves. at p. 374) the Master of the Rolls says, "It (the bequest) is to have perpetual continuance in favour of a particular description of persons, and is not like an immediate bequest of a sum to be distributed among relations." And in the earlier case of *Brunsden* v. *Woolredge* (1 Amb. 507), where the trust was to distribute the proceeds of sale of real estate, after paying debts, among poor relations, the fact that the court directed such proceeds to be distributed in accordance with the provisions of the will seems to show (the case having been decided thirty years after the passing of the Act of Geo. II.) that the gift was not considered charitable within that statute, which, as is well known, renders it impossible to give by will the proceeds of real estate to charities.

In many of the older cases the decision of this question seems to have been avoided by assuming that although the words used by the testator were consistent with the immediate distribution of the *corpus* of the bequest among the objects indicated, yet he must have intended to found a permanent institution. Thus in *Attorney-General* v. *Gladstone* (13 Sim. 7), where the testator bequeathed £15,000 to T. R. "to be *by him applied* for the use of the Roman Catholic priests in and near London at his absolute discretion," the Vice-Chancellor thought that "the words of the testator must be construed as importing perpetuity and not as being confined to individuals living at any given period," apparently founding this conclusion on the "probability that the Roman Catholic as well as the Protestant Church will last as long as the world endures." So also in *Powell* v. *Attorney-General and Robert Pendleton* (3 Mer. 48) a bequest of the residue of the testator's estate "to the widows and children of seamen belonging to the town of Liverpool," was construed as intended to create a permanent fund, and, after a reference to the master to report as to what charitable institutions existed in Liverpool for the benefit of widows and children of seamen belonging to that town, it was ordered that the residue be laid out at interest, and the interest applied for the benefit of the widows and children of poor seamen belonging to the port of Liverpool, in like manner as an existing charity of the same kind was applied. In these and other cases the court construed a bequest of a gross sum to a specified class as intended for the benefit not only of the present but of future members of that class, and as implying a direction to distribute not the *corpus* but the interest.

But it is obviously impossible to place this construction on bequests of a specific sum to each member of a class, and the question has arisen whether these latter bequests, not having perpetual continuance, are to be considered charitable. In *Russell* v. *Kellett* (3 Sm. & Gif. 264), a bequest "to such poor widows or credible (*sic.*) industrious unmarried women upwards of forty years of age, residing in the town of U. of the sum of £5 each," was held to be a charitable bequest, and was ordered to be distributed in accordance with the directions of the will, the bequests failing so far as they were payable out of real estate or personal estate savouring of the realty. In the recent case of *Thomas* v. *Howell* (22 W. R. 676, L. R. 18 Eq. 198), however, a different construction was applied. The testator gave "to each of ten poor clergymen of the Church of England, whether holding benefices or not, to be selected by my friend J. B. O., if alive, or if dead, then by the acting executors or executor of my will, and in his or their judgment not holding High Church or Puseyite doctrines, £200." The Vice-Chancellor held that these were not charitable legacies, and were payable out of the general estate of the testator. "It has been contended," he said, "that because the motive is charity, therefore it is a charitable gift within the statute; but I dissent from that argument. It is not a charitable bequest unless it is a gift for the maintenance of a charity." "In every case it depends on whether there is a charity which is to continue for a certain specified time."—*Solicitors' Journal.*

COMMON LAW.

Bankruptcy—Execution.

Ex parte BROOKE, L.JJ., 22 W. R. 395, L. R. 9 Ch. 301.
STOCK *v.* HOLLAND, Ex., 22 W. R. 661, L. R. 9 Ex. 147.

If *ex parte Pearson* (21 W. R. 688, L. R. 8 Ch. 667) was supposed to decide that section 87 of the Bankruptcy Act, 1869, would take away from the execution creditor money which was paid to him under pressure of the execution, but without seizure *and sale*, the two cases above mentioned, in the former of which there was no seizure, in the latter a seizure, but no sale, will remove that impression. *Ex parte Pearson* was decided on the ground that in substance there was a sale, though it was endeavoured to conceal it by an artifice. But the attempt to do more for the general creditor than the statute actually does, which was made in some of the earlier decisions of the Chief Judge, has now been decisively checked, and we are once more brought back to the wholesome rule that the duty of judges is not to make but to interpret the law.—*Solicitors' Journal.*

Digitized by Google

GARBUTT *v.* NAUGHTON.

[From the *Australian Jurist Reports*, vol. v., p. 70.]

Tenancy until six months' notice, but at least for three years—Option to renew—Held to be determinable only by notice expiring with a year.

Appeal from justices.

The appellant had let premises to the respondent by a lease under seal, at the monthly rent of six pounds sterling, payable always in advance, this tenancy commencing from the 1st day of August, 1870, and (except as hereinafter provided) to continue till six months' notice in writing shall have been given by either party to the other, and for at least the term of three years, with option of renewal. On 1st Aug., 1873, the appellant gave notice to quit on 1st Feb., 1874; and on the same 1st Aug. the respondent gave written notice to renew. Afterwards the appellant applied to justices, under the Landlord and Tenant Statute 1864, No. 192, sect. 90, to recover possession. At the hearing it appeared that before the 1st Aug. the respondent orally demanded a renewal. The justices determined that the clause for renewal did not require the notice of renewal to be in writing, and that the oral demand had the effect of prolonging or renewing the term without any new lease, so that the notice to quit did not determine the tenancy. They dismissed the summons.

Mr. HIGINBOTHAM, for the appellant, contended that the tenancy was for three years, with option of renewal for three years, if notice to quit were not given at the end of the first term. To hold it a tenancy from year to year, terminable by notice given six months before the end of the three years, would make the option of renewal meaningless. The tenancy might be put an end to by six months' notice expiring at any time after the three years. The case differed from *Beaumont* v. *Love* 1 A.J.R. 167, inasmuch as there the tenancy was for two years *certain*, and so on from year to year, till determined by six months' notice to quit.

Mr. JUSTICE FELLOWS drew attention to *Thompson* v. *Maberley*, 2 Camp. 572, in which a tenancy for a year, with six months' notice afterwards, may be determined at the end of the first year.

Mr. WILLIAMS, for the respondent, cited *Langton* v. *Carleton*, L. R., 9 Ex. 57; 43 L. J., Ex. 54.

Mr. JUSTICE BARRY said that the question in this case arises upon the construction of the lease. The lease in *Beaumont* v. *Love* differs in having the word "certain," which is not to be found here. We cannot, however, say that this is a demise for a fixed period. It is rather a yearly tenancy to last at least three years. Notice to quit might have been given at any time during the three years, to operate at the end of that term. As the notice was not given till the end of the three years, another estate arose, similar in its incidents, except that it was a tenancy from year to year. The six months' notice in writing would then be different in giving the tenant a right to remain until the end of the year. As to the exercise of the option to renew, the case is governed by that of *Doe d. Devenish* v. *Moffatt*, 15 Q. B. at p. 263; 19 L. J., Q. B. 438, the notice to renew created no legal estate; the tenant would merely have a right of action for breach of the agreement, or a suit for specific performance; until consent by the landlord, no estate was created, and the tenant might be ejected at the end of some year.

Mr. JUSTICE FELLOWS: I think the contract created all the incidents of a tenancy from year to year, except that it could not be determined before the end of three years. The stipulation that it shall last for "at least" three years, implies that it may last longer; it also implies that it may not. It will not, however, then expire by effluxion of time. It must be determined by notice to quit. That notice must, of course, be given six months before the three years end. If not given, a fourth year is entered upon. As the six months' notice to determine the tenancy at the end of three years must expire with the three years, upon what principle can it be said that after the three years, the tenancy may be determined by notice expiring at *any* period of the year? The stipulation for at least three years is equivalent to a contract for three years certain. The case is governed by *Thompson* v. *Maberley*, as explained in *Doe d. Chadborn* v. *Green*, 9 A. and E. 658, and as the notice to quit did not expire until the year, the tenancy continues.

Appeal dismissed. Costs of re-statement of case allowed to appellant.

Attorneys:—*Crisp* and *Lewis* for appellant; *Godfrey* for defendant.

THE LAW CLERKS' ASSOCIATION.

A general meeting of the association was held last Monday evening at 207, Great Brunswick-street. The attendance included the Vice-president, who took the chair—Messrs. Jervise, Dodd, Farrelly, Wheatley, Walsh, Sheridan, Flynn, and Power. After the receipt of the subscriptions for the current month, and the confirming of the minutes of the preceding meeting, the Secretary stated that he was happy to be in a position to announce that their President was rapidly recovering from the effects of the accident he had met with some time ago, and would soon resume his place among them to aid the Association with his zeal and sagacity. In reference to the Saturday half-holiday movement, he stated the progress the question was making was eminently satisfactory. From the reports of the members that had been sent in he estimated that at least three fourths of the solicitors of Dublin had conceded this great boon during the present long vacation. Indeed one eminent firm, Messrs. Oldham and Co., had adjusted their business arrangements so as to close their office altogether upon Saturday during the long vacation, and in many of the offices a reduction in the hours of business during the rest of the week had been granted. With regard to the Library he was happy to state that it continued to progress, and announced that he had received £2 2s. from W. J. Stuart, Esq., solicitor, and donations of books from H. Fitzgibbon, Esq., Q.C., and D. H. Madden, Esq. Mr. Power then moved, and Mr. Sheridan seconded a resolution that the Library Committee should be authorised to expend a sum of £50 in the purchase of books of practice, and that the sum of £100 should be invested in Government Stock to form a reserve fund. The motion was carried unanimously, and the meeting shortly afterwards adjourned.

CORRESPONDENCE.

THE SESSIONAL EXAMINATION.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I am surprised that I did not see many letters in your columns complaining of the delay in publishing the result of the last Sessional Examination by Professor Hickson. He must surely have given to the Council the list before this, as it is two months and more since the Examination took place, and I cannot understand why it has not been made public, or at least communicated to the Apprentices who were in. I heard when I passed my Preliminary a few days after the Examination, and Mr. Richey, as well as Dr. Webb, who have very large classes, never used to keep us waiting so long as this. I hope, as well as your last correspondent, that a graduated list will be published, as I worked very hard and do not want to be placed in the same alphabetical way as if I had only looked at Broom for a week or two before the Examination. Some men whom I know that were in at the July Examination want to go in for the Final next year, and it is very important for them to know whether they have passed or not, as the result may be another year's apprenticeship service to them. Hoping you will print this in the SOLICITORS' JOURNAL, I am, Sir,

THE SON OF A SUBSCRIBER.

In answer to our very candid correspondent, and the numerous other gentlemen whose letters we did not publish, we have only to say that it is impossible the list can have been yet given to the Council of the Incorporated Law Society, as it would be published immediately, or posted on the door of the Solicitors' Buildings. The result of last year's July Examination was announced about the second week of September last, and we dare say our correspondent's anxious desire will be gratified soon. As to a list of names graduated according to merit, that is another thing, and we hardly expect it, as Mr. Hickson did not publish such a list of the gentlemen who passed the Sessional Examination last November.—[ED. I. L. T. & S. J.]

Digitized by Google

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Francis Keegan	Settle title, conditions of sale, &c.	*Rosenthal*
Richard M. Sadlier	Prove debts	*Kavanagh*
Patrick Mooney	do	*Rynd*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Michael Sullivan	1st composition sitting	*Donnelly*
James M'Bride	1st public sitting	*Mathews*
Hugh S. Guiney	do	*Oldham & Eaton*
Joseph Campbell	Final examination	*Oldham & Eaton*
E. D. Maccaud	do	*Leachman*
John Flanagan	do	*Rynd*
Jeremiah Sullivan	do	*O'Connell*
Matthew Kilcullen	do	*Hamilton & Craig*
John Chamney	do	*Molloy & Watson*
William Bergin	do	*Goff*
Philip Barry	Application for certificate of conformity	*O'Connell*
————	Show cause against adjudication	*Payne*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John Farrell	Costs	*Larkin & Co.*
Francis Keegan	do	*Meade & Colles*

FRIDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Luke Connor	1st public sitting	*Stuart*
Patrick Hessesey	do	*Perry & Co.*
Thomas O'Brien	do	*O'Connell*
Catherine Boland	do	*Hamilton & Craig*
Henry Davey	do	*Neilson*
Michael Kappock	do	*Jones*
Owen Dunne	do	*Scallan*
Same matter	1st composition sitting	*Rynd*
Michael Ryan	do	*Findlater & Co.*
Same matter	Final examination	*Kavanagh*
Michael Reilly	do	*Perry & Co.*
Thomas Sturgeon	do	*Seeds & Lynch*
Robert Coane	do	*Cronhelm & Co.*
Benjamin Norman	do	*Neilson*
David Rutledge	do	*Larkin & Co.*
R. K. Thompson	do	*Sinnott*

ADJUDICATIONS IN BANKRUPTCY.

Clarke, Patrick, Wicklow-street, in the city of Dublin, cowkeeper and dairyman. Sittings, *Tuesday, September* 22, and *Friday, October* 16. *Rynd*, solr.

Hanley, John, Main-street, Longford, draper. Sittings, *Tuesday, September* 29, and *Friday, October* 16. *Casey and Clay*, solrs.

M'Connell, Thomas, Talbot-street, Dublin, draper. Sittings, *Friday, October* 2, and *Tuesday, October* 20. *Larkin and Co.*, solrs.

M'Donald, Francis H., 5, Great Patrick-street, Belfast, county Antrim, pawnbroker. Sittings, *Friday, October* 2, and *Tuesday, October* 20. *Rosenthal*, solr.

Murray, Thomas, 95, Harcourt-street, Dublin, merchant tailor. Sittings, *Tuesday, September* 29, and *Friday, October* 16. *Molloy and Watson*, solrs.

Russell, Robert, Donegall-square North, Belfast, county Antrim, wholesale stationer. Sittings, *Tuesday, September* 29, and *Friday, October* 16. *Oldham and Eaton*, solrs.

Shevlin, Thomas, senr., and Shevlin, Thomas, junr., Leeson-street, Belfast, county Antrim, grocers and spirit dealers. Sittings, *Tuesday, September* 29, and *Friday, October* 16. *Oldham and Eaton*, solrs.

Thornton, William Henry, Cadamstown, King's County, gentleman farmer. Sittings, *Tuesday, September* 29, and *Friday, October* 16. *Whelan and Son*, solrs.

DIVIDENDS IN BANKRUPTCY.

Parker, Joseph, Mallow-street, Limerick, M.D. 2nd and final dividend, 1$\frac{13}{16}$d., making, with first dividend, 8s. 8$\frac{13}{16}$d. in the £. L. H. Deering, official assignee. *Oldham and Eaton*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	SEPTEMBER Fri 4	Sat. 5	Mon. 7	Tues. 8	Wed. 9	Thur 10
	Government.						
–	3 p c Consols	—	92–⅛	92⅛	92	92–⅛	92–⅛
—	New 3 p c Stock ..	91⅞⅞	91⅞⅞	91⅞	91⅞⅞	91¾⅞	91¾⅞⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	108	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102⅛	102–⅛	—	102	102	101⅞–2
	Banks.						
100	Bank of Ireland ..	306	305⅝	304½	303⅝	—	304
25	*Hibernian Banking Co.* ..	60	59¾	59⅝	59⅝	—	59⅝
15	*London Joint Stock* ..	—	—	50⅝	—	50½	50½
20	*London and Westminster* ..	74½	--	74¼	74⅝	74⅝	74⅝
3½	*Munster Bank (Limited)*	8⅞	8⅞	—	—	—	—
30	*National Bank*	63½	—	63½–3	63¼½	63⅜½	63⅜½
15	*National of Liverp'l (Ltd)*	—	—	—	–	—	14⅜⅞
25	*Provincial Bank* ..	—	89⅜¾	—	89½	89¾	90
10	*Royal Bank*	—	—	30⅜⅜	—	—	30⅜
	Steam.						
100	City of Dublin		—	—		107½	—
50	Dublin & Liverpool Steam	—			—		
	Ship Building. Co.	—	55	—	—	—	—
10	Dundalk (Limited) ..	—	—	—	—	—	6½
	Mines.						
3½	*Berehaven (Limited)*	--	—	–/4	-	--	—
1	Killaloe Slate Co. (lit'd) ..	—	—	—	17/6	—	17/9
7	*Mining Co. of Ireland (lit'd)*	—	—	5⅜⅜	5⅜	—	5⅜ 6
2½	Wicklow Copper	2⅝	—	--	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	10⅜⅝	10⅜½	10½	—	10½
9½	*Dublin Tramways* ..	—	—	6⅜½½	—	—	6⅜⅜
5	Gresham Hotel (limited)	—	3½	–	—	—	—
25	*National Assurance* ..	—	—	—	47½	—	47½
	Railways.						
50	Belfast and Northern Cos.	--	67	—	67½	67½	67½
50	Cork and Bandon ..	—	—	24	—	—	—
20	Cork, Blackrock & Passage	—	—	10⅜⅜	—	—	--
100	Dublin and Belfast Junct.	—	—	—	—	—	91½
100	Dublin and Drogheda	112¾	--	112½	—	-	112¾
100	Dublin, W'klow, & W'ford	—	—	—	—	—	—
100	Gt. Northern and Western	98⅝	—	98⅝	98⅝	—	—
100	Gt. Southern and Western	108½	—	—	109	109	109
100	Londonderry & Enniskillen	--	—	--	—	—	65
100	Midland Gt. Western ..	—	—	—	81⅝	—	82
50	Waterford and Limerick ..	—	—	—	30⅜⅜	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	--	—	--	—	—
100	Do. do. 4½ p c	102¾	—	—	—	102¾	-
100	D., W., & W., 6 per cent ..	—	-	—	—	—	130
50	D., W., & W., 5 p c (1860)	—	54½	—	—	54½	—
50	Do. do. (1865)	—	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	99	—	—	96⅝
100	Londonderry and Enniskillen, A from Oct '66 5 p c	—	—	—	—	100½	—
100	Mid. Great Western, 5 p c	—	--	—	—	--	—
100	Ulster 4½ Per Cent. Stock	--	—	103	—	—	—
50	Watfd. & Limerick, 5 p c rd	50	—	—	—	—	—
100	Do., 4½ p c	97	—	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	—	—	--	—	—
50	Do., new red, 1873, 5 p c ..	—	—	—	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	--	--	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	97½	—	97
—	Do., 4½ p c	—	—	—	—	—	99⅝
—	D., W., & W., 4½ p c ..	—	—	—	100	—	--
—	Gt. South'n & West'n, 4 p c	--	—	—	--	--	—
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	--	–	100	—	—
—	Do., 4½ p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 27th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.

Name Days—September 15th and 29th, 1874.
Account Days—September 16th and 30th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

THE LONG VACATION.—One of the principal grounds of regret in connexion with the postponement of the Judicature Act is that the abolition of that real grievance of suitors, the long vacation, has in consequence been deferred for another year. "A City Solicitor," writing to the *Times*, complains bitterly of the "monstrous abuse" involved in the system now pursued by the Court of Chancery, which amounts, he says, "to an absolute denial of justice in most cases." The one "vacation judge" now representing the Court can only be approached through the post, and lately he has given out to the world that if an application be made to him "not of an urgent nature," it will be refused with costs. The question of urgency is left to be decided by a clerk at the Judge's Chambers. This official, in fact, decides whether any application made at a Judge's Chambers is or is not "vacation business," and if he settles this point in the negative, the suitor has no choice but to wait till next term. By the end of the vacation the thing sought for will perhaps be unattainable, and the wrong done beyond the reach of a remedy. "I have myself," says the writer, "most urgent matters concerning foreign undertakings involving many thousand pounds and the interests of many parties, and yet I am told that neither the judge nor his clerk will hear it, because, forsooth, it is 'not vacation business.' So my clients are to run the risk of their property being actually forfeited in a foreign country, because the courts won't declare their rights as between one another in this." Is this, he asks, just or fair or reasonable? There is certainly but one answer to such an inquiry. It is, indeed, only a matter of wonder that the present system has so long been allowed to endure. Holidays are, no doubt, necessary things; but the business of the world will not stand still to enable all the administrators of a public service to take their holiday together. What would be thought if the post and telegraph offices were closed for three months in the year to give the clerks and postmen a holiday? And yet in these days of commercial activity the services of the law courts are matters of as constant and immediate need as those of the post office and the telegraphs.

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY, IRELAND.

MICHAEL O'SULLIVAN, of Clonakilty, in the County of Cork, Draper, was on the 18th day of August, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 25th day of SEPTEMBER, 1874, and on TUESDAY, the 13th day of OCTOBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

MICHAEL LARKIN & CO., Solicitors, 51 Dame-street, Dublin. 537

IN THE COURT OF BANKRUPTCY, IRELAND.

THOMAS M'CONNELL, of Talbot-street, in the City of Dublin, Draper, was on the 11th day of August, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 2nd day of OCTOBER, 1874, and on TUESDAY, the 20th day of OCTOBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

MICHAEL LARKIN & CO., Solicitors, 51 Dame-street, Dublin. 540

IN THE COURT OF BANKRUPTCY, IRELAND.

WILLIAM HENRY THORNTON, of Cadamstown, in the King's County, Gentleman Farmer, was on the 1st day of September, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 29th day of SEPTEMBER, 1874, and on FRIDAY, the 16th day of OCTOBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

ROBERT WHELAN & SON, Solicitors, 70 Middle Abbey-street, Dublin. 538

CITY OF LONDONDERRY.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of DENIS DOHERTY, An Insolvent.

TO BE SOLD BY PUBLIC AUCTION, At the AUCTION MART OF WILLIAM DALE, SHIP-QUAY-STREET, LONDONDERRY, On WEDNESDAY, 30th SEPTEMBER, 1874, At the hour of One o'clock afternoon,

All the Estate and Interest of the Insolvent, his Assignees and Mortgagees, of, in, and to—

LOT 1 (Part of Lot No. 2, formerly offered for sale), viz.:—All that portion of the Plot of Ground extending from the Old Newtownlimavaddy Road, leading from the Waterside, situate in the Parish of Glendermot, and City and County of Londonderry, upon which has been built an excellent Dwelling-house and large Yard at the rere thereof, as lately in the occupation of the Insolvent, containing in front 28 feet 3 inches, and from front to rere 75 feet, be the same more or less, as described in the Map thereof. The Premises are comprised and held with others under a lease dated 9th July, 1863, for a term of 970 years from 1st May, 1863, at the yearly rent of £19 16s 8d, but are indemnified against payment thereof by Premises already sold in this Matter.

LOT 2 (also part of Lot No. 2, formerly offered for sale).—A Parcel of Ground adjoining Lot No. 1, with the Sheds erected thereon, also late in the possession of the said Insolvent, containing in front 54 feet 9 inches, and from front to rere 81 feet 6 inches, be the same more or less, situate as aforesaid, as described in the Map thereof, held with the foregoing and other Premises, under the above-mentioned lease, dated the 9th July, 1863, for the term of 970 years from the 1st May, 1863, at the yearly rent of £19 16s 8d, but indemnified by the other Premises held under said lease against the payment of the said rent.

The Biddings taken by the Auctioneer will be submitted to the Court, at the Four Courts, Dublin, on Friday, the 2nd day of October, 1874, when, if approved of, the Purchaser will be declared.

A Statement of Title and Conditions of Sale are lodged in the Office of the Court, and may also be seen in the Office of the undernamed Solicitors having carriage of the Sale, and at the Office of James Hayden, Solicitor, Londonderry.

Dated this 1st day of August, 1874.

THOMAS FARRELL, Chief Clerk.

DESCRIPTIVE PARTICULARS.

LOT No. 1 consists of an excellent Dwelling-house, with large Yard suitable for a Builder, with Workshop and Office thereon.

LOT No. 2 consists of a Plot of Ground, with Sheds thereon, adjoining No 1, and available for the erection of Dwelling-houses.

Both Lots will be sold free from any rent, and indemnified against the payment of the rent reserved by the lease of 1st May, 1863, by the other Premises held under the same lease.

Proposals for purchase by Private Contract will be received by the Official Assignee up to the hour of Twelve o'clock noon, on the 24th day of September, 1874. If an offer be made which can be recommended by the Vendors, it will be submitted to the Court for approval without further notice.

For further information apply to

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

MICHAEL LARKIN & CO., Solicitors for Mortgagees, having carriage of Sale, 51 Dame-street, Dublin.

JAMES HAYDEN, Solicitor, Londonderry.

541 WILLIAM DALE, Auctioneer, Londonderry.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, from J. FALCONER, 53, Upper Sackville-street, Dublin.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, September* 12, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, SEPTEMBER 19, 1874. No. 399.

VENDORS AND PURCHASERS.

IT would not be unreasonable to expect that, at this time of day, all the leading principles, at least, of that branch of the law which determines the rights and duties of vendors and purchasers of landed property, should be pretty well ascertained and settled. Nevertheless true it is that no fewer than four remarkable cases, decided within a recent and comparatively short period, have involved one of the most important of these principles in doubt and uncertainty. We may be permitted the observation that, apart from their legal bearing, these decisions are not a little curious as intellectual phenomena, and one of the judgments, in the case decided in this country, is relieved by a pleasant spice of personality. Before proceeding to refer to them in detail, it may be convenient to remind our readers of the well-established principle of equity—that a purchaser of landed property who knows that it is in the occupation of some person other than the vendor, is so far fixed with notice of the terms and conditions of that person's tenancy, that he is bound by them in the same manner and to the same extent as his vendor was (*Daniels* v. *Davidson*, 16 Ves. 51). As between the person in possession of the land and the purchaser this is unquestionably law, and the point that arose in the following cases was—Does this principle equally apply between the vendor himself and the purchaser? The earliest of these cases was *James* v. *Lichfield*, L. R. 9 Eq. 51. It was a suit by a purchaser for specific performance of an agreement to assign some land and houses, with compensation for loss which the plaintiff alleged he would sustain by reason of one of the persons in possession holding under a lease for an unexpired term, which fact the vendor had not disclosed. It was admitted that the plaintiff was aware that the tenant was in possession, but that he knew nothing about the lease, and believed that the tenancy was from year to year. The Master of the Rolls (Lord Romilly) decided that the principle above mentioned applied, that the purchaser was affected with notice of the tenant's interest, and was not entitled to specific performance with compensation.

The next case was *Keayes* v. *Carrol*, 8 Ir. L. T. R. 47, decided in the Court of Appeal in Chancery in this country. The facts are important. There was a cross suit. The plaintiff Keayes sought specific performance of an agreement to assign certain lands, with compensation with respect to the possession of portion of the land by some cottiers, holding as yearly tenants He alleged that he was not aware that the cottiers were in occupation till after the contract had been made. The evidence, however, satisfied the Court that he had visited the land about twelve months before the date of the agreement, and had seen the cottiers in occupation. At the time of the purchase no reference to the cottiers was made by either party, and the written agreement did not mention them. By the cross suit the vendors sought specific performance of the agreement simply. Held (following *James* v. *Lichfield*) that, knowing the fact of the cottiers being in possession, the purchaser was fixed with notice of the nature of their tenancies, and was not entitled to compensation. Specific performance was decreed in the cross suit.

A somewhat peculiar case, involving the same principle, was decided shortly after in the Court of Common Pleas, in England. *Phillips* v. *Miller*, L. R. 9 C. P. 197, came before the Court, on case stated, in an action by a purchaser, who sought to recover damages from his vendor for breach of contract to assign three farms in Hampshire. It appeared that the tenants of these farms held under verbal agreements from year to year. By the custom of Hampshire the incoming tenant is entitled to the hay and straw on the farm on paying the out-going tenant "*fodder value*." This is lower than the "*market value*." In April, 1868, it was agreed between the vendors and the tenants that, in consideration of the tenants abandoning their claims to leases, to which they alleged themselves entitled, the vendors should pay them the "*market value*" for the hay and straw when quitting their holdings at Michaelmas in the following year. In June, 1868, the property was sold to the plaintiff, subject to certain conditions of sale, which described the farms as being held till Michaelmas, 1869, as stated, and specified two incumbrances, land tax and tithe rent-charge, but were silent as to the above agreement with the tenants. It was conceded that at the time of the purchase the plaintiff knew nothing about this agreement. When he became aware of it, and objected, it was arranged that the contract should be completed without prejudice to his claim for any loss he might sustain by being obliged to pay for the hay and straw at the higher rate. The plaintiff afterwards paid the tenants for the hay and straw on their farms at the market value, and he now sought to recover the difference between that and the "fodder value." The case was twice argued, and it was held by the full Court (Lord Coleridge, C.J., Keating, J., Denman, J., Honeyman, J.) that the contract was to convey subject to the existing tenancies, and, following *James* v. *Lichfield*, that notice of the tenancies was notice of all the terms of the contract under which the tenants held, including the above term, and consequently that the action could not be maintained.

This novel application of the old principle of equity, introduced by Lord Romilly in *James* v. *Lichfield*, thus appeared to be in a fair way of becoming settled law. But a still more recent decision of the Court of Chancery Appeal in England would seem to have cast it once more adrift. We refer to the case of *Cabbalero* v. *Henty*, L. R. 9 Ch., 447. It was a suit by a vendor for specific performance of a contract for the sale of a public-house and some cottages which were sold to the defendants, who were brewers, under conditions of sale, which described the house as in the occupation of a certain person "at the low rent of £20 per annum," and the cottages as in the occupation of two other persons "at 2s. per week," and stated that "the property was sold subject to the existing tenancies." After the purchase the defendants discovered that it was under lease to another brewer for a term of which nine years were unexpired. James, L.J., in the course of his judgment, after stating that the property had been misdescribed, proceeded as follows—"It was said that the purchaser was bound to go to Slatter (the person in possession) and ascertain from him the nature of his tenancy, and *James* v. *Lichfield* was cited as an authority for that proposition. I am not prepared to follow the dicta in that case, which supports the notion that the doctrine of *Daniels* v. *Davidson* (16 Ves. 249) applies as between

Digitized by Google

vendor and purchaser, and whilst the matter still rests in contract. Such a notion does not appear to me to be deducible from the previous authorities. These decisions apply only to certain equities between the *purchaser* and the *tenant* when the purchase has been completed, and have nothing to do with the rights and liabilities of vendors and purchasers as between themselves. If there is anything in the nature of the tenancies which affects the property sold, the vendor is bound to tell the purchaser. He cannot afterwards say to the purchaser, 'If you had gone to the tenant you would have found out all about it.'" Mellish, L.J., concurred.

It may here be observed that an expression of opinion to the same effect as that of Lord Justice James occurs in the judgment of Knight Bruce, V.C., in the case of *Nelthorpe* v. *Holgate*, 1 Coll. C. C. 54. As observed by Christian, L.J., in *Keayes* v. *Carroll*, this expression may be "very guarded," but, at the lowest, it imports a settled doubt in the mind of that eminent judge. It would appear to us that this limitation of the principle under discussion is not arbitrary. In the principal case Lord Romilly asks, "Why is the purchaser bound to inquire as regards the tenant, and yet not bound to inquire as regards the vendor?" Lord O'Hagan, in *Keayes* v. *Carroll*, repeats this, and seems to consider that it is merely a question of evidence. With the greatest possible respect for the opinion of these noble and learned Lords, we cannot help saying that we think a little consideration of the reason of the rule, as admittedly restricted in its application, at any rate, before the decision in *James* v. *Lichfield*, would have helped to solve the question, and suggest the distinction required.

The principle with which we are dealing, is one of those contained under that head of equity called "Notice." In *Le Neve* v. *Le Neve* (Wh. & T. L. C. Eq.), Lord Hardwicke says: "Fraud or *mala fides*, is the true ground on which the Court is governed in cases of notice." Where is the fraud or *mala fides* in the class of cases, represented by *James* v. *Lichfield?* It is easy to understand why a Court of Equity would not allow the rights of the tenant, a stranger to the dealings between the vendor and purchaser, and whose possession (of vast significance in law), was known to the latter, to be destroyed behind his back, by two parties, one of whom probably designs the fraud, and the other wilfully turns away from the means of knowledge. The reasoning of Lord Eldon in *Daniels* v. *Davidson*, is plainly concerned with the equity of the party in possession. It is true that the principle is laid down in very wide and general terms. But it is submitted that before sanctioning an extension of that principle to a new class of cases, regard should be had to the reason of the thing, and to the mischief which it was intended to remedy. What equity can a vendor have in such a case? All the facts are peculiarly within his knowledge. His rights are safe in his own keeping. Not so is the case of a person in occupation. The vendor puts forward a description of his property. It is not correct, or rather it is not the whole truth, but is sufficient to throw the purchaser off his guard, and to lead him to infer that the condition of the estate has been fairly disclosed. Why is the purchaser not entitled to assume, as against the vendor, that he has stated all the material facts with respect to the property? Why should he be bound to go "upon an errand of inquiry, whether the statements made by the vendor are correct or not"? If the purchaser chooses to impute ordinary care and fair dealing to a vendor, how can a default in either of these give the latter an equity against him? One, at least, of the cases cited was not free from a suspicion of fra[illegible] and if the decision in *James* v. *Lichfield* were followed in that case, a principle which was designed to suppress fraud would have been perverted into an instrument for promoting it. It may be retorted that this was owing to the purchaser's want of caution. But mere want of caution is not so punished in equity. A most rigid application of the maxim *caveat emptor* would not cover such a case. If the case of *Phillips* v. *Miller* be a fair specimen of the manner in which the Common Law Judges will administer equity, the fears of those who apprehend mischief from the intended fusion, are not wholly groundless. In *Keayes* v. *Carrol*, Christian, L. J., so eagerly embraced the ruling of Lord Romilly, that the vigour and subtlety of intellect, for which he is so justly distinguished, appear to have been laid asleep. He is amused at the hardihood of counsel who called on him, sitting in a Court of Appeal, to review that decision. He characteristically observes that "there are Courts of Appeal and Courts of Appeal," and that while some Courts of Appeal "may, without presumption, and with full acceptance from the legal profession overrule the decisions of the English Masters of the Rolls," he in that Court of Appeal "declined the high function to which he was invited."

We are forced to remark, that we think it fortunate there is a Court of Appeal which has the courage to recognise and assert its high function, though we regret that the honour of being the first to check what, in our opinion, would be a dangerous and unwarranted extension of the doctrine of *Daniels* v. *Davidson*, does not rest with an Irish Court of Appeal.

NOTANDA.

Sale of goods; misrepresentation as to ownership; true owner re-claiming; recovery of price from vendor.—Appeal from a decree of the Chairman of Quarter Sessions, pronounced against the appellant, for the sum of £19 10s., being the value of a piano sold at the auction mart of the appellants, which at the time of sale they, as alleged, represented as being their *bona fide* property, but which was in fact the property of Messrs. Hart and Churchill. It appeared that the respondent attended an auction of goods advertised in the papers, purporting to be the sale of the entire household furniture of a country mansion, and that he bid for the piano at that sale, but was not declared the purchaser. The piano was subsequently withdrawn from the sale, and on the following day Mr. Gamble called on Mr. Thompson, one of the appellants, and purchased privately from him the piano that had been withdrawn from the sale, for the sum of £19 10s. He took the piano home, and had it for about five months. At the end of this time it required tuning, and having sent to the firm of Messrs. Hart and Churchill, whose names appeared upon the piano, for a tuner, those gentlemen claimed the piano as being theirs, stating that it had been borrowed out by a person named Kelly, for whom they had been looking for a considerable time. They alleged that the piano had simply been out on hire, and that it should be returned to them. A process was afterwards brought by Messrs. Hart and Churchill against Mr. Gamble, at the Co. Down Sessions, and the Chairman gave a decree against him for the price of the piano. The respondent sued the appellants in the court below for the price of the piano which he had purchased of them as their property, and obtained a decree. The appellants' defence was that they had merely sold the instrument in the capacity of agents for Kelly, the owner of the piano, and that it had been released from Mr. Wright's pawn office. They alleged that they, at the time the sale was being effected, showed a certain receipt to the purchaser by which he

Digitized by Google

should have known that they were merely acting as agents, and that Kelly was the owner. On cross-examination, it appeared that the piano was represented as belonging to a "country mansion," but the explanation offered by the auctioneer was that in sales by auction articles are frequently introduced and offered for purchase, although not belonging to the same owner. *Weir*, for the appellants. *Dodd*, for the respondent. KEOGH, J., said he was quite satisfied that the piano was sold by the appellants as if it was their property. He had no hesitation in affirming the decree pronounced by the Chairman, with costs (*Thompson & Anderson*, app. v. *Gamble*, resp.; Antrim Assizes, July 23, 1873).

L. & T. Act, 1870, *ss.* 3, 4; *Compensation for disturbance; maximum allowance; tenant not in actual occupation.*—Appeal from the Chairman for £71 13s. 6d., compensation for disturbance and improvements. The holding consisted of 10½ acres, at the annual rent of £17 10s. The Chairman had awarded £70, the full sum claimed for disturbance, equal to four years' rent; also £10 for improvements, and £12 for unexhausted manures; making together £92. From that was deducted a year's rent due, and the costs of the ejectment; the balance being decreed for. The claimant did not reside upon or occupy the land. *Monroe*, for the appellant: The maximum amount has never been allowed where the tenant did not reside on the land, and it was in the occupation of another. The Chairman himself laid down in *Darragh* v. *Murdoch*, 5 Ir. L. T. R. 38, 69, that in awarding compensation he would have regard to the grievance of the tenant being put out of the occupation, and having the trouble of seeking another holding; but there could be no such grievance here. *Donnell*, *contra*. KEOGH, J.: I must take into consideration the position of this tenant. He was not an occupying tenant at all. He lived on another farm, and let the house on this farm and two acres of what he called pasture land. When I look at the map I find that this pasture was the best portion of the farm. I shall not give the tenant four years' rent for disturbance. Taking the most roseate view of the Act of Parliament, three years' rent would be amply sufficient. That would amount to £52 10s. I shall allow what the chairman has allowed for unexhausted manures, £12. As to the improvements to the house, I do not believe there were any at all. It was a racketty tumble-down place, and it would be better to take it down and put up something in its place. This will make my allowance to the tenant £64 10s. As to the set off, I shall allow £20 6s. 6d., the same amount allowed by the Chairman. This will make the decree £44 3s. 6d. The respondent is also entitled to the costs of the appeal (*M'Neill*, app. v. *Adams*, resp.; Antrim Assizes, July 23, 1874.

L. & T. Act, 1874, *ss.* 3, 4, 15; *compensation for disturbance; town-park.*—In this case the appellant was claimant in the court below, and sought compensation for disturbance, on the land of Parisha, of five years' rent at £12 per year. He also claimed for improvements and unexhausted manure—the entire claim amounting to £98 14s. The Chairman dismissed the claim under the 3rd section, on the grounds that the holding in question was a town-park. He gave compensation for improvements under the 4th section, to which, if the holding was a town-park, it would be subject, but the amount taxed as a set-off was so large that it exceeded the amount claimed for improvements, and so he dismissed the claim. It appeared that in 1870, the claimant being about to sub-let a portion of his farm to Joseph Charles, was ordered not to do so and was served with a notice to quit. The arrangement with Charles fell through, and Wilson continued as tenant. Subsequently he endeavoured to sub-let to a Mr. Cobain, and Mr. M'Donald, the agent, served him with a notice not to do so, but Wilson persisted in sub-letting, and Cobain came in and sub-let in defiance of the notice served upon Wilson. The chairman, however, did not consider it necessary to decide that Wilson had no right to claim under those circumstances, as he was of opinion that the land was a town-park. The claimant lived in the town of Glenarm; and the lands were about half-a-mile distant from the town, at which place portions of the lands were let to butchers, publicans, tailors, and others living in the town, for their accommodation, and were always treated and considered as town-parks, and for which a great deal higher rent was charged than for ordinary farms on which the tenants lived. *Donnell*, for the appellant. *Porter*, Q.C. (with him *Orr*), for the respondent: Even if it were not held that this land was a town-park, under the 3rd section, the claim would have to be dismissed. It was contended before the Chairman that as the section of the Act stated that town-parks must be "ordinarily termed" such, they must be nick-named town-parks in point of fact; but that none of the witnesses had ever heard it so called FITZGERALD, B., at the Summer Assizes of Nenagh, had this contention raised before him in another case, and he held that the words "ordinarily termed" were merely explanatory, and meant only lands of that character, which were ordinarily termed town-parks. The evidence having closed, KEOGH, J., delivered judgment: The first question is whether these lands are town-parks. I do not dwell at all upon the matter as regards the notices served, as I think the holding is a town-park, and I agree with the Chairman in that respect. No doubt, years ago, when there was nothing there but Glenarm Castle, there could be no such thing as a town-park in existence there, but the world is every day progressing, and lands that were not town-parks two hundred years ago might become town-parks by the fact of a town growing up about them. Besides, there is a rent-book before me which appears to have been kept very accurately by Mr. Hanna, the former agent of the estate, and in that book I find that these very lands of Parisha are called "town-parks." That book was not kept by the present agent, Mr. M'Donald, at all, but by Mr. Hanna; and though he were the most speculative man in the world, Mr. Hanna, the former agent, could not have had any idea at that time that the Act would come into operation. I also see in another part of this book the entry "Larne town-parks." I cannot pass by this and give no consideration to it. I at once pass over the claim of £60, and I think it would have been better had the appellant gone under the 7th section; but this he abandoned, preferring to go under the 4th section, though he might have recovered under the former. I shall affirm the decision of the court below, with costs (*Wilson*, app. v. *Earl of Antrim*, resp.; Antrim Assizes, July 23, 1874.

L. & T. Act, 1860, *s.* 6; *L. & T. Act*, 1870, *s.* 58; *alternative notice to quit.*—In an ejectment on the title, to recover lands which had been held by the defendant under a tenancy from year to year, commencing on March 25th, it appeared that the notice to quit, on which the action was brought, had been served on behalf of the landlord, previously to the 25th of March, 1872, was a notice to quit and deliver up the possession on the 29th of September, 1872, provided the tenancy originally commenced on September 29, or otherwise to quit at the end of the year of the tenancy expiring next after the end of six calendar months from the date of the notice. The action was brought before the 25th of March following, and the writ claimed title from October.—*Exham*, Q.C. (with him *Lane*), for the plaintiff.

Digitized by Google

O'Brien, Q.C. (with him *O'Hea*), for the defendant.—Held (*per* Fitzgerald, Deasy, and Dowse, B.B.,) that the notice did not determine the tenancy until March 25, 1873, which not having arrived at the date of the bringing the ejectment, the action was premature. *Per* Fitzgerald, B: It was unnecessary to decide whether the true construction of the L. & T. Act, 1870, s. 58, was that it enables the landlord to determine the tenancy by a notice served six months before the last gale day of the calendar year, without reference to the actual commencement of the tenancy—a construction which there would be great difficulty in adopting; or that the tenancy was still only determinable by notice for half a year expiring at the end of the tenancy, but not even then, unless the notice had been served six months before the last gale day of the calendar year. *Lord Ashtown* v. *Larke*, 6 Ir. L. T. R. 140, did not apply, as in that case both the half year expiring with the end of the tenancy, and the six months terminating with the last gale day of the calendar year, had elapsed prior to the ejectment (*Ferguson* v. *Daly;* Ex., Nov. 17, 25, 1873).

Change of tenants' names in rent-receipts; evidence; new tenancy; transfer of previous rights.—In an ejectment on the title brought by the plaintiff as surviving executor of Thomas Bourke, to recover a farm held under a yearly tenancy, it appeared that Catherine Bourke, the mother of the testator, on her husband's death became tenant; that a new tenancy was subsequently created in the mother and son as joint tenants; and that the mother surviving became entitled to the entire interest. After the death of Thomas Bourke, the executors applied to have his eldest son's name introduced into the receipts for rent. That was not done, however; but the form of the receipts was altered by introducing, along with Catherine, the representatives of Thomas Bourke. There was no evidence that Catherine was privy to that, or ever assented to a change in the tenancy, or to give up her rights. Catherine Bourke died; and afterwards Bridget Bourke, the testator's widow who was the only defendant, continued in possession.—*Murphy*, Q.C. (with him *Cleary*), for the plaintiff. *Heron*, Q.C. (with him *Naish*), *contra*.—Held, that the mere alteration in the form of the receipt for rent by the landlord, did not constitute evidence from which the Court could infer a change of the tenancy, or a transfer of the legal rights which Catherine Bourke had by survivorship, as it was not shown that the alteration was assented to by all the parties interested; and that the legal estate was therefore outstanding in the personal representative of Catherine Bourke (*Bourke* v. *Bourke;* C.P., April 17, May 2, 1874).

THE CORPORATION OF DUBLIN.

THE OFFICE OF LAW AGENT.

The Town Clerk read the report of the special committee with reference to the vacant post of law agent. The report set forth the duties to be performed by the gentleman who would hold the office. He was to attend to all the business of No. 1 Committee, to attend to all the law business of the Waterworks Committee and of the Public Health department of the Corporation, under whatever name it might be called. He should discharge all the law duty referred to him by the Municipal Council, and report all matters referred to him without delay. He should discharge all Parliamentary duty in the Corporation of whatever kind, and, so far as practicable, be in attendance at all meetings of the council; that he devote the entire of his time to the business of the Corporation, and not engage in any law or equity proceedings as attorney or solicitor other than as committed to him by the Corporation; that he pay to the Corporation all moneys received by him as fees, fines, or costs of any kind; that his salary shall be at the rate of £800 per annum, and £150 as salary for a competent and efficient clerk; that this shall be in lieu of all costs; that he shall be paid all travelling and hotel expenses; and that the 19th October be the day of election, and that the necessary advertisements be inserted in the newspapers.

Mr. Dennehy said he was strongly of opinion that there ought to be slight additions to the conditions to be imposed on their law agent, and he would suggest they should add that, in case of absence from his business, without the express leave of the Council, for a period of seven days, unless such absence should be caused by illness or some circumstance beyond his control, the office be declared vacant and a new election take place. They should see that their law agent be continually on the spot, and he thought they should add to hotel and travelling expenses, all advances made by him for the Corporation, and all costs paid by him out of pocket for the purpose of his office. He believed, with those things added, the report would be as perfect as it could be, and he would move its adoption. The only thing remaining was to fix the date for the election.

The Chairman said the 19th of October mentioned in the report was the day on which the vessels arrive from America, and it would be well to make the time of appointment two or three days later. The Lord Mayor had promised to be here on the 20th, and it would therefore be well to extend the time, as he suggested.

It was then agreed that October 24 should be the day of election.

It was suggested that the report should be taken as read for the first time.

Mr. Dennehy said the meeting was a special one to consider this matter, and he thought they should deal with it now.

Alderman Purdon was of opinion that this would be a good time to consider the position of Mr. Morgan with reference to the Corporation.

Mr. Dennehy thought it right to say that the position of the Corporation with reference to the absence of a law agent had been over and over again brought before the Council. Therefore, when the committee prepared their report, and when the letter was laid before the house, it was with the anxious wish that they would this day adopt it and take action on it by having the necessary advertisements inserted. Every member would wish to see Mr. Morgan's position as their law officer and law agent made right; there was no man connected with the Corporation who knew more of their laws and their usages than Mr. Morgan, whose position in this matter was not touched.

Mr. Warren seconded the motion for the adoption of the report.

Alderman Purdon thought that if Mr. Morgan could give them any information on the subject they should wait and not decide upon the report to-day.

The Chairman thought the question arose whether they could adopt the report at once.

Mr. French did not think their by-law enabled them to do so.

The Town Clerk said it was in perfect order.

Mr. Murphy did not approve of the report. They should not saddle the ratepayers with the large sum mentioned. He thought £600 a year would be quite enough pending the life of Mr. Morgan. He would move an amendment that the sum of £600 should be inserted in the report as a substitution for £800.

Mr. M'Dermott said there were several gentlemen canvassing for the post, and many of them would be glad to get £600.

Mr. O'Neill—Aye, or £200.

Sir James W. Mackey thought there should properly be only one solicitor for the Corporation, and the officer who was appointed to the position should be adequately remunerated. He himself would recommend the Corporation to give a man £1,000 a year, with £200 a year for a clerk—no further cost to be incurred.

Alderman M'Swiney hoped Mr. Murphy would withdraw his amendment.

After some further discussion,

The Chairman put the amendment, which was declared lost.

The report was then adopted.

Digitized by Google

METROPOLITAN POLICE COURT.

(Before Mr. BARTON.)

CRAMER & Co. v. MORTON.

Sept. 10, 17, 1874.—*Sale by Auction—Bonâ-fide purchaser—Piano hired under "three years' system"—Sale by hirer before payment of last instalment—Goods obtained by felony, purchased without notice thereof—Trover—Jurisdiction of Police Magistrate to order re-delivery by purchaser, or payment of value—5 Vict., c. 24, s. 68.*

Summons, brought by Messrs. Cramer, Wood, and Co., against Mr. Morton, for illegal detention of a piano. It appeared that Mrs. Noone having communicated with the plaintiffs in reference to the hire of a pianoforte, and giving references which upon inquiry appeared satisfactory, the piano was given to her by the plaintiffs on hire, upon the following conditions (signed by her):—

"1. On the sum of £15 being paid to Cramer, Wood, and Co., in twelve instalments of £1 5s. each (the first instalment to be paid this day, and each subsequent instalment at the expiration of each succeeding three calendar months), the pianoforte to belong to the undersigned.

"2. In case of default in the punctual payment of any instalment, the instalments previously paid shall be forfeited to Cramer, Wood, and Co., who shall thereupon be entitled to resume possession of the instrument, the understanding being that, until full payment of the £15, the pianoforte remains the sole and absolute property of Cramer, Wood, and Co. In the event of its removal being necessary, in consequence of change of residence (not out of Ireland), intimation must be sent to Cramer, Wood, and Co., who will either remove the instrument themselves or sanction its removal by others; but in no case will they consent to its being removed out of Ireland without some person in Dublin being appointed (to be approved of by C., W., and Co.) who will undertake to regularly pay the instalments as they fall due."

Mrs. Noone kept the piano for three months, paying the hire for that period, and then sent the instrument to be sold absolutely, by auction, at Messrs. Lawlor, Hill, and Co's. sale rooms. It was there sold in the ordinary course of business and purchased absolutely by the defendant. The further facts sufficiently appear in the judgment of the court.

Mr. Clay (Casey and Clay), attorney for the plaintiff, in support of the summons.

Boughey, for the defendant, *contra*, contended that the summons did not lie, as the defendant was a *bonâ fide* purchaser, without notice of any fraud, unless it were proved that there was a larceny of the piano, and that the act of the lady who hired the instrument was such an act as a jury would say was evidence that she had in her mind at the time a felonious intention to steal the piano; and he submitted there was no such evidence in this case, but that even if there were such evidence, the plaintiffs could not recover the possession, until after they had prosecuted the thief to conviction. He thought it would be rather hard upon society, if a piano was advertised for sale, that a person intending to purchase it should trace the possession of the piano from one person to another until the original owner of it was discovered.

[*Mr. Barton.* That might be rather hard, but I apprehend it is the law nevertheless.]

Mr. Clay, in reply, argued that the property had never passed, and that therefore his clients were entitled to the instrument. There were only two courses open to the plaintiffs in such cases—either to take criminal proceedings or take a civil action. He submitted, however, that they were not bound to look for a criminal remedy, and as a summons was the least expensive course in civil proceedings, they had selected that remedy; and the question resolved itself into this, had his worship the power, under the 5 & 6 Vic., cap. 22, to give them back the piano? That enactment was passed with a view to affording a speedy and inexpensive remedy in cases of this kind. He cited *White* v. *Spettigue*, 13 M. & W. 603; *Manders* v. *Williams*, 4 Ex. 339; *Lee* v. *Baynes*, 18 C. B. 509; and referred to some unreported cases, where the Court of Bankruptcy ordered the proceeds of sales, by the assignee, of pianos so hired by arranging traders, to be handed over to the present plaintiffs.

[*Mr. Barton.*—I have a strong disinclination to extend the area or practical exercise of the jurisdiction of this Court, under the 68th section of the Act in question.]

Judgment deferred.

MR. BARTON.—This case stood over until to day, not from any doubt I had as to the order to be made upon it, but owing to a strong disinclination on my part to entertain it at all. I felt that, where there was a concurrent jurisdiction with the superior courts in relation to a case so important to commercial interests, it would be more satisfactorily disposed of by a judge at *nisi prius*, assisted by a jury of Dublin traders, than in a summary way in this court. I have not been able, however, to resist Mr. Clay's argument for the plaintiff, that the trover section of the principal Dublin Police Act, 5th Vic., cap. 24, sec. 68, under which this summons was brought, was framed with a manifest view to just such cases as the present—that is, to afford a speedy and inexpensive remedy where property, not exceeding £15 in value, is alleged to be illegally detained from its owner, within the limits of Dublin metropolis. The facts of the present case are shortly these:—Messrs. Cramer had let on hire, to a lady, calling herself Mrs. Noone, a piano, on the modern system of hiring pianos to intending purchasers, to be paid for by instalments. This instrument was to have been paid for by twelve instalments, each of £1 8s., and the hirer bound herself by a stringent agreement not to part with its possession until the last of these instalments should be paid, and that, until then, it was to continue the unqualified property of Messrs. Cramer. It soon turned out, however, that the hirer, having originally obtained possession of the piano by a fraud, and having paid but three instalments of the purchase money, sent it for sale to an auction room, where it was purchased by Mr. Morton, the defendant here—the proceeds of the sale being appropriated by Mrs. Noone. With the exception of this last-named person (against whom an indictment would certainly lie) no imputation whatever attaches to any of the parties to the transaction. They acted, admittedly, quite *bona fide*, without any collusion, and in ignorance that a fraud had been committed. I have looked carefully into the authorities which govern this case, and the rule of law clearly is this, that a purchaser of any chattel, at a private sale, and not in market overt, acquires no better title than that of his immediate vendor; and that therefore, if he purchases at a sheriff's sale, or a pawnbroker's auction, property which the sheriff or the pawnbroker had no right to sell, he acquires no title against the true owner of such property. This proposition rests upon a crowd of cases, of which the principal are *Farrant* v. ———, 3 Starkie, 130; *Chapman* v. *Speller*, 14 Q. B, 621; *Morley* v. *Attenborough*, 3 Exch., 500. It was urged by counsel on behalf of the defendant that, the piano having been stolen from the plaintiff, they could not legally recover possession of it until after they had prosecuted the thief to conviction; and such, no doubt, would have been the case had Mr. Morton purchased the piano in market overt. An innocent purchaser in market overt (which means a legally constituted open market) acquired at common law an indefeasible title, which was only invaded by a recent act (24 and 25 Vict., c. 96, s. 100), which enables the owner to recover property, so acquired, after the conviction of the thief. But, to confuse a sale in a market overt with a transaction such as I have to deal with here—a fallacy which pervaded the whole defence at the hearing of this case—would be a most inconvenient mistake to prevail in the public mind. Sales in auction rooms are, in fact, of the character of mere private sales, and have none of the incidents of market overt; and whenever a purchaser buys of the servant or agent of the owner at such sale, and out of market overt, he takes the risk of the servant having sold without authority; and if the servant had no authority to sell, and the purchaser refuses to give up the subject-matter of the sale, on demand, to the master, he is guilty of a wrongful conversion (*Metcalf* v. *Lumsden*, 1 C. & K., 309), which is exactly the case which has arisen here. The circumstance of the piano having been stolen (if, in fact, it were so) has really no legal bearing on the case. The law is that stolen property, ever so *bonâ fide* purchased, for a valuable consideration and without notice of the felony (but out of market overt), may be followed by the owner, and recovered by him from the

purchaser, although the thief has not been convicted of the felony, or the owner have taken any step to put in motion the criminal law; *White* v. *Spettigue*, 13 M. & W. 603; *Lee* v. *Baynes*, 18 C. B., 599. Those are the principles of law by which a superior court would be governed in trying this case in an action of trespass or trover, and they are those, therefore, by which I must be guided here. No claim having been put forward on behalf of Mr. Morton in the way of lien or security (such as the 68th section refers to), it only remains for me to call the attention of the parties to the proviso at the end of the section, to the effect that no order made here under this section bars the party effected by it from proceeding by action at law, if commenced within six months. My order is, that Mr. Morton shall give possession of the piano to Messrs. Cramer within six days, or else pay them £15.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship, will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 30th and 31st days of October, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Wednesday, 14th October, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place, on Monday and Tuesday, the 2nd and 3rd days of November, 1874, *at the same hour.*

By Order of the Council,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The COMPETITIVE EXAMINATION for the Society's Prize, will be held on *Monday, Tuesday, and Wednesday, the 2nd, 3rd, and 4th of November, 1874,* at 11 o'clock each day.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 10th of November, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

HILARY TERM, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Michaelmas Term.*

By order,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts, Dublin.

DIGEST OF RECENT ENGLISH DECISIONS.

BILL OF EXCHANGE.

A drew a bill on B, which B accepted. C became the holder for value. Before due date it was agreed between A and C (A assuring C of B's concurrence) that the bill should be renewed; and C gave to A a cheque on C for the amount of the bill, to the intent that B should be placed in funds to meet the original bill, and should thereupon accept the renewed bill. A sent the new bill to B for acceptance, and also sent him the cheque) and B knew the purposes for which both were sent. B cashed the cheque and paid the first bill, but refused to accept the second. *Held*, that B had no right so to appropriate the cheque without accepting the bill. *Held*, also, that the agreement between A and C did not release B from his suretyship as acceptor of the first bill. *Torrance* v. *Bank of British North America*, L. R. 5 P. C. 246.

BILL OF LADING.

Semble.—A bill of lading, in which the words "or order or assigns" are omitted is not a negotiable instrument.

Where goods have been delivered to the person to whom the bill of lading is made out, and they have then been delivered to indorsees of the bill of lading, so that the indorsees unite in themselves a legal and an equitable title to the goods, the omission of the words "or order or assigns" in the bill of lading is not sufficient to give the indorsees constructive notice of some equitable arrangement between the person to whom the bill of lading was made out and the consignors. *Henderson* v. *The Comptoir d'Escompte de Paris*, L. R., 5 P. C. 253.

COLLISION.

Duty of steam vessel in dense fog.—A steam ferry boat started in a dense fog to cross a navigable river, those in charge of her having been informed that vessels were anchored in or near her track. The ferry boat, although navigated with all ordinary care, ran into and damaged a ship at anchor. *Held*, that the ferry boat was to blame. *The Lancashire*, L. R., 4 Ad. & Ec. 198.

COVENANT RUNNING WITH THE LAND.

The owner of some land sold a part of it and entered into an agreement with the purchaser, that an adjoining plot of land "should never be hereafter sold, but left for the common benefit of both parties and their successors." *Held*, that this was merely an agreement that the plot of land should be left open, in the state in which it then was, for the common advantage of both parties, and that such an agreement did not contravene any rule at law, but gave the person who might hold the vendee's land the right to enforce the obligation against the person who might hold the vendor's land. Thus the former might apply to a court of equity to order the removal of a structure that had been placed on the plot in violation of the agreement. *M'Lean* v. *M'Kay*, L. R., 5 P. C. 327.

LIBEL.

Defamation: privilege: communication by one election agent to another: parliamentary election: time for petition: interest on duty.—F. and B. were candidates at a parliamentary election. The defendants were agents of B., and on the day of the election, whilst the poll was proceeding, one of them wrote to the agent of F., stating that bribery on F.'s behalf was going on. B. was returned, and on the next day the plaintiff's name was mentioned by the same defendant to F.'s agent as that of a briber. A discussion upon the imputation ensued, which resulted in the defendants transmitting to F.'s agent on the day following a document signed by both of them, "certifying" that the plaintiff had been personally guilty of bribery. In an action of defamation brought upon this document: *Held*, that the occasion was not privileged. *Quære*, whether it would have been privileged if a petition against the return of B. had been presented or contemplated, the twenty-one days during which such a petition might have been presented not having elapsed. *Dickeson* v. *Hilliard*, L. R., 9 Ex. 79.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from* 22nd *May, to* 30*th June,* 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT £ s. d.	SOLICITOR
May 22	Fitzmaurice Pratt, owner and petitioner	Sale	Wicklow	—	*R. N. Peebles*
" "	Walter Duff, owner; *William Ash Gaussen, petitioner*]	Sale	Tyrone	85 0 0	*John Glover*
" 23	J. FitzEustace Forster, owner and petitioner	For declaration of title	Dublin and Meath	1,864 0 5	*Maxwell & Weldon*
" "	Thomas Brady, owner; *George Brown and another, petitioners*	Sale	Leitrim	166 0 0	*Perry & Crossberry*
" 26	Michael Derham, owner; *Thomas Dyer, petitioner*	Sale	Dublin	119 12 0	*T. F. Bergin*
" 27	Charles J. Henry, owner and petitioner	For declaration of title	—	5 0 0	*George Bolton*
" 28	Thomas John, owner and petitioner	Sale	Cork	270 0 0	*W. W. Babington*
" 29	William Bowler and several others, owners; *William Brew, petitioner*	Sale	Clare	15 14 0	*D. R. Hilliard*
" "	Mary Hall, Mary Wilson, and several others, owners and petitioners	Sale	Galway, Roscommon, and Clare	1,063 5 7	*Flood & Russell*
" 30	Rev. Robert Wm. King and Rev. Abraham S. Palmer, trustees for sale under will of Rev. Luke W. King, owners and petitioners	Sale	Longford	218 14 6	*J. E. Tarleton*
June 2	Arthur M'Cann, owner; *James Blayney, petitioner*	Sale	Armagh	81 3 0	*Morris & Lawler*
" "	Peter Gallagher, owner; *Peter Heany, petitioner*	Sale	Leitrim	Not stated	*Michael M'Keown*
" 3	John P. Carleton, Mary D. Carleton, Penelope Carleton, and Louisa Carleton, owners and petioners	Sale	Cork	102 11 11	*S. Gillman*
" 4	John Rowan and others, owners; *Executors of A. Crawford, petitioners*	Sale	Antrim	80 16 3	*Seeds & Thompson*
" "	Randal Adams, owner and petitioner	Sale	Tyrone	187 3 3	*John Fleming*
" "	John Murray, owner; *John Thompson, petitioner*	Sale	Tyrone	In owner's possession	*Longfield & Co.*
" "	William Anketell, owner and petitioner	Sale	Monaghan	3,759 6 10	*Edward Hudson*
" "	James A. Armstrong and others, owners; *Executors of A. Crawford, petitioners*	Sale	Antrim	1,554 17 9	*Seeds & Thompson*
" 5	Martin O'Carroll, owner and petitioner	Sale	Roscommon and Westmeath	519 9 3	*Charles Kernan*
" "	Trustees William Metge and wife, owners and petitioners	Sale	Meath	389 16 2	*James Burke*
" "	Rev. Robert W. Maxwell, owner and petitioner	For declaration of title	Donegal, Tyrone, and Londonderry	4,558 9 0	*Henry M'Clay*
" "	Catherine Mullally, owner; *C. Purcell, petitioner*	Sale	Tipperary	30 17 4	*P. J. Luther*
" 8	Eliza Martha Browne and Emily Browne, and Charles Abbott and Mary Dora Abbott, owners and petitioners	Sale	Leitrim	254 11 3	*Barry Collins*
" "	James Waring, owner; *Lucas Waring, petitioner*	Sale	Cavan	183 13 3	*L. Waring*
" "	William Boak, owner; *James Moore and others, petitioners*	Sale	Donegal and Tyrone	207 8 6 estimated net rental	*Wilson & Frosts*
" 10	Henry Roe and others, owners and petitioners	Sale	Dublin	97 5 0	*Webb, Scott, & Co.*
" 12	Dionysius D. Hughes, Chas Henry James, and Lucius H. Deering, or some or one of them, owners; *Margaret M'Kinstry, petitioner*	Sale	Armagh	58 16 3	*A. M'Combe*
" "	Patrick M'Parland, owner and petitioner	Sale under Partition Act	—	Not stated	*A. M'Combe*
" "	Edward M. O'Callaghan, owner; *John Ryan, petitioner*	Sale	Cork	121 3 6	*John Ryan*
" 13	Trustees Charles P. Leslie, owners and petitioners	Sale	Meath	2,482 8 5	*Robert Murdoch*
" "	Administrator of Francis John Garvey, owner; *Robert Morrogh, petitioner*	Sale	Mayo	151 3 0	*Leonard Morrogh*
" 19	Trustees of will of J. C. Moreland, owners and petitioners	Sale	Antrim	237 0 0	*L'Estrange & Brett*
" 22	Henry O'Beirne, owner; *Patrick Nolan, petitioner*	Sale	Dublin and Westmeath	23 3 6	*W. R. Meredith*

Digitized by Google

LANDED ESTATES' COURT—PETITIONS FILED—*continued.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
June 22	John J. Bourke, owner and petitioner	Sale	Mayo	Not stated	*J. D. Meldon & Sons*
" 23	Mary Stedder, John Gore, and Catherine Gore, owners and petitioners	Sale	Kilkenny	43 18 3	*Hamilton & Craig*
" "	John Townshend, owner and petitioner	For declaration of title	Cork	239 19 0	*A. H. Middleton*
" "	Edmund Lyons, owner and petitioner	Sale	Dublin	245 6 11	*Keely & Lloyd*
" 24	George Hayes, owner; *Eliza Fawcett, petitioner*	Sale	Tipperary	49 17 7	*A. Robinson*
" 25	Richard Cross, owner; *Michael Byrnes, petitioner*	Sale	Cork	90 0 0 estimated annual value	*S. Gillman*
" "	Mrs. Charlotte Gamble and another, owners; *Same, petitioners*	To sanction building lease	—	—	*Cathcart & Hemphill*
" "	Executors of Patrick Coyne, owners; *National Building Company, petitioners*	Sale	Dublin	191 0 0	*J. D. Meldon*
" "	Charles Copland and Frederick William Niven, Charles Henry James and Lucius H. Deering, owners and petitioners	Sale	Roscommon	360 8 6	*Orpen, Sons, & Sweeney*
" 26	Francis Brew, owner; *E. B. Browne, petitioner*	Sale	Clare	In owner's possession	*M. M'Namara*
" "	John E. Delmege, A. W. S. Delmege, M. J. E. Delmege, M. J. J. Delmege, E. J. Delmege, and J. J. J. Delmege, owners and petitioners	Sale	Limerick	461 17 7	*Edward Hartigan*
" "	Lord Ashtown and others, owners; *Henry Pattison, petitioner*	To carry out contract for sale	Queen's Co.	444 10 6	*A. H. Middleton*
" 27	Christopher Magrane, owner and petitioner	Sale	Meath	Not stated	*T. W. Hardman & Son*
" 30	Rev. P. L. Jameson and others, owners; *R. Singer, petitioner*	Sale	Dublin	94 3 6	*W. Jameson*
" "	Michael Derham, owner; *John M'Laughlin, petitioner*	Sale	Dublin	In owner's possession	*T. F. Bergin*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John M'Crory	Prove debts	*Scallan*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Arthur G. Hay	2nd composition sitting	*Mathews*
Robert Courtney	do	*Perry & Co.*
Mason and Looby	1st composition sitting	*Mathews*
Same matter	Final examination	*Casey & Clay*
Luke Connor	1st composition sitting	*Oldham & Eaton*
John Marsden	1st public sitting	*Rynd*
Same matter	Motion	*Rynd*
John Gleeson	1st public sitting	*Casey & Clay*
John Keane	Final examination	*Fottrell & Son*
Owen Dunne	do	*Scallan*
S. W. Tomlinson	do	*Scallan*
William Moreland	do	*Lynch*
George Boyd	do	*Donnellan*
James Allison	do	*Casey & Clay*
John F. Maguire	Examine witnesses	*Oldham & Eaton*
———	Application to dismiss debtor summons	*Armstrong & Tatlow*

The following at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Hanlon	Sale	*Fay & M'Gough*
James Murray	do	*Larkin & Co.*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
William Holmes	Reference under order 7th July	*Larkin & Co.*

WEDNESDAY.

Before MR. REGISTRAR DOYLE at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
J. W. Savage	Reference	*Adams*

THURSDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Banbridge Extension Railway Co.	Motion	*Murland & Perry*

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Folliott Barton	Prove debts	*Leachman*
Robert Courtney	do	*Perry & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
William Moreland	1st composition sitting	*Benner*
Michael O'Sullivan	1st public sitting	*Larkin & Co.*
Edward Quigley	do	*Kernan*
John Behan	Final examination	*O'Brien*
Michael Russell	do	*Stewart*
Patrick Mooney	do	*Perry & Co.*
John Woods	do	*Oldham & Eaton*
J. W. & R. Rowan	do	*Lynch*
Same matter	Motion	*Smith*

ADJUDICATIONS IN BANKRUPTCY.

Campbell, William, Triton, Bettystown, county Meath, farmer. Sittings, *Tuesday, October* 6, and *Friday, October* 23. *Rynd*, solr.

Lynch, William Henry, Butcher-street, Derry, boot and shoe-dealer. Sittings, *Friday, October* 9, and *Tuesday, October* 27. *Cronhelm and Co*, solrs.

Maguire, John F., Fivemiletown, county Tyrone, draper. Sittings, *Friday, October* 9, and *Tuesday, October* 27. *Oldham and Eaton*, solrs.

Digitized by Google

M'Cusker, John J., Dundalk, county Louth, outfitter and draper. Sittings, *Tuesday*, *October* 6, and *Friday*, *October* 23.

M'Ghee, Mary L., Granby-row, Dublin, spinster. Sittings, *Tuesday*, *October* 6, and *Friday*, *October* 23. *Rynd*, solr.

Molloy, John, Middle Gardiner-street, Dublin, grocer. Sittings, *Friday*, *October* 9, and *Tuesday*, *October* 27. *M'Evoy*, solr.

Murphy, Malachi, 28, Ranelagh, county Dublin, confectioner. Sittings, *Friday*, *October* 9, and *Tuesday*, *October* 27. *Hamilton and Craig*, solrs.

DIVIDENDS IN BANKRUPTCY.

Bailey, Thomas, Larne, Antrim, publican. 1st dividend, 9s. in the £. C. H. James, official assignee. *Scallan*, solr.

Some of the legal and administrative arrangements on the further shore of the Atlantic are a little slipshod, but they are not quite so bad as they are made out by an artless traveller, who contributes the following *trait* of American manners to a French paper. He arrived, he says, in New York (Somethingville, Nevada, U.S., would have been better), and proceeded to one of the large hotels in the town, when, after spending twenty-four hours in this hospitable mansion, he found that his gold-headed cane had disappeared, and that his umbrella had been, not stolen—that would have been less galling—but exchanged for one of coarse and voluminous make. He complained to the master of the hotel, but, obtaining no redress, left the house, and went to the French Consulate. "I shall prosecute the rascal," said the aggrieved exile. "On no account," replied the Consul. "And why not, pray? have I not been scandalously robbed?" "No doubt of it, but the hotel subscribes to the judge."

DEATH OF A SCOTCH JUDGE.—Lord Benholme, one of the judges in the Second Division of the Court of Session, died in Edinburgh on Tuesday night after a few days' illness, at the age of 78. He was called to the Bar in 1817, and became Sheriff of Renfrewshire in 1842. He was appointed a Lord of Session in 1853.

A LEGAL GEM.—Perhaps the most perfect specimen of the "allusive style" in legislation has been created by the draughtsman of the Statute Law Revision Act, 1874. A correspondent of the *Law Times* who has been puzzling over the Act for some time, describes it as being "as pretty a piece of network as can possibly be put together," and defies "the most industrious to master a fifteenth part of it in less than a week." He extracts one of its "gems," which is certainly perfect in its way. It is the clause of the schedule designating those parts of the Act 6 George IV. c. 7, which are repealed by the operative portion of the Revision Act, and the passage runs thus—"6 George IV., c. 7. in part, namely, section 2, from 'and when any window,' to increase of such window or windows,' the words 'or the increase of windows,' the words 'or the additional windows therein shall be made and restored,' and so on. The writer inquires whether it would not be better "to repeal the whole of the Act in question, and re-enact in simple form and substance what is required by law." Undoubtedly it would be better—for everybody but lawyers—that the existing state of the law on any subject should be capable of being ascertained by some other process than a game of "hide and seek" through the statute book.—*Pall Mall Gazette.*

COUGHING IN COURT.—We have heard of a popular preacher who periodically reproved his congregation for coughing in church, and an incident which has just occurred in Liverpool shows that the prohibition ought to extend to all public places. Grave legal consequences very nearly resulted from a fit of coughing which lately overtook a member of the Bar in the Liverpool Court of Sessions. A prisoner charged with stealing a macintosh coat was on his trial, and the foreman of the jury was about to deliver the verdict, when the noise of the coughing caused the Clerk of the Peace to misinterpret the opinion of the twelve "gentlemen in the box." The learned Recorder at once proceeded to sentence the prisoner. With a sauve approval of the judgment arrived at, he remarked that "the jury had found the prisoner guilty of the offence, and, so far as he (the Recorder) could see, very properly so." At this point, however, the unfortunate spokesman of the twelve became uneasy. The compliments of the Bench seemed to arouse him to an understanding of the situation, and he ventured to inquire whether the Recorder's kindly comments referred to the case just tried. The Recorder replied in the affirmative, and the luckless juryman could no longer conceal the fact that the verdict of himself and his brethren had been an acquittal. We think on the whole, the conduct of the foreman is to be commended. By thus reverting to the actual verdict he lost, it is true, the approval of the Bench, but he might possibly have felt some little remorse if the prisoner had been condemned to a long term of imprisonment after the jury had taken pains to find him innocent.—*Globe.*

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	SEPTEMBER Fri. 11	Sat. 12	Mon. 14	Tues. 15	Wed. 16	Thur 17
	Government.						
—	3 p c Consols	—	91⅞–2	91⅞	91⅞	91¾⅞	—
—	New 3 p c Stock ..	91⅝¾	91½	91⅛–	191–0	⅞91	90⅞–1
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	102	—
	Banks.						
100	Bank of Ireland ..	—	303⅞	304	304	304	305
25	*Hibernian Banking Co.* ..	—	—	59⅝	59½	—	59½
15	*London Joint Stock* ..	—	50½	—	50⅜¼	—	—
20	*London and Westminster* ..	74½	—	—	—	75	75½
3½	*Munster Bank (Limited)*	8⅜¼	8⅜	8⅜¼	—	—	8⅜
30	*National Bank*	63½	63⅜⅝	63⅞	64½	64½	64⅜⅝
15	*National of Liverp'l (Ltd)*	—	—	—	—	14½	14⅜⅝
25	*Provincial Bank* ..	90	—	90⅛⅝	—	90⅛	—
10	*Royal Bank*	30⅛	—	—	x d	—	29⅞
2½	*Ulster Banking Co.* ..	—	—	—	x d	—	—
	Steam.						
50	British & Irish	—	—	—	52	—	—
100	City of Dublin	—	107⅜	107⅜	107½	107⅝	107½
50	Dublin and Glasgow ..	—	—	—	—	62½	—
10	Dundalk (Limited) ..	—	—	6½	6–⅛	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	–/1	—	—
1	Killaloe Slate Co. (lit'd) ..	—	—	—	x d	17/3	17/ xn
7	*Mining Co. of Ireland (lit'd)*	—	—	6	—	—	6⅜⅝
2½	Wicklow Copper	—	—	—	3	3½	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅝	10½⅝½	10½	10⅜⅝	10⅜⅝	—
9½	*Dublin Tramways* ..	—	—	—	6⅝	6⅝	—
25	*National Assurance* ..	47½	47½	47½	—	—	—
9-4-7	*Patriotic Assurance* ..	—	—	10⅜	x d	—	—
	Railways.						
100	Dublin and Drogheda ..	—	—	112⅝	113	113½	113¾
100	Dublin and Kingstown ..	—	—	—	x d	—	—
100	Dublin, W'klow, & W'ford	—	—	—	—	77	—
100	Gt. Northern and Western	—	—	98⅜	—	—	—
100	Gt. Southern and Western	109	108⅝	108¼	108⅝	108⅞	108⅞
100	Londonderry & Enniskillen	—	—	—	—	—	—
100	Midland Gt. Western ..	81½	81⅛⅝	81⅝	79⅝xd	—	—
100	Waterford & Cent. Ireland	—	—	—	—	13	13
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	95	—	—	—	—	—
100	Do. do. 4½ p c	—	—	—	102⅝	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	—	—
100	Do., 4½ p c	—	—	106	—	—	—
100	D., W., & W., 6 per cent ..	—	—	130	—	—	—
50	D., W., & W., 5 p c (1860)	—	54½	54½	—	—	—
50	Do. do. (1865)	—	—	—	—	—	—
100	Gt. South'n & West'n 4 p c	97½	—	—	97½	—	—
10	Irish North Western A 5 p c	—	—	—	x d	—	—
100	Do., Divd Com A 5 p c ..	—	—	—	x d	—	—
10	Do., B 5 p c	—	—	—	x d	—	—
100	Mid. Great Western, 5 p c	—	—	—	x d	—	—
100	Ulster 4½ Per Cent. Stock	—	103	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	50	—	—	—	—	—
50	Do., new red, 1873, 5 p c ..	—	—	—	—	50	—
10	Waterford & Tramore 5 p c	—	—	—	x d	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	97	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	100	—
—	Dublin & Meath 4½ p c ..	—	—	90	—	—	—
—	D., W., & W., 4½ p c ..	—	—	—	—	100	—
—	Gt. South'n & West'n, 4 p c	—	—	—	—	—	—
—	Irish Nth Westn 1st C 5 p c	—	100½	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—3½ per cent., 27th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.

Name Days—September 29th, and October 14th, 1874.
Account Days—September 30th, and October 15th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

SETTLED ESTATES.—By an Act of the late Session, the powers of the Leases and Sales of Settled Estates Act (19 & 20 Vic., c. 120) are extended. Where under the recited Act the concurrence or consent of any person to an application is required and not obtained, notice is to be given and the Court may dispense with such consent, and when it is refused, grant the application, having regard to the number and interest of parties in the matter.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

HODSON and HUDSON—September 12, at the Parish Church of Highweek, near Newtownabbot, South Devon, Herbert Richard Hodson, Esq., of the Inner Temple, London, barrister-at-law, to Octavia Charlotte, daughter of the late John Percival Hudson, Esq., of Belfast.

LEECH and LEPPER—September 15, at Larne, Charles Leech, Esq., third son of Charles Leech, Esq., Q.C., Dublin, to Ellen Miller, fourth daughter of William Harper Lepper, Esq., Glenville, Cushendall, County Antrim.

O'BRIEN and KELLY—September 12, at the Catholic Church, Castlebar, by the Rev. P. Waldron, Administrator, Michael Thomas O'Brien, Esq., of No. 5 Lower Dominick-street, Dublin, to Maria, second daughter of the late Ignatius Kelly, Esq., of Castlebar, Crown Solicitor for the County Mayo.

LEGAL POSTINGS:

CITY OF LONDONDERRY.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of DENIS DOHERTY, An Insolvent.

TO BE SOLD BY PUBLIC AUCTION,

At the AUCTION MART OF WILLIAM DALE, SHIP-QUAY-STREET, LONDONDERRY, On WEDNESDAY, 30th SEPTEMBER, 1874, At the hour of One o'clock afternoon,

All the Estate and Interest of the Insolvent, his Assignees and Mortgagees, of, in, and to—

LOT 1 (Part of Lot No. 2, formerly offered for sale), viz.:—All that portion of the Plot of Ground extending from the Old Newtownlimavaddy Road, leading from the Waterside, situate in the Parish of Glendermot, and City and County of Londonderry, upon which has been built an excellent Dwelling-house and large Yard at the rere thereof, as lately in the occupation of the Insolvent, containing in front 28 feet 3 inches, and from front to rere 75 feet, be the same more or less, as described in the Map thereof. The Premises are comprised and held with others under a lease dated 9th July, 1863, for a term of 970 years from 1st May, 1863, at the yearly rent of £19 16s 8d, but are indemnified against payment thereof by Premises already sold in this Matter.

LOT 2 (also part of Lot No. 2, formerly offered for sale).—A Parcel of Ground adjoining Lot No. 1, with the Sheds erected thereon, also late in the possession of the said Insolvent, containing in front 54 feet 9 inches, and from front to rere 81 feet 6 inches, be the same more or less, situate as aforesaid, as described in the Map thereof, held with the foregoing and other Premises, under the above-mentioned lease, dated the 9th July, 1863, for the term of 970 years from the 1st May, 1863, at the yearly rent of £19 16s 8d, but indemnified by the other Premises held under said lease against the payment of the said rent.

The Biddings taken by the Auctioneer will be submitted to the Court, at the Four Courts, Dublin, on Friday, the 2nd day of October, 1874, when, if approved of, the Purchaser will be declared.

A Statement of Title and Conditions of Sale are lodged in the Office of the Court, and may also be seen in the Office of the undernamed Solicitors having carriage of the Sale, and at the Office of James Hayden, Solicitor, Londonderry.

Dated this 1st day of August, 1874.

THOMAS FARRELL, Chief Clerk.

DESCRIPTIVE PARTICULARS.

LOT No. 1 consists of an excellent Dwelling-house, with large Yard suitable for a Builder, with Workshop and Office thereon.

LOT No. 2 consists of a Plot of Ground, with Sheds thereon, adjoining No 1, and available for the erection of Dwelling-houses.

Both Lots will be sold free from any rent, and indemnified against the payment of the rent reserved by the lease of 1st May, 1863, by the other Premises held under the same lease.

Proposals for purchase by Private Contract will be received by the Official Assignee up to the hour of Twelve o'clock noon, on the 24th day of September, 1874. If an offer be made which can be recommended by the Vendors, it will be submitted to the Court for approval without further notice.

For further information apply to

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

MICHAEL LARKIN & CO., Solicitors for Mortgagees, having carriage of Sale, 51 Dame-street, Dublin.

JAMES HAYDEN, Solicitor, Londonderry.

541 WILLIAM DALE, Auctioneer, Londonderry.

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of ROBERT COURTNEY, of Dundrum, in the County of Dublin, Builder, a Bankrupt.

TO BE SOLD BY PUBLIC AUCTION, Before the Court, At the Four Courts, Dublin,

On FRIDAY, the 9th day of OCTOBER, 1874, At the hour of Twelve o'clock noon,

All the Estate and Interest of the Bankrupt, his Assignees, and Mortgagees, in and to—

The Lot or Parcel of Ground situate on the west side of the line of the Dublin and Wicklow Railway at Dundrum, in the Half Barony of Rathdown, and County of Dublin, containing 1a 0r 10p, statute measure, held by lease from the Earl of Pembroke and Montgomery to the Bankrupt, bearing date the 9th of August, 1871, for 99 years, from the 25th of March, 1871, subject to the yearly rent of £12, payable half yearly, on 25th March and 29th September, and to the covenants and conditions in the said lease

A Statement of Title and Conditions of Sale are lodged in the Office of the Court, and may be seen also in the Office of the undernamed solicitor having carriage of the Sale.

Dated this 9th day of September, 1874.

THOMAS FARRELL, Chief Clerk.

DESCRIPTIVE PARTICULARS.

The demised premises have been enclosed by a stone and brick wall wall, and a good and substantial Dwelling-house, now known as No. 3, Eglinton-terrace, Dundrum, has been erected on the said plot of ground, according to the conditions in the lease.

The house is in the occupation of a solvent tenant, whose tenure will expire on the 1st November, 1874; and the purchaser will be entitled to the quarter's rent falling due on that day, amounting to £13 15s.

Proposals for purchase by Private Contract will be received by the Official Assignee up to the hour of Twelve o'clock noon on the 3rd day of October, 1874.

If an offer be made which can be recommended by the Vendors, it will be submitted to the Court for approval without further notice.

For further information apply to

LUCIUS HENRY DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

Messrs. D. and T. FITZGERALD, Solicitors for Mortgagees, having carriage of the Sale, No. 20 St. Andrew-street, Dublin, where may be seen Statement of Title and Conditions of Sale.

JAMES GOFF, Solicitor for Assignees, No. 16 Bachelors'-walk, Dublin. 545

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN J. M'COSKER, of Dundalk, in the County of Louth, Outfitter and Draper, was on the 8th day of September, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 6th day of OCTOBER, 1874, and on FRIDAY, the 23rd day of OCTOBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

THOMAS FARRELL, Chief Clerk.

OLDHAM & EATON, Solicitors, 42 Fleet-street, Dublin.

547

SALE:

COUNTY CARLOW.

ESTATE in the County of Carlow FOR SALE. TO BE SOLD, with Landed Estates Court Title, One Undivided Moiety of an extremely desirable Estate, held in Fee, situate at Milford, in the County Carlow, and within four miles of the Town of Carlow, the whole producing at present an annual profit rent of £400, which will be increased to £600 per annum on the falling in of two annuities of £100 a-year each. Apply to

Messrs. J. D. MELDON & SONS, 14 Upper Ormond-quay, Dublin. 544

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can now be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, at the Office of the Journal, 53, UPPER SACKVILLE-STREET, DUBLIN.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, September* 19, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, SEPTEMBER 26, 1874. No. 400.

THE EXTENSION OF COUNTY COURT JURISDICTION.

NOT the least important enactment of the late session of Parliament from a practical point of view, is the short Act 37 & 38 Vict., c. 66, which confers upon the Irish Civil Bill Courts for the first time, a jurisdiction as regards the recovery of unascertained balances due on partnership accounts, and much enlarges their jurisdiction in respect of certain actions involving questions of title. These new provisions, which are borrowed from the English County Court Acts, empower the Chairman of every county court in Ireland:—1st, to try, by civil bill, actions for the recovery of any debt or demand not exceeding £40, alleged to be due as the balance of a partnership account, *whether the balance shall have been ascertained or not* previous to the issuing of the Civil Bill—they already possessed jurisdiction in the case of *ascertained* balances, 14 & 15 Vict., c. 57, s. 35; and, 2nd, "to try by civil bill actions in which the title to any corporeal or incorporeal hereditament shall come in question, when the value of the land which is *in dispute*, or in respect of which an easement or licence is claimed," &c., "shall not exceed £20 by the year as valued under the acts relating to the valuation of rateable property in Ireland. As this Act will come into operation upon the 1st December next, and will, therefore, be available for the coming Christmas quarter sessions, it deserves immediate attention.

As regards the partnership provisions, we see that they give the Chairman jurisdiction to wind up the affairs of a small partnership business, by taking the account between the parties, and giving a decree for the balance; but, forgetting that the sittings of our Chairmen are but for a short time and at considerable intervals of time, the Legislature has omitted to provide any machinery for the satisfactory ascertainment of the value of property, and other like matters connected with the proper taking of the account. Unless the parties, therefore, come into court unusually well prepared, and willing to aid one another, we apprehend that adjournments and great delays will frequently occur. Nevertheless, although this provision, after upwards of twenty years' trial (*vide* 9 & 10 Vict. c. 95, section 65, extended by 13 & 14 Vict. c. 61, section 1,) was found by Englishmen to be inadequate for their own wants, and was supplemented by the enactments which created the valuable but costly equitable jurisdiction of the English County Court, we apprehend that it will be a boon to many an humble Irish suitor, who cannot afford to embark in a plenary chancery suit. Before the passing of the Chancery (*Ireland*) Act, 1867, suits for the taking of partnership accounts in Ireland were carried on in Chancery under the comparatively summary and inexpensive procedure provided by the 15th section of the Irish Chancery Regulation Act, 1850; this section was also applicable to administration suits. When, however, the Act of 1867 became law, the previously existing summary mode of procedure was abolished, and, while a fully adequate substitute was provided for administration matters, by proceedings under an "*originating summons*," no provision was made for the summary adjustment of partnership differences. Hence it is that we regard this accession to our civil bill jurisdiction as a boon to the humble suitor, and trust that the chairmen may find means to supplement, in part, its deficiencies by judicious Rules.

With respect to the new jurisdiction in matters involving questions of title, we apprehend that it will be found to be an unqualified boon; and we regret that, as the Legislature had before them its English prototype (30 & 31 Vic., c. 142, s. 12) with the rules which supplement it, they did not think fit to provide a more intelligible, because less vague, enactment. For instance, there is a provision in section 2 of the new statute enabling the defendant to obtain an order from a judge of the superior court that the proceedings in the Civil Bill Court be stayed, if he can satisfy the judge either that the value of the lands in question exceeds £20, or, that, for any other reason, it is not a fit case to be tried in the Civil Bill Court. It is manifest that such a provision will be a nullity unless some intimation [such, for instance, as no ordinary process for trespass ever gives] is given to the defendant that the question of title is to be investigated, and, unless he have some time to make the application; the ordinary seven day service would be wholly insufficient. In England the form of summons provided by the orders gives the requisite particulars, and the statute itself gives the defendant one month for making the application. These matters can, however, be dealt with by the Chairmen themselves before the Act comes into operation.

There is one section in the Irish Civil Bill Act of 1851 which presents some analogy to the new enactment. It is the 79th section (14 & 15 Vic., c. 57, s. 79), which is the only section of that statute that gives jurisdiction in any matter of pure title. This section is the *bête noire* of many sessions practitioners, partially because of the difficult questions as to title and as to service, which may arise, and partly because of the special provisions as to the contents and form of the process, which frequently escape attention, since it happens that section 82 has been repealed by "Deasy's Act," so far—but so far only—as relates to proceedings between landlord and tenant, &c. (23 & 24 Vic., c. 154, s. 104, and schedule B), and is omitted, by mistake, from the late Mr. Johnstone's book on Irish County Courts' practice, as if it had been wholly repealed.

Section 79 empowers the Chairman, &c., to hear and determine "all disputes and differences respecting the possession of any lands," &c., "held under any grant, lease, or other instrument, for any term or interest, the duration or extent whereof, when originally granted," &c., "did not or shall not exceed three lives without any provision for the renewal thereof, or, a term of sixty-one years determinable upon three lives, or three lives with a concurrent term of years not exceeding sixty-one years, or, a term of sixty-one years absolute, and the yearly rent reserved or payable in respect whereof, under such grant, lease, or other instrument, shall not exceed £20, and in respect of which no fine exceeding £20 shall appear on the face of such grant, lease, or other instrument, to have been paid on the granting or execution of such grant, lease, or other instrument, or, held under a parol demise for a term not exceeding three years at a rent not exceeding £20, whether any fine was paid on the creation of the

Digitized by Google

same or not, or, held for any term or tenancy from year to year at a rent not exceeding such amount as aforesaid."

In short, wherever the plaintiff and defendant claim to be entitled to the same lands, under the same lease or contract of tenancy, provided that the tenancy which both claim (whether created by a written instrument or a parol demise), is one and the same, and is of the limited character mentioned in the section, and that the rent reserved thereby does not exceed £20 per annum, and that the writing (if writing there be) creating the tenancy does not recite the payment of a fine, the Chairman has jurisdiction under that section to adjudicate between the rival claimants; and the only matter to prevent the Court from trying the question of disputed possession will be a *bonâ fide* title set up adverse *and paramount* to the claim of the plaintiff—*vide* O'Donnell on the Civil Bill Act, p. 44 *et seq.*, and O'Donnell and Brady on Civil Bills, pp. 618 to 636.

What is and what is not a *bonâ fide* claim of *title paramount*, is a point often difficult to determine upon the evidence, although the matter bristles with authorities; and hence a further reason why suitors shrink from resorting to this remedy. This section is, however, useful. For instance, it empowers the Chairman to decide many family disputes as to the ownership of the farm, or, to enable the purchaser of a tenant's interest at a sheriff's sale, to obtain the possession of his purchase from the tenant, without the expense and delay involved in proceeding by action in the Superior Court.

We have dwelt upon this somewhat anomalous existing jurisdiction with a twofold object—partly because it deserves attention for its own sake; partly because, owing to the similarity of the language of the two statutes, it illustrates and brings into prominence the more comprehensive provisions of the new enactment. Furthermore, we find that, according to the existing Irish procedure, full particulars of the thing claimed must be given to the defendant by the "*process*" itself, so as to prevent a surprise, just as, by the Rules under the English Act (30 & 31 Vict., c. 142) from which the new Irish enactment is borrowed, corresponding provision is made.

And what is the result of the comparison? We find that under the new law the jurisdiction is neither limited to cases where the parties claim under a common title, nor, in cases where they happen to do so, to claims for a particular class of tenancies; and no claim of *title paramount* can oust the jurisdiction. Not only has the Chairman jurisdiction as regards the title to the land itself, but as regards easements, licences, and incorporeal hereditaments, excepting rights of fishing connected therewith, and this—whether the question of title arises in an ejectment or in any other action. And even as regards the subject-matter—the land itself—the jurisdiction is widened; inasmuch as, not the rent, but, the amount of the poor law valuation, is made the test of value.

These are far-reaching and wide advantages, and there is good reason to expect that when the new law comes to be known and understood by our peasantry, but few of their disputes as to bounds, as to rights of way, rights of light, *et hoc genus omne*, which now breed and perpetuate feuds between humble neighbours, and too often lead from mere bitterness to riot and bloodshed, will long remain unsettled when they can settle their differences cheaply and speedily before a tribunal which has so long enjoyed their confidence.

NOTANDA.

Renewal of Attorney's certificate; conveyancing, without certificate; affidavit to obtain renewal of certificate; non-statement of facts as to practising as conveyancer.—*Shortt*, on behalf of R. Parsons, one of the attorneys, moved that the Registrar of the Incorporated Law Society should be directed to issue the necessary certificate to enable him to take out his licence for 1874, in pursuance of an order made by Deasy, B., on Feb. 6, 1874. That order was founded upon an affidavit of Mr. Parsons, stating that he had not, directly or indirectly, practised as an attorney or solicitor in any court during the preceding two years. On the 23rd February the secretary of the Law Society received a letter from Mr. Edward Hamilton Hunter, attorney, forwarding a deed and bill of costs, which he stated had been prepared by Mr. Parsons within a year. The Incorporated Law Society forwarded Mr. Hunter's letter to Mr. Parsons, who replied, giving an explanation which he now submitted upon affidavit. The Incorporated Law Society had not deemed his letter satisfactory, and required that the circumstances should be laid before the Court. Mr. Parson's affidavit stated that in January, 1873, he was residing with his stepfather, Mr. Peter Blackburn, in Smithfield. Mr. Blackburn being about to enter into a contract with Mr. Nolan for the lease of a house, Mr. Parsons drew a draft agreement for them and gave it to Mr. Nolan, who got it engrossed. Shortly afterwards Mr. Parsons was arrested for a small debt. While in the Marshalsea he handed over his stepfather's papers and title deeds to Mr. Hunter, in order that he might act for him, including the engrossment of the agreement, and a draft bill of costs, which he (Mr. Parsons) had prepared in prison. He acted purely in a friendly capacity for his stepfather, and made no demand for payment, nor did he furnish the bill of costs; but a clerk of Mr. Nolan brought £3 to the prison to him, of which he sent back 10s. Mr. Hunter, as a solicitor, transacted the rest of the business in connexion with the agreement, and was paid £25 by Mr. Nolan. Mr. Hunter served Mr. Blackburn with a bill of costs for £29 in connexion with his preparation of a lease and conveyance of a mortgage, and brought an action for the recovery of his claim, laying the venue at Kilkenny for the last spring assizes. The defendant in that action lodged 30s. in Court, and obtained a change of venue to Dublin; but Mr. Hunter had not since proceeded with the trial of it. The affidavit also stated that Mr. Parsons had, for some time, acted as assistant in the office of Mr. Hunter.—*Sheckleton*, on behalf of the Incorporated Law Society, stated that, in consequence of what had appeared to them to be a suppression of facts on the part of Mr. Hunter, they had felt it to be their duty to leave the matter in the hands of the Court. The name of Mr. Parsons was on the draft of agreement, as solicitor; and he stated, in his own affidavit, that he prepared the bill of costs in anticipation of becoming a licensed practitioner before the execution of the agreement. [Dowse, B.: The Law Society never would have known anything about this but for the public spirit of Mr. Hunter. What did Parsons get the £2 10s. for?]—*Shortt*: It could hardly have been expected that Mr. Parsons, while in prison and in distress, would have returned a sum of money sent to him in a friendly manner. The statute does not require that the applicant should state that he had not practised as a conveyancer, and having so practised does not affect the present application.—Palles, C.B.: We have carefully considered this application, and regret to find ourselves coerced to the conclusion that it cannot be complied with. The application was made to Deasy, B., on an affidavit, on

Digitized by Google

the faith of the statements contained in which the Incorporated Law Society did not think it necessary to oppose that motion; and an order was then made that the registrar of the society should be at liberty to issue a certificate to Mr. Parsons. That affidavit suppressed matters that, probably, ought to have been brought under the notice of the judge who made the order. The Court cannot, under the circumstances, permit that order to stand; and we shall not, at present, make an order that the Society should be at liberty to issue a certificate to Mr. Parsons. At the same time, we reserve liberty to Mr. Parsons to renew his application at any time during the course of next Michaelmas Term, upon a new affidavit explicitly stating all the facts, as if no order had been made in February last. We offer no opinion, whatever, as to what order we may deem it our duty to make upon such renewed application. We feel coerced to take this course in the interests of the public, and of the practitioners of a profession who are making every effort to enable them to enjoy, without any exception, the high status and position which they have always enjoyed. Under the circumstances, we are not making an order that bears too hardly upon Mr. Parsons. The effect of the present order is, that, until next November, it will be impossible that Mr. Parsons can practise, in any way, as an attorney and solicitor of the Court. On a full consideration of all the facts, upon a new affidavit, and with notice to the Incorporated Law Society, in Michaelmas Term, we shall give the case our best, and I think I may add, our most merciful consideration.—Deasy, B.: I would not have made the order in February last, if the facts which have now transpired had been stated to me (In re *Parsons*, an Attorney; Exch., June 11, 1874).

Libel; privilege; libellous matter published in newspaper, in answer to words spoken at meeting of Board of Guardians, and also so published.—Action by the plaintiff, a Poor Law Guardian of the Arklow Board, against the defendant, a dispensary doctor of the same place, claiming damages for a libellous letter published by the defendant in the *Wicklow News*, charging the plaintiff with being insolvent and unable to pay his debts, and also with not being an independent guardian. A defence was filed relying on a speech made by the plaintiff at a meeting of the Rathdrum Board of Guardians, in which he opposed the payment of costs incurred in a sanitary prosecution ordered by the defendant—the speech having been published in the *Wicklow News*, and the defendant averred in substance that he was privileged, therefore, to publish the statements alleged to be libellous, in order to show that the public ought not to credit the plaintiff in what he said in his speech of the defendant. Demurrer thereto.—*Armstrong*, Serjeant (with him *H. Macdermot*), in support of the demurrer. *Purcell*, Q.C. (with him *E. Gibson*, Q.C., and *J. Gibson*), *contra*.—Fitzgerald, B., said that the defence was based upon the decision of the Exchequer Chamber in *O'Donohoe* v. *Hussey*. No doubt the Court should follow that case, in which it was laid down that, if a person took an action against another for libel, it was open to that other to show that the person who took the action had appealed through the press to the tribunal of public opinion against the defendant, and that the latter had defended himself before the public. But, without entering into any criticism of the decision in *O'Donohoe* v. *Hussey*, the present case clearly did not come within it, because the defendant here wholly failed, first, to show that the libel published was relevant to his supposed defence, and, next, to show that the public had been given such an interest in the matter by the plaintiff's speech as warranted the defendant in addressing the letter complained of to the editor of the *Wicklow News* for publication in his journal.—Deasy, B., said that the present plea was an attempt to extend the doctrine in *Hussey* v. *O'Donohoe* to a degree that would be perilous to suitors and mischievous to the public. The principle of *O'Donohoe* v. *Hussey* was plain. It was this—When a man appealed, through the medium of the press, to the public to condemn the acts or conduct of another, that other was privileged to appeal, through the same medium, to the same tribunal, to induce that tribunal to distrust the statement made against his character or conduct by showing that the person who assailed them was not to be relied on for accuracy, or other reasons; the appeal being made *bona fide* without malice, and the question of *bona fides* or malice to be tried by a jury, who would take into account excess, if any, in the language used. But then, the plaintiff here never made any appeal to the public, through the press, at all. The allegation that the plaintiff caused his observations to be published was given up; the matter then stood in this way—that the plaintiff, being a Poor Law Guardian, at a meeting of the Board of which he was a member, the reporters of the press being present, made remarks relevant to his duties as guardian, and relevant to the subject matter before the Board, and, so doing, said that certain costs, sought by the defendant as sanitary officer, to reimburse him for acting in a prosecution for selling unsound meat, ought not to be paid out of the rates; that the defendant had acted wrongfully and injuriously in the prosecution, and that the matter ought to have been compromised. These were not defamatory expressions, no want of skill was alleged, nor was corruption or improper motive attributed. Was that to be held a justification or privilege in the defendant to appeal to the public through the press in denouncing the guardian who used the expression as a person insolvent, dishonest, unable and unwilling to pay his debts, for that was the substance of the publication of which the plaintiff complained? It would be, he repeated, a very dangerous extension of the principle of *O'Donohoe* v. *Hussey*, to hold that any such privilege existed, and he rejoiced that it would not obtain the sanction of any member of the Court.—Dowse, B., said that he did not wish to express any opinion on the decision in *O'Donohoe* v. *Hussey*, but he quite concurred that the plea contended for in this case would most dangerously extend to the principle of the case named, and, if the Court allowed this, he did not know where the line would be drawn.—Demurrer allowed, with costs (*Murphy* v. *Halpin*; Exch., Jan. 23, 1874).

Conveyance to purchaser of leasehold, by official assignees and mortgagee of bankrupt lessee; covenant by purchaser to pay rent reserved; exemption from liability of property of assignees and mortgagee; warranty of title.—Motion on behalf of J. Burke, the purchaser of a bankrupt's leasehold interest, that the official assignees and a mortgagee, the trade assignee, (who had joined together in the sale, under the order of the Court) should be compelled to execute the deed of conveyance, as furnished by the purchaser's solicitor, notwithstanding that the purchaser refused to allow amendments to be inserted, as required by the solicitor for the assignees and mortgagee, providing that the conveyance was to be by way of assignment only and without warranty of title, that the property of the official assignees and mortgagee should be exempted from liability, and that the purchaser should covenant to pay the rent reserved under the lease by the lessor. The conditions of sale subject to which the property was sold provided:—"That upon payment of his purchase-money the purchaser shall have a conveyance of all the estate and interest of the bankrupt, and his assignees, and mortgagee, in the premises now offered for sale, to be

Digitized by Google

prepared by him and at his expense, but shall not be entitled to call for any documentary or other evidence of title other than and except as the same are offered to be given in the statement of title lodged in the court." "That the vendors will discharge all rents due out of the premises, up to the last gale day preceding the sale:" "That the purchaser shall not be at liberty to make enquiry or objection with respect to the title of the landlord to the premises, nor to object by reason of any incumbrance affecting such title; and for the purpose of the sale the purchaser shall admit the existence of the tenancy offered for sale, without further proof thereof." The draft conveyance submitted to the solicitor of the assignees and mortgagee contained the operation words;—"doth by these presents grant and assign unto the said James Burke, &c., all that and those," &c.; it contained no indemnity clause, and no covenant by the vendee to pay rent. The solicitor for the assignees and mortgagee amended the draft deed by inserting, after the words "grant and assign," the words "by way of assignment only, and without warranty of title." He inserted, also, the following clauses:—"Provided always, and it is hereby declared and agreed that nothing herein contained shall be deemed, construed, or taken to in anywise prejudice, affect, or incumber the real or personal estate of them, the said [assignees and mortgagee] or render them, &c., liable to any cost or expenses whatsoever in relation thereto, they having executed these presents in their official capacities of official and trade assignees respectively, without warranty of title, and not further or otherwise:" "And the said J. Burke doth hereby for himself, &c., covenant and agree to and with said [assignees and mortgagee] their and each of their, &c.; that he the said J. Burke, his heirs, &c., shall and will well and truly pay the rent, and perform the covenants in and by the indenture of lease of the 31st October, 1864 [the interest in which was purchased] reserved and made payable, and on the part of the tenant or lessee to be paid and performed, and shall and will indemnify and keep indemnified the said [assignees and mortgagee] against the same, and all costs, charges, damages, and expenses to arise from the non-payment of said rents, or non-performance of said covenants, or any or either of them."—*Stritch*, in support of the motion, cited *Wilkins* v. *Fry*, 1 Mer. 265, *et seq.* *Perry contra:* The assignees and mortgagee are entitled to what they have asked. At least, in the interest of the mortgagee, the purchaser should covenant to pay the rent up to the end of the current year. Under 23 & 24 Vict., c. 134, the mortgagee would be liable for the rent up to that time; not so in England.—HARRISON, J., ordered that the amendment, "by way of assignment only, and without warranty of title," should be struck out, as being unnecessary; that the clause of indemnity should be struck out, as the assignees and mortagee were not entitled thereto; but that the covenant to pay rent, and perform the covenants in the lease, should (in the mortgagee's interest) remain, the purchaser covenanting with the mortgagee to pay rent up to the end of the current year, as the mortgagee would be as to that liable, under Deasy's Act—the conveyance to be executed accordingly, (*Re A. O'Connor*, a bankrupt; Ba., August 11, 1874).

CASES AFFECTING SOLICITORS.

The recent cases of *Plumer* v. *Gregory*, 43 Law J. Rep. N. S., Chanc. 616, and *Watson* v. *Row*, 43 Law J. Rep. N. S., Chanc. 664, affect respectively the liabilities of solicitors in partnership *inter se*, and the rights of solicitors upon retainers, where proceedings are conducted on behalf of more than one client. Of late years there have been some very painful examples of solicitors being held liable either for the professional negligence of partners, or for the misapplication of moneys by partners. The contest hitherto in all such cases has been between the client and the partner, who has not interfered in any way in the business, but who has been attacked solely as a partner. *Plumer* v. *Gregory* is rather a different case. The plaintiff alleged in her bill that she had entrusted moneys to A. and B., now both deceased, as her solicitors for investment, and that the moneys had been lost, and she sought to make their estates liable. There had been another partner, C., in the firm during part of the time over which the alleged transactions extended, but the bill averred that C. took no part in them, and was not a necessary party to the suit. At the hearing the executors of A. and B. raised the objection that C. ought to be a party to the suit. It was held that in all such cases the liability of the solicitors in partnership was joint and several, and therefore that the plaintiff could select such one or more of the firm as he or she might choose to sue. It was rather a startling proposition that the persons, against whom the bill was filed as the actual wrongdoers, should have a right to drag an innocent partner into the suit to share their liability, although the plaintiff had no similar desire.

In *Watson* v. *Row* two trustees of a will gave a written retainer to Messrs. L. and F. in these words: "We require and authorise you to act for us in the above suit." One of the trustees became insolvent, and owed money to the estate. The plaintiff in the suit contended that the costs of the two trustees ought to be taxed separately as against the estate. If that had been done, the costs due to the insolvent trustee would have been set off against the debt due from him to the estate, and so none would have been paid to him, or through him to the solicitors. The solvent trustee would have received for the solicitors only one moiety of the whole taxed costs, and would have been liable to the solicitors for the other moiety, without being able to recoup himself out of the estate. Vice-Chancellor Hall decided against the theory so advanced by the plaintiff; and, being of opinion that the solvent trustee was liable to pay the whole of the solicitors' bill, allowed him the whole of the costs out of the fund. The chief difficulty in the case was presented by *Re Colquhoun*, 22 Law J. Rep. N. S., Chanc. 484; 23 *Ibid.* 515. The Vice-Chancellor said that he did not intend to decide anything at variance with that case. There it was left uncertain whether there was or was not a joint retainer; but his Honour inferred from what appeared in the report that there was only a separate retainer, and that it was a case of the same solicitor accidentally representing four parties. The certificate of the master treated the retainer as a separate one. The distinction is clear and strong; and it is manifest that in the principal case, if there had been no joint retainer, and the solicitors had been driven to make out a separate bill of costs against the insolvent trustee, they would have lost the whole amount of that bill. The case affords a lesson in practice which ought not to be overlooked.—*Law Journal.*

ALIENS AND THE FRANCHISE.—A question has recently been raised before the Revising Barrister for Middlesex which we should have thought a reference to a very elementary book on law would have conclusively settled. A person claimed a vote in respect of premises entitling him to be placed on the register. It was objected that he was not entitled to vote because he was the son of an alien father. His mother was English, and he had been born in England. On these facts the revising barrister at first refused to allow the vote, on the ground that the son must follow the nationality of the father; but eventually reversing his decision, decided in favour of the claim. If the revising barrister possesses a Stephens' Blackstone, he will find that it is there laid down (5th edit. vol. 2, p. 420) that all persons born within the dominions of the Crown—that is, either within the United Kingdom or the territories thereto belonging, are natural born subjects, and that this extends to the children of aliens if their parents were not at the time in enmity with our sovereign. Natural born subjects, having the necessary qualifications, are entitled to be placed upon the register. We are glad that the revising barrister considered his decision, but are rather astonished at the necessity for the consideration.—*Law Times.*

Digitized by Google

SOME DECISIONS ON THE LAW OF JOINT STOCK COMPANIES.

THE FIDUCIARY RELATIONS OF DIRECTORS.

The wide extension of the mercantile transactions of English capitalists, as well as the variety of the objects in which their money is invested, might be expected to colour more or less the proceedings of our courts of law and equity. And such is the fact. A glance through the Law Reports issued during any single quarter of the year will give some indication, though slight, of the magnitude and complexity of the interests involved in such transactions. Some of the profoundest Judges who have sat on the Bench have been engaged in the task of building up and moulding into a just and harmonious whole the rules and principles recognised as the commercial law of this country. Of the law thus introduced we purpose examining in detail some few principles which have occupied the attention of our courts of late, and have consequently been more or less topics of general interest. The topics to which we mean to direct our remarks are incidental to a consideration of the law affecting joint-stock companies, yet we venture to hope that in their application they will prove of wider utility. They are:

I. The Fiduciary Relations of Directors.
II. Personal Liability of Directors.
III. Law of Contributories.

"Directors," says Sir John Romilly, in *The York and North Midland Railway Company* v. *Hudson* (16 Beav. 485), "are persons selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust, which if they undertake it is their duty to perform fully and entirely." This case, which was decided in 1853, is quoted as containing a fair summary of the duties of a director. A railway company was formed in 1836, with the defendant as chairman. In this position he exercised an uncontrolled authority in managing the affairs of the company, without interference on the part of the other directors. In 1845 the company took steps to extend the operation of their railway, and to that end required an additional capital of one million and a quarter. The undisposed-of residue of shares, 12,050 in number, were carried in the share register book to the name of the defendant, but no sanction was given by the directors to a disposal of those shares. The defendant, however, sold more than 5,000 of the shares thus entered at premiums of from £10 to £18 per share. It should be stated that a resolution had been passed at a general meeting of the railway company, placing the 12,050 shares at the disposal of the directors. The company's bill sought relief with respect to those shares exceeding 5,000 in number. Storey's Agency (7th edit. p. 249) states it as a general rule that wherever a person is either actually or constructively an agent for some one else, all profits and advantages made by him in the business beyond his ordinary compensation are made for the benefit of the principal. This rule has every reason for its support, and the same may be said of the following observations of the Master of the Rolls in the present case: "A resolution by shareholders that shares or any other species of property shall be at the disposal of directors, is a resolution that it shall be at the disposal of trustees; in other words, that the persons intrusted with that property shall dispose of it, within the scope of the functions delegated to them, in the manner best suited to benefit their *cestui que trust*." This enunciation of a principle of equity makes the result of the bill evident. The defendant was declared to be a trustee, and bound to account to the plaintiffs for all profits derived from the sale and disposal of the shares. Once established the relation of trustee and *cestui que trust* and the result is obvious. The rules of the civil law were equally strict with respect to one in the position of a trustee. *Tutor rem pupilli emere non potest. Idemque porrigendum est ad similia, id est, ad curatores procuratores, et qui negotia aliena gerunt.* The above principles, acted upon in the case of *The York and North Midland Railway Company* v. *Hudson*, are firmly established in the Court of Chancery. "I would not," said Lord Hatherley (L. Rep. 6 Ch. 570) "be supposed for one moment to throw out a word that could tend to lead any trustee into the notion that he may deal with the persons for whom he is trustee, or for whom he is a trustee with others, in any manner which will give him a benefit or put money into his own pocket." Doubtless our readers need not be reminded of the 81st section of the 24 & 25 Vict. c. 96, which makes any fraudulent appropriation of the property of the company a misdemeanor.

With the above decision in view, now let us turn to a more recent case, viz., that of *The Liquidators of the Imperial Mercantile Credit Association* (apps.) v. *Coleman and Knight* (resps.) (L. Rep. 6 H. of L. 189; 29 L. T. Rep. N. S. 1), which was an appeal against a decision of Vice-Chancellor Hatherly, who had reversed a previous decision of Vice-Chancellor Malins. The respondents were stock-brokers in partnership. In 1864 the London, Chatham, and Dover Railway Company was desirous of raising money on debentures and shares, and Peto and Co., who had an interest in the affair, communicated with the respondents on the subject. Coleman wrote to Peto, "If the following arrangements meet with your approval we should like to proceed at once with the affair. I can arrange to place the whole of the B shares and the debentures for a commission of 5 per cent in cash and 5 per cent. in A shares, to be paid as and when the deposits are paid into the company's bankers." Peto replied to express his firm's consent to the above. In the same year was incorporated a company called The Imperial Finance Company (Limited). Coleman was a director. It was agreed that this company should unite with another called The Mercantile Credit Association (Limited). Coleman became a director of the united company, but he was not one of the first committee. A proposal was now made to the committee by Knight and Coleman suggesting that the company should undertake to "place" the debentures above referred to at a commission of one and a half per cent. No mention was made of the previous arrangement with Peto and Co. The proposal was adopted. The question for the decision of the court was whether Coleman was liable to account to the association for the difference between the two amounts of commission so far as concerned the debentures which had been actually placed by the association. One of the articles of association provided that a director should vacate his office (1) If he held any other place of profit under the company; (2) if he became bankrupt or insolvent; (3) if he was concerned in the profits of any contract with the company without declaring his interest at the meeting of directors. The above question was answered in the affirmative. Coleman did not declare *his* interest. This was most material, for, as Lord Cairns observed, the conduct of the shareholders might have been very different had they known the real nature of the transactions. In this case it is recognised as a "firmly and well-established principle" that a person holding a fiduciary position with reference to a company cannot obtain for himself a benefit derived from the money of the company. The law being so laid down, probably no attempt would be again made to exonerate directors from the liability of trustees. To do so would be labour thrown away. The attempt would rather be made, as in this case, to prove that the rule did not apply because the person was not director, as alleged. Before we leave the subject, it may be useful to run briefly over some few cases which bear upon the topic discussed. That of *The Great Luxembourg Railway Company* v. *Sir William Magnay* (25 Beav. 586) came before the Master of the Rolls in 1858. Magnay was the chairman of the board of directors. In 1853 the company furnished him with a sum of money to enable him to purchase the "concession" of another line. He purchased it, but, as it afterwards appeared, he was himself the owner. The Master of the Rolls recognised the fiduciary character of the director, and was prevented from giving relief only by the fact that the plaintiffs had rendered it impossible. An earlier case is that of *Benson* v. *Heathorn* (1 Y. & C. Ch. 326), decided by Vice-Chancellor Bruce in 1842. The plaintiffs in this case had combined with others in forming a company for the purpose of carrying goods and passengers along the coast of Brasil and elsewhere, and for the building, purchase, and hiring of steam vessels. The defendant one of the first directors, purchased a vessel for £1,340, and afterwards sold it to the company, as from a stranger, for £1,500. He charged the company, in addition, a commission at £1 per cent. The bill was filed

Digitized by Google

to obtain relief against this and other acts. "I apprehend," says his Honour, "that without any special provision for the purpose, it was by law an implied and inherent term in the engagement that they [the directors] should not take any other profit to themselves of that trust or employment, and should not acquire to themselves while they remained directors an interest adverse to their duty." We now come to the important case of *The Aberdeen Railway Company* (apps.) v. *Blackie Brothers* (resps.) (1 Macq. Sc. Ap. 461). Messrs. Blackie, ironfounders, in Aberdeen, brought an action against the railway company for performance of a contract to purchase and accept some iron chairs from Messrs. Blackie. The defence relied on was that at the time of making the contract, Mr. Thomas Blackie, the managing partner of the Ironfounder's Company, was a director of the railway company, and therefore incapacitated from dealing in that character with his own firm. The Court of Sessions held that the Companies Clauses Consolidated Act (8 Vict. c. 17, ss. 88, 89), did not make the contract void, although it deprived the contractor of his office. The decision was accordingly given in favour of Blackie. The railway company now appealed. It was contended for the respondents that the contract was not null; that, in fact, the question now before the House of Lords had already been solved by the Court of Common Pleas in *Foster* v. *The Oxford, Worcester, and Wolverhampton Railway Company* (13 C. B. Rep. 210), and the appellants were concluded by acquiescence. For the appellants, the Solicitor-General (Sir R. Bethell), contended that Blackie was a trustee, that the general law applicable to all fiduciary relations prevented him from making a valid contract in the business of the company for his own benefit; a rule determined in 1795 in *The York Buildings Company* v. *Makenzie* (8 Bro. Par. Cas. 42), that these views are supported by *dicta* of Lord Eldon; that the construction of the statute as made by the court below, sets a premium on the commission of a breach of trust, and facilitates a violation of duty, and, finally, that no acquiescence could give validity to such a contract; as to the case of *Foster*, on which reliance is placed, the court was constrained to act as it did owing to its incompetency to take fiduciary principles into consideration. In delivering judgment the Lord Chancellor Cranworth, first considered the subject without regard to the statute, and proceeded to touch upon the position of directors with regard to the company. His Lordship recognised the fiduciary nature of the duties of directors (16 Beav. 485), and gave expression to a rule of universal application, to the effect that persons entrusted with duties of such a nature shall not be permitted to enter into engagements in which they may have a personal interest which may possibly conflict with the interests of those whom they are bound to protect. The fairness or unfairness of such an engagement is quite immaterial, and this is an inflexible rule, acted upon by Lord King, Lord Hardwicke, and Lord Eldon. Further, this prohibition does not depend on the subject-matter of the contract, "but on the fiduciary character of the contracting party." Thus any objection that previous questions had arisen, not on mercantile transactions, but on agreements for purchases of land, and contracts of a similar nature, was disposed of. Having settled these principles, his Lordship held that Blackie contracted on behalf of those for whom he was acting with himself. Lord Fullerton had previously expressed a doubt whether the rule would apply where the party is only one of a body of directors, and not sole manager. The Lord Chancellor, however, thought this distinction of no moment, and maintained further, that unless the respondents could show that the Companies Clauses Act, made valid a contract which was bad on general principles, the case of *Foster* would not serve them.

We have now gone through some of the more important cases bearing upon the fiduciary character of directors; we have attempted to show how the law has been settled so as to check any fraud or fraudulent use of their position by directors; and how, as in the case last noticed, the enlightened principles of the civil law have been infused with beneficial effect into the system of our mercantile law. Courts of equity cannot allow to persons in fiduciary relations the powers enjoyed by strangers. A position of trust is a position of power; it enables an unscrupulous person to do much wrong; to others it is a position of trial and temptation. Besides, breaches of trust are hard to detect, and often irremediable in their consequences, hence the extreme jealousy of the courts of Chancery of the interests of the *cestuis que trusts*. Our remarks may be fittingly closed by some observations made by Lord Eldon upon the leading case of *Fox* v. *Mackereth*: "Though you may see in a particular case that the trustee has not made advantage, it is utterly impossible to examine, upon satisfactory evidence in the power of the court (by which I mean in the power of the parties) in ninety-nine cases out of a hundred, whether he has made advantage or not. Suppose a trustee buys an estate, and by the knowledge so acquired in that character discovers a valuable coal mine under it, and locking that up in his own breast, enters into a contract with the *cestui que trust;* if he chooses to deny it, how can the court try that against that denial? The probablity is, that a trustee who has once conceived such a purpose will never disclose it, and the *cestui que trust* will be effectually defrauded:" (*Ex parte Lacey*, 6 Ves. 627.)—*Law Times*.

INTERNATIONAL LAWYERS ON ARBITRATION.

The newly founded Institute of International Law, whose first annual meeting has just concluded at Geneva, have been engaged in business of very varying degrees of utility. We shall not, we trust, offend the eminent jurists of all nations of whom the Conference was composed if we express an opinion that the least ambitious portion of their work is calculated to be the most useful. The last of the three questions discussed by them was as to the expediency of assimilating the English and Continental rules of "private international law" on one point of much importance, and on which the divergence at present existing is highly inconvenient. The efforts of the Institute towards procuring the universal adoption of the principle of nationality as the criterion of the "personal law" of residents in a foreign country are worthy of all sympathy; and the substitution of a more simple and rational test in lieu of that of "domicile" at present insisted on by the English law is an object in itself worth holding a meeting for at Geneva, even if it were not now the tourist season. It is only the more ambitious part of the business discussed by the Institute to which we are inclined to take exception on the score of utility; and when we say that the first matter on the agenda of the meeting was "to draw up a set of regulations for the procedure of international arbitrations," all, we think, but a few enthusiasts, will admit that some at least of the deliberations of the Institute were of no great practical value. We can quite understand an assembly of international lawyers taking a kind of professional pleasure in arranging the procedure of international arbitrations, just as we could understand a committee of military men taking the same sort of pleasure in settling the plan of a sham fight; but it is impossible to consider the labours of either as tending to any immediate end. We cannot think that any amount of simplification of their procedure will render arbitrations generally attractive to European Powers as a means of settling international difficulties. The utmost facilitation of the access to such a tribunal as that which sat two years ago at Geneva will hardly induce any nation to face the probable results of resorting to it. Dr. Goldschmidt's report on the subject will have a certain amount of interest, no doubt, but it will be interest of a purely speculative nature.

Having discussed the best means of facilitating arbitration for the future, the Institute next proceeded to demolish the judicial results of the first important arbitration that has ever taken place. After smoothing the path to the tribunal as much as possible for intending suitors, the Institute show them incidentally by their subsequent criticisms that the judgments they may get there are likely to require some little revision. Thus they admit at the outset that the majority of the Geneva arbitrators laid down unsound law in relation to the case before them. "The Three Rules of the Treaty of Washington of the 8th of May, 1871, only apply the recognized principle of the laws of nations," say the Institute, "that it is the duty of a neutral State, which desires to remain at peace with the

Digitized by Google

belligerents and to enjoy the rights of neutrality, to abstain from taking any part in the war by affording military aid to one or both of the belligerents, and to take care that (*veiller à ce que*) no acts which would constitute such co-operation in the war be committed by any one within its territory. 2. To avoid the controversies which have arisen on the interpretation of those rules it would be desirable to revise their expression. 3. The fact that a hostile act has been committed on neutral territory does not suffice to make the neutral State responsible. To establish the violation by it of its duty there must be proved either a hostile intention (*dolus*) or negligence (*culpa*)." Thus it will be seen, says Mr. Westlake, one of the English members of the Institute, who has communicated its proceedings to the *Times*, "that these doctrines absolutely reject the doctrine which four of the arbitrators of Geneva inserted in their award, that 'the due diligence referred to in the first and the third of the said rules ought to be exercised by neutral Governments in exact proportion to the risks to which either of the belligerents may be exposed from a failure to fulfil the obligations of neutrality on their part,' and adopts instead of it, as defining the limit of responsibility where there is no hostile intent, precisely what the Lord Chief Justice of England contended for—namely, the notion of *culpa* as understood by all the best modern writers on law." We need not, after all we have said on this subject, waste words in expressing our hearty agreement with the view taken by the Institute of the Geneva ruling; but we cannot follow them to their view of the true effect of the Three Rules as distinguished from their erroneous interpretation. Is it, indeed, the fact that the Three Rules "only apply a recognized principle of the law of nations"? If so, where was the necessity for framing them at all? Surely, a "recognized principle of the law of nations" is enough in itself for two nations to go to arbitration upon. The fact, however, that the Americans refused to go to arbitration upon recognized principles of the law of nations, and consented to do so upon the Three Rules, raises a presumption, at any rate, that in the contemplation of one of the parties at least there was something more to be got out of the principles as "applied" by the Treaty of Washington than could be extracted from them without this assistance. But it is idle to discuss the point, since it is well known that the construction which the rules were to receive was a question of political agreement and not of judicial interpretation—that the consent of England to the Three Rules was meant, and was perfectly well understood by the foreign arbitrators to mean, that we were willing that a specially strict view should be taken *pro hâc vice* of our neutral obligations towards the United States during the Civil War.

Where we cannot agree with Mr. Westlake and his colleagues is in their assumption that the "recognized principle of the law of nations" of which they speak is itself a fit subject for the arbitration of an international tribunal; and that the Three Rules, if they were brought into unambiguous conformity with these principles, might form a fit basis of arbitration in future. We are of course gratified to learn, on Mr. Westlake's authority, that the most "influential continental writers on international law" do not consider us to have evaded our duty in not submitting the rules for general adoption, they being not clear enough for adoption; but we do not think that, were they made ever so clear, we ought, even to please these influential jurists, to submit them for adoption. Even supposing the famous "obligation of due diligence" to receive authoritatively the harmless if somewhat tautologic interpretation that "a neutral ought to use such diligence as he ought to use" to prevent infractions of neutrality, what then? Why, then there will still remain the question for the arbitrators as to what is the amount of diligence which the neutral ought to use; and in whatever form the question of due diligence might in future be submitted to a tribunal of arbitration (unless, indeed, the submission of the question is to be nothing more than normal), it would still be possible for the tribunal to apply to its decision the same principles as those which were applied with such fatal effect by the majority of the arbitrators at Geneva. Had the framing of the Three Rules been unexceptionable, it would still have been open to Count Sclopis to assert his monstrous proposition, that the diligence due from a Government is not to be estimated with reference to the ordinary efficiency of its machinery for detecting and preventing breaches of its municipal law, but that if that machinery, however faithfully and vigorously set in motion, be in itself, or rather in the opinion of three foreigners, less efficient than it might be made, the neutral Government is to be mulcted in damages. It may be ruled again, as it has already been ruled once, that a "duly diligent" Government means a Government which not only loyally employs such means as it has at its command for the enforcement of its municipal law, but also takes vigilant care that those means are in themselves sufficient for the protection of the belligerents interested in the inforcement of such law; and that if constitutional forms impede the neutral's action, he must pay for not being able to act with the promptitude of despotic Governments. This is the sort of consequence to which a neutral exposes himself by going to arbitration on such questions; and any amount of strictness in defining the obligations of neutrals must still leave to a tribunal a sufficient latitude of discretion to render the recurrence of such consequences possible and even probable. The inference is obvious, and it is one which is curiously enough suggested by the very illustration of neutral obligation which Mr. Westlake quotes from Von Holtzendorff. "The ordinary conduct of an intelligent, prudent, and careful *Hausvater*, of a *diligens et bonus Paterfamilias*, affords the normal measure of the obligation of diligence." But no self-respecting and, we may add, no prudent *Hausvater* would permit a stranger ignorant of his domestic relations to pronounce in any given case on the question of the proper management of his household, with power to inflict a heavy fine for mismanagement; and neither can any Government of dignity or prudence submit to the decision of a foreigner the question of its proper administration of its municipal law.—*Pall Mall Gazette.*

CASE-LAW AND INDUCTIVE SCIENCE.

Much has been said and written lately about making English law more scientific in various ways: as to the form by processes of definition and consolidation, as to the substance by getting rid of archaisms and anomalies. And, besides those who do or suggest good work of this kind, there are those who expound a so-called science of law which on examination appears to have little to do with science and less with the law of England. But not much attention has been paid to the scientific character of the methods by which a great part of English law has actually been built up, and by which it is still administered and developed. We mean that part which is made not by enactments but by decisions, and which is to be sought in the records of decided cases. It once bore the unhappily chosen name of unwritten law: modern writers call it after its source by the more convenient and accurate name of case-law. This system of case-law might be described in hostile popular language as a servile following of precedents tempered or supplemented by transparent fictions—a sort of hand-to-mouth scrambling work at best. Because the results are ill-arranged and difficult to get at, it is assumed by a not unnatural fallacy that there must have been something bungling and unscientific in the operations by which they were produced. What we now seek is to show that these operations have a truly scientific character, and that English case-law may fairly claim kindred with the inductive sciences.

The ultimate object of natural science is to predict events—to say with approximate accuracy what will happen under given conditions. Each special department of science occupies itself with predicting events of a particular kind. Note also that each science occupies itself only with those conditions which are material for its own purposes. The object of legal science, as we here understand it, is likewise to predict events. The particular kind of events it seeks to predict are the decisions of courts of justice. Like the other sciences, it selects its own sets of conditions to deal with. Let us consider for a moment an event which has both physical and legal consequences. If A strikes B, then the effect of the blow on B's equilibrium is a matter of mechanics; the effect on his organism is a matter of physiology; the effect of giving him a right of action is a

Digitized by Google

matter of law. For the scientific examination of the event in each of these several aspects we want to know and to deal with the several appropriate sets of conditions, and those only: thus if B struck A first, this is irrelevant to the mechanical question, but relevant to the legal question. The legal result is as definite and capable of prediction as either the mechanical or the physiological one; the needful thing in each case is that the right set of conditions be rightly observed. So far, then, natural science and legal science aim at like objects. Let us go on to consider the likeness of the means by which those objects are accomplished.

In natural science we need an all-embracing fundamental assumption before we can take any step towards prediction; in other words, before we can have any science at all. This assumption is that nature is uniform. We act on the belief that whenever the same conditions are repeated they will give the same result, and we refuse to entertain any supposition to the contrary. How we came by this axiom of the uniformity of nature, or whether it can be justified otherwise than by its results, we have not now to ask: all we need remark is its place as the corner-stone of science. It is plain that without it we could make no use whatever of past experience.

Turning now to legal science, we find that an assumption of the same kind is no less needed. In order to predict physical results, we must suppose that the same thing always happens under the same conditions; and, in the same way, in order to predict legal results, we must suppose that the same decision is always given on the same facts. We must have a fundamental axiom of the uniformity of law corresponding to the fundamental axiom of the uniformity of nature. But here a notable distinction at once strikes us. We cannot make nature uniform; we can only gradually discover that as a matter of fact we succeed or fail in our undertakings just in so far as we remember or forget to act consistently on the assumption that nature is uniform. But law is made by man, and man can do as he pleases with it. Here it is in our power to make our fundamental axiom approximately true: we say approximately, but of this afterwards; for the present we neglect the approximate character of legal as well as of physical prediction. The object is to ensure the same decision being given on the same facts. In English case-law this object is attained by what seem the most obvious and direct means, namely, an understanding that the court shall follow the authority of decisions formerly given on similar facts.

Now if there were but one court, or branch of a court, administering the same system of law and bound by its own decisions, that would be adequate to produce, in course of time, a consistent body of case-law which could be used as materials for scientific prediction; but, as a matter of fact, we have several co-ordinate courts, and we have to prevent them from making different and inconsistent bodies of law. Here, again, we have chosen, or rather evolved, the most direct of various possible ways that might be thought of: we have courts of appeal whose decisions are binding on the courts of first instance, and a final court of appeal whose decisions are binding on all other courts and on itself. This last principle, that the decisions of an ultimate court of appeal are binding on itself, is seen from our present point of view to be indispensable in order to keep up the fundamental assumption of uniformity. Apart from this consideration, it might seem anomalous; and it was not formally enounced—perhaps we might even say not followed in practice—by the House of Lords till within quite modern times. It is also seen to be necessary that there should be only one court of last resort for the same system of law. Without undertaking to discuss the exact nature of the authority of the Judicial Committee of the Privy Council as bearing on the general system of English case-law, it may be said that this condition has hitherto been not perfectly satisfied, as we have had one ultimate Court of Appeal for points of English law arising at home and another for points of the same law arising in colonies where English law prevails. It is further to be observed that from the scientific point of view it is desirable that appeals should not be left altogether to the option of the parties. As it is, there is no security against lawyers being perplexed for years together (as they frequently are) to reconcile or choose between the conflicting decisions of co-ordinate courts. The best thing (speaking always in the interests of pure science) would be that suitors should be moved, by pure zeal for the advancement of legal science, to make a point of carrying such cases to an ultimate appeal; but this they naturally are not. The next best thing would be a compulsory appeal; but this is obviously impracticable. To some extent it might be possible to get such cases heard by the Court of Appeal sitting as a court of first instance as regards the particular case, but in effect on appeal from the authority called in question; but for various reasons—*e.g.*, the difficulty of foreseeing at any early stage on what point a case will ultimately turn—this would be only a partial remedy. As another alternative, it might be made somebody's business to call the attention of the Court of Appeal to difficulties of this kind from time to time, and to submit cases to it for the purpose of obtaining judicial opinions, which should be of the same authority as the actual judgments of the court. Such matters would, of course, have to wait till the court could deal with them after the actual appeals of suitors; and at present we have no legal officer who could be expected to undertake the task of selecting and preparing the cases. But some such proposal may become practicable whenever we have a Ministry of Justice, Legal Department, or what else it may be called. Yet another way of removing such doubts is direct legislation. Except by rare luck, this way must be the clumsiest and least satisfactory, at least with our present fashion of legislating; and as regards the order of things we are now considering, it is not a natural operation at all, but a catastrophic interference.

The system of judicial precedents, themselves kept uniform by a supreme court of appeal, being thus chosen as the means of keeping up the assumption of uniformity, the system of reports follows as an indispensable auxiliary. As the man of science has to predict what will happen under new conditions from what is known to have happened under more or less similar conditions, so the man of law must predict the decision of a new case from what is known to have been decided in more or less similar cases. In order to do this, they must both have at hand the recorded results of former experience. For the lawyer, those results are to be found in the reports. There is yet another parallel. A vast number of scientific observations are made for practical purposes which add nothing to our powers of prediction, but simply confirm what is known already. In law, too, a vast number of cases are decided which settle the rights of the parties, but add nothing to the general body of law, and these cases are not or ought not to be reported. Like the repeated experiments and regular observations of science, they answer their own practical ends and also give the expert that sort of familiarity with the principles and methods of his art which cannot be attained except by constant handling of the sort of particular examples on which the general principles are based. Again, the hundredth or thousandth observation which (as we say) illustrates a scientific truth is, of course, in itself as good as the first observation which (as we say) established it. In the same way unreported cases are in theory no less binding on the court than reported ones. But here the difference also comes in. The science of case-law being wholly conventional, we might, if we chose, absolutely limit the field of observation to reported cases, as it now is practically limited with trifling exceptions, or even to the authorized Law Reports, without any loss to the scientific character of our work. Whether it would be, in fact, a good thing to forbid the citation of any but the authorized reports is a minor question of convenience, not to be discussed here.

It must not be forgotten that our English system of precedents and reported cases is by no means the only one by which a system of case-law might be constructed. For instance, it might happen, from the want of permanent trained judges or for other reasons, that the opinions of eminent lawyers should have more weight with the judges themselves and with their profession generally than any decisions actually given. In such a state of things there might grow up a body of reported opinions instead of reported judgments, and this would produce a system of

Digitized by Google

case-law scientific to a considerable extent, though the danger of internal conflict would be much increased by the want of a final appeal, and the actual administration of the law would correspond less closely to its ideal scientific aspect than on our plan. Something like this did happen at Rome. A system of case-law grew and flourished there which was founded not on decisions, but on opinions. And for such reasons as above given it became in course of time so unmanageable that the violent remedies of legislation had to be called in, first to set up a kind of parallel to courts of appeal by enacting that the opinions of certain writers should be preferred, and then to give a definite and exclusive authority to a select compilation from the whole mass. This compilation we still have in the Digest, which is a kind of petrified case-law. The great difference from our own case law is that the elements of which it is composed are not the judicial decisions of real cases, but the opinions of advocates and text-writers on cases either real or supposed. We should add that the Code gives us something more analogous to our own case-law, containing, as it does, not only the legislative acts of emperors, but their decisions in a judicial capacity.

We have now seen the parallel of legal science to natural science in the nature of its object and in its first fundamental assumption. We have also seen that some of our most characteristic legal institutions are immediate consequences of that assumption. On another occasion we shall endeavour to pursue the comparison in some other directions.—*Pall Mall Gazette.*

THE NEW ACT ON ATTORNEYS AND SOLICITORS.—Among the last Acts of the late Session was one to amend the law relating to Attorneys and Solicitors, by making certain alterations to and removing restrictions contained in the statute 23 and 24 Vict., cap. 127, as to the employment of persons serving their articles, and also as to striking off of the Rolls attorneys and solicitors. The tenth section in the recited Act is not to apply to persons bound by articles who obtain the consent of the attorney to whom he is bound, and the sanction of a Judge, to employment from which he was debarred by the Act of 1860. By the former Act it was required that when an attorney or solicitor was struck off the Rolls, before the same was acted upon, the order was to be produced to the Registrars of Attorneys and Solicitors, and an entry made thereof. It is now provided by the Act, which only extends to England and Wales, that where application is intended to be made to strike an attorney off the roll, or for a rule to answer affidavits, notice is to be given to the registrar at least 14 days before such application, with copies of the affidavits on which the application is to be made. The registrar may appeal by counsel on the hearing or any other proceeding. A person acting wrongfully as an attorney when he is not is to be liable to a penalty of £10, and no costs to be recoverable by a disqualified attorney or solicitor. Offences under the Act may be prosecuted in a court of summary jurisdiction.

A QUESTION OF JUDICIAL PRECEDENCE.—A singular question of precedence is just now exciting a considerable amount of public attention in the Island of Jersey. The vacancy in the bench of Jurats has been filled by the election of Mr. Edward Mourant, M.A., seigneur of the manor of Samarès. In accordance with long established custom the seigneur of this manor, with three others, claims precedence on the bench. The origin of the custom is involved in obscurity, but it is supposed the privilege was granted for some valuable services rendered to the Soverign. An Order in Council, dated January, 1629, confirmed the right of these seigneurs to the claim of precedence, and a similar decision was given about sixty years ago. There was much speculation as to whether Mr. Mourant would enforce his claim or not, it being reported that if he did all the judges would resign. On taking his seat after being sworn in, Mr. Mourant made reference to the precedence to which he was entitled, but said that, while not waiving his right, he would not then enforce it. Mr. Mourant consequently takes the lowest place on the bench, but it is generally expected that before long he will seek to enforce his claim, and the result is looked forward to with some degree of curiosity.

IMPORTANT TRADE'S MARK PROSECUTION.

WORSHIP-STREET, POLICE COURT, LONDON.

Mr. Herbert Clarke, known as Dr. Clarke, of High-street, Shoreditch, was charged under the 25th and 26th Vict., c. 88, with having forged or counterfeited a trade mark of Francis Jonathan Clarke, and with procuring and using the said forged trade mark to a bottle, and selling the same, contrary to the statute.

Mr. Salaman, solicitor to the Trades Mark Protection Association, appeared for the prosecution, and Mr. Lindus defended.

The complainant is Mr. Clarke, carrying on business at Lincoln, the patentee of a medicine largely advertised as "Clarke's World-famed Blood Mixture." The defendant advertised an imitation medicine which he called "Blood Renovator and Purifier." The defendant, it was stated by Mr. Salaman, in his opening address, had for a long time past misled the public by the style and title of his medicine, by copying the complainant's form of advertising, the style of his bottle wrappers, his trade mark, stamp, and signature. In consequence of complaints, the complainant sent his agent to the defendant's shop, and he asked for a bottle of "Clarke's Blood Mixture," and received the "Renovator." Samples of the bottles were handed to the magistrate—it was pointed out that the signature of the defendant was written in exactly similar style on the stamp, the letters being formed alike. There were some points in addition, which must go to a jury. One of the points was that the defendant was known as Davis, and had denied being Dr. Clarke.

Mr. Lindus said he would prove that the defendant's name was Clarke.

A witness, who said his name was John Morgan Davis, the name over the defendant's shop, said that he was a chemist, now of the same address as the defendant, High-street, Shoreditch. The business which the defendant had carried on was his, and he had taken it over again during the past six weeks. He had sold it to the defendant four years ago, but because he was not able to pay the money for which the business was sold he had resumed possession. The defendant, he said, was Mr. Clarke. The witness was cross-examined by Mr. Salaman as to the genuineness of the transaction, and whether it was a sham sale or not, but he refused to say what the terms of the sale were, how much he got, or how the money was secured. Mr. Salaman submitted witness and defendant had juggled the business between them for purpose of fraud.

Mr. Bushby thought it curious, and said that he could not withdraw the case from a jury.

The defendant was then fully committed for trial.

THE IRISH FRANCHISE.—The select committee appointed during the past session to inquire into the expediency of amending the law relating to the registration of parliamentary voters in Ireland, have reported against any alteration in the laws as to the registration of such voters.

ACTUAL MARRIAGE AND AMERICAN LAW.—*Richard* v. *Brehm*, 73 Penn. St. 140, is another contribution to the adjudications in the United States holding that marriage need not be formal in order to be legal, at least for some purposes. In this case defendant cohabited with a woman for many years, calling each other husband and wife in presence of others and executing deeds with acknowledgments as such. She made a will naming herself his wife and devising property to him as her husband. She made a subsequent will devising her real estate to plaintiff who, after the death of the testatrix, brought an action of ejectment against defendant. Defendant claimed possession as tenant by courtesy, and the validity of the marriage was brought in issue. Defendant admitted in his testimony that he and the testatrix were never married with the ordinary ceremonies, but that they mutually agreed to live together and to keep it a secret that they were not married. The judge charged that the facts constituted a marriage as to all the world, in matters pertaining to business transactions, but not as between themselves, and consequently defendant could not hold the property as tenant by courtesy. But the court on appeal held that the judge erred in taking

Digitized by Google

the case from the jury, and saying that this was not a marriage as to defendant and the testatrix. While the Appellate Court was probably correct in its holding, yet it must be admitted that the present laws in regard to marriage in most of the United States are unsatisfactory in their workings. And there is some force in the remarks of the judge who delivered the charge in the subordinate court when he says, "the defendant ought not to expect immunities from the responsibilities of married life and possess its benefits also. For instance, under the facts disclosed he could not have been made to suffer the penalties of bigamy if he had married another woman during his supposed wife's life, nor be punished for adultery if he had committed that crime, for in these cases actual, not presumptive, marriage must be proved."

Prosecution under the Conveyancers Act.—At the Rathfriland Petty Sessions a case, brought by the Northern Law Club under the Act the 27th Victoria, cap. 8, sec. 3, was heard on Friday, the 18th inst., in which James Hudson, auctioneer, was charged with preparing a conveyance on 8th June last from Bernard Doyle to Patrick Doyle, for and in expectation of fee, gain, and reward, without certificate or licence, whereby he subjected himself to a penalty not exceeding £20, but not under £5. Patrick Doyle was called, and swore he had handed James Hudson a pound for the deed. The stamp duty, amounting to five shillings, had been paid by Hudson. He had received back the fifteen shillings afterwards. It was returned to him within the last month. When he gave Hudson the pound he asked him not to charge much for the deed, and understood Hudson to promise he would not charge anything. Hudson was his landlord, and lived next door to him. They met each other every day. The money was only returned that week. It was handed him by Hudson the previous Tuesday. He could not swear at what time of day, whether before or after dinner, but he would not swear it was before dinner. The Summons-server proved that the summons in the case was served upon Hudson between twelve and one o'clock on the previous Tuesday morning, the same day the 15s. were returned. The Bench decided there could be no conviction upon the evidence of Doyle as to Hudson's promise that he would not charge for his services, but expressed belief that the case had been brought in consequence of a different version previously given, and that what had transpired would effect the Law Society's object in making known the penalties attached to a violation of the Statute.

DIGEST OF RECENT ENGLISH DECISIONS.

DAMAGES.

Agreement to grant use of an entrance to premises: defective title: measure of damages for breach of contract.—By an agreement, dated the 6th of September, 1871, entered into between the plaintiff and defendants, it appeared that the plaintiff was entitled to the residue of a lease for twenty-seven years. from 1857, of the Bell Inn, situate in Bell Yard, part of which had been underlet; that the defendants had become assignees of the underlease, and also for a term for 150 years, being the reversion immediately expectant on the lease of the Bell Inn, vested in the plaintiff; that the defendants had contracted for the purchase of the freehold of the Bell Inn, together with other premises situate in Bell Yard, and that the same would shortly be conveyed to them in fee simple; and that, for the purpose of enabling the defendants to make alterations both in the Bell Inn and in the other premises contracted to be sold to them, it had been agreed that the plaintiff should surrender part of the premises in the lease; and it was agreed that the defendants should forthwith grant to the plaintiff for the term the use and enjoyment of an entrance to the Bell Inn from St. Michael's Alley. The agreement then contained stipulations that the plaintiff should surrender part of his leasehold interest in the Bell Inn, and that the defendants should make alterations described in the agreement, and amongst others, that they should remove a portion of the existing building between St. Michael's Alley and the Bell Inn, and make an entrance to the Bell Inn four feet wide, and grant to the plaintiff the use of the entrance during the residue of the term for which he held the Bell Inn; and it was also agreed that the defendant should, within a limited time, complete the alterations and execute a lease at a peppercorn rent to the plaintiff of the premises and the entrance, for a term of years co-extensive with the term for which he held the Bell Inn, containing covenants similar to those contained in his present lease. One of those covenants was a covenant by the lessor that the lessee should quietly enjoy the premises without disturbance from the lessor or those claiming under him. The entrance in question was on premises contracted to be purchased by the defendants, and forms no part of the Bell Inn. The plaintiff surrendered his part of the premises, and the defendants erected other buildings in their place, and derived permanent benefit from the agreement. They also made the entrance, and put the plaintiff in possession of it; but the day after it was stopped up by third parties. The entrance had been conveyed to those third parties by one S., who was not a person claiming through the defendants. No lease had been executed. An action having been brought for not granting the use of the entrance, *held*, that the rule in *Flureau* v. *Thornhill*, 2 W. Bl. 1078, did not apply, and that the plaintiff was entitled to such damages as would amount to the difference between the present state of things and what it would have been if the contract had been performed and the plaintiff had got a title to the entrance. *Wall* v. *City of London Real Property Company, Limited*, L. R. 9 Q. B. 249.

2. *Railway company: negligence: consequential damages.*—A herd of plaintiff's beasts were being driven, at 11 o'clock, p.m., along an occupation road to some fields. The road crossed a siding of the defendant's railway on a level, and while the cattle were crossing the siding the defendant's servants negligently sent some trucks down an incline into the siding, which divided the cattle into two lots, and frightened them and they rushed away, with the drovers after them. The drovers succeeded in recovering most of the cattle, but they were unable to recover six of them, which were ultimately found at between 3 and 4 a.m., lying dead or dying on another part of the railway; and it appeared that they had gone along the occupation road up to a garden and orchard about a quarter of a mile from the level crossing; had got into the garden through defect in the fences, and so on to the line. There was no evidence as to when the train had passed which ran over the cattle. *Held*, that, it being admitted that the defendants had been guilty of negligence which caused the drovers to lose control over the cattle, and it being also admitted that the plaintiff's men had done all they could to recover control over the beasts and had not been able to do so before they were killed, their death was the consequence of the defendants' negligence; and the damage was not too remote. *Sneesby* v. *Lancashire and Yorkshire Railway Company*, L. R., 9 Q. B. 263.

VENDOR AND PURCHASER.

Sale of real property: incumbrances: terms of existing tenancies, notice of.—Part of an estate consisted of three farms in Hampshire, and in that county valuations between outgoing and incoming tenants for hay, straw and manure, are made at "fodder value," which is lower than what is called "market value." The three tenants of the farms held under verbal agreements from year to year, according to the custom of Hampshire. In April, 1868, the defendants, who were devisees of the estate on trust for sale, gave notice to the tenants to quit at Michaelmas, 1869, but the tenants alleged that they had been promised leases by the devisor, and ultimately it was agreed that if they would give up possession according to the notices, the half year's rent due at Michaelmas, 1868, should be remitted to them, and they should be entitled at the termination of their tenancies to be paid for hay, etc., at "market value." In June, 1868, the estate was put up for sale by auction. In the particulars and conditions of sale the three farms were described as in the occupation of the tenants respectively till Michaelmas, 1869, at certain rents; and certain incumbrances, subject to which the sale was made, were specified, viz.: land tax and tithe rent-charge; but no express mention was made of the above-mentioned agreements with the tenants. The conditions stipulated that the property should be taken to be correctly described as to quantity and otherwise, and that if any error, misstatement, or omission should be

discovered, the same should not annul the sale nor should any compensation be allowed, and that the rents or possession should be received or retained, and the outgoings discharged by the vendors up to the 29th of September, and from that day by the purchaser. The property was bought in at the sale by auction, and afterward sold by private contract on the 18th of July, 1868, to the plaintiff. The contract for sale which was written on a copy of the above-mentioned particulars and conditions, described the property purchased as the property mentioned in the foregoing particulars, and as being purchased subject to the foregoing conditions. At the time the plaintiff bought he had no knowledge of the above-mentioned agreements with the tenants. Upon his becoming aware of and objecting in respect of them, it was agreed that he should complete without prejudice to his claim to be indemnified in respect of the agreements to pay the tenants market instead of fodder value for the hay, straw and manure. The plaintiff afterward paid the tenants the amount of the valuations of hay, etc., at market value, and now sought to recover the difference between that and fodder value from the vendors. *Held*, that upon the true construction of the contract of sale there was nothing to show that the farms were to be conveyed free from the claim of the tenants to be paid at market value; but that the contract was to convey, subject to the existing tenancies, of which the agreement to pay market value formed terms, and that upon the authority of *James* v. *Lichfield*, Law Rep., 9 Eq. 51, notice to the plaintiff of the tenancies was notice to him of all the terms of such tenancies, and consequently that the action was not maintainable. *Philips* v. *Miller*, L. R., 9 C. P. 196.

THE CODIFICATION OF INTERNATIONAL LAW.

We have always advocated the codification of the law of England, and it may appear a little inconsistent to feel, as we do, that the proposals made by the Congress for the codification of international law are extravagant and altogether unlikely to serve any useful purpose. Such, however, is our opinion, and it will, we think, appear upon consideration that in point of fact there is no inconsistency at all between the two views.

The reason for codifying the law of England is simply that it has become so rank and over-luxuriant and is expressed with so very little certainty that knowledge of it can hardly be acquired except at the expense of the labour of a lifetime, and that even when it is acquired such knowledge must, from the nature of the case, be disjointed, fragmentary, and otherwise of a very unsatisfactory kind. The conditions which make it possible to codify the law of England, or indeed that of any other country, are the existence of a mass of material from which a systematic categorical statement of the law may be extracted by due care and assiduity, and the existence of a legislature which, when such an extraction has been made, can give it the stamp of unquestionable authority. When this operation is properly performed, it does unquestionably procure the advantage of compactness, simplicity, certainty, and system in the place of their opposites. It enables the legislature to judge of the value of a great number of isolated rules, and to clear them away if, as is frequently the case, they are simply intricate and superfluous ways of expressing the same thing, or if they are obsolete or otherwise objectionable. To codify a vast number of authorities which have gradually accumulated in the lapse of ages is an operation not unlike sorting a mass of papers or letters, burning those which have ceased to be of interest, and arranging the rest in a systematic manner. The performance of such an operation implies that the person who performs it is master of his own papers, and knows what he wants to keep and for what purposes. It is the same with codification. The nation decides what it will keep and what it will reject; it re-arranges and re-enacts what is valuable, and rejects what is useless.

A process of this sort is of the utmost value and interest when the law for practical purposes may be regarded as settled. Vast masses of the law of England are in such a condition. No one who has any practical acquaintance with the subject doubts that large parts of the law of contracts, the law of wrongs, the criminal law, &c., are perfectly well settled, and, as far as their substance goes, meet the requirements of the public. All that is required is to make their form as good as their substance, and to remove the minor defects and uncertainties which involve no questions of any very serious or general importance. This is what is meant by codification, and is the object which we, as consistent advocates of codification, have had in view in the many articles which for years past we have devoted to the subject. We see no occasion to alter or recall anything which we have said on that subject. There is, however, a point at which codification ceases to be in any sense a good thing, and becomes excessively dangerous. The point is reached when the subject on which it is proposed to legislate not only admits of two opinions, but does actually divide men into parties more or less eagerly opposed to each other. In such cases no codification, no definite, final, categorical statement of the law is possible until one side has finally got the better of the other, and proved itself to be permanently the stronger party. This is the reason why codes have had such very different fortunes. The French codes have lasted for about seventy of the stormiest years of French history with singularly little variation. They have outlived a greater number of constitutional codes than we care to count. The reason is that the Code Napoléon and the Code Pénal consist principally in definite and systematic statements of matters upon which such a statement, as to the substance of which there was little room for question, was highly convenient. The different constitutional codes expressed nothing except the arrangements which happened to suit a party triumphant for the moment. It would be a difficult but by no means an impossible enterprise to codify the branches of the English law which we have mentioned and some others; but imagine the difficulties to which a man would be exposed who was called upon to draw an Act declaring the law as to the political constitution of the country, or, indeed, upon any point which deeply interested people's feelings. The only effect would be to raise a violent and better controversy, which might have been avoided and could hardly be determined. Imagine, for instance, a constitutional code one chapter of which would begin thus:—

"Chapter—.—Of the Church of England.—Art.—. The Church of England is——"

The person who completed the sentence would be more bold than wise, and the article, when drawn, would hardly become law without a social convulsion.

The question, then, whether it is or is not practicable to codify international law depends on two further questions, each of which, as it appears to us, must be answered in a sense unfavourable to the undertaking. In the first place, is the substance of the law well settled, and are the improvements which it requires improvements of form merely? Now, it is perfectly notorious that almost every single rule and principle of which international law is made up is susceptible of every sort of different interpretation; and, what is more, the adoption of the one or the other of these interpretations is a matter of the last importance to the nations concerned, and may interest their honour and even their safety in the highest degree. To codify these rules, to reduce them to a certainty, would be equivalent to legislating upon matters of vital interest to every nation in the world. No one who has had any practical experience of legislation would undertake such a task. The notion that in the nature of things it is possible to carry it out appears to us to indicate an essentially false conception of the very first principles of legislation. Laws always have been, always are, and always will be made to protect and favour some interest at the expense of others. An international law, if we assume for a moment the possibility of making one, must favour either the belligerent or the neutral, and, what is more, it must favour either the strong or the weak belligerent. Are invaders to be entitled to treat irregular levies as banditti? If yes, so much the better for great military Powers. If no, so much the worse for them. Shall free ships make free goods, or are belligerents to have a right to take an enemy's goods under a neutral flag? The one rule is good for Powers strong at sea, the other for Powers weak at sea; at least nations are sure to look upon the rule in a different light according to their naval

strength. International law, like some other things, is not so wide as it looks; for the greater part of it consists of rules and maxims, made with reference to the circumstances of a very few nations, strong enough to keep each other in check. Are reasonable men prepared to throw open all the questions for which these rules provide after a fashion which, if not quite satisfactory, is much better than it easily might be, and to have every sort of delicate question in which all their interests are most deeply involved disposed of once for all by no one knows who?

The conclusion of the last sentence brings us to our final objection to the schemes which are just now making so much noise. We have heard a great deal of international law and its codification, but who is to be the international legislator? We all know what came of the embassy to America, which drew up in studiously vague and ambiguous language the Three Rules, which cost the English nation three millions of pounds sterling, besides extreme mortification and some loss of credit; but they cover a very trifling part of the subject, and the result has not been so satisfactory as to make us, at least, much disposed to go any further in the matter. In that case, however, whatever the result may have been, we had, at all events, the satisfaction of having the negotiations conducted by English public men responsible to Parliament; but who is to perform the enormous task of codifying international law? of legislating for all the nations which compose the human race? Whoever does it, we hope that the task will not be entrusted to a gossiping Congress, which, as far as we can judge from its proceedings, would appear to consist of a miscellaneous collection of undistinguished people, each riding his own hobby, some of the said hobbies being of the very most paltry kind.—*Pall Mall Gazette.*

SOLICITORS AND ADVOCATES.—The *Times*, in commenting on the probable operation of the Judicature Act in regard to long vacations, has recently suggested that the public must not expect to gain as easily and at all times, access to the Court of Chancery, as to an attorney's office. The comparison is hardly a happy one, for more reasons than one, and we are disposed seriously to doubt whether access to the former should not be as easily accomplished as to the the latter. The Act referred to directs that, for the future, attorneys at law are to be called "Solicitors of the Supreme Court," but the *Times* seems indisposed to drop the use of the familiar expression "attorney-at-law," to which, of course, there is no objection, as in the public estimation such an appellation is regarded in a very different sense to that which attached to it during the seventeenth century. In the MS. memoirs of Sir John Oglander, having especial reference to the Isle of Wight, the assertion is made that the condition of the inhabitants of the island was a happy one before "peace and law had beggared them all; when the hateful race of attorneys that had made the island their habitation, and so by suits undone the country, was unknown." Indeed, it was at one time the boast of the residents in this island that there was "neither fox, attorney, or friar in it." We observe that Mr. Wynne E. Baxter, who is the author of a work on the Supreme Court of Judicature Act, is described by the publishers, Messrs. Butterworths, as a "Solicitor of the Supreme Court," that it is the intention of the Legislature that this term shall be universally adopted cannot be doubted, although no alteration was called for by the Profession. The change is therefore to be accounted for thus:—Formerly Solicitors constituted a distinct branch of the Profession, who practised only in the Chancery Courts, while Attorneys-at-law exercised similar functions in the Common Law Courts the one called Solicitors of the High Court of Chancery, the other Attorneys of the Superior Courts of Common Law." In course of time this division of legal work ceased to exist, and at the present day there are very few Solicitors who are not Attorneys, or *vice versâ*. There are many professions whose members would have demurred to any attempt of the Legislature to alter its nomenclature, while, in the present case, the proposed change has been regarded with comparative indifference. The time is probably coming when the expression "Barrister-at-Law" will undergo some change. The origin of this name is fully explained in Mr. W. T. Charley's work, "The Legal Profession." It originated in times when Professional service was of a purely honorary nature, now quite otherwise; we, therefore, support the substitution of the expression "Advocate of the Supreme Court" in lieu of that now in use.—*Law Times.*

LAW STUDENTS' JOURNAL.

ATTORNEYS' APPRENTICES.

Result of PROFESSOR HICKSON'S *Examinations in Law, on 1st and 2nd days of July, 1874.*

The following Apprentices have passed an Examination to the satisfaction of the Professor of Law, in the subjects of the Lectures delivered in 1873-4, pursuant to the 25th of the Society's Rules of October, 1866.

The names are arranged in the order of answering.

First Day.

1	ATWELL H. ALLEN	CHARLES E. CORCORAN
	ATHOL J. DUDGEON	GERALD H. CULLEN
3	GEO. T. CARMICHAEL	NICHOLAS DOWNES
	JOHN HALPIN	HUGH DRUMMOND
	JOHN KENNEDY	HENRY R. EMERSON
6	EDWIN HUGHES	JOHN FEGAN
7	ROBERT G. HAMIL	JOSEPH D. FISHER
	FREDERICK HALL	HENRY B. FITZGERALD
	PATRICK DOYLE	PATRICK GLYNN
10	WILLIAM J. BRETT	EVERARD HAMILTON
	PATRICK J. B. DALY	REUBEN H. HARVEY
12	ORLANDO P. BEATER	EDWARD HENRY
	WILLIAM FRAZER	J. H. HOGAN
	RICHARD L. LEWIS	WILLIAM HAMERTON
	WM. M. BARRINGTON	WILLIAM P. KELLY
	WILLS C. BENNETT	GEORGE B. KENT
	EDWARD A. BEYTAGH	VALENTINE KILBRIDE
	F. C. E. BLAND	JAMES LATCHFORD
	RICHARD J. BROWNE	

Second Day.

1	JOHN P. M'CRAITH	DAVID M'GONIGAL
2	ARCHIBALD S. M'COY	ROBERT J. M'MORDIE
	DANIEL M'LAUGHLIN	WELDON C. MOLONY
	HORACE WILSON	JAMES MORAN
5	JOHN G. SHAW	CHARLES MURLAND
	JAMES J. RYAN	EDWARD O'CONNOR
7	JOHN C. WHITE	JOHN CHAS. O'FARRELL
	CHARLES J. MORPHY	ARTHUR OLDHAM
	CHAS. M'MAHON, Junr.	JAMES E. PROCTOR
	ANDREW M'CAFFERTY	ST. GEORGE ROBINSON
11	WILLIAM TAGGART	WM. J. J. ROBINSON
	FRANCIS R. WOLFE	JAMES B. ROSS
13	DANIEL F. SPILLER	WILLIAM T. ROWAN
	CARSE C. M'MINN	JOHN SCULLY
	JOHN F. SMALL	JOSEPH R. SHIEL
16	J. HUNTER MOORE	JAMES SMYTH
	ARTHUR ST. GEORGE	ALFRED STUBBS
	JOSEPH P. MANNION	JAMES SWANZY
	ROBERT C. MARTIN	ROBERT A. WILSON

The Gentlemen whose names appear in the first divisions respectively answered very satisfactorily. On each day the answering of the first five in the list was nearly equal, save in the case of Mr. M'Craith, whose papers deserve very high commendation.

(Signed)

WILLIAM HICKSON, Professor.

23rd September, 1874.

Digitized by Google

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

MICHAELMAS SESSION, 1874.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Michaelmas Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Thursday*, the *fifth* of November, 1874.

The course will consist of *Twelve* Lectures, three-fourths of which *must* be attended so as to entitle Candidates to Professor's Certificate.

By Order,

JOHN H. GODDARD,
Secretary.

Gentlemen proposing to attend Lectures, will have to leave their names at the Secretary's Office, Solicitors' Buildings.

The Professor of Law has fixed upon the following Book for Lectures, viz., "WILLIAMS ON REAL PROPERTY"—"Last Edition."

Solicitors' Hall, Four Courts, Dublin.
October, 1874.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship, will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 30th and 31st days of October, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Wednesday, 14th October, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place, on Monday and Tuesday, the 2nd and 3rd days of November, 1874, *at the same hour.*

By Order of the Council,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The COMPETITIVE EXAMINATION for the Society's Prize, will be held on *Monday, Tuesday, and Wednesday, the 2nd, 3rd, and 4th of November, 1874,* at 11 o'clock each day.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 10th of November, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

HILARY TERM, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Michaelmas Term.*

By order,

JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas J. Curtis	1st composition sitting	*Stewart*
W. H. Thornton	1st public sitting	*Whelan & Son*
Patrick Clarke	do	*Rynd*
Robert Russell	do	*Oldham & Eaton*
Thomas Murray	do	*Molloy & Watson*
Thomas Shevlin, sen. and jun.	do	*Oldham & Eaton*
John Hanley	do	*Casey & Clay*
Patrick Mason	1st composition sitting	*Kernan*
Same matter	Final examination	*Mathews*
James Harbinson	1st composition sitting	*M'Cully*
Same matter	Final examination	*Murray*
Patrick Dillon	do	*Meldon & Son*
Catherine Holland	do	*Gerrard*
Joseph Creswell	do	*Mathews*
William Creswell	do	*Mathews*
Wm. Fitzgerald	Examine witnesses	*Mathews*
Philip Barry	Application for certificate	*O'Connell*
Daniel Cullen	Confirm sale	*Boyd*
Peter Smith	Examine witnesses	*Hamilton & Craig*
John F. Maguire	do	*Oldham & Eaton*
Thomas Laffan	Motion	*Connolly*

Before the CHIEF REGISTRAR, at 12 o'clock.

William Holmes	Costs	*Larkin & Co.*

THURSDAY.

Before the COURT, at 11 o'clock.

Folliott Barton	Prove debts	*Leachman*
Robert Courtney	do	*Perry & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

Thomas M'Connell	1st public sitting	*Larkin & Co.*
F. H. M'Donald	do	*Rosenthal*
James M'Bride	Final examination	*Mathews*
Hugh S. Guiness	do	*Oldham & Eaton*
Thomas Clarke	do	*Casey & Clay*
Michael Reilly	do	*Perry & Co.*
Samuel Doyle	do	*Meldon & Sons*
Same matter	Motion	*Meldon & Sons*

Before the CHIEF REGISTRAR, at 12 o'clock.

Thomas F. O'Neill	Costs	*Larkin & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Gardiner, Samuel, Belfast, grocer. Sittings, *Tuesday, October* 13, and *Friday, October* 30. *Oldham and Eaton*, solrs.

Harris, William H., 100, Middle Abbey-street, Dublin, glass merchant. Sittings, *Tuesday, October* 13, and *Friday, October* 30. *Casey and Clay*, solrs.

Smith, Peter, Rooskey, Ballinagh, Cavan, farmer. *Tuesday, October* 13, and *Friday, October* 30. *Hamilton and Craig*, solrs.

Stanley, Michael, 26, City-quay, Dublin, coal merchant. Sittings, *Tuesday, October* 13, and *Friday, October* 30. *H. C. Neilson*, solr.

Digitized by Google

COVENTRY'S ACT.—The *Athenæum*, alluding to the enactment of this notable statute, in the reign of King Charles II., mentions an advertisement in the *Daily Post*, Jan. 22, 1740, showing a recent assault on a gentleman passing along the north side of Lincoln's-inn-fields, by three unknown persons, upon the alleged idea that he was the author of a satire called "The Satirists." The advertiser then suggested a meeting at Dick's Coffee House, Temple Bar, for his atonement or recompense, and in case of their refusal he offered the "satisfaction of a gentleman," when and wherever shall be appointed, so as he may not have to deal with numbers. Such was life in London less than 150 years ago.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	SEPTEMBER Fr. 18	Sat. 19	Mon. 21	Tues. 22	Wed. 23	Thur. 24
	Government.						
—	3 p c Consols	—	91⅞	91⅞	91⅞	—	91⅞
—	New 3 p c Stock	91–⅛	91–⅛	91–⅛	90⅞–1	90⅞–1	90⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	108¼	—	—	—	108	—
—	4 p c Oct. '88 } Bk. of Irel.	102	—	102	102	—	—
	Banks.						
100	Bank of Ireland	305½	306	306½	306½	-	306½
25	*Hibernian Banking Co.*	59½	59⅞60	60	59⅞	59⅞	59⅞ 60
15	*London Joint Stock*	50⅛⅜	—	50¼	—	—	50¼
20	*London and Westminster*	75½	--	75⅞–6	76⅛	—	—
3½	*Munster Bank (Limited)*	—	—	8¾	—	3¾	—
30	*National Bank*	64⅞–5	66	65⅞–6	65⅞	66	65⅞–66
15	*National of Liverp'l (Ltd)*	14⅜	—	—	—	—	—
25	*Provincial Bank*	—	—	—	91	91	—
10	Do. New	—	—	36	36	—	-
10	*Royal Bank*	30	—	—	30	—	30⅛
2½	*Ulster Banking Co.*	10	—	—	—	—	—
	Steam.						
100	City of Dublin	—	108	—	107½	107½	107½
50	Dublin & Liverpool Steam Ship Building. Co.	—	55	55	—	—	—
10	Dundalk (Limited)	5⅜	—	—	—	—	—
	Mines.						
3½	*Berehaven (Limited)*	-/6	—	—	-/6	--	-/6
7	*Mining Co. of Ireland (Ltd)*	—	6⅜	—	—	—	—
2½	Wicklow Copper	—	3½	—	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Ga	10⅜	10⅜	10⅜	10⅜	10⅜	—
9½	*Dublin Tramways*	--	—	6½	—	—	—
9-4-7	*Patriotic Assurance*	—	—	—	—	10⅞	—
	Railways.						
10	Athenry and Tuam	—	—	—	-	—	—
50	Belfast and County Down	--	—	—	—	-	—
50	Belfast and Northern Cos.	--	—	—	—	—	58
10	Cork and Macroom	—	—	—	—	—	—
100	Dublin and Belfast Junct.	—	89½	—	—	89½	—
100	Dublin and Drogheda	112¾	—	—	112¾	—	112¾
100	Dublin, W'klow, & W'ford	--	—	77⅜	77¾		—
100	Gt. Southern and Western	108¾	--	108¾	108½	—	108
100	Midland Gt. Western	—	--		32	—	—
100	Waterford & Cent. Ireland	—	13½	14	—	—	--
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	93	--	—	--	—	—
100	D., W., & W., 6 per cent	—	-	—	—	130	—
50	D., W., & W., 5 p c (1860)	54½	—	—	—	—	—
50	Do. do. (1865)	—	—	—	53¾	—	—
100	Grand Trunk of Canada, 3	—	—	—	-	—	31½
100	Gt. South'n & West'n 4 p c	97½	—	96½	97–½	98	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	50	—	—
100	Do., 4½ p c	—	97	—	—	—	—
50	Do., new red, 1873, 5 p c	—	—	—	—	50½	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	--	--	—	97	—
--	Cork and Bandon, 4½ p c	—	—	—	—	—	—
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Dublin & Drogheda 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Dublin & Meath 4½ p c	—	—	—	—	91	—
—	Do., 4 p c	79½	--	—	—	—	—
—	D., W., & W., 4½ p c	100	—	100	100	100	—
—	Do., 4½ p c	—	—	--	—	—	103
—	Gt. South'n & West'n, 4 p c	99½	—	—	—	--	—
--	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	--	—	—	-	103⅜	—
—	Ulster 4 p c	—	—	—	—	—	—
—	Waterford & Central 5 p c	—	—	—	—	—	-

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—3½ per cent., 27th August, 1874
Of Deposit—2 per cent., 20th August, 1874.

Name Days—September 29th, and October 14th, 1874.
Account Days—September 30th, and October 15th, 1874.

On Saturdays business commences at 11 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

KELLY—September 17, at his marine residence, Clew Bay House, the wife of Alfred B. Kelly, Esq., solicitor, of a son.

PEYTON—September 18, at 23, Upper Gloucester-street, the wife of William H. Peyton, Esq., solicitor, of a daughter.

MARRIAGES.

QUILL and CHUTE—September 23, Albert William Quill, Esq., Barrister-at-Law, eldest son of Thomas Quill, Esq., Kingstown, to Margaret, only daughter of the late Rev. James Chute, Rector of Ballyheigue, County Kerry.

ROBERTSON and WALKER—September 12, at St. Thomas's Church, Belfast, Robert Robertson, Esq., solicitor, Peterhead, to Lucy, eldest daughter of James Walker, Esq., J.P., Kununat Glynn, Natal.

DEATHS.

HOLROYD—September 15, at Conneragh, Temple Michael, near Youghal, after 2 days illness, of congestion of the lungs, George Frederick Holroyd, Esq., Barrister at the Parliamentary Bar, in his 51st year, eldest son of Edward Holroyd, Esq., of Elland Lodge, Wimbledon (late one of Her Majesty's Commissioners of the Bankruptcy Court).

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

SALE,

On FRIDAY, the 6th day of NOVEMBER, 1874.

In the Matter of the Estate of William Noble, Owner; Nicholas Lynch, Petitioner.

TO BE SOLD, On FRIDAY, The 6th day of NOVEMBER, 1874, At the Hour of Twelve o'clock noon, Before the Honourable Judge Flanagan,

At his Court, Landed Estates' Court, Inn's-quay, In the City of Dublin, In One Lot,

The Dwelling-house and Premises now known as No. 2 Thornville, Rathgar-avenue, in the Barony of Newcastle, and County of Dublin, held under lease dated 14th February, 1868, for 393 years, at the yearly rent of £3, and estimated to produce a yearly profit rent of £27.

Dated this 17th July, 1874.

H. R. GREENE, Chief Clerk.

For Rentals and further particulars apply at the Landed Estates' Court, Four Courts Inns'-quay, Dublin; or to
THOMAS J. FURLONG, Solicitor having carriage of Sale, 23, Eustace-street, Dublin. 535

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN MOLLOY, of Middle Gardiner-street, in the City of Dublin, Grocer, was on the 11th day of September, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 9th day of OCTOBER, 1874, and on TUESDAY, the 27th day of OCTOBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

WILLIAM P. M'EVOY, Solicitor, 65 Dame-street, Dublin. 534

SALE:

COUNTY CARLOW.

ESTATE in the County of Carlow FOR SALE.

TO BE SOLD, with Landed Estates Court Title, One Undivided Moiety of an extremely desirable Estate, held in Fee, situate at Milford, in the County Carlow, and within four miles of the Town of Carlow, the whole producing at present an annual profit rent of £400, which will be increased to £600 per annum on the falling in of two annuities of £100 a-year each. Apply to

Messrs. J. D. MELDON & SONS, 14 Upper Ormond-quay, Dublin. 544

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, September* 26, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, OCTOBER 3, 1874. No. 401.

THE STATUTES REVISED.

THE efforts of our legal reformers of late years have been directed to simplifying and, so far as it is possible, abridging the letter of the law. Lord Brougham and Mr. Bentham, in a past generation, respectively, thundered out denunciations as to the defects in our law of crimes, procedure, and evidence, and subjected them to philosophical criticisms which have resulted in their amelioration and assimilation, by one or two stages, to that which European jurists look upon as the model of perfect legislation—the Roman code, just as the Roman jurisconsults affected to judge and to guide their own efforts by attempts to attain the perfection of a forgotten or a lost law of nature.

However great may still be the gap which separates our codes of procedure and evidence from an ideal condition of perfection, the exertions of these reformers have been of the greatest use to our civilization, and though the efforts of Brougham, being concrete in their nature, were spent and died out when he retired from the scene of his labours, the exertions of Bentham, in the cause of common sense and humanity, are still vivifying influences, and cannot lose their force, because they depend npon principles which, once admitted to be true, are permanent in their hold upon men's minds.

The great legal peers, Cairns and Selborne, have succeeded in giving to England a still newer course of procedure, and we shall probably soon feel its influence here; but meanwhile another current of legal improvement has been rather silently going on for the last six years in the endeavour to remove from our jurisprudence one of its greatest reproaches, that is, its literal magnitude. While doctrinaire jurists have been contending for the comparative merits of a code or a digest, as if they were incompatible or exclusive, and each party has refused to aid the other, the great practical lawyer of the day, Lord Cairns, stepped in and provided what was a necessary antecedent to either of the above in a revised edition of the statutes in force.

It is obvious that neither a Digest nor a Code of English Law could be prepared until the multitudinous legislative enactments of the country were *authoritatively* reviewed and arranged. It was in some well-known instances impossible *a priori* for a practitioner, or even a judge, to determine whether an Act still on the statute-book could, or should, be enforced.—the Irish statute-book abounds in such instances—and, therefore, it was impossible that the law could be codified, and represented in an actually existing state. The same difficulty, of course, presented itself with regard to the compilation of a digest. But the difficulty of doubt was not the only impediment to the clear intelligence of the status of a litigant; the physical extent of the body of the statute law made it an endless work to arrive at a correct conclusion on many points, through the endless mass of obsolete and partially repealed enactments.

It was to end this confusion and to give some order to the *rudis et indigestaque moles*, that Lord Cairns set his mind, when he wrote the letter to Sir J. G. Shaw Lefevre, dated from the House of Lords, 9th July, 1868, wherein he stated that he had under consideration the subject of a revised edition of the statutes—a work the expediency of which had been three times affirmed by Parliament in the preambles of the Statute Law Revision Acts. That series of Acts, embodying the results of labours, begun under the direction of Lord Campbell as Chancellor, and Lord Westbury (then Sir Richard Bethell) as Attorney-General, and continued under that of succeeding Lord Chancellors and Attorney-Generals of England, had removed many difficulties that would have obstructed the application to the Statute Book of the process of expurgation.

His Lordship, therefore, determined that an edition of the statutes should be prepared and published, containing, so far as might be, only such Acts as are in force. A commission was appointed for the purpose, and the result of their labours is five volumes of revised statutes. The work is still progressing, but to increase the value of the publication the editors have published a chronological table and index of the statutes, from the first year in which they appear to have been preserved down to 1872.

The magnitude of the work involved will be somewhat realised by remembering that this chronological table is itself a quarto volume of 700 pages, and that the contents of the five volumes of statutes date from Henry III. to 4 George IV., or from 1235 to 1823. The earlier centuries, as might be expected, are sooner despatched, the first volume extending from 1235 to 1686, while the last volume yet published only includes the legislation still in force, which passed between 1812 and 1823, while we may expect that the reigns of William IV. and her present Majesty will take up a larger number of pages. But if we assume that the existing legislation of England can be completed in as many more volumes as are already published,—that is in twelve altogether, we shall see what a revolution in our ideas and knowledge of the positive law, as imposed by Parliament, will be thus caused.

That every one is assumed to know the law is a maxim which carries absurdity on the face of it, or else where would be the necessity of Courts of Appeal or Review, as was pointed out in *Martindale* v. *Falkiner;* but heretofore it was not only absurd, its execution was an utter impossibility, and its injustice and impracticableness were only partially removed by the most palpable intervention of fiction and equity, as in the distinctions taken between mistakes arising through ignorance of law and ignorance of fact, as illustrated by the notable case of *Bingham* v. *Bingham.*

Now, however, legislation has, in strict accordance with Sir Henry Maine's theory of legal evolution, been brought to bear, and English practitioners, that is, the legal public, have some chance afforded them of learning (apart from the difficulties, however, of its construction) what is the statute law of the country. It was practically impossible, too, for an ordinary individual, however large his means or his premises, to have a complete set of the statutes, and his recourse was to a library or to text writers, whose books gave readings which were sometimes erroneous, and in all cases necessarily imperfect. *Melius est petere fontes quam sectari rivulos*, and every lawyer, at a small cost and in a small bulk, can have the whole statute laws of the country in his possession (subject to a deficiency to be noted hereafter), in a most readible and accessible form, aided in its comprehension by perfectly drawn analytical indices.

Digitized by Google

It would be a mistake, however, to suppose that the mere legal advantages of this compilation form its chief value. The history and character of a people can really only be gathered from its laws; traditions and records, such as genealogies, are useful when used guardedly, but in the body of its laws a people's true career is unreservedly written.

The history of the English Constitution itself is the best illustration of this statement, and every phase of thought which marked the career of the country is indelibly stamped upon its laws. For the purpose of discovering the force of this, however, it would be necessary to compare the laws repealed and those allowed to fall into desuetude with those in the full vigour of life. To the layman, the politician, and the statesman, then, this revised edition of the statutes will be equally useful as to the lawyer. The work has been performed in a manner worthy of the design, and we can only regret that the laws peculiar to Ireland (even though passed in the English Senate) have not been thought worthy of notice—a neglect which they share with the Scotch laws.

This was probably inevitable when we consider the design of Lord Cairns, but it is none the less lamentable, and we can only hope that some future Irish Lord Chancellor and Attorney-General (particularly if the former should be relieved from some of his judicial functions) may be inspired with the laudable desire to emulate the activity and wisdom of our great countryman, Lord Cairns, in the peculiar sphere of labour which he seems to have made his own, and procure a similar work for Ireland. For England the work so far is complete; for Ireland it requires to be supplemented, but we receive it with pleasure as the prototype of what we may expect some day for ourselves. In a future article we shall set out the sources of the various Acts, and the method employed by the editors in publishing them.

NEW ACT TO AMEND THE LAW OF POWERS.

The Act passed in the last session under the title "An Act to alter and amend the law as to appointments under powers not exclusive," is no doubt the legitimate result of Lord St. Leonard's Act (1 Will. 4, c. 46), which made valid illusory appointments under non-exclusive powers; but the objections which have so often and so powerfully been urged against the earlier statute apply with no less force to the latter. The difference between the two is, indeed, only verbal and technical; and it is difficult to see on what grounds of reason and common sense the donee of a power should be permitted to give a shilling, or some other nominal sum, to an object of the power, and not be permitted to pass over that object altogether. In effect an illusory appointment is no appointment. Lord St. Leonard's Act reminds one of the belief once prevalent among the vulgar, that in order to disinherit an heir it was necessary to leave him a shilling. The noble lord (Powers, 8th edit., p. 449) speaks of the uncertainty and difficulty involved in every attempt of equity, so as to restrict the common law right of the donee of a power to fix the shares of the objects of the power, as to make all those shares substantial. He then argues against the opinion which has just received legislative sanction—that every power ought to be declared an exclusive one. But all the arguments he adduces tells us forcibly against himself as against his opponents. Though his language has the obscurity which so often defaces the pages of a work which is a model of legal learning and research but not of style, still the general drift is clear enough. Speaking of the case of a father delegating a power of appointment among his children, the learned writer says: "If I had an exclusive power, I might, upon slight grounds, give all to one without noticing any of the others." By his own law he might give nearly all to one and nominal sums to the others, who would probably greatly prefer to be passed over altogether to being insulted by the gift of some trifling sum. That law proceeded upon a principle the reverse of what is now generally accepted. It assimilated the equitable to the legal rule, by which it was expected that litigation would be avoided; an expectation scarcely justified by subsequent experience.

Expressed in plain language, the practical effect of Lord St. Leonard's Act, was to enable donees of powers to do what they were expressly told not to do; but to do it by availing themselves of a petty legal technicality. The Act just passed takes away the necessity of resorting to a quibble, and enables that to be done straightforwardly which before could only be effected in an underhand manner. It is, so far at least, an improvement on the former statute. But its tendency is as obviously unjust and inequitable. Donees of powers have, hitherto, been very properly regarded as subjects to duties and responsibilities analogous to those of trustees. The legislation we have been criticising enables them to disregard those responsibilities. Doubtless litigation frequently arose in the endeavour to discriminate between substantial and an illusory share. Litigation also frequently arises in reference to trusts, but it is not thought needful to enact that trustees may carry out or evade the trusts reposed in them at their own pleasure. It was surely possible for the court to fix the proportion which should constitute the minimum to be appointed to each object, in analogy to the *légitime* of the French law and the *legitima portio* of the Roman. There would of course be a decree of arbitratorship in establishing such a rule, and on ethical principles it would be exceedingly difficult to justify a preference of one proportion over another. But it is obvious that a donor's wishes—which ought to be the primary standard—would be carried out in most cases more nearly by the method we suggest, than by the present law. It is stated in both statutes that nothing in the acts contained should affect any provision in an instrument creating a power which should declare the amount of the share from which none of the objects of the power should be excluded. But such a provision by no means meets all the requirements of the case, as it is frequently unknown at the time of the creation of the power who its ultimate objects will be. It is, besides, clear that if the objects of a gift are in any case to be excluded from the enjoyment of that gift, it ought to be from causes which affect the relations existing between giver and receiver. It is true that the donee in such cases has a discretion allowed him; but that discretion ought to be confined to proper limits.

The framers of the statute passed in the last session have certainly spared no pains to make the act as sweeping as possible. They are not content with saying that all non-exclusive powers are hereafter to be deemed exclusive. They go even further, at least according to the interpretation we put upon the words. The preamble says, "Whereas by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that no one of the objects of the power can be excluded, or *some one or more of the objects of the power cannot be excluded*, by the donee of the power, from a share of such property;" and the Act proceeds to state that no appointment shall hereafter be invalid at law or in equity on the ground of the exclusion of any of the objects, "but every such appointment shall be valid and effectual, notwithstanding that any one or more of the objects shall not thereby or in default of appointment take a share or shares of the property subject to such power." If the operative words of the statute are to apply to all the cases mentioned in the preamble, including that expressed in the words we have italicised, it will then be possible that an object of a power whom the donor may have mentioned by name as an especial object of his bounty, may be defrauded of his rightful expectations at the caprice of the donee of the power.—*The Law Times.*

Under a new law in New York, if a murderer sets up the plea of insanity, the court must appoint a commission of experts to investigate his insanity, instead of going on with his trial, and one Matteson, who murdered his brother in Orange county, has just been sent to the lunatic asylum upon such a report, thus saving the county the expense of a useless trial.

Digitized by Google

QUARTERLY INDEX TO SUBJECTS OF CASES.*

Adjournment (see *Appeal*).
Administration (see *Probate Court*).
limited administration to person entitled to general administration; absence of special circumstances. *Goods of Cowan.*—R. 120.
rights of widow; suspicion of being implicated in murder of husband. *Goods of Devery.*—R. 120.
Affidavit (see *Bills of Exchange Act*).
Amendment; filing additional defence. *Oleary* v. *Lenihan.* —R. 160.
Appeal from Q. S.; adjournment. *Hughes* v. *O'Donnell.*—Mis. 448.
Arrangement (see *Bankruptcy*).
protection order; registering judgment as mortgage; mortgagee not proving, but receiving dividend; acquiescence; election. *Rooney's estate.*—R. 125.
apprentice; return of fee. *Re J. L.*—R. 160.
Arrest (see *Bankruptcy; Debtors Act*).
Attachment (see *Contempt of Court*).
Attorney (see *Solicitor*).
Auction (see *Sale of Goods; Jurisdiction*).

Bankruptcy (see *Arrangement*).
setting aside agreement, as fraudulent; declaration of trust in favour of infants; jurisdiction to appoint guardians. *Re Flynn.*—R. 112.
adjudication, time for shewing cause against; laches; jurisdiction to rehear, vary, and rescind orders; application by bankrupt who has not surrendered. *Re De Serancourt* (on App.).—R. 137.
certificate of conformity; non-payment of 10s. in £1; circumstances for which not responsible; conduct before bankruptcy; keeping irregular books. *Re Harris.*—R. 121.
final examination; adjournment *sine die*; certificate of conformity. *Re O'Dwyer.*—Mis. 401.
execution against bankrupt; rights of execution—creditor; sheriff having notice of act of bankruptcy. *Re Condon.*—Mis. 392.
sheriff paying year's rent to landlord; bankruptcy of tenant. *Re Kenirey.*—Mis. 449.
absconding bankrupt; expenses of trying to arrest; escape. *Re Payne.*—Mis. 402.
debtor's summons; proof of indebtedness. *Re. M'Donald.*—Mis. 433.
election; proof of debt; discharge of bankrupt from arrest. *Girond* v. *Burke.*—Mis. 450.
report of Chief Registrar; objections to report; appeal. *Re Nolan.*—Mis. 472.
bankrupt in prison under warrant of Court of Bankruptcy; bringing up for examination. *Re Beahan.*—Mis. 486.
conveyance, to purchaser of leasehold, by official assignees and mortgagee of bankrupt lessee; covenant by purchaser to pay rent reserved; exemption from liability of property of assignees and mortgagee; warranty of title. *Re O'Connor.* —Mis. 511.
Bills of Exchange (Summary Procedure) Act; motion for leave to defend; copy affidavit not served. *Dillon* v. *Eastwood.*—Mis. 448.
Borough-fund (see *Certiorari*).

Certiorari, discretion as to issuing; borough-fund; surplus; public benefit of inhabitants; charitable infirmary; constabulary; waterworks. *R.* v. *Mayor of Cork.*—R. 131.
Charity (see *Certiorari*).
appointment of new trustees to administer; provision for appointing future trustees. *Caldbeck's Trusts.*—R. 119.

* Continued from p. 360, *ante.* The numerals with R. prefixed refer to the pages of the IRISH LAW TIMES REPORTS. The numerals with Mis. prefixed refer to the pages of the miscellaneous portion of the Journal.

Civil Bill Court (see *Appeal; Ejectment*).
Contempt of Court; attachment; discharge from custody. *Murray* v. *Tracey; Gallagher* v. *Gallagher.*—Mis. 400.
Coroner (see *Presentment*).
Costs (see *Debtors Act; Bankruptcy*).
security for; plaintiff resident in America; temporary residence; property in Ireland. *Gaynor* v. *Short.*—R. 116.
short-hand report; construction of model; sheriff's fee for jury-panel; briefs for new trial motion. *Jameson and Co.* v. *Royal Insurance Co.*—Mis. 375.
several defendants; bill of costs; severance. *Watson* v. *Row.*—Mis. 407.
against the Crown; administration; question of legitimacy. *Good* v. *Joynt.*—Mis. 415.

Debtors Act; order for payment; jurisdiction of judge in Con. Ch. *Reardon* v. *Hayes.*—R. 116.
order for payment; costs of motion. *White* v. *Power.*—Mis. 375.
lapse of twelve months after arrest; discharge from custody. *Nalty* v. *Aylett.*—Mis. 444.
Deed (see *Registry Acts*).
ex post facto consideration; marriage; Registry Acts. *Dooley's Estate.*—R. 141.
construction of; limitation of estate tail. *Denny's Estate.*—153.
usury; fraud; undue influence by brother-in-law over sister-in-law. *Evans* v. *Cooke.*—R. 118.
preparing, without having conveyancing licence; 27 Vict. s. 3. *Anon.*—Mis. 518.
Domicile (see *Husband and Wife*).

Ejectment (see *Jurisdiction*).
on title, by tenant in common to recover share; Civil Bill Court; 23 & 24 Vict., c. 154, s. 72. *Moroney* v. *Moroney.*—R. 136.
for non-payment; demurrer; traverse of tenancy. *Campion* v. *Campion.*—R. 147; *Billing* v. *Arnold.*—Mis. 450.
Election, parliamentary; petition; recrimination by respondent; time for serving list of objections; Sunday; day of service and of trial. *Joyce* v. *O'Donnell.*—R. 113.
returning officer; action for penalties. ——— v. *Langley.*—Mis. 422.
Evidence (see *Husband and Wife*).
cross examination of witnesses, before whom to be taken. *Breslin* v. *Hodgens.*—R. 110.
witness out of jurisdiction; cross-examination; appointing special examiner. *Sankey* v. *Alexander.*—R. 159.

Fraud charged by bill in equity; where not sustained, relying on other grounds. *Evans* v. *Cook.*—R. 118.

Garnishee; attaching judgment debt; costs not taxed. *Webb* v. *Graves; Reynolds* v. *Graves* (C. P.)—Mis. 385.
money lodged under garnishee order in Court of Common Pleas; subsequent garnishee order in Queen's Bench, and motion by judgment-creditor to draw money; jurisdiction. *Curtin* v. *Fitzgerald.*—Mis. 472.
General Orders (see *Election; Bills of Exchange Act*).
relating to business in Masters' offices.—Mis. 431.
Greyhound, keeping without qualification. *Russell* v. *Dwyer.*—Mis. 415.
Guardian (see *Bankruptcy*).
ad litem, to lunatic not so found by inquisition; affidavit as to unsoundness of mind. *Watson* v. *Knilans.*—R. 157.

Habeas corpus ad test.; affidavit of attorney that witness can give material evidence. *Darragh* v. *Graham.*—Mis. 486.
Homicide; negligent driving; onus of proof. *R.* v. *Cavendish.*—Mis. 415.

Horse-race; conditions; weight for age; alteration of conditions; recovery of stakes. *Woods* v. *Gallagher*.—R. 124.

Husband and wife; protection of wife's property acquired subsequent to desertion; drawing money out of Court; notice to husband. *Re Dundas's Trust*—R. 117.
 wife's earnings; Married Woman's Prop. Act; action for breach of contract. *Summers* v. *The City Bank*.—Mis. 407.
 divorce *a mensa et thoro;* domicile; jurisdiction. *Gillis* v. *Gillis*.—Mis. 414.
 action by, for injuries sustained by wife through defendant's negligence; evidence of wife; declarations of injured person to physician. *Harriman* v. *Stowe*.—Mis. 465.

Injunction; action of trespass; setting up tenancy created by a receiver; assertion of doubtful equity. *Hughes* v. *D'Arcy*.—R. 130.

Interpleader; real estate. *Gardiner* v. *Hinds*.—Mis. 401.

Judgment (see *Arrangement*).
 setting aside regular; fatality; affidavit of merits. *Griffin* v. *Mayor of Dublin*.—R. 123.

Jurisdiction (see *Debtors Act; Garnishee; Husband and Wife; Bankruptcy; Temporary bars; Magistrate*).

Landed Estates Court: (see *Limitations*.)
 jurisdiction to decide questions of law and title. *Denny's Estate*.—R. 153.

Landlord and tenant; L. & T. Act, 1870, s. 69; tenancy for a year certain; notice to quit. *Wright* v. *Tracey*.—R. 142.
 yearly tenancy created after passing of L. & T. Act, 1870; improvement during previous tenancy under lease; unexhausted manure; demand of increased rent; offer of arbitration; compensation for disturbance; unreasonable conduct of landlord or tenant, what constitutes. *Kinnerk* v. *Hall*.—R. 150.
 compensation for disturbance; Ulster custom; purchaser of tenant's interest, with notice that he would not be accepted. *Lappin and Little* v. *Coote* (App.).—Mis. 416.
 compensation for disturbance; discretion of Chairman as to amount awarded; reviewing on appeal. *Lord Mountmorris* v. *Hamilton and Kyne*.—Mis. 486.
 compensation for disturbance; maximum allowance; tenant not in actual occupation. *M'Neill* v. *Adams*.—Mis. 501.
 compensation for disturbance; town-park, not so named. *Wilson* v. *Earl of Antrim*.—Mis. 501.
 L. & T. Act, 1870, s. 58; L. & T. Act, 1860, s. 6; alternative notice to quit. *Ferguson* v. *Daly*.—Mis. 501.
 change of tenants' names in rent-receipts; evidence; new tenancy; transfer of previous rights. *Bourke* v. *Bourke*.—Mis. 502.
 tenancy in common; notice to quit not signed by each of two tenants in common. *Moroney* v. *Moroney*.—R. 136.
 tenancy until six months' notice, but at least for three years; option to renew; notice to quit, expiring with a year. *Garbutt* v. *Naughton*.—Mis. 496.
 trespass; defence, setting up tenancy created by a receiver; injunction. *Hughes* v. *Darcy*.—R. 130.

Libel (see *Amendment*).
 justification; privilege; libellous matter in municipal election petition, prepared but not presented; publication; truth of statements not averred in plea. *Oleary* v. *Lenihan*.—R. 146.

Limitations, statute of; effect of petition for sale, by owner, in Landed Estates Court. *Nixon's Estate*.—R. 111.

Magistrate (see *Trade Union; Mandamus*).
 declining jurisdiction; re-hearing; fresh evidence; reducing to writing evidence tendered. *Murphy* v. *J's. of Co. Dublin*.—R. 134.
 trover; jurisdiction to order delivery of goods or their value.—*Cramer & Co.* v. *Morton*.—Mis. 503.

Mandamus; magistrates refusing to issue summons; previous summons dismissed without prejudice. *R.* v. *J's. of Meath*.—Mis. 415.

Marriage (see *Husband and Wife; Will; Deed*).

Misrepresentation (see *Sale of Goods*).

Negligence (see *Pleading; Homicide; Husband and Wife*).
 of captain of merchant-ship: injury to sailor; liability of owner. *Ramsay* v. *Quinn*.—R. 149.

Pleading (see *Amendment*).
 covenant; traverse of making; duplicity. *Connell* v. *Dillon*.—R. 115.
 action under Lord Campbell's Act; traverse that negligence was cause of injuries; contributory negligence; setting aside pleas. *Weston* v. *Hunt*.—R. 115.
 money had and received, where it lies; horse-race stakes. *Woods* v. *Gallagher*.—R. 124.

Poor-rate; exemption of building for public purposes; town-hall. *Sligo Board of Guardians* v. *Wynne*.—Mis. 472.

Presentment; to county surveyor for works executed under his direction; forms of presentments. *Re North Tipperary Presentments*.—R. 116.
 coroner's inquest; death of inmate of workhouse; fee to medical officer. *Anon*.—Mis. 375.
 county printing; lowest tender; discretion of grand jury as to acceptance. *Anon*.—Mis. 376.

Principal and agent; agent responsible for misfeasance of duty, for which principal, also, responsible. *Harriman* v. *Stowe*.—Mis. 465.

Privilege (see *Libel; Production of Documents*).

Probate Court (see *Administration*).
 mode of trial; framing of issues; trial by jury. *Isaac* v. *Grant*.—Mis. 401.
 attesting witness refusing to make any affidavit; *subpœna ad test*. *Goods of Dorgan*.—Mis. 486.

Production of documents; co-defendants; solicitor and client; privilege. *Sankey* v. *Alexander*.—R. 157.

Receiver (see *Injunction*).
 appointment of; delay; eve of long vacation. *Kearney* v. *O'Flaherty*.—R. 157.

Registry Acts; settlement charge on, though not conveying land; priorities. *Estate of Dooley*.—R. 141.

Remittal of action to inferior court; striking out count in detinue; visible means. *Barry* v. *Cass*.—R. 124.
 under C. L. P. Act., 1870, s. 5, though notice of motion framed under s. 6. *Macdermot* v. *Cox*.—Mis. 448.
 question of title; visible means. *Stamp* v. *Hickey*.—Mis. 485.

Sale of goods; misrepresentation of ownership; true owner reclaiming; recovery of price from vendor. *Thompson* v. *Gamble*.—Mis. 500.
 by auction; piano hired on "three years' system;" absolute sale by hirer, before payment of last instalment; trover. *Cramer and Co.* v. *Morton*.—Mis. 503.

Solicitor (see *Costs; Production of Documents*).
 renewal of certificate; conveyancing without licence; non-statement in affidavit. *Re Parsons*.—Mis. 510.

Special jury, certificate for; delay in application. *Coote* v. *Meredith*.—Mis. 449.

Statute of Limitations (see *Limitations*).

Substitution of service; plaintiff residing abroad; service through registered letter. *Kelly* v. *Mason*.—Mis. 472.

Digitized by Google

Temporary bars, waiver of; ejectment on title; jurisdiction of judge on circuit. *Comyn* v. *Comyn*.—Mis. 375.
Trade union; claim by member for payment of a sick allowance; jurisdiction of magistrate. *M'Queen* v. *Quirk*.—Mis. 393.
Trustee (see *Charity*).

Venue, change of; county where cause of action arose. *O'Toole* v. *Mulhall*.—Mis. 375.

Will (see *Probate; Administration; Limitations*.)
bequest; condition in restraint of marriage; consent of third person; testator consenting in his life time to a marriage, and the marriage taking place after his death. *Lowry* v. *Patterson*.—R. 109.
construction; "property" passing real estate. *Moroney* v. *Moroney*.—R. 136.
construction; bequest for "sole use and benefit." *Re Flynn*.—R. 112.

IRISH JURIES.

A blue-book has just been issued which illustrates in a very striking and painful manner one of the great difficulties of Irish administration. There are some things which a Government can do for a country, and there are other things which the people alone can do for themselves. In the latter category must be placed trial by jury. A Government can supply judges, but the working of the jury system demands the loyal and intelligent co-operation of the people. If that is wanting, the whole thing breaks down. It has been said that the object of the British Constitution is to bring twelve men into a box, and Ireland has enjoyed the application of this sacred principle. It is obvious, however, that the value of the system depends in a great degree on the conduct of the twelve men when they have thus been brought together. The theory of trial by jury assumes the competence and honesty of the persons who compose the jury; but even the most fanatical idolater of the institution would scarcely deny that the consequences are likely to be disastrous if the jurors fall below the requisite standard of character and intelligence. It was held that the lower classes in Ireland could not be required to have confidence in the administration of justice unless they administered it themselves. This experiment has now been in force for a year or two, with the most deplorable, though most natural, results; and anybody who wishes to understand the paralysis and perversion of justice which at present prevails in Ireland cannot do better than study the Report of the Committee of the House of Commons on the Irish Jury System which has just been published.

The first witness examined was Mr. Hamilton, an Irish barrister who has had great experience on the subject. He told the Committee that there was really no such thing as trial by jury in Ireland, and that even the fiction of it would disappear under the slightest strain. The last two years, he said, had been quiet, but "in case of any agitation or disturbance you would have to suspend trial by jury altogether." The result of the present system had been to put "a mass of prejudice, ignorance, and disaffection on the panel." In ordinary cases the juries simply did what the judge directed; but in cases where there was any agrarian or other disturbing element there was usually no finding. The lower class of jurors were either terrified by the Ribbonmen or were friendly to them; and there was "to a considerable extent a sympathy with crime" on the part of juries. Mr. W. Ormsby, sub-sheriff of the county and city of Dublin, gave similar evidence. Juries were hopelessly ignorant, and it would be better to abolish them altogether than go on with the present system. Mr. West, Chairman of Wexford County, pointed out that the tendency of the existing system was to introduce class feeling into the jury-box. A gentleman in his county fired four pistol-shots at another, but the accused was represented as "a favourite of the people," and got off easily. His attorney said, "I put the frieze-coated gentlemen on the plaintiff, and made him consent to a plea of guilty for a common assault." In short, disagreements and acquittals in the teeth of evidence are of frequent occurrence. Mr. De Moleyns, Chairman of the county of Kilkenny, thought there was a feeling among the lower sort of jurors that "they were one class" with the prisoners, and that they had strong sympathies with them. He added that jurors were systematically canvassed by the friends of prisoners, and were "exposed to injuries in different ways which we hardly appreciate." Mr. Leahy, Chairman of the county of Limerick, stated that, with the new jurors, there was the greatest difficulty even in the clearest cases in getting a verdict at all. They made all sorts of excuses for disagreeing—that nobody actually saw the crime committed, that there was only one witness, and that was not enough, and so on. In one case a juror sent a doctor's certificate of his inability to attend, but he afterwards turned up because he had been canvassed by the friends of a prisoner to try to get him off. Mr. Bolton, Crown Solicitor for Tipperary, mentioned a case in which one of the jurors was drunk, and another was found to have just come hom efrom seven years' penal servitude for cattle-stealing. He also confirmed other witnesses as to the frequency of bad acquittals—"sixteen at Clonmel, and fourteen of them as bad acquittals as could be pronounced." Cases of murderous violence were frequently reduced by juries to mere ordinary assaults. The common cry to jurors on going into the box was, "Go in and free the boys." The practice of canvassing jurors was "becoming quite alarming in Tipperary," and persons supposed to have influence were taken on cars round the country canvassing jurors. Mr. Boyd, another Crown Solicitor in Tipperary, reported that canvassing was very largely practised there, and "very extraordinary" verdicts were often given. In Kildare a juror declared that he could not find a prisoner guilty under any circumstances, because "he might himself be guilty of the same to-morrow." In Ennis there was a case of shooting with intent to murder. The blunderbuss exploded, and the assassin's hand was blown off, and was produced in evidence. The man was acquitted by a jury, many of whom "had come twenty miles to try the boy," and who immediately adjourned with his friends to a public-house to celebrate the event. The prisoner himself is said to have asked for his hand back, and the judge remarked that he might as well have it.

Mr. Murphy, Senior Crown Prosecutor, Dublin, stated that, as far as his experience went, in any case of agrarian outrage, faction fight, or serious assault between farmers or farmers' sons, and so on, there was very little use in prosecuting in a great part of the South of Ireland at the present time. At New Pallas, in the county of Limerick, for instance, the population is divided by an old feud about the age of a bull into what are called factions of "Three-years-old" and "Four-year-olds;" and "terrible crimes, not merely savage assaults, but brutal murders, have occurred, and very recently." Yet there is a difficulty in repressing these outrages, because juries will not convict. Perhaps the strongest evidence as to the incapacity of the Irish juries is that given by Baron Deasy. In Sligo, he said, there was a case of ejectment on notice to quit; the notice was the only point in the case, and was, in fact, admitted. But the counsel for the defendant got up and implored the jury to stand between an oppressive landlord and the widow and orphans; and the consequence was a verdict for the defendant, in opposition to the directions from the judge. The "poor widow" in this case was a lady of large fortune, with a town-house in Merrion-square and another house in the country, and the oppressive landlord was merely trying to get back his own property. In Galway the state of things is said to be truly deplorable. Out of a panel of 265 jurors, "not one-fifth were capable of trying any case whatever, civil or criminal." In a case of sheep-stealing, the prisoner's counsel challenged every man who was decently dressed and seemed intelligent; the Crown objected to the ragamuffins; and "the result was that we went through the whole of the 265 names without being able to get a jury." Ultimately some "set-asides" were taken in, but a verdict could not be got after all. In an action for trespass, as to the facts of which there was no dispute, the jury would not agree to find any damages; "perhaps," says Baron Deasy, "because they thought that the plaintiff, being an hotel keeper, had no right to have land at all." In another case a son had murdered his father and signed a confession, but his counsel argued that

Digitized by Google

the confession was dictated by a sentiment which especially animates the Irish breast, a sense of filial affection, and that he had made it to screen his mother, an old woman aged eighty, who was too feeble to lift her hand. The prisoner was acquitted.

It is clear from this evidence that a very great mistake was committed in introducing a lower class of jurors into the box. It is not merely that many of these men are too ignorant and stupid to understand the nature of the cases which they have to try, but that they act under the impression that they have been brought there to take care of themselves as a class, and to see that "poor men" come to no harm. Mr. Serjeant Armstrong defended the change in the system on the ground that "he would do anything to satisfy the men in the dock that they were to get a fair trial;" and he drew a touching picture of a jury, "with not so much as a necktie, hardly a shirt" among them, trying a prisoner of the same rank, but "dressed up a little for the occasion." He had observed, he said, the good moral effect of a verdict found by such men, who were really the peers of the prisoner. "A general sigh goes through the gallery when they find that peasant has convicted peasant." There is no doubt a certain amount of truth in this, and it is of the utmost importance that men of the lower classes should be convinced that they have the same chance of being fairly tried as other people. But it is rather a dangerous experiment to put into the hands of the lower classes, especially when they are so ignorant and prejudiced as those of Ireland, the power of thwarting the efforts of justice to reach criminals in their own rank of life; and it is evident that this is the use which a great many of the new jurors have made of their privilege. The question is, what is to be done when peasant will not convict peasant, or give a verdict against one in a civil suit when his antagonist belongs to a higher class? In addition to the case of the poor widow with a town and country house, Baron Deasy mentioned three similar cases which were called before him, but very soon after the jury was sworn the landlords compromised with their tenants rather than go on; and he added that he thought it not improbable that this was on account of the appearance of the jury. It is not surprising that, after hearing this testimony, the Select Committee should have arrived at the conclusion that the qualification of Irish jurors was too low, and that the system required amendment. It is possible that some of the alterations proposed may have a good effect; but in the meantime a vast amount of mischief has been done, and it is to be feared that any attempt thoroughly to reform the system will be keenly resisted.—*Saturday Review*.

THE FUTURE OF THE PROFESSION.

Rather by the force of circumstances than by the fault of any particular individual or class of persons, the legal profession has been hitherto, and still continues, divided into two great branches, with a strong line of demarcation between them. The bar, which is commonly known as the upper branch, and the solicitors, or lower branch of the profession, although working well and harmoniously together at present, are gradually so changing their relative positions that their interests are likely at no distant period to clash with one another. In former times it is easy to understand why such a broad distinction sprang up between the bar and the solicitors. It was purely a question of education, and consequently of social standing. Barristers in former days were most invariably the sons of gentlemen who, after being sent to one of the universities, came up to London, to finish their education at one of the inns of court; and, even if they were not gentlemen by birth, they usually went through a university course, and their legal education was completed among a class who came within that denomination; and consequently such men acquired, probably more tenaciously than those born to it, the class feelings and prejudices of their companions. On the other hand, an attorney or solicitor educated beyond the necessary practice of his profession and a certain smattering of law, was a rarity; although, perhaps, an exception ought to be made in favour of conveyancing knowledge, which at all times seems to have been considerable among attorneys. This state of things necessarily resulted from the way in which attorneys were in former days educated. Articled at an early age to a country practitioner, they had had no opportunity for an advanced education; the only chance they had of acquiring any knowledge beyond what they could pick up at their master's desk was such as they obtained during the period that they were up with the London agents, or obtaining their admissions. Such a course of study—although it may have produced a hardworking, respectable class of men, a man who might be thoroughly respected in the neighbourhood in which he lived—was not calculated to form characters which could force themselves before the public in such a way as would put attorneys upon an equality with their better educated brethren of the bar. Now, however, much, if not all of this is changed, attorneys as a body, are men as well, if not better, educated than the bar. Both branches of the profession contain men who could not by any pretence be called educated men, whilst there are a few in each branch who would far outstrip their compeers; but taking each branch as a whole, it cannot be said at the present day that the class of men to be found in either differs materially from that to be found in the other. As a rule barristers and solicitors have had the same preliminary education, and it is only when they begin to enter upon the training required for their respective branches that their education differs, and that training is gradually becoming more and more assimilated. The bar are supposed to devote their peculiar attention to the study of the theory of the law, and to the application of that theory of facts supplied to them by the attorneys; whilst, on the other hand, the attorneys undertake the practice of the law, and this practice necessarily involves great labour and leaves little time for the acquiring a deep knowledge of the theoretical part of their profession. But now-a-days solicitors are perforce obliged to learn not only the practice but also the theory. With the increase of jurisdiction of the County Courts an important class of business has sprung up, which is managed exclusively by solicitors, who have to act, not only in the capacity in which they were formerly accustomed to act, but also as advocates; and this new labour which has come upon them has necessitated the careful study of that which has been hitherto looked upon as the peculiar province of a barrister. A solicitor living in the country, and even many living in London, must nowadays combine many qualities if he wishes to command success. He must be a master of the practice of his profession, he must be a good advocate, but above all, he must be an accurate lawyer, in the strict sense of the word. Nor is the modern tendency to throw open the courts to solicitors likely to decrease, for in the report of the Judicature Commission on public prosecutors there is a suggestion that solicitors should have the right of audience at quarter sessions. It will thus be seen that solicitors are acquiring many rights, and are having imposed upon them many duties which have hitherto been looked upon as the particular property of the bar. The question then naturally arises, are not solicitors desirous, and have they not the right, and are they not well fitted to share in the rewards which are now usually given to the Bar? That they are desirous there can be no doubt from the numerous complaints that appear day by day of the giving of offices to the Bar which should properly go to solicitors. That they have the right, we must fully admit and maintain, provided they show themselves to be properly qualified. Every person who enters into a profession goes into it with the hope of getting an adequate reward for it; and although a good practice may be satisfactory, it is not so satisfactory as when the practitioner has a prospect of obtaining, after some years, an office which shall be some substantial reward. It is a well recognised principle in every country that fitness for an office gives a right to compete for that office. There can be no doubt that as great a number of solicitors are fitted for many offices which they might properly fill as there are members of the Bar so fitted. For instance, why should not County Court Judgeships be thrown open to solicitors? It is not likely that a solicitor would be appointed to such an office unless he were peculiarly fitted for it; but there are numbers of solicitors who are fitted to hold that office, and who would be very willing to accept the appointment, even if the salary be less than the income they derive from

Digitized by Google

their practice. Why should not County Court Registrars, who now do half the work of the County Courts, have promotion open to them? But, besides County Court Judgeships, there are a great number of inferior offices, and will be still a greater number with the new Act, which are now, and will be, unless some action is taken, conferred upon the Bar. This action, whatever it may be, should be taken at once by the solicitors, and no time seems more suitable than the present.

As we have often pointed out, solicitors do not act sufficiently together; there is a great want of united action on their part. It is to this deficiency alone that must be attributed the want of influence that causes appointments and positions to be distributed among the Bar, of which solicitors would otherwise get a share. If there were some unity of education, some body of which all solicitors must be members, some thing properly to represent them, they would more surely succeed in impressing their claims upon the authorities and the public, and in obtaining their fair share of the rewards of the Profession. A barrister cannot acquire the right to practise without having passed through and being a member of an Inn of Court. That Inn is his representative. Attack the Bar, and you attack a corporate body, which has means, funds, and talent to defend itself. Offer to deprive the Bar of any of its offices or privileges, you attack not one man, but many, so united, and consequently so influential, that the attack is useless. Why should not solicitors be similarly united? We do not write in antagonism to the Bar, but merely for the purpose of advocating the interest of solicitors in these matters in which they have a right to advancement equally with the Bar. We have been rather astonished to see how little support has been given among solicitors generally to the School of Law advocated by Lord Selborne. Such an institution offers the foundation of the very society which solicitors ought to seek to form. The proposed school is intended to be a species of university of law with the Inns of Court as its colleges. But it is intended that persons wishing to be admitted as solicitors should pass examinations and take degrees in this same school. If solicitors would take the matter up and interest themselves in the proposed school they might form a united body just as the Inns of Court are in themselves united. They might make another inn of court as a fifth college in the proposed university, and admit to this inn only intended solicitors. Such a scheme would require money, but with the immense number of solicitors there are throughout England a very small donation from each would raise the necessary funds. But more important than money, the scheme would require management. The proper persons to enter upon such an undertaking are obviously the law societies throughout the kingdom. If these would take up and discuss the question, and appoint proper persons to negotiate among solicitors themselves and with the authorities, no serious difficulty need be encountered. Again, in such a matter, a local habitation is no mean consideration. One of the first things that would be necessary to the united body of solicitors would be a college, hall, inn, or some place which would be capable of containing within itself residences for students, conveniences for meeting of members, and, in fact, other things which are usually found in a college or inn of court. Such is a rough sketch of a plan which might be adopted by solicitors for strengthening their position and asserting their rights; and something of this nature ought to be done, otherwise there is little chance of anyone outside the profession stepping out of his way to raise them up. If they do not help themselves they will not be helped by other people. The Bar are sufficiently satisfied with the present state of things, the outside public will not interest themselves in the supposed wrongs of the lawyers, unless the latter are in a position to bring their grievances before the public in such a way that they cannot be refused a hearing, and to convince the authorities that they are well fitted for promotion. This can only be done by decided action; to resort at once to this action we advise the solicitors.

The future of the Bar we have not dealt with. It is pretty well assured so long as they remain a separate and a higher branch. The Bar has little to complain of, and it is not our business to find grievances for people who have nothing to complain of. We write for the benefit of solicitors and not antagonistically to the Bar. The latter want no advice in the art of taking care of themselves, and we do not think that our present remarks are likely to lead in any way to their injury.—*The Law Times.*

THE CORPORATION OF DUBLIN AND ITS LAW AGENT.

The *Law Times* makes the following sensible remarks, in reference to the vacant office of Law Agent to the Corporation of Dublin, and the opinions expressed at a late meeting of the Corporation, and published in the IRISH LAW TIMES:—

"Corporations seem to have very extensive notions of the capacities of their law officers. The Corporation of Dublin have just been considering the propriety of appointing a law agent upon a new basis. By a report of one of their committee, the gentleman who has the happiness to serve the Corporation in that capacity will be required to attend to all the business of No. 1 committee—whatever that is—to all the law business of the waterworks committee, and the public health department of the Corporation, under whatever name it may be called. He will have to discharge all the law duties referred to him by the municipal council, and report all matters referred to him without delay. He must discharge all Parliamentary duty of the council of whatever kind, and, so far as practicable, be in attendance at all the meetings of the council; he must devote all his time to the business of the Corporation, and not engage in any equity or law proceeding as a solicitor other than as committed to him by the Corporation; must pay to the Corporation all moneys received by him as fees, fines, and costs of any kind. In return for this the Corporation propose to give him the magnificent salary of £800 a year, and £150 as salary for a competent clerk, and this in lieu of all costs. His travelling expenses will be paid. So said the report, but a member of the council wanted to bind the unfortunate law agent down to presence at his post by providing that if he should be absent more than seven days without leave the post should be vacant; and another member thought that plenty of gentlemen could be got to do the work for £600 a year; and a third thought £200 enough to secure an efficient man. We always considered the Corporation of Dublin an important body, which had important legal business to transact. Do they expect to get a solicitor of capacity and standing to fill a position such as that of their law agent for £800, or perhaps less, subject to such conditions? Men who would gladly fill the post can no doubt be found, but that is not the question. The real point is whether it can be worth the while, in the present day, for any solicitor, fitted for such a post by long training and experience, to accept such remuneration. The thing is in itself absurd. The Corporation of Dublin is not the only body which makes this mistake; there are many others. Railway companies are now trying to get salaried solicitors at ridiculously small salaries. It is perfectly incomprehensible how reasonable men, such as directors and members of council, can be content to go on employing for their private law business the most competent men who are naturally paid at the highest rate, and yet when they come to appoint an attorney to do the corporate work their only aim seems to preclude the best men in the profession from offering themselves for the appointment. If their law business is badly done, the Corporation of Dublin will have themselves alone to thank for it."

NOTES OF ENGLISH DECISIONS.

[From the *Law Times.*]

PETITION—IRREGULARITIES IN POLLING—BOOTHS NOT OPENED—INABILITY OF VOTERS TO VOTE—BALLOT ACT 1872.—It was proved that in one district of the borough, containing 4838 voters and two polling stations, the stations were closed during the whole day of the election, so that none of the 4838 voters could record their votes. It was further proved that at four other stations in the borough for a certain period during the day of election voters were

Digitized by Google

prepared to record their votes, but were unable to do so, owing to the polling stations being closed. Positive evidence was given that upwards of 5000 voters were prevented from recording their votes. Held, that there had been no valid election, either at common law or under the statute (The Ballot Act 1872, 35 & 36 Vict. c. 33). By sect. 13 of the Ballot Act, it is enacted that "No election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this Act, or any mistake in the use of the forms in the second schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election." Held, that two of the principles of the Ballot Act being that the voting at an election should be secret, and that all voters should have an opportunity of recording their votes, it was impossible to inquire how the voters who were unable to vote would have voted, and consequently that it was impossible to say positively that the irregularities complained of had or had not affected the result of the election; but the conclusion from the facts was that the irregularities had such a bearing upon the result as to affect the election within the meaning of the Act. *Semble*, that the result of an election is affected if the majority of the successful candidate is less than it would have been. It is not necessary to satisfy the terms of the Act that another candidate would have been elected. Held also, that an election is not conducted in accordance with the principles laid down in the Ballot Act if any considerable proportion of a constituency are prevented from recording their votes, or have impediments placed in their way calculated to prevent them from voting. Irregularities to upset an election must be substantial, and not mere informalities. The judge must look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a rational mind to produce a substantial effect upon the election. The petitioner being the defeated candidate, no order was made as to the costs of the petition, the parties being left to any remedies which they might have for the miscarriage of the election: (*The Borough of Hackney*, 31 L. T. Rep. N. S. 69. Grove J.).

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The Preliminary Examination of Candidates for Apprenticeship, will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 30th and 31st days of October, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Wednesday, 14th October, 1874.*

The Final Examination of Candidates seeking admission as Attorneys, will be held at the same place, on Monday and Tuesday, the 2nd and 3rd days of November, 1874, *at the same hour.*

By Order of the Council,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The Competitive Examination for the Society's Prize, will be held on *Monday, Tuesday, and Wednesday, the 2nd, 3rd, and 4th of November, 1874,* at 11 o'clock each day.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 10th of November, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Michaelmas Session, 1874.

LEGAL EDUCATION.

NOTICE.

William Hickson, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Michaelmas Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Thursday*, the *fifth* of November, 1874.

The course will consist of *Twelve* Lectures, three-fourths of which *must* be attended so as to entitle Candidates to Professor's Certificate.

By Order,

JOHN H. GODDARD,

Secretary.

Gentlemen proposing to attend Lectures, will have to leave their names at the Secretary's Office, Solicitors' Buildings.

The Professor of Law has fixed upon the following Book for Lectures, viz., "Williams on Real Property"—"Last Edition."

Solicitors' Hall, Four Courts, Dublin.
October, 1874.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Hilary Term, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Michaelmas Term.*

By order,

JOHN H. GODDARD,

Secretary.

Solicitors' Hall, Four Courts, Dublin.

A New Idea in Club Life.—One of the happiest strokes we have heard of for a long time is the amalgamation of two widely celebrated London Clubs. The Civil and Military Club is situated in Regent-street; the Temple Club in Arundel-street, Strand. These clubs are to be united; of which the consequence will be: that a member of the West-end Club, finding himself in the City, and a member of the Temple Club, finding himself at the West-end, will both of them enjoy precisely the same conveniences which, before the amalgamation was effected, were to be obtained only at the expense of a long walk or a long ride. It is something to have a good club; it is a great thing to have two good clubs; but not in the history of social gatherings is it to be credited that for an almost nominal subscription, a man was ever before this year supplied with a mansion, fifty servants, and all the other material matters which help to render human life endurable, on his discovering himself at the one end of London; and another mansion, more servants, and all the other trifles which contribute towards keeping the world fresh and the conscience easy, on his discovering himself at the other end of London.

Digitized by Google

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Jeremiah Sullivan	2nd composition sitting	*Donnelly*
Same matter	Final examination	*Mathews*
Folliott Barton	2nd composition sitting	*Leachman*
Thomas O'Brien	1st composition sitting	*Scallan*
Same matter	Final examination	*O'Connell*
William Campbell	1st public sitting	*Rynd*
Mary L. M'Ghee	do	*Rynd*
John J. M'Cusker	do	*Oldham & Eaton*
Luke Connor	Final examination	*Stuart*
Patrick Heeney	do	*Perry & Co.*
Catherine Boland	do	*Hamilton & Craig*
Henry Davey	do	*Neilson*
Michael Kappock	do	*Jones*
David F. Jones	do	*Mathews*
J. Mason and T. Looby	do	*Casey & Clay*
John Keane	do	*Casey & Clay*
Hugh John Hall	do	*Cronhelm & Co.*
Same matter	Examine witnesses	*Cronhelm & Co.*
Samuel Tomlinson	Final examination	*Scallan*
James Nolan	Motion	*Davis & Montford*
Thomas Shevlin, sen. and jun.	do	*Mathews*
Patrick Flood	do	*Scallan*
A. J. Cunningham	do	*Boughey*
John Chamney	Examine witnesses	*Molloy & Watson*
Wm. Fitzgerald	do	*Mathews*
Daniel Cullen	Confirm sale	*Boyd*

The following at 12 o'clock.

———	Judgment	*Black & Browning*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Geo. P. Magrath	Inquiry under 138th General Order	*Hickie*
Daniel Lenehan	Costs	*Thompson*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

Folliott Barton	Prove debts	*Leachman*

FRIDAY.

Before the COURT, at 11 o'clock.

Malachi Murphy	1st composition sitting	*Hamilton & Craig*
Same matter	1st public sitting	*Hamilton & Craig*
Wm. Henry Lynch	do	*Cronhelm & Co.*
John Molloy	do	*M'Evoy*
John F. Maguire	do	*Oldham & Eaton*
John Marsden	Final examination	*Rynd*
John Gleeson	do	*Casey & Clay*
John Woods	do	*Oldham & Eaton*
John R. Duggan	do	*Findlater & Co.*
David Cupples	do	*M'Cully*
Robert Warnock	do	*M'Cully*
———	Show cause against adjudication	*O'Beirne*
———	Application to dismiss debtor summons	*Kavanagh*

The following at 12 o'clock.

Robert Courtney	Sale	*D. & T. Fitzgerald*

ADJUDICATIONS IN BANKRUPTCY.

Curran, Denis, 4, Longwood-terrace, Dublin, grocer. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Lett*, solr.

Hamill, George, Anne-street, Belfast, tobacconist. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Molloy and Watson*, solrs.

Hillsworthe, William Henry, 5 Breffin-terrace, Sandycove, gentleman. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Findlater and Co.*, solrs.

Laffan, Thomas, late Sandville, Limerick, farmer and dairyman. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Dundon and O'Reardon*, solrs.

M'Cutcheon, Thomas Henry, Lisnaskea, Fermanagh, ironmonger. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Tincler*, solr.

Ogle, Robert F., Kells, Meath, grocer. Sittings, *Tuesday, October* 20, and *Friday, November* 6. *Larkin and Co.*, solrs.

Spring, James J., 1, Foster-place, Dublin, stock and share broker. Sittings, *Tuesday, October* 20, and *Friday November* 6. *Fitzgerald*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	SEPTEMBER Fri. 25	Sat. 26	Mon. 28	Tues. 29	Wed. 30	OCT Thur 1
	Government.						
—	3 p c Consols	—	—	91⅝¾	91⅞	91⅞	91⅞
—	New 3 p c Stock	90⅞	90⅞–1	90⅞–1	90⅞	90¾⅞	90¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	101⅞–2	101⅞	—	102	—	—
	Banks.						
100	Bank of Ireland	308	310	—	—	—	308⅝
25	*Hibernian Banking Co.*	—	60¾⅞	61	61–⅛	62	61½
20	*London and County*	—	—	—	—	64–⅛	—
15	*London Joint Stock*	—	—	—	50⅛	—	50⅝
20	*London and Westminster*	—	—	—	—	76	—
3½	*Munster Bank (Limited)*	—	8⅜½	8⅜½	8⅜½	8¾	8¾
30	*National Bank*	66¼⅜	66⅜	67–⅛	67⅛	67–⅛	66⅝
15	*National of Liverp'l (Ltd)*	14⅝	—	14⅜⅝	14⅝	—	—
25	*Provincial Bank*	—	—	92	91⅞–2	—	—
10	Do. New	—	—	36	36	36	—
10	*Royal Bank*	30¼⅝	30⅝	30⅜½	—	—	30⅝
15	*Union of London*	—	—	—	—	47⅞	—
	Steam.						
100	City of Dublin	—	—	—	107¾	107¾	—
50	Dublin and Glasgow	—	—	—	—	61¾	61¾
10	Dundalk (Limited)	—	—	—	—	—	6 5⅞
	Mines.						
3½	*Berehaven (Limited)*	-/6	—	-/7½	—	-/7½	—
7	*Cape Copper M. Co. (lit'd)*	—	—	—	x d	—	—
2½	Wicklow Copper	—	—	—	—	3¼⅜	3½
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	10⅜⅝	—	10⅝⅞
9½	*Dublin Tramways*	6⅛	—	6⅛⅜	6⅛⅜	6⅛⅜	6⅛⅜
5	Gresham Hotel (limited)	—	—	—	x d	—	—
9-4-7	*Patriotic Assurance*	—	—	—	—	—	10½
	Railways.						
50	Belfast and Northern Cos.	—	—	68	—	—	69
100	Dublin and Belfast Junct.	89½	—	—	—	—	90
100	Dublin and Drogheda	—	—	—	—	—	—
100	Dublin, W'klow, & W'ford	77¾	—	—	—	77⅞	77⅞
100	Gt. Southern and Western	107¾	108	108–⅛	109	109	109⅛
100	Midland Gt. Western	83¼⅜	83⅜⅝	83½	84	83⅞–4	83¾
50	Waterford and Limerick	—	—	—	—	31⅝	31½
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	95½	—	—	—	95½
100	Do. do. 4½ p c	—	—	103	—	—	—
100	D., W., & W., 6 per cent	—	—	—	—	130	—
50	D., W., & W., 5 p c (1860)	—	—	53¾	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	—	—	99
10	Irish North Western A 5 p c	—	—	—	—	4⅜⅝	4⅜⅝
100	Ulster 4½ Per Cent. Stock	—	—	103½	—	103½	103¾
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c	—	—	50⅝	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	96½	—	—	—
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	100	—	—
—	D., W., & W., 4½ p c	—	100	—	100	100	100
—	Gt. South'n & West'n, 4 p c	—	—	—	99½ f	—	98⅝
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	102½	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—3½ per cent., 27th August, 1874.
Of Deposit—2 per cent., 20th August, 1874.

Name Days—October 14th and 29th, 1874.
Account Days—October 15th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTY AND CITY OF DUBLIN.

SALE,

On FRIDAY, the 20th day of NOVEMBER, 1874.

In the Matter of the Estate of William Tighe Hamilton and Frederick Fownes Hamilton, Trustees and Executors named in the last will and testament of John Bell, deceased, Owners and Petitioners.

TO BE SOLD BY PUBLIC AUCTION, In Thirteen Lots, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, In the City of Dublin,

On FRIDAY, the 20th day of NOVEMBER, 1874, At Noon.

LOT 1—Part of the Lands of Simmons Court, now called Mount Erroll, containing 13 acres, 1 rood, 20 perches, statute measure, held under lease dated the 8th day of December, 1821, for 99 years, from the 29th September, 1821, subject to the yearly rent of £92 15s 4d sterling, payable half yearly, on the 25th March and 29th September, and of the net annual value of £102 4s 8d, and situate in the Barony of Rathdown and County of Dublin.

LOT 2—The Dwelling-house and Premises No. 32 Bridge-street, Lower, in the Parish of St. Audeon and City of Dublin, held under lease dated 28th January, 1846, for the term of 100 years, from the 25th of March, 1841, subject to the yearly rent of £5 sterling, payable half yearly on the 25th of March and 29th September, and producing a well-paid profit rent of £40 sterling.

LOT 3—The Dwelling-houses and Premises 83 and 84 Heytesbury-street, Parish of St. Peter and City of Dublin, producing the net annual profit rent of £41 15s 6d.

LOT 4—The Dwelling-houses and Premises 85 and 86 Heytesbury-street aforesaid, producing the net annual profit rent of £52.

LOT 5—The Dwelling-houses and Premises 87 and 88 Heytesbury-street aforesaid, producing the net annual profit rent of £56.

LOT 6—The Dwelling-houses and Premises 89 and 90 and 91 Heytesbury-street aforesaid, producing the net annual profit rent of £82 15s.

LOT 7—The Dwelling-houses and Premises Nos. 1 and 2 Pleasant-street, Parish of St. Peter and City of Dublin, producing the net annual profit rent of £65.

LOT 8—The Dwelling-houses and Premises Nos. 3 and 4 Pleasant-street aforesaid, producing a net annual profit rent of £66.

LOT 9—The Dwelling-houses and Premises Nos. 5 and 6 Pleasant-street aforesaid, producing the net annual rent of £61.

LOT 10—The Dwelling-houses and Premises Nos. 7 and 8 Pleasant-street aforesaid, producing the net annual profit rent of £63.

LOT 11—The Dwelling-houses and Premises Nos. 9 and 10 Pleasant-street aforesaid, producing the net annual profit rent of £66.

LOT 12—The Dwelling-house and Premises 8, 9, and 10 Camden-row aforesaid, with Building Ground, producing the net annual rental of £106.

LOTS 3 to 12 inclusive, are held in fee-farm, and are jointly subject to the head rent of £4 4s 6d, which is primarily charged on Lot 3, in indemnification of all the other lots.

LOT 13—The Plots of Ground, Dwelling-houses, and Premises, 99, 100, 101, 102, 103, 104, 105, 106, and 107, Coombe, and the Dwelling-houses and Premises and Yards in Skinner's-alley, held partly in fee-farm and partly for long terms of years, and producing the net annual rental, or of the net annual value, of £164 12s, or thereabouts.

Dated this 2nd day of July, 1874.

C. E. DOBBS, Examiner.

Private Proposals for the purchase of all or any of the foregoing Lots will be received by the Solicitor having carriage of the Sale up to the 25th day of October, 1874, and will be submitted, without further notice, to the Honourable Judge Flanagan for his approval, on the 2nd day of November, 1874.

DESCRIPTIVE PARTICULARS.

Lot 1—This Lot consists of a handsome Residence, with Out-office, Lawn, Orchard, and beautifully laid out Gardens, with an entrance Lodge and Premises situate on the road from Dublin to Stillorgan, in the Pembroke Township, adjoining the splendid residence known as "Montrose," and is situate within a convenient distance from the City of Dublin.

Lot 2 consists of a substantial Business House and Premises, No. 32 Bridge-street; and the rent is punctually paid.

Lots 3 to 12 consist of substantially and well-built Dwelling-houses and Premises, set to solvent tenants at reasonable rents; and in order to suit small capitalists the property has been divided into small Lots.

Lot 13 consists of several Dwelling-houses, Gardens, Yards, and Premises, with a large Garden attached situate on the Coombe, and Skinner's-alley, and are admirably suited for a timber and builders' yard, and Dwelling-house; and are held at nominal rents under the Earl of Meath.

For Rentals, particulars, and Conditions of Sale, apply at the Registrar's Office, Landed Estates' Court, Inn's-quay, Dublin; to

ROBERT JOHNSTON, Esq., Solicitor, 8 Lower Ormond-quay, Dublin; to

H. S. MARTLEY, Esq., Solicitor, 24 Westland-row, Dublin; and to

THOMAS TIGHE MECREDY, Solicitor for the Owners having carriage of the Sale, 28 Westmoreland-street, Dublin. 551

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MONAGHAN

SALE,

On FRIDAY, the 20th day of NOVEMBER, 1874.

In the Matter of the Estate of The Right Honourable The Earl of Dartrey, Owner and Petitioner.

TO BE SOLD, In Twelve Lots, BY PUBLIC AUCTION, At the Landed Estates' Court, Four Courts, Inns'-quay, Dublin,

On FRIDAY, the 20th day of NOVEMBER, 1874, At Twelve o'clock noon, Before the Honourable Judge Flanagan. (If not previously disposed of by Private Treaty, as mentioned below),

The following Valuable Fee-simple Lands, all situate in the Barony of Trough, in the County of Monaghan:—

No. of Lot	Denominations	Quantity Statute Measure			Net Rental			Ordnance Valuation		
		A	R	P	£	s	d	£	s	d
1	Cavan Cope - -	87	3	16	69	10	0	73	10	0
2	Dernahinch - -	106	2	8	54	3	0	75	15	0
3	Drumcondra - -	82	0	10	55	13	0	59	15	0
4	Figullar - -	264	3	11	168	1	0	193	10	0
5	Killyrean Upper (part of)	172	3	28	118	4	2	137	10	0
6	Killydonagh - -	78	1	35	58	15	0	60	0	0
7	Killeanly - -	112	2	36	74	5	0	74	0	0
8	Killybrone (part of) -	134	0	15	79	18	5	83	10	0
9	Ralaghan - -	163	1	26	115	3	5	126	5	0
10	Urlish - - -	46	2	14	32	16	0	32	5	0
11	Drumanell - -	94	1	12	69	10	6	67	15	0
12	Astrish Beg - -	37	2	5	80	0	0	31	15	0
	Total -	1,381	1	16	925	19	6	1,015	10	0

Private proposals (in writing) for the purchase of all or any of the Lots, will be received by the Owner's Solicitors, up to the 24th day of October, 1874, and if approved will be submitted to the Judge for confirmation on the 2nd day of November, 1874, at the sitting of the Court, or at the earliest opportunity afterwards, without further notice.

Dated this 2nd day of May, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

The above lands (occupied almost exclusively by yearly tenants) are of excellent quality for grazing and agricultural purposes. The tenants are peaceable and prosperous, and pay their rents punctually.

Lots 1, 2, 3, 4, 6, 7, 9, 11, and 12 (forming a ring fence) lie within two miles of Aughnacloy, six of Monaghan, three of Glasslough, and one of Emyvale. Glasslough and Monaghan are both stations on the Ulster Railway, and fairs and markets are held there and at Aughnacloy.

Lot 5 is within two miles of Glasslough and Caledon, six of Monaghan, and 5 of Killyleagh, all of which are Railway Stations.

Lots 8 and 10 lie together, within two miles of Aughnacloy and six of Clogher. At almost all these towns fairs and markets are frequently held.

The lands are let at moderate rents, the valuation being in excess of the rental.

For Rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates Court, Four Courts, Inns'-quay, Dublin; to

Mr. JOHN STEEN, Dublin-street, Monaghan, who will point out the premises; or to

Messrs. MEADE and COLLES, Solicitors for the Owner and Petitioner, having carriage of the Sale, No 3 Kildare-street, Dublin. 500

SALE:

COUNTY CARLOW.

ESTATE in the County of Carlow FOR SALE. TO BE SOLD, with Landed Estates Court Title, One Undivided Moiety of an extremely desirable Estate, held in Fee, situate at Milford, in the County Carlow, and within four miles of the Town of Carlow, the whole producing at present an annual profit rent of £400, which will be increased to £600 per annum on the falling in of two annuities of £100 a-year each. Apply to

Messrs. J. D. MELDON & SONS, 14 Upper Ormond-quay, Dublin. 544

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, at the Office of the Journal, 53, UPPER SACKVILLE-STREET, DUBLIN.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, October* 3, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, OCTOBER 10, 1874. No. 402.

THE STATUTES REVISED.—II.

In our leading article of last week we alluded to the publication of an edition of the Revised Statutes of the United Kingdom, and we now proceed to set out the sources from which the materials of this edition of the Statutes have been derived, and the *modus operandi* of its editors, who, we may remark, have exhibited the most wonderful accuracy in carrying out the design and plan laid down for them. It is based on the edition of the Record Commission, known as the Statutes of the Realm, and a repealed part of an Act, if required to be given for the construction of the unrepealed part, is printed in small type, with a note of the repeal; if not so required it is omitted; while Acts of a local or personal or private nature are also omitted. All the instruments contained in any former edition are included in the present, with the necessary corrections as text, and at the foot of the text in each page there are added such various readings as are necessary to correct its errors or supply its deficiencies. These various readings are taken from the following sources:—Enrolments of Acts; exemplifications; transcripts by writ; original Acts; rolls of Parliament; close, patent, fine, and charter rolls; books containing entries of record; ancient books and manuscripts, not of record, but preserved in the repositories of Courts of Justice and corporation offices, or in the libraries of cathedrals, universities, colleges, or Inns of Court, or at the British Museum. It is interesting to observe that it was in the 31st year of Henry VIII. that the distinction between Public Acts and Private Acts was for the first time specifically stated on the enrolments in Chancery. The earliest statutes contained in any collection are those of Henry III., but no Parliamentary record of statutes is now known to be extant prior to the Statute Roll 6 Edward I.

But to this interval belong the Statutes of Merton, Marlborough, and Westminster the First, and for these, accordingly, recourse is had necessarily to other sources for the text of the Statute Law, and, even in later times, there is not only an interruption in the series of Statute Rolls, viz.:—after 8 Henry VI., until 23 Henry VI., inclusive, but the Statute Rolls themselves do not contain all the instruments which have been acknowledged as statutes. After 8 Edward IV., the Statute Roll is not preserved. After 4 Henry VII., it ceased to be made up, and ultimately it was succeeded by the enrolment in Chancery. The materials for the several periods during which no Statute Rolls exist, is collected from records containing copies or extracts of statutes in the custody of the courts authorized for the purpose—such as the Close, Patent Fine, and Charter Rolls in Chancery, and the Red Books of the Exchequer, of Westminster, and Dublin. The Red Book of the latter place contains entries of Magna Charta, 1 Henry III., especially granted to the people of Ireland; of the Statute of Westminster the First, 3 Edward I. (which is not to be found on the Great Roll of Statutes in the Tower of London, being prior in date to the commencement of that roll); and also of the Statutes of Gloucester, 6 Edward I., de Viris Religiosis, 7 Edward I., and Westminster the Second, 13 Edward I. agreeing in general with the text of those statutes on the Statute Roll in the Tower. The editors say that there is reason to believe that these statutes were entered in the Red Book at Dublin, from an exemplification sent over from England in the 13th year of Edward I., as is noticed in a memorandum on the Close Roll of that year.

The earlier statutes are, of course, translated into English, as the first statute published in that language was the 4 Henry VII. (A.D. 1488), entitled "An Acte agaynst Collusions and Faynd Accions." The statute roll and the entries in the Exchequer were then contemporaneously used, and it is interesting to remark the discrepancies in the text of the two, which are printed in parallel columns. The text of the earlier Acts is in fair Law Latin, degenerating, however, in the time of Edward II., into a hybrid Norman French.

The Chronological Table and Index (each according to its scope) cover the whole period from the date of the earlest Statute of the Parliament of England to the end of the latest Session of the Parliament of the United Kingdom of Great Britain and Ireland, namely, the Session of 1769 (32 & 33 Vict.)

Ante-Union Acts of the respective Parliaments of Scotland and Ireland are not comprised in the Index, nor is a list of them given in the Chronological Table.

One class of Acts affecting Ireland has required special treatment, namely, the Acts of the Parliament of England which were extended to Ireland by one general enactment of the Parliament of Ireland, 10 Hen. 7, c. 22, Poyning's Act. In relation to Ireland these are properly to be regarded as ante-Union Acts of the Parliament of Ireland. Consequently (1) they are not indexed as affecting Ireland; (2) in the second column of the Chronological Table they are treated as not in force, if they have ceased to be in force in England (without reference to the question whether they are still in force in Ireland or have been repealed as regards Ireland by Acts of the Parliament of Ireland).

As regards repeals (total or partial) of Acts extended to Ireland by Poynings Act, the practice has been as follows:—

(1.) Where the repeal has been limited territorially, so as not to apply to Ireland, the limitation is noticed.

(2.) Where the repeal is not in terms limited territorially it is entered as unrestricted (even though the repealing Act is an Act of the Parliament of England or of Great Britain, therefore presumably not applying to Ireland).

(3.) Where a partial repeal by an Act of the Parliament of England or Great Britain, not in terms limited territorially, has been followed by a total repeal as to England only, the partial repeal as well as the total repeal has been entered, though the partial repeal may not in fact extend to Ireland.

THE SOCIAL SCIENCE CONGRESS.

The eighteenth meeting of this Society was held during the last and present week at Glasgow, when the Legal Department was under the presidency of Lord Moncreiff. Many voluntary papers were read upon various legal subjects, but the special subjects for discussion were: 1. Is it desirable that verdicts of juries should be unanimous? 2. Should the testimony of any and what persons at present excluded as witnesses be admissible as evidence in courts of law? 3. How far may Courts

Digitized by Google

of Arbitration be resorted to as a means of settling the disputes of nations?

The presidential address is printed below, and is well worth the attention of our readers. It is probable that Lord Cairns will be obliged, in his attempts to improve our law of conveyancing and settle a more perfect system of registration, whether of title or otherwise, to limit the present powers of settlement, and entail or substitution; and it is of the utmost importance to learn what are the views, on this matter, held by competent persons who are yet outside the limits of political or professional pejudice and theory. It is from this point of view that Lord Moncreiff's views are valuable. His necessarily intimate acquaintance with the two rival systems of jurisprudence—the Roman or Civil Law Code and the feudal or English Common Law system, which, from the commencement of modern history, that is, from the beginning of the 15th century, have divided the attention of legislators and lawyers, renders him peculiarly well adapted to advise as to their comparative merits, while his age, judicial position, and well known ability, render him as little as possible obnoxious to the suspicion of desire for innovation.

The chief point of his address was, that the power of entailing or substitution should be limited, so that the donee, whether under settlement or will, should have the absolute dominion over the property. He seems to have been led to this opinion by reasons drawn from economic science as well as from his experience of the civil code, on which the Scottish laws, which he had to administer as a Scotch judge, are founded. But he does not seem to have remembered that, in the latter days of the empire, the same change took place by extending the terms of the settlements, as occurred under the feudal system of land laws. The Roman substitution was at first limited, in its form of *Fidei Commissum*, to persons in existence at the time of its creation, but it is possible to trace its course to a perpetuity through its phases of *substitutio vulgaris*, *pupillaris*, and *quasi-pupillaris*, just as we find by historic inquiry that the fief, or benefice, originally held, perhaps, by the feoffee or beneficiary, during the pleasure of the grantee, then for life, then in fee on condition, with a power of alienation, then in tail inalienable, with the regulating power of the statute *De Donis*, and the disturbing element permitted by *Quia Emptores*. In many other respects we have thought it necessary to revert to our older forms of law, and it is a question as much for economists and sociologists as for jurisprudents, whether we should now revert to the principle that the limit of settlement should be for one life, with an absolute power of disposal. As the question of entails and trusts are intimately connected in their origin with the Roman power of alienation by will, and the creation of *Fidei Commissa*, we shall show the introduction and evolution of these conceptions of Roman law in a future number.

The number of Irish lawyers, we regret to say, at the Congress was small. Sir Joseph Napier was our chief legal representative. Professors Hancock and Donnell, who were also there, represented rather the statistical and economic societies.

LAW.

TO BARRISTERS.—Wanted, a Barrister, resident in Dublin, to prepare and conduct a case for trial in the Superior Courts, to recover a large property, valued to several thousand pounds: a sum of four guineas will be given for advising proofs and all notices, and an additional sum of three guineas will be given when the trial is over: a Q.C. preferred. Address, &c., &c.

The above has appeared in the advertising columns of a daily contemporary, which sometimes contain curious illustrations of our social system, but we are entirely at a loss to know to what we should attribute this latest exhibition. The wording of the paragraph would seem to show that it was drawn up by a person who was acquainted with the technical forms of a suit, but the idea conveyed by the whole clearly shows that its author, if indeed he be serious, had no knowledge whatever of the rules of professional etiquette which govern such matters, or the amount of counsel's fees. It is the greatest insult to the profession which we remember to have seen conveyed in a public journal, and there is an additional sting in the statement that "a Q.C. will be preferred." It may be that there are some anomalies in the professional etiquette of the Bar, but the time is very distant, we trust, when any practitioner in Ireland will condescend to such an arrangement as is here proposed. Such things are done in America, and we publish an article from the *Albany Law Journal* recommending them. But the reports of the conduct of the American Bench and Bar, and the esteem in which they are held (apart from their technical knowledge, which we admit is considerable, and in some instances, such as those of Kent and Story, wonderful), do not make us desire to see the profession Americanized. We believe that it would be impossible to find any barrister ready to make such an agreement as is desired by the advertisement, if for no other reason than because it is desired to act independent of a solicitor, even though one should be nominally employed. It is probable, however, that the whole affair is a mean, wretched attempt at a gibe on the members of a profession which has acquired, and seems likely to retain, a hold on the confidence of the people of the country, in its honour, integrity, and ability—a confidence which was not gained by making sordid bargains, but by nobly doing its duty, through good report and through ill report, towards those whose interests it had espoused. A cynic might say that the cost of publishing such a paragraph would check that kind of animadversion, but when we occasionally see whole columns devoted to the criticism and abuse of a profession—whose independence and integrity, in both its branches, are as necessary for the welfare of the country as they are admittedly present, a criticism and abuse, too, directed by spite and envy but partially concealed—we cannot wonder that there are some people who will even pay for the expense of publishing advertisements with what philosophers call a sinister motive.

TWO BANKRUPTCY DECISIONS.

Among the most recent of the many bankruptcy decisions of the Lords Justices were two of some importance affecting the general principles of the law of bankruptcy. *Ex parte Baum, re Edwards* (31 L. T. Rep. N. S. 12; 11 Co. Court Rep. 72), has reference to the nature of debts which are provable in bankruptcy. By the 31st section of the Act of 1869, it is provided that demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise, shall not be provable in bankruptcy. The application in this case was to restrain proceedings by a creditor who had joined counts in tort with counts in contract. The power to restrain is defined by the 260th rule, which says, "The court may at any time after the presentation of a petition, restrain further process in any action, suit, execution, bankruptcy petition, or other legal process against the debtor or his estate in respect of any debt provable." It is clear that damages claimed in respect of a tort are not a debt provable in bankruptcy, and this case of *Ex parte Baum* suggested the difficulty arising out of the joinder of causes of action as allowed by the Common Law Procedure Act. Lord Justice Mellish puts the position of the matter very clearly:—"It is quite clear that a claim for damages for false representations is not provable in bankruptcy, and that the court has no power under the

Digitized by Google

260th rule to restrain an action against the debtor in respect of such damages. If a creditor joins in his action claims which are provable to claims which are not provable, the court has jurisdiction to stay the action in so far as it proceeds upon claims provable in bankruptcy, but on the other hand this court ought not, because the claims are so joined, to attempt to stay the whole action."

It is, we think, to be regretted that there is not jurisdiction in bankruptcy to deal with unliquidated claims against bankrupts, so as to make the damages to be awarded provable, and thus to bring the action of tort within the power of injunction conferred upon the court.

Another decision of equal importance, to which we desire to refer, relates to the law of bankruptcy as affecting proof by partners. There is a general rule, as is well known, that a partner shall not prove against the estate of his co-partners. There being this rule, it is highly important that practitioners should be aware of any exceptions, and *Ex parte Nanson, re Dixon* (31 L. T. Rep. N. S. 40; 11 Co. Court Rep. 472) has laid down that the rule does not apply to cases where under the partnership articles the share of a deceased partner has been taken by the surviving partners at a valuation, and has thereby become a debt due from them to the executors of the deceased partner. In such a case the executors are entitled, on the bankruptcy of the surviving partners, to prove against their estate for the share of the deceased partner, and to receive dividends in respect thereof, notwithstanding there may be joint debts of the old firm in existence at the time of the bankruptcy in respect of which the estate of the deceased partner may have to contribute.

The reporter in this case puts a *semble* in his head note, which is justified by the judgments, that the general rule is restricted to debts arising in the lifetime of a partner.—*Law Times.*

LADY LAWYERS.

It may be interesting to know how our foreign contemporaries regard the movement in this country toward female lawyership. The *Scottish Law Magazine* says :—"Many of the periodicals have been making merry over the fact that a Miss Goodell, of Janesville, Wisconsin, has been admitted as a member of the bar. We do not see anything to make merry about Miss Goodell going into the profession. We have no doubt that good'll come out of it. If it is true that in one of the Western States, one member of the bar who differed from another fired at him in court, and the judge was compelled to remark that if this kind of thing went on much longer he was afraid he would have to commit somebody for contempt of court, we fancy that the admission of ladies to the bar of these States will have a beneficial effect by improving the tone of feeling and increasing the amenity of manners. The first intimation we saw of Miss Goodell's admission was in the *Chicago Legal News*, a legal periodical, which is edited by a lady, Mrs. Myra Bradwell, and very well she does it, too. Another lady, connected with the same periodical, was not long since appointed assistant-clerk in the State Legislature of Illinois. In this country the success of female doctors has not been such a *succès d'estime* as to induce other ladies to attempt becoming female jurists. There may, however, come a time when (to quote the rhymes of one who evidently aspires to both the poetical and prophetical qualities of the *vates*)—

"'Ladies fair, in wig and gown,
With stately step strut up and down,
The noblest hall in this old town,
With their attendant chivalry.
And female advocates, I assure ye,
Shall tickle the fancies of the jury,
And put crown counsel in a fury,
And cause a dreadful rivalry.'"

PROSECUTION UNDER THE COMPANIES ACT.

Mr. George R. Ross, a stock and share broker, at 80, Cornhill, and the managing director of the New Brynpostig Lead Mining Company (Limited), attended before the Lord Mayor at the Mansion House London, on October 5th, upon a summons, at the instance of Lieutenant Cutajar, R.N., charged with an infringement of the Companies Act, 1862, by knowingly and wilfully authorising the default of the company in not having its name painted or affixed outside the registered office of the company in a conspicuous position in letters easily legible. Mr. Straight was counsel for the prosecution, and Mr. Montagu Williams for the defence.

The prosecutor stated that in 1869 he had his attention called to the prospectus of the company by Captain De la Bere, one of the directors, and he subsequently purchased 100 shares in it for £200. The defendant carried on his business at 26, Nicholas-lane, and the registered office of the company was in the same building. He frequently called on the defendant there, and had conversations about the company. In December last the defendant moved his office to 80, Cornhill, and witness always understood that the company's office was removed there as well. It was not until last month that he knew that the office of the company had been removed to the fourth floor of the house.

Mr. Richard Spyer, chief clerk to the registrar of joint-stock companies, proved that the company was registered in May, 1869, and that it had its office then at 26, Nicholas-lane. In March last a notice was sent to the registrar, signed by Messrs. Ross and Co., managing directors, intimating that the office of the company had been removed to 4, Birchin-lane.

Bernard Donnelly, a letter-carrier, stated that until four weeks ago the name of the company was not painted or written upon the passage or office-door, and it was then only written on a card two inches long by an inch wide.

The Lord Mayor fined the defendant in the nominal penalty of £5 and costs, which was paid.

LAW CLERKS' ASSOCIATION.

The monthly general meeting of this association was held on Monday evening at the Central Committee Rooms, 207 Great Brunswick-street. Mr. Dowling, Vice-President took the chair at half-past eight o'clock, and among those in attendance were, the secretary, treasurer, and Messrs. M'Dermott, Keegan, Burke, Condell, Farrelly, Giltrap, Flynn, Dodd, Coyle, and others. The library committee announced the receipt of £2 2s. 0d. from Mr. Benjamin Whitney, Solicitor, and £1 1s. 0d. from Mr. J. B. Meredith, Solicitor, and a donation of books from Patrick Martin, Esq., M.P., and from Mr. John Falconer, the publisher, of a complete set of "The Irish Law Times and Solicitors' Journal." The secretary announced that he was in communication with the Attorney-General in reference to their library, and that the Right Honourable Gentleman had kindly consented to receive a deputation or their body upon the subject in the course of a week. Mr. Giltrap moved, and Mr. Coyle seconded a vote of thanks to the donors to the library just mentioned, and alluded in special terms of praise to the presentation from Mr. Falconer. The "Solicitors' Journal" contained the most succinct reports of all leading cases decided during the past seven or eight years, and dealt particularly with those branches of the details of the law, which chiefly fell to the law clerk to transact. It was the most useful addition to their library in the shape of books they had yet received. The chairman put the vote to the meeting and it was carried with acclamation. A discussion then took place upon the best means of protecting the *bona fide* law clerk from the great evils that have arisen by the admission into solicitors' offices of persons without training. Numerous instances were mentioned of the consequences of this state of things, the expense to suitors, and loss to employers by the incompetence of such persons. The officers of the courts are complaining that clerks unacquainted with the most rudimentary principles of their occupation are sent down to transact business. And these gentlemen are prepared to strengthen the hands of the association in any well considered scheme to create a thorough reform in this matter, and will support an application to the judges for a general order to establish a registry of law clerks. The passing of the new Judicature Bill and the consequent changes to be carried out by new general orders would offer a favourable opportunity for working this subject out. Ultimately a sub-committee consisting of four members, Messrs. Jervise, Flynn, Power, and Farrelly, were appointed to prepare a report on the question, and the meeting soon after adjourned.

Digitized by Google

LEGAL REFORM AND THE SOCIAL SCIENCE CONGRESS.

Lord Moncreiff, the President of the Jurisprudence Department, read the following Address, on September 30th :—

There are two points of view from which jurisprudence is generally regarded. One, that from within, as she appears to the priests of the sacred temple of justice, who venerate even her most trivial rights, and guard her mysteries from the profane. That is the professional aspect of the science. The reverse of the picture is the appearance she presents to the unwilling votaries who are forced to do homage at her shrine—to whom she seems arrayed in motley robes, addressed in an unintelligible jargon—issuing incoherent mandates, and making little but a lottery of strife. In discharging the duty you have imposed on me to-day, I shall not represent either class. For those who administer the law it is immutable. That which has been is that which shall be, and should be. The perfection of the science—which never can be perfect until mankind is so, and then it might be dispensed with—is that its precepts should continue as they have been, and the judge is condemned if the ancient landmarks are removed. When new occasions arise the old occasions must be invoked to solve them, and the old maxims and old formularies must be sought for at the fountain-head. But while law in its own eyes is immutable, time, the devourer of all things, even of law, changes those objects for which alone law exists, silently abrading surfaces, effacing features, raising land here, submerging it there, until the end and purpose which the law was made to serve has disappeared altogether, or is so altered in its incidents and its surroundings as perhaps to invert the effect of its provisions. This is a process in constant and daily operation, and one which the administration of the law is powerless to prevent or provide for. It is a process also which lawyers are slow, and perhaps unwilling, to see. It is hard to learn the law as it is without being obliged to look beyond its confines, and to note how far it squares with the times. So an aggrieved community wait until the current of legislation sets in towards the future, and, taking warning by the past, provides for increased equity and security. But legislation limps with a very tardy foot. The dull ear of the goddess must be long invoked and hetacombs of injured suitors must be sacrificed on her altar before she relents and redresses. It would almost seem in some instances that as social relations and customs change, ingenious subtleties and devices are resorted to to enable Courts to apply rules which were meant for one purpose to another for which they were not meant, and to use them to solve combinations of fact of which the makers of the law never dreamt. But when the ingenuity of lawyers and Courts of Justice has effectually surmounted by subtle analogy the difficulties of a case unprovided for, arise forthwith suckers and shoots innumerable from this new root, the original subtlety being in its turn adopted as a principle from which new deductions are to be made, until the luxuriant foliage entirely obscures the ancient stems, and we wander in impenetrable thickets. The true principle on which this inevitable tendency of judicial systems ought to be counteracted is by bringing the law as it stands to the test of public utility, and inquiring how far, in the existing state of social and private interest, it is calculated to promote justice in the average or greater number of instances in which it is likely to be applied. For a law may have been admirable, or indeed essential to the protection of private right, when it was made, and yet, as I have said, productive of nothing but injustice now. The question always ought to be, whether the evil it was intended to prevent, or the benefit it was intended to confer, is sufficiently general, important, frequent, or universal, to compensate for what may be sacrificed. This may be so at one time. At another the reverse may be true. The evil which was dreaded may have become a thing of the past. That which was surrendered to avert it may have increased tenfold in magnitude and importance. Herein lies one great hindrance to the intelligent amendment of the law. However manifest the incongruity may be, however heavy the counterpoise of the opposite scale, courts of law must hold the balance blindly, and add the weight of authority and tradition to bring the lighter to prevail. Nay, I should not be candid were I not to say that the necessity in the actual administration of the law of shutting out considerations of expediency or general utility has a tendency to induce practical oblivion of this element, or a very narrow or partial appreciation of it. Thus when any alteration of an existing law is suggested, it is sure to be met by reference to possible cases in which the change would be inconvenient and unjust, and the critic thinks that this object will be attained should he succeed in demonstrating that this would be the result. But nothing can be more shallow or inconclusive. Every law is essentially inconvenient and unjust; that is, in some possible phase of its operation. The question for a philosophical jurist is, which state of the law will prove the most beneficial in the greatest number of cases; and that question once solved, possible instances of hardship are mere nightmares, which an enlightened legislator must entirely disregard. Thus the evils which become gradually encrusted on any system of law, and which it is the object of the amendment of the law to remove, arise mainly from the exaggeration of elements sound in themselves, but which either from original defect or through change in the outward condition of the community, have lost their true proportions, and encumber and overshadow the more healthy vegetation. Some of these I propose shortly to illustrate. Many laws were originally framed, not merely to secure special interests, but to guard against special dangers, and in compliance with prevalent apprehensions. Take, for example, the fear of civil despotism and oppression—a noble element in any system of jurisprudence, and one eminently characteristic of the law of England. In that respect the jurisprudence of England stands pre-eminent—the subject's personal freedom; the Coroner's inquest, that murder might not go unpunished; the Grand Jury, that the innocent might not be prosecuted; the unanimity of Juries, to avert unjust conviction and private prosecution, lest the lieges should be sacrificed to arbitrary and tyrannical measures on the part of officers of the Crown. England renounced and declaimed the authority of the Roman Law, and by consequence the authority of all the continental systems built on that stable foundation. It was the law of despotism—that was enough. Its illustrations dealt with men and women as chattels, articles which might be the subject of mercantile transactions, which might be sold or bequeathed. That could be, in the judgment of the founders of English jurisprudence, no law for the free soil of England; and so, without any extraneous aid, renouncing participation in a sympathy with the jurists of other nations, the labours of many generations of great and fearless men have built up a legal fabric out of materials found on English ground alone; rude at first, but massive and permanent, and now closely welded into harmony by the ability of her Courts and the transactions of the greatest commercial nation in the world. Yet the result attained has been reached at no small sacrifice. The isolation of the law of England among European systems is a disadvantage; the entire singularity of the language it speaks, of axioms it acknowledges, of the paths which it travels, unquestionably fetters and limits its range. The results arrived at, I admit, are not materially different from those to which the old Roman road would lead; but there are so many ingenious and painful divergencies made in order to avoid the beaten track as to puzzle a cosmopolitan jurist to comprehend how he and his English friend ever reached the same terminus together. With all the unfeigned respect and admiration which I feel for the law of England, in some respects not lessened but heightened by the bold independence and originality of its course, I cannot consider it as anything but a misfortune that they should deliberately cut themselves adrift from the stores of the most learned men of the most civilized nations of the world, and from results deduced on the most enlarged and philosophic views of the varied and possible relations of man to man. However able their jurists and however distinguished their judges, they could not fail to reap benefit by being brought into contact with minds not less able, and with the systematic exposition of legal principle harmonized through the wide experience of many generations. I speak on this question as a Scotch lawyer, remembering that I speak in the presence of English lawyers. Our Scottish

Digitized by Google

system apart from what it has borrowed from England, is simply a branch of the great European family. It has little which is indigenous. Principles and phraseology which sound strange in English ears would have been quite familiar in those of Voet, or Pothier, or Savigny. If the question were of the assimilation of our law to that of France, or Germany, or Italy, the task would be easy. It is true that we in Scotland feel most the inconvenience of the special and peculiar system which prevails on the other side of the Tweed, and, great as is my desire to see the two systems assimilated, I see only one course by which that end might be to some extent accomplished, and it is one which to my mind has other reasons to recommend it. Many years ago I sat as a member of the Statute Law Commission, the object of which was partly to provide for the abrogation of obsolete statutes, and partly to see whether those which were in full operation could be consolidated by new enactment. The Commission bore some fruit as regarded the first of these; but it had not gone far before I became persuaded that the second was substantially impracticable. Statutes which have been long the subject of judicial interpretation often become deflected from the original and primary meaning of their words, a result which it may be equally impossible to express in a new statute, either by the old words or by new ones. There is only one remedy for the voluminous obscurity of the Statute Book, although, as yet, lawyers are unwilling to allow or adopt it—I mean codification, a compendious statement of legal results, without regard to the steps by which they are reached. I have no idea that we shall ever see so gigantic a work undertaken as a Code of the Laws of these Kingdoms. A Code, or a Digest, is the work of an arbitrary Government. How a Bill framed for this object would ever get through Committee it is difficult to see. We should not, I think, attempt to commence on so ambitious a scale. But I see no reason why certain portions of the law might not at once be subjected to that process. Take, for instance, the department of Mercantile Law; the law of bills of exchange, of insurance, of sale, and other more common contracts, might, without much difficulty, be separately codified; and in the course of that process it would be open to adopt what seemed the most desirable provisions of either system, or of any system. Lawyers are apt to exaggerate the importance of what is termed legal principle. In many of the most controverted questions it is of little moment to persons who contract which way they are solved, provided they know how they are to be solved before they contract. I see in this direction, and this direction only, a way to extricate ourselves from the anomaly, a most inconvenient and serious one, especially in the south country, of having two systems of law applicable to the same mercantile community. I believe all that is needed for this work is a serious and practical commencement, and, if I may take the liberty of making the suggestion, I know of no work more suited to this Association for the amendment of the law than the preparation of a specimen Code on one or other of the subjects I have indicated. I should have more hope from the voluntary effort of a committee of this Society than from any Commission which could be appointed. The specimen might never become law, but it would show lawmakers how it might be done. Doubtless lawyers would mourn over the loss of those cherished refinements by which their results were reached, and would chafe at being chained to a few peremptory words; but the gain to the public would be incalculable. In Scotland, especially, the gain would be great; for even when the law of England was adopted we should obtain the results, often most enlightened and salutary, without being weighted with the subtle, and sometimes questionable, reasoning by which they were attained. I might find another illustration of the effect of social change in removing the apprehensions on which laws have proceeded in those which have sprung out of the fear or distrust of the people. To enter on the political phase of this question would be entirely beyond the province of my duty here. Yet the enlightened jurist will mark with satisfaction how social progress and the spread of intelligence have broken down the rough and coarse barriers which a ruder age set up against popular licence, partly, no doubt, from a sounder view of public justice and experience, but partly also, and mainly, because the times have outgrown the danger. One class of laws, which to a certain extent may fall under this category, I should have been tempted to enlarge on, but I find the subject too nearly allied to political feeling to do more than allude to it—I mean what are termed the Labour Laws, a subject which in the present day excites a lively and natural interest, and which is well worthy the attention both of the philanthropist and the jurist. Another class of laws is founded on fear of fraud, an element which runs through much of the history of the Scottish system, and a good deal of which still remains in it. I do not mean to question the soundness of the views on which several of these provisions proceed; but in some aspects of their operation they appeared in former times, and perhaps to a certain extent they appear still, to favour the principle, that it is better that 20 honest men should be cheated according to law than that one rogue should succeed. The tendency is to exclude the light for fear of fraud, forgetting sometimes that darkness may favour fraud and that light may detect it. Thus the whole of that category of the law of Scotland which limits proof to the writ or oath of the party, seems to assume that the limitation is in favour of the interests of truth, and that a wider inquiry into facts would lead to error and favour fraud. For instance, trust can only be proved by the writ or oath of the alleged trustee, a law introduced after the troubles in the 17th century, when estates were conveyed from one to another of the family, as Cavalier or Roundhead had the upper hand. The allegations that land-rights were truly held in trust became so numerous and so troublesome that the litigant alleging trust against an *enfaire* title was restricted to prove it by the writing or the oath of his antagonist. At that date, probably, the law was salutary, but the danger of these frauds has departed, and left the law behind it. So payments of money cannot be proved by witnesses, nor can want of value for a bill of exchange. In all these cases the only real position is, not whether in some instances proof by witnesses might aid a fraudulent desire, but whether, in the majority of instances the truth is best established by excluding or by admitting such testimony. So much of laws based on apprehension or fear. I proceed to a second class —namely, laws resting on imperfect or exaggerated distinctions. The first instance which naturally occurs is the distinction which prevails in England, and in English-speaking communities only, between law and equity. This is too obvious an instance of my general proposition to require me to enlarge upon it. There is no distinction between law and equity, in any philosophical acceptation of these terms, for equity is the basis of law. Law, divorced from equity, is a monster which could have no place in any system of jurisprudence. But the truth is that in England the distinction is not truly expressed by the nomenclature. It is not one between either the subject-matter or the objects of jurisprudence, but one solely of courts and jurisdiction—not what the right is or what the remedy should be, but solely from what tribunal redress can be given. It never could have arisen save from the jealousies of co-ordinate Courts, and the distinction can only be arrived at by confining the terms within arbitrary rules which deprive them of their primary meaning. No other system, ancient or modern, ever made such a partition, as far as I know. The enlightened legislation of last year—to be completed, I hope, next year—terminates the reign of this anomaly, as far as theory goes; but there has sprung up around each of those divisions so strong a growth of distinctive principles and formularies, in the course of centuries of able administration, that it will take many years before the rival camps will effectually unite. Probably they never will until their mutual technicalities are merged in a code. It is more in accordance with my present object to refer to a very familiar and well recognised distinction which prevails in all European jurisprudence—I mean that between real and personal property, or, as we should call it, between heritage and movables. Of course the distinction itself is not imperfect. There is a perfect distinction between that which the owner can carry about with him and that which in its nature remains fixed. To some extent also this natural and physical distinction must vary the forms of transference and the evidence and nature of title. But we are apt to

Digitized by Google

forget from long familiarity with artificial consequences of the division, that beyond this there is no philosophical distinction at all. Reasons of State or social policy or expediency may have created variations, but these must rest either on their own intrinsic utility or on the effect of ancient usage and tradition. These are mainly to be found in forms of transfer, including attachment for debt and the rules regulating succession. I see by the report of a discussion which took place at the recent meeting of the British Association that our distinguished countryman, Sir George Campbell, maintained that rights to land were not absolute, but limited rights, in the person of the proprietor. Historically, Sir George Campbell was quite right. In all the feudal countries the land was the property of the Crown, by right of conquest, and while these were obtained by subjects, by grant from the Crown, the Crown remained the landlord, while similar subordinate rights might be created by the Crown vassal, all depending on the inherent right in the soil vested in the Crown as universal superior. From the very superficial acquaintance I have with the land rights of Hindostan, I should be inclined to think that, in many districts at least, the ancient tenure was strictly feudal, and that the chief, the Zemindar, and the ryot answered as nearly as might be to the Crown vassal, sub-vassal, and cultivator with us. So far as land, from its nature, admits of separate and limited interests in it subsisting at the same time, this is a peculiarity inherent in the quality of the right. But in other respects the characteristics of the feudal relations in it are purely adventitious and artificial, not attaching to the subject of property, but to the mode of acquisition and the extent and interest in the property which is acquired. But is not this one of those distinctions which time and circumstances have reduced to a shadow; so much so that in England the substance of it has long vanished, and the very memory of it has perished, save in a very few surviving and exceptional traces? The proprietor is no longer a *locum tenens* for the Crown or for the public, he is simply proprietor. The purely feudal forms have lingered longer in this end of the island, but they have remained only as a very scientific and logical system of conveyancing, and, coupled with the thorough system of Registration of Deeds which our lawyers have always considered the bulwark of our law of real property, afford as secure and complete a series of titles to land as any country possesses. The fear of publicity, which is an element I might have included under the former head, has never disturbed the spirit of the lawyers or landowners of the North, nor do I believe that any nation which enjoys a complete Register of Deeds ever found the slightest element of inconvenience from this source to qualify its immense advantages. But the old forms were cumbrous and expensive, although precise and secure. When I addressed this Association 13 years ago, I find, from the draught of the observations which I then made, that I had intended to express the opinion that the time had come when these feudal forms might be entirely abandoned; but on reflection I thought the proposition too sweeping, and simply indicated an opinion that the juridical mind was not yet ripe for the change. But time and public opinion and the greater courage of my successors have brought about a great and most salutary advance in this direction. I was, and am still, of the mind that the thorough measure proposed by Lord Young might, as regards its broad lines, have been adopted with safety and with benefit. Still I view with satisfaction the important measure, modified as it is, which was passed last Session in the hands of the present Lord Advocate, and I consider it a most valuable instalment towards the simplification of rights to land. While, however, much may still remain to be done in the simplification and cheapening of the transfer of land—a subject my limits will not permit me further to discuss—I have no idea that any amount of legislation in that respect will ever have the effect of extending the property in land to the less wealthy classes, or of assimilating its transfer to that of personal property. What may be done in a new country, in which the value of land is inconsiderable, is another matter; but with us, among whom the value of land is rising every day, the nature of the property itself, and the old traditions and instincts of the country, will always require, in the forms of the transference of land, an amount of care and security not appropriate to personal property. It is not the expense of acquiring or transferring land, but the expense of holding it, which prevents the larger diffusion of this species of property—not the laws of the Statute Book, but those of political economy; and nothing but sumptuary laws entirely irreconcilable with the freedom of trade could accomplish this result. As long as the return from land is less than the ordinary return from capital invested in trade or in ordinary marketable securities, the man who can afford to hold it at a sacrifice of income must necessarily exclude the man who cannot; and no diminution in the cost or difficulty of transfer will have the slightest effect in accomplishing any such result. While, however, I doubt if it will ever be practicable to place the transfer of land on the same footing as that of ordinary personal property, there is one direction in which the distinction seems to be pushed to an extreme, and in which the law appears to be drifting into considerable confusion. The matter is somewhat technical, but in a large mercantile and manufacturing community, such as that in which I now speak, it has some features of considerable importance. I refer to the law relating to accessories and land. From the traditional and ancestral right to broad acres to the property of a few spinning machines enclosed by old brick walls and driven by a steam engine put up yesterday, and which may be taken down to-morrow, the transition would seem to be as just as can well be conceived. To extend the law of land-rights to a species of property as thoroughly personal in its own nature as a cart or wheelbarrow, seems a caricature of this legal distinction. No doubt proper accessories—things which are truly subordinate to the enjoyment of real property, and for that purpose are fixed to the soil—may become real by accession. But when the building itself, the machinery, the moving power, are all parts of one machine, placed for the purpose of carrying on a trade or manufacture, and without the slightest intention of altering the nature of the articles, it seems to me to be an example of the grossest exaggeration to deal with these as if they savoured of reality or were anything but what they are, stock-in-trade. The anomaly becomes obvious and mischievous when it carries with it as a consequence the qualities of real estate in the matter of succession, so that if a trader who has invested his capital in machinery for the purpose of trade or manufacture die unexpectedly, without a settlement, his family are exposed to the risk of the whole of the father's means devolving on the eldest son, on the preposterous fiction that the whole is real estate. I do not say that such would be the result; but the law approaches much too nearly to the confines of such an absurdity. The second adventitious or artificial result of this distinction rests in the law of primogeniture—the descent of the real estate to the eldest son in the absence of settlement by the owner. The abstract utility or justice of this state of the law—a remnant, doubtless, of feudalism—I do not now stop to discuss. Its practical importance, while the power of settlement remains, is not of the magnitude which theorists frequently represent it to be. It seems to be one of those institutions so largely interwoven with the habits and associations of this country as, for the present at least, to be beyond the pale of controversy. Hardships it has, undoubtedly; but it has also fostered among the younger branches of landed families a spirit of enterprise and manly independence which has largely tended to the prosperity and power of the nation. What I have to say or suggest on that subject may be embraced under my last subdivision—namely, imperfect or exaggerated analogies. The power of settling real estate in this country practically reduces the law of primogeniture as regards proper land estate within very moderate bounds, and, as I have already said, the rule is too firmly fixed among us to be open, at present at least, to question; all the more that the power of limiting the succession suffers restrictions very far short of perpetuity. The inconvenience of the law practically is much more felt in regard to those kinds of property for which it never was intended—house property in town, and similar subjects, which follow the soil by accession. Of these I have already spoken. While, however, I do not expect to see any alteration in this leading

Digitized by Google

feature of the descent of land amongst us, I remain of the opinion that the right of settlement should not go beyond the first donee; in other words, that it would be beneficial to all classes to see the power of entail substantially abolished. If this power ever had beneficial results, they are all worked out long ago. I know no good which they effect. They retard the improvement of land, they impoverish the younger branches of the family without enriching the elder, they hang like a millstone round the neck of an heir in possession, they insensibly exaggerate what were molehills of a debt until they overshadow the ancestral acres, preventing the useful application of the resources of nature and of science, in order that posterity may succeed and be crippled it its turn. It is, in my opinion, a stolid and blindfold policy. So far from preserving ancient families, it is the true secret of their destruction. I believe it will be found that a large amount of land in the hands of the great proprietors has descended from generation to generation in fee-simple, and I am quite certain that where it is so agriculture and enterprise have left their mark. I own, therefore, that I should like to see entails abolished, the power of settlement only remaining. There are, no doubt, some interests in expectancy under the old law so close that it may be right to consider them; but that is a mere matter of time and of detail, which presents no real difficulty in adjustment. Short of entailing land, the power of settlement seems entirely reasonable. It is remarkable that those who think otherwise, and lean to a constant subdivision of land, have never proposed to put any restrictions on the absolute power of a testator over his personal property. Yet the right legitim which we have borrowed from the Roman law has much more to recommend it than a perpetual subdivision of land. The highest development of the fertility of the soil can only be attained on a considerable scale. But there is no difficulty in the division of money, and I am inclined to think that on the whole there is reason and justice in the law which secures to younger children, unless they surrender it, a portion of their father's personal succession. The last head under this chapter of my subject, and my last illustration, has reference to charitable bequests—a subject of no small interest in the present day, and one which affords many examples of the truth of some of the principles I have endeavoured shortly to enforce. What are we to say of a mischievous or useless charitable bequest? The law protects it, and, of course, while the law stands, must continue to protect it. But it is hard to say to which of the canons of useful or philosophical law it conforms. It is not adapted to the wants of the times, for the tide has ebbed from it and left it on the shore. There are no existing interests which it promotes, because, as it is mischievous or useless, it can promote no interest. The will of the testator is in some sense a mere phantom, for he has no present will. In many instances there is no reason to suppose that if he were here among us he would maintain his bequest for a moment. All that can be said is that the integrity with which the law invests such bequests is an operative element in the action and proceedings of men during their lives, and regulates the use which they make of their property, and that they would destroy their confidence in the law were their settlements liable to be disturbed. Nevertheless, in dealing with this question, while extremes should be avoided, and the intentions of the donors carried out as far as this can be usefully done, I find no legal principle, as I found no suggestion of reason, which should induce me to join in the cry of sacrilege at every attempt to turn such bequests into a fertilizing channel.

COMPENSATION OF LAWYERS.

Two recent cases bearing on this subject have attracted our attention, and strike us as being of vital importance to our profession. The first case to which we refer is *Voorhees* v. *M'Cartney*, 51 N. Y. 387, decided by the Commission of Appeals. The principle adjudged, as stated in the syllabus, is that an attorney, who brings an action in the name of another, in which he is beneficially interested by virtue of an agreement by which he is to have a portion of the recovery as compensation for his services, is liable, like the plaintiff, for the defendant's costs, and that his liability has not been affected by the provision of the Code (§ 303) legalizing such agreements. This liability is created by statute, 2 R. S. 616, section 44, which enacts that in an action brought in the name of another by an assignee of a right of action or a person beneficially interested in the recovery, such assignee or person is liable for costs the same as the plaintiff. Before the Code this was held to include the attorney in only one case so far as we know, namely, *Bliss* v. *Otis*, 1 Den. 656. In that case the attorney's interest was a demand against the plaintiff, which the latter consented that he might retain out of any recovery in the action against the defendant. He was to be paid for his services in that case at all hazards. But when he issued the declaration he indorsed on it a notice that he was the assignee of the claim in suit, and alone authorized to compromise and settle it; and this was held to estop him. The decision in the Commission of Appeals is based upon the latter authority. The facts in the former case, however, were peculiar. Canfield, the assignor of the cause of action, being about to remove from the State, made an agreement with Dorr, an attorney, by which the latter was to bring an action on a claim against the defendant, and if he failed to collect, to have nothing for his services, but if he collected, to have the costs and a sum equal to one-half the demand for his compensation. To save filing security for costs Dorr advised the assignment to Voorhees, who was insolvent, and so believed to be by Dorr and Canfield, with the understanding that it was a mere matter of form, and that no title passed to Voorhees. We specify these facts, because we deem them the probable provocation and the only excuse for the remark of the court that such transactions by lawyers are made tolerable "only by leaving such of them as might choose to embark in such enterprises upon the same footing with other speculators." Previous to this decision we think it had been generally supposed that the Code, in abolishing champerty, had also deprived this statute of its force as against attorneys, if it ever possessed any. We are inclined to believe now that this decision will scarcely support the principle laid down in the syllabus. It may be right upon the peculiar facts of that case, but we hardly think the doctrine enunciated is applicable to cases where the plaintiff has a *bonâ fide* interest in the action although the attorney may also have an interest. In such cases the attorney cannot be said to bring the action in the name of another; the other brings it in his own name. The attorney is beneficially interested, to be sure, but this is not enough, he must also bring the action.

Now, the old statute was part of a system under which lawyers were viewed and treated very much as malefactors. The legislature and the public seemed to regard them as a class of reprehensible persons, who were not to be paid for their services like other people. If they were permitted to work it was mainly for the public benefit and behoof, like the convicts in our prisons. It was meritorious to restrict their compensation to a meagre pittance. It was even esteemed by many a venial offence to cheat a lawyer out of his pay. Agreements between attorney and client in respect to the subject-matter of the litigation were always construed as frauds upon the client. The public were to be protected against these ravening wolves by legislation, and if the costs of a suit could be charged upon the lawyer it was a joke that made godly persons laugh. But when common sense and the Code came in, we tried to change all that. We left lawyers at liberty to make contracts for their compensation like other persons. It is notorious that an immense amount of legal business is now transacted in this State by the most reputable lawyers under agreements, precisely like that impliedly censured by the court in *Voorhees* v. *McCartney*, although seldom, we hope, entered into under the same circumstances. It is an affectation at this day to frown at this mode of doing legal business. Indeed some of our courts have held that the existence of such an agreement between attorney and client, in a particular case, cannot be proved on the trial in defence, because it is immaterial and may tend to prejudice the plaintiff's case with the jury. *Cook* v. *New York Central Railroad Co.*, 5 Lans. 501. We can see nothing immoral or impolitic in such arrangements, and we can see no reason

Digitized by Google

for mulcting the attorney in costs because he has chosen to run his risks of getting any compensation for his services in the suit. We think the legislature would do well to look to this matter at their next session, if the case of *Voorhees* v. *McCartney* really decides what the reporter seems to think.

The other decision is English. We refer to the action of the Benchers of the Middle Temple in expelling from their membership a barrister who stole some law-books. We cite this case, not to condemn it, because we do not see how the Benchers could have done otherwise, but to draw public attention to the facts which led to the commission of the crime. The simple truth was, this lawyer was starving for want of employment, and stole these books and sold them to buy bread for himself and another unfortunate in the same predicament. He was sent to prison for six months, and served out his term, and on his release his brethren who had expelled him from their fellowship, presented him with six hundred pounds sterling, and created a fund for the relief of poor barristers. But they could not give back to this unfortunate gentleman his honour. He was a victim to the ideas of professional compensation which prevail in England. A barrister may not solicit patronage; he must wait until an attorney brings it to him, and starve if it does not come. A lawyer cannot make an agreement that his compensation shall depend upon, be measured by, and be paid out of the recovery; that is champertous and immoral, and he must wait for responsible clients. Now is it not a little ridiculous, not to say perfectly monstrous, that in the largest city and the most enlightened and wealthiest nation on the globe, a gentleman of education and culture, a member of the higher branch of the most influential of the learned professions, is reduced by fashion's caprice and by the absurdity of the laws to such an extremity, that he must starve, go to the alms-house, or steal? We applaud the humanity of our English brethren. We should have liked to contribute our mite to the fund for the relief of that most unfortunate lawyer. But we should like still better to be able to aid in bringing about a reform of their customs and their laws, so that a probability should exist that such a thing could never occur again.

We hope our readers see the connexion between these two cases. Legislation can never keep the relations between attorney and client pure. Lawyers and suitors must be left to deal with each other like other persons of common sense and ordinary experience. Suitors will occasionally be fleeced by dishonest lawyers, but where one such case occurs, nineteen lawyers will be cheated by dishonest clients. There is a great deal too much of this sentimental nonsense in regard to the members of the learned professions. A physician must not advertise; a clergyman must not care for the amount of his salary; a lawyer must not have any pecuniary interest in the result of his client's cause. We had supposed that the sturdy sense of our profession, in this State, at least, had weeded out this last idea. We knew it was legally extinct; we hoped it was morally defunct. But when a high judge stigmatizes the lawyers who accept retainers in the way to which we refer, as "speculators," and implies that they are "intolerable," we confess we fear the old folly is not quite dead. It is these ideas that lead to such tragedies as we have recorded in the case of the London barrister. They are "too good for human nature's daily food," at least for that portion of our profession who are still at the bar, and who expect from those of their number whom they elevate to the bench, and there maintain on comfortable salaries, the liberty to gain bread and not stones, fish and not serpents.—*Albany Law Journal.*

Insurance Frauds.—The *Central Law Journal* of America says:—"The Irish Law Times, for August 8, contains a leader (No. I) on Life Insurance Law and Legislation, the subject of which is warranty on the part of the person for whose benefit the policy is taken. We intend to reprint it. It will be good reading for those judges whose decisions have supported Life Insurance Companies in dishonestly wriggling out of their obligations, after pocketing large sums of money in premiums."

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The Preliminary Examination of Candidates for Apprenticeship, will be held at the Solicitors' Hall, Four Courts, Dublin, on Friday and Saturday, the 30th and 31st days of October, 1874, *at Eleven o'clock.*

N.B.—All papers to be lodged on or before *Wednesday, 14th October, 1874.*

The Final Examination of Candidates seeking admission as Attorneys, will be held at the same place, on Monday and Tuesday, the 2nd and 3rd days of November, 1874, *at the same hour.*

By Order of the Council,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The Competitive Examination for the Society's Prize, will be held on *Monday, Tuesday, and Wednesday, the 2nd, 3rd, and 4th of November, 1874,* at 11 o'clock each day.

N.B.—The decision of the Court of Examiners will be announced on Tuesday, the 10th of November, 1874, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Michaelmas Session, 1874.

LEGAL EDUCATION.

NOTICE.

William Hickson, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Michaelmas Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at Ten minutes before Ten o'clock, a.m.

The first Lecture will be delivered on *Thursday,* the *fifth* of November, 1874.

The course will consist of *Twelve* Lectures, three-fourths of which *must* be attended so as to entitle Candidates to Professor's Certificate.

By Order,
JOHN H. GODDARD,
Secretary.

Gentlemen proposing to attend Lectures, will have to leave their names at the Secretary's Office, Solicitors' Buildings.

The Professor of Law has fixed upon the following Book for Lectures, viz., "Williams on Real Property"—"Last Edition."

Solicitors' Hall, Four Courts, Dublin.
October, 1874.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Hilary Term, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Michaelmas Term.*

By order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

Digitized by Google

COURT PAPERS.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Robert Courtney	Vouch account	*Goff*

TUESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Folliott Barton	2nd composition sitting	*Leachman*
Edward Quigley	1st composition sitting	*Lett*
Same matter	Final examination	*Kernan*
Michael Ryan	2nd composition sitting	*Findlater & Co.*
Same matter	Final examination	*Kavanagh*
Michael Stanley	1st public sitting	*Neilson*
Peter Smith	do	*Hamilton & Craig*
Wm. H. Harris	do	*Casey & Clay*
Samuel Gardner	do	*Oldham & Eaton*
William Moreland	2nd composition sitting	*Benner*
Same matter	Final examination	*Benner*
James Harbison	1st composition sitting	*M'Cully*
Same matter	Final examination	*Murray*
Same matter	Examine witnesses	*M'Cully*
G. and R. Ferguson	Final examination	*Larkin & Co.*
Michael O'Sullivan	do	*Larkin & Co.*
John Nolan	do	
Henry Davey	do	*Neilson*
Wm. Fitzgerald	do	*Mathews*
Michael Russell	do	*Stewart*
Patrick Heeney	do	*Perry & Co.*
Patrick Monahan	Motion	*O'Farrell*

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
William Moreland	Prove debts	*Benner*

WEDNESDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Keegan	Costs	*Ryan*
Thomas Clarke	do	*M'Govern*
Iver MacDonnell	do	*Forsythe*
Geo. P. Magrath	Settle report	*Hickie*

THURSDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Nolan	Reference	*Stephens*
Alex. D. Stewart	Prove debts and vouch	*M'Govern*
John Farrell	do	*M'Govern*
Jeremiah Sullivan	Prove debts	*Donnelly*

FRIDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Owen Dunne	2nd composition sitting	*Rynd*
Same matter	Final examination	*Scallan*
Wm. H. Thornton	do	*Whelan & Son*
Patrick Clarke	do	*Rynd*
Robert Russell	do	*Oldham & Eaton*
Thomas Slevin, sen. and jun.	do	*Oldham & Eaton*
Thomas Murray	do	*Molloy & Watson*
John Hanley	do	*Casey & Clay*
Joseph Campbell	do	*Oldham & Eaton*
James M'Bride	do	*Mathews*

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Lynam	Prove debts and vouch	*Maxwell & Weldon*
James W. Dillon	Vouch assignee's acct.	*Toomey*

ADJUDICATIONS IN BANKRUPTCY.

Brown, Ebenezer E., The Valley, Roscrea, Tipperary, seed and manure merchant. Sittings, *Tuesday, October* 27, and *Friday, November* 13. *Larkin and Co.*, solrs.

Davies, George Henry, The Barracks, Ennis, county Clare, gentleman. Sittings, *Friday, October* 30, and *Tuesday, November* 17. *O'Connor*, solr.

Gordon, Patrick, Lisliddy, Knockmurray, county Roscommon, farmer. Sittings, *Friday, October* 30, and *Tuesday, November* 17. *Walsh*, solr.

Gordon, Ellen, Lisliddy, Knockmurray, county Roscommon, widow. Sittings, *Friday, October* 30, and *Tuesday, November* 17. *Walsh*, solr.

Nolan, Daniel, Knocknagashil, county Kerry, shopkeeper. Sittings, *Friday, October* 30, and *Tuesday, November* 17. *Larkin and Co.*, solrs.

O'Hagan, Patrick, Dundalk, county Louth, currier. Sittings, *Friday, October* 20, and *Tuesday, November* 17. *Jones*, solr.

Waring, Richard, Ligoniel, county Antrim, flax spinner, trading as Waring and Duncan. Sittings, *Friday, October* 30, and *Tuesday, November* 17. *Black and Browning*, solrs.

Wilson, Edward Samuel, trading as E. S. Wilson and Co., Belfast, tea merchant. Sittings, *Tuesday, October* 27, and *Friday, November* 13. *H. C. Neilson*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	OCTOBER Fri. 2	Sat. 3	Mon. 5	Tues. 6	Wed. 7	Thur 8
	Government.						
—	3 p c Consols	—	91⅜	91¼	—	—	91⅜
—	New 3 p c Stock ..	90⅞	90⅞	90¾	90⅝¾	90⅞–1	91⅛¼
	INDIA STOCK.						
—	5 p c July '80 } Trafble. at	107⅝	107⅝	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	—	102	101⅜	—	101⅞	—
	Banks.						
100	Bank of Ireland ..	308½	—	308	309	308¼	308½
25	*Hibernian Banking Co.* ..	61⅛	60⅞	60⅞	61	61⅛¼	61¼
20	*London and County* ..	64⅜¼	—	—	—	—	—
15	*London Joint Stock* ..	50¼⅜	—	—	—	—	—
20	*London and Westminster* ..	—	—	—	—	77¼	77½
3½	*Munster Bank (Limited)*	8¾⅞	8¾	8¾	8⅝	—	—
30	*National Bank*	66⅝¾½	66–5⅞	65¾⅞	65⅞	66–⅛	66⅛
15	*National of Liverp'l (Ltd)*	—	—	—	14⅜⅞	14⅜⅝	—
25	*Provincial Bank* ..	92	—	91	91⅛	92	92
10	Do. New ..	—	—	—	36¼	—	—
10	*Royal Bank*	30⅝	—	—	—	30¾	—
	Steam.						
50	British & Irish	—	—	52	52	—	—
100	City of Dublin	107½	—	107⅜	107½	108	108
50	Dublin and Glasgow ..	—	—	62½	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	55¼
	Mines.						
3½	*Berehaven (Limited)*	-/7½	-/7½	—	—	—	-/7½
7	*Mining Co. of Ireland (lit'd)*	6¾⅞	—	6¾	—	—	—
2½	Wicklow Copper	—	—	3½	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅝½	—	—	—	—	—
9½	*Dublin Tramways* ..	6⅛⅜	6⅛⅜	—	—	—	6⅝
9-4-7	*Patriotic Assurance* ..	—	—	—	10¼	—	10¼
	Railways.						
50	Belfast and Northern Cos.	—	—	69–½	69½⅝	69½	—
50	Cork and Bandon ..	—	25	—	—	—	25
20	Cork, Blackrock & Passage	—	—	10½	—	—	10
100	Dublin and Drogheda ..	—	112½	—	—	113¼	113⅝
100	Dublin and Kingstown ..	—	—	—	—	208	—
100	Dublin, W'klow, & W'ford	78	—	78	—	—	—
100	Gt. Northern and Western	—	—	98½	—	—	—
100	Gt. Southern and Western	109½	108⅞	108⅛	108½	108⅛	108⅞
100	Londonderry & Enniskillen	—	—	66	—	—	—
100	Midland Gt. Western ..	83½	—	82¼	82¼	—	—
25	Portdn. Dun. & Omh. Jun.	—	14⅝	—	—	—	—
50	Waterford and Limerick ..	—	—	31	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	95⅝¾	—	—	—	—	—
100	Do. do. 4½ p c	—	102⅞	—	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	x d	—	—	—	—
100	Do., 4½ p c	—	x d	—	—	—	—
100	Gt. South'n & West'n 4 p c	—	—	98½	—	98½	—
100	Mid. Great Western, 5 p c	—	—	108⅛	—	—	—
100	Ulster 4½ Per Cent. Stock	103½	—	—	—	—	—
100	Watfrd. & Ct'l Irel, 6 p c rd	—	—	—	—	—	78
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	97	—	—	—	—
50	Do., new red, 1878, 5 p c ..	50⅛	—	—	—	50⅞	50⅞
	Railway Debentures.						
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	100	—	—	—	—	—
—	D., W., & W., 4½ p c ..	100	100	100	—	—	—
—	Gt. South'n & West'n, 4 p c	98½	98⅛	98⅛	—	—	—
—	Waterf'd & Limerick 4½ p c	102¼ f	102⅝	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Digitized by Google

A CHILIAN COURT OF JUSTICE.—A Reuter's telegram from Valparaiso says:—"A seaman, late one of the crew of the South American Steam Packet Company's steamship Loa, was murdered a few days since on Cerro de la Concepcion. Two engineers of the Pacific Steam Navigation Company's steamer Atacama were summoned to appear at the Criminal Court to identify the body. The engineers, believing they were not bound to appear, refused to obey the summons. An armed force from the Chilian corvette Esmeralda was sent on board the Atacama, and the engineers were taken out of the vessel and brought on shore. They could not identify the man, and the Chilian judge fined them 100 dollars for contempt of court.

PORTRAITS OF LEGAL CELEBRITIES.—The Benchers have given instructions to Mr. T. A. Jones, President of the Royal Hibernian Academy, to paint a portrait of Lord Chancellor Clare and also a portrait of the late Lord Chancellor Blackburne. Both portraits are to be placed in the dining hall of the King's Inns.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BEVERIDGE—October 4, at 39 Upper Rutland-street, the wife of John Beveridge, Esq., barrister-at-law, of a son.

MARRIAGES.

MILNER and FITZGERALD—October 7, at Mountmellick, Queen's County, by the Rev. George Kemmis, assisted by the Rev. William F. W. Bolton, William Milner, Esq., eldest son of James Milner, Esq., J.P., Mounmellick, to Frances Helen Fitzgerald, eldest daughter of John Alexander Fitzgerald, Esq., solicitor, Mountmellick, and niece of Thomas Turpin, Esq, solicitor, Maryborough.

DEATHS.

SMYTH—September 30, at his father's residence, Alma-road, Monkstown, County Dublin, after a very protracted illness, aged 24 years, Ralph Mountague Smyth (late Lieutenant 63rd foot), youngest son of John Smyth, Esq., Solicitor, 2 Clare-street.

CASES for holding THE IRISH LAW TIMES, AND SOLICITORS' JOURNAL, for One Year, can be had, Lettered on side, Price—whole-bound Cloth, 8s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, at the Office of the Journal, 53, UPPER SACKVILLE-STREET, DUBLIN.

SALE:

COUNTY CARLOW.

ESTATE in the County of Carlow FOR SALE.

TO BE SOLD, with Landed Estates Court Title,

One Undivided Moiety of an extremely desirable Estate, held in Fee, situate at Milford, in the County Carlow, and within four miles of the Town of Carlow, the whole producing at present an annual profit rent of £400, which will be increased to £600 per annum on the falling in of two annuities of £100 a-year each. Apply to

Messrs. J. D. MELDON & SONS, 14 Upper Ormond-quay, Dublin. 544

LEGAL POSTINGS:

STATUTORY NOTICE TO CREDITORS.

In the Goods of Joseph Holloway, late of Dundrum, in the County of Dublin, and formerly of Arran-quay, in the City of Dublin, Baker, deceased.

NOTICE is hereby Given, pursuant to the statute 22nd and 23rd Victoria, cap. 35, intituled "An Act to further amend the Law of Property and to Relieve Trustees," that all persons claiming to be Creditors of, or who have any claims or demands against the Estate and Effects of the said deceased—who died on the 8th day of September, 1874, at Arran-quay aforesaid—are hereby required to furnish particulars in writing of such claims or demands, on or before the 1st day of DECEMBER next, to the undersigned, as Solicitor for James Hanratty, of Lincoln-lane, in the City of Dublin, commission merchant, one of the executors named in the Will of said deceased, to whom Probate of the Will of the testator was granted forth of the principal Registry of the Court of Probate in Ireland on the 8th day of October instant.

And take notice that after the said 1st day of DECEMBER next the said executor will proceed to distribute the assets of said deceased among the persons entitled thereto, having regard only to the claims and demands of which he, or I, his Solicitor, shall then have had notice.

Dated this 9th day of October, 1874.

JAMES GOFF, Solicitor for said executor, 16, Bachelors'-walk, Dublin. 563

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF MAYO.

SALE,

On FRIDAY, the 13th day of NOVEMBER, 1874.

In the Matter of the Estate of John Nolan Ferrall, Esq., Owner and Petitioner.

TO BE SOLD, On FRIDAY, The 13th day of NOVEMBER, 1874,

Before the Honourable Judge Flanagan,
At the
Landed Estates' Court, Dublin,
At the hour of Twelve o'clock noon,
In Five Lots,
The following Valuable Fee-simple Estate,

Situate in the Barony of Kilmaine and County of Mayo, and the well-secured Yearly Fee-farm Rents of £63 3s 0d, and £54 10s 4½d, payable out of Lands situate respectively in the Baronies of Carra and Kilmaine, and County of Mayo.

LOT 1—Part of the Lands of Ballymangan, containing 179a 2r 32p, statute measure, situate in the Barony of Kilmaine and County of Mayo, held in fee, and producing a net annual rental of £175 15s 0d.

LOT 2—Other part of said Lands of Ballymangan, containing 52a 2r 19p, statute measure, situate in the Barony of Kilmaine and County of Mayo, held in fee, and producing a net annual rental of £48 1s 3d.

LOT 3—The other part of said Lands of Ballymangan, containing 49a 2r 34p, statute measure, situate in the Barony of Kilmaine and County of Mayo, held in fee, and producing a net annual rental of £51 11s 1d.

LOT 4—The Yearly Fee-farm Rent of £63 3s 0d, created by deed, dated 17th August, 1857, payable out of the Lands of Tawneclough, Tubberoughter, and Rosceene, formerly called Rusheens, but now called Thomastown, containing 212a 0r 11p, statute measure, situate in the Barony of Carra and County of Mayo. The Ordnance Valuation of the Lands is £130 15s 0d. The tenant pays the Quit and Crown Rent and Tithe Rent-charge.

LOT 5—The Yearly Fee-farm Rent of £54 10s 4½d, created by deed dated 24th April, 1851, payable out of the Lands of Knocknagarra, otherwise Knocknaganny, containing 133a 2r 9p, statute measure, situate in the Barony of Kilmaine and County of Mayo. The Ordnance Valuation of the Lands is £83 5s 0d. The tenant pays the Quit and Crown Rent and Tithe Rent-charge.

Dated this 17th day of July, 1874.

C. E. DOBBS, Examiner.

DESCRIPTIVE PARTICULARS.

Lots 1, 2, and 3 are situate within two miles of the Post-town of Hollymount, twelve miles of Tuam, where there is a Railway Station, six miles of the Town of Ballinrobe, and seven miles of the Town of Claremorris, where there is also a Railway Station. Hollymount, Tuam, and Ballinrobe, are all market towns and fairs; Claremorris is a market town.

Lot 4 is situate about one mile from the Post-town of Ballyglass, and about eight miles from the Town of Castlebar, where there is a Railway Station. Ballyglass and Castlebar are both market towns and fairs.

Lot 5 adjoins Lots 1, 2, and 3.

The Lands comprised in Lots 1, 2, and 3, are of superior quality, and are well circumstanced as to Roads. The Lands are in the hands of three wealthy tenants, who pay their rents punctually, and would be a safe investment for intending Capitalists.

The Fee-farm Rents payable out of Lots 4 and 5 are well-secured and regularly paid.

Proposals for purchase by Private Contract will be received by the Solicitor having carriage of Sale, and submitted to the Court, up to Monday, the 2nd day of November, 1874, after which no private offer can be entertained.

For rentals, Maps, and further particulars apply at the Registrar's Office, Landed Estates Court, Four Courts, Inns'-quay, Dublin; to EDMOND KELLY, Esq., the Agent over the Lands, Church-field, Ballyhaunis, County Mayo; and to

JOHN R. COLFER, Solicitor having carriage of Sale, 17 Merchants'-quay, Dublin. 559

IN THE COURT OF BANKRUPTCY, IRELAND.

ELLEN GORDON, of Lisliddy, Knockmurray, in the County of Roscommon, widow, was on the 6th day of October, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 30th day of OCTOBER, 1874, and on TUESDAY, the 17th day of NOVEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

JOHN O'RIORDAN and FARRELL M'DONNELL, Solicitors, 3 Capel-street, Dublin. 561

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, October* 10, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, OCTOBER 17, 1874. No. 403.

INFANTS' CONTRACTS.

The late Session of Parliament was not fertile in Acts of much political importance, perhaps, but there is no doubt that there were enacted some three or four measures which passed almost *sub silentio*, but which are very important for society as well as lawyers. Of these we propose to consider one, chapter 62 of 36 & 37 Victoria. It is an Act to Amend the Law as to the Contracts of Infants, and came into operation on the 7th of August last. After reciting that it is expedient to amend the law as to the contracts of infants, and as to the ratification made by persons of full age of contracts made by them during infancy, and as to necessaries, it enacts that—

"All contracts, whether by speciality or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable." And further:—

"No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age."

This is a sufficiently wide enactment, and will lend to youth a charm in every sense additional to what it possessed before. We said that these purely legal measures passed almost *sub silentio*, and we do not remember the grounds on which this measure was propounded. There have been, of late, in England and Ireland, two or three cases of great hardship, when adults involved themselves in great difficulties by promising anew to pay debts, contracted during infancy, on purely honourable obligations; and these cases probably called the attention of our legislators to what seemed a defect in the *rationale* of law, for, as these ratifications, or new promises, were voluntary acts, it seemed reasonable that they should be of no more force than the previous honourable or moral consideration on which they were founded; but, practically, as they were only allowable, or at least actionable, when the consideration for the promise was originally beneficial to the party promising, and he was protected from liability by some provision of the Statute or Common Law meant for his advantage, it was surely reasonable that, if he renounced the benefit of that law, and promised to pay the debt, which was only what an honest man ought to do, he should be bound by law to perform it (Judgment, *Earle* v. *Oliver*, 2 Exch. 90).

As a matter of fact, if the prior consideration was not beneficial to the party making the subsequent promise or ratification, the latter would be relieved against it in Equity, as was done in the cases to which we have alluded, on equitable terms, and we cannot help thinking that the Court of Equity is powerful and active enough to protect those deserving its assistance against improvident contracts. However, the rule of Law, that a consideration will support no other promise than such as would be implied by Law, is now more symmetrical, being cleared of its chief exceptions.

That a moral consideration will not support a promise, has, since the case of *Eastwood* v. *Kenyon* (11 Ad. & E. 438), been firmly established, and it was generally on the ground of a previous moral consideration that the ratification was held binding. The same anomaly is still, however, left in the case of a debt taken out of the Statute of Limitations by an acknowledgment in writing, with this difference, that the latter may be signed by an agent of the debtor, while the ratification of a contract made during infancy had to be signed by the debtor himself, according to the provisions of 9 Geo. IV., cap. 14, sec. 6, which provided—

"That no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing, signed by the party to be charged therewith."

The age of twenty-one years has, for long, been fixed in the Common Law as the period when an absolute and unlimited legal ability to contract shall commence, or in other words, at this period the protection afforded to infants against improvident bargains, and the artifices of designing persons ceases. This rule appears to have been borrowed from the feudal law, by which the tenant was presumed to have acquired at this age sufficient bodily strength to attend his lord in the wars, and therefore at this age ceased to be the ward of his guardian in chivalry (Co. Litt. 78b., 171 b.) The first section of this Act is sweeping enough, and it would appear from the words of the second section, that it is retrospective in its effect, and that not only shall no ratification to be given in future be binding, but also, that no action can be brought on ratifications effected before the passing of the Act.

Digitized by Google

LEGAL APPOINTMENTS.

THE present Government has not had many legal appointments to bestow as yet. In England there have been some County Court judgeships vacant by resignation and otherwise, and the Lord Chancellor has appointed to the Hampshire County Court Mr. P. M. Leonard, who is an Irishman and a graduate of Trinity College, Dublin; while there is a report that Mr. Justice Honeyman is about to retire, and that Mr. Huddlestone, another distinguished Irishman, is to be appointed in his stead.

Mr. Leahy's death also leaves a first-class county at the disposal of the Irish Government, but it is possible that some judge of a second-class county may be promoted, and the latter vacancy given to the new man, whoever he may be.

NOTANDA.

Landlord and Tenant Act, 1870, *s.* 46; *purchase of holding by occupying tenant.*—Motion, on behalf of L. Mallon, an occupying tenant of the estate of John Sherlock (trustee for sale of the estate of Anna E. O'Brien, deceased), owner and petitioner, that his holding, with another piece of land, should be made one lot of, in order that he might purchase same under the provisions of the Landlord and Tenant Act, 1870, s. 46. The estate comprised, among other lands, the townlands of Tullabeg, and of Rahan demesne and Newtown. The Tullabeg Jesuit College stood on the townland of Tullabeg, and the trustees of the institution held a lease, substantially for ever, of the townland, and they intended to purchase the head-rent, and become the owners. Laurence Mallon was tenant from year to year of 35 acres of Rahan demesne, which was a subdenomination of Newtown, at a rent of £35 a year. His holding lay between Tullabeg and the Grand Canal, from which the water supply of the College was drawn. When the examiner was adjusting the rental for sale, the solicitor for the trustees of the college appeared and asked to have Mallon's holding made a single lot of, in order that they might purchase it. Mr. Sherlock, the trustee for sale of the estate, opposed the application, on the ground that the estate would sell best by being put up in townlands. This view was taken by the examiner; but then, on the 30th June, Laurence Mallon came forward as the occupying tenant, and claimed under the 46th section of the Land Act, to have the privilege of purchasing his holding. Mr. Sherlock opposed this application just as he did the previous one, and the examiner refused to accede, unless Mallon agreed to take 23 acres of another part of Rahan, that would otherwise be left perfectly separated, and consequently be greatly depreciated in value. This Mallon agreed to do, and the examiner fixed the price at 23 years' purchase of the head rent. It was admitted that, when the trustees of the college were seeking to purchase Mallon's farm by itself, they intended to give him a life interest in it at the present rent. Mr. Sherlock, the trustee for sale, in his affidavit, swore that to split up the townland of Rahan by separating the farm of Mallon would be most injurious to the estate at the sale—that Mallon's farm was the best of all, the other tenants being for the most part poor and unable to pay their rent. By yielding to the application of Mallon the devisees of the reversion—the Sisters of Charity—would suffer a loss, because the sale would produce less than otherwise would be obtained. Laurence Mallon, in his affidavit, stated that he wished to purchase for himself—that he had no intention of assigning the farm to anyone else—and it would be sold, in any case, subject to the right of the trustees of Tullabeg College to take water from the canal which bounded the holding. The rector of the college, in his affidavit, stated that there was no agreement between himself and Mallon as to getting an assignment of the farm; that the negociations with Mallon were broken off when the offer of the college for the farm was refused by the examiner; and that all that was intended was to offer, hereafter, a fair price for the reversion, if it could be obtained.—*Jackson*, Q.C. in support of the motion.—*Mr. Weldon* (*Maxwell & Weldon*) solicitor for the Sisters of Charity said that the superioress of the community instructed him to state that, when the course of sale was first discussed, she did not wish to interfere with the discretion of Mr. Sherlock, as trustee, as to the mode of setting up the estate, and she was satisfied to leave the matter in the hands of the Court.—*Walsh*, Q.C. on behalf of Mr. Sherlock:—The motion should be refused. Mallon seeks not to purchase *bona fide* for himself, but for the trustees of Tullabeg College, who are seeking through him to obtain what was originally refused to themselves. Therefore the application is quite outside the operation of the L. & T. Act, 1870, s. 46. Considering the certain injury to the estate by allowing Mallon's farm to be separated from the rest of the townland, and the want of *bona fides* on the part of Mallon, who clearly is not purchasing for himself, because he never dreamt of an application till after the offer of the trustees of Tullabeg College was refused, it was submitted that the motion on behalf of the tenant should be refused.—*Jackson*, Q.C. in reply:—Mallon seeks to become the purchaser for his own benefit, and for no other purpose. Under the rules of the Court there is power to put up the estate in such lots as would be advantageous for the sale; and, by the 46th section of the Land Act, the Court is to give the occupying tenant all reasonable facilities for purchasing his holding. Unquestionably, if the tenant has the right to purchase, he also has the right after purchase to sell the interest. The fact that he might do so does not deprive him of the benefit of the section of the Land Act. In this case it is sought to deprive the tenant of his right upon a mere vague statement, that to separate Mallon's farm from the rest of the townland would be injurious to the sale; but the Court has the fact that Mallon is to take 23 acres additional, and pay 23 years' purchase—a very high price—and if the other tenants are poor and not well-paying, is that a reason why Mallon, a good honest and thriving tenant, should be deprived of his right to purchase his holding? It was said that the offer of Mallon was not *bonâ fide*, but the man was prepared to bring in the purchase money, and he in fact imputed want of *bonâ fides* to Mr. Sherlock, stating that that gentleman wanted to purchase for himself, and if he did would evict him (Mallon) from his farm. [FLANAGAN, J.—It is impossible that Mr. Sherlock could purchase, as he is a trustee for sale, and is forbidden by Act of Parliament from bidding.] [*Walsh*, Q.C.—That is so; and the only foundation for Mr. Jackson's statement is, that Mr. Sherlock states that, if he were allowed to become the purchaser, he would be willing to give eighteen years' purchase.].—FLANAGAN, J., in giving judgment said:—Mr. Sherlock has an unlimited discretion—guided, of course, by fairness and honesty—as to the manner in which the estate should be brought to sale. He has stated most emphatically that to separate Laurence Mallon's holding, with the addition of twenty-three acres to it, as one lot, would seriously injure the sale of the remainder of the townland of Rahan demesne, and he all through acted consistently, because he opposed the application of Mallon for separate purchase, just as he opposed the application of

Digitized by Google

the trustees of the Tullabeg College. While I agree that I am bound to give the fullest possible effect to the 46th section of the Act, and allow every facility to the occupying tenant to become the purchaser of his farm, I should do so consistently with the interests of the estate; and it would require very strong evidence to satisfy me that the person whose bounden duty it was to sell the estate to the best advantage did not know what was most for the interest of the estate in the sale. Mr. Sherlock has pledged his oath that it would be injurious to sell Mallon's holding distinct from the rest of the townland. He might be in error in that opinion, but should I decide that question against Mr. Sherlock's oath? With regard to the other matters in the case, it would have been better if it had not been stated in the affidavit that Mr. Sherlock intended to become a purchaser himself. He could not do so, and there was no foundation for the allegation. Though, perhaps, I might shrewdly guess that, if Laurence Mallon became the purchaser, the holding would in some way or other pass to the trustees of Tullabeg College, yet I see no reason to doubt Mallon's statement that he intends *bonâ fide* to purchase for himself, nor the statement of the rector of the college that negociations were broken off with Mallon when their own offer was refused. The sole question for me is, whether the sale to the tenant could take place without in the slightest degree prejudicing the interests of the persons entitled to the residue of the estate. Believing, on the evidence before me, that I am bound to act upon the opinion of Mr. Sherlock as to that matter, I must refuse the application of the tenant, and give the trustee his costs (*Estate of Sherlock*, owner and petitioner; Landed Estates Court, July 20, 1874).

Presentments; lunatic asylum; salary of R. C. Chaplain of infirmary; coroner's inquest.—At the Assizes at Clonmel, July, 1874, an application was made to MONAHAN, C. J., to direct the Grand Jury to pass a presentment for £40, as salary to the Very Rev. Dean Quirk, as Roman Catholic Chaplain to the infirmary. It was stated that the Grand Juries of Galway and Clare had presented for the same purpose every year, without any objections. His Lordship held that the Grand Jury had no power to pass such a presentment.——At Limerick Assizes, July 10, 1874, a deputation from the Corporation drew the attention of DEASY, B., to a presentment for £1,600 which the Corporation had to vote towards the expenditure of the asylum, without any representation from that body on the Board of Governors. It was stated that the presentment had been going on increasing, year after year, until it rose to the present figure. Lately, the Corporation made an effort to examine the accounts of the asylum, but they had been informed by the asylum authorities that, though they could see the place as ordinary visitors, they would not be permitted to examine the accounts. The Corporation looked upon this as a hardship, and, as his Lordship was a member of the Privy Council, the Corporation hoped that he would bring the matter under the notice of His Excellency the Lord Lieutenant and the Lords Justices of Ireland. DEASY, B., said that he had no option but to fiat the presentment. If there was a grievance, the Corporation could lay the matter before the Privy Council by petition ——At Tullamore Assizes, July 8, 1874, an application was made on behalf of Mr. Gowing, coroner, to direct the Grand Jury to fiat a presentment in respect of an inquest on Mr. Hussey Walsh, which the Grand Jury considered should not have been held. It appeared that the deceased had died from the effects of a fall in the hunting field. He had lingered three or four days after the fall. Mr. Gowing was examined, and stated the circumstances of the death. He said he received the news in a telegram from a constable, and subsequently got important information from a respectable private gentleman; that gentleman told him that Mr. Lee, one of the members of the hunt, had complained of the "drag hunt" course being unfair and dangerous, and also that Mr. Walsh, on that occasion, had been badly treated by another gentleman, who rode his horse against Walsh's, and said that he (Walsh) was no gentleman—that he was a blackguard. He had said to the Grand Jury that he considered a drag hunt for nine Irish miles, without a check, as an illegal proceeding. He had received a letter relative to Mr. Walsh's death, and it partially influenced him in holding an inquest; the letter had a name to it, but he did not know whose it was.—*Molloy*, on behalf of the coroner, submitted that the Court should not interfere with the discretion of the coroner when he had *bona fide* instituted the inquiry, and held an inquest in conformity with the directions imposed upon him by statute. It would be absurd if, after a coroner had so acted in discharge of his duty, a Grand Jury should review his decision, and peremptorily decide whether an inquest should be held or not.—*Dames*, Q.C., *contra*, submitted that the presentment had not been disallowed without sufficient inquiry and cause. The coroner had stated to the Grand Jury that the reason he held the inquest was on account of the drag hunt, which he believed illegal. The late Sir R. Peel died under similar circumstances, and no inquest was thought of. Bishop Wilberforce and the late Marquis of Waterford were, no doubt, killed from a fall from their horses, but death was instantaneous. Mr. Walsh, who for days lingered, and during that time was perfectly sensible, emphatically stated that he had no charge to make against any person. WHITESIDE, C.J., after having reviewed the facts, said:—There is an important principle involved in this case. I, myself, as the Chief Justice, am the chief coroner of this country, empowered to hold inquests, as Lord Denman once did. Coroners exercise a most important duty, and statutes regulate how they are to do it. Mr. Walsh was not found dead, nor was his death of a sudden nature. A Grand Jury is entitled to inquire whether a coroner had reasonable ground for deeming an inquest necessary. If an inmate of a gaol or a lunatic asylum dies, the law, very wisely, says that an inquest must be held. I feel very much the gravity of being asked to interfere with the decision of the Grand Jury. Inquests had been very properly held on the Bishop of Winchester and the Marquis of Waterford, because death came upon them in the most exceptional manner. I am of opinion that Mr. Walsh's death was not a "sudden one," or a suspicious death within the meaning of the Act. I, therefore, cannot interfere with the course adopted by the Grand Jury.

Money lodged, under garnishee order, in Common Pleas; motion to draw, by judgment-creditor in Queen's Bench; jurisdiction.—*Crean* renewing the application mentioned ante, 472, and now moving on an affidavit made in the Common Pleas, but on a notice of motion in the Queen's Bench, O'BRIEN, J., said: I have no power as a judge in the Queen's Bench to make an order disposing of money in the Common Pleas. Your notice of motion, also, must be in the Common Pleas (*Curtin* v. *Fitzgerald;* Con. Ch., October 2, 1874. The application was renewed Oct. 16; and, it appearing that the money was lodged in *three* causes in the C. P., FITZGERALD, J., considered that the notice of motion should be entitled in all of them, and directed the motion to be moved before the C. P.)

Digitized by Google

REPORT FROM THE SELECT COMMITTEE ON JURY SYSTEM (IRELAND).

The Select Committee, appointed to inquire and report on the working of the Irish Jury System before and since the passing of the Act 34 & 35 Vict. c. 65, and whether any and what amendments in the Law are necessary to secure the due Administration of Justice, have considered the matters to them referred, and have agreed to the following Resolutions:—

That the Juries (Ireland) Act, 1871, should be amended, but that it is indispensable to the proper administration of justice in Ireland that the system of providing juries should be such as to ensure absolute impartiality in the formation of the panels of jurors.

That, in some instances, the rating qualification of jurors, fixed by the Jurors Act (Ireland), 1871, is too low; and that it should be raised, and should, in some instances, be higher than the qualification fixed in the temporary Act amending the said Act.

That it is desirable to add to the number of persons qualified to serve on juries by qualifying some persons who may not have a rating qualification, such as the sons of peers, of baronets, of grand jurors, and of magistrates, officers of either the army or navy while not on actual service, freeholders, and leaseholders.

That collectors of rates and stamp distributors should cease to be exempt.

That publicans should be exempt from service on juries.

That all persons who have been convicted of perjury should be disqualified.

That the lists of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions.

That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the juror's books, has not worked well, and requires alteration.

That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books. Having regard—

(a) To the convenience of jurors as to the locality to which they shall be summoned, so that, as far as may be, the jurors shall be summoned from within the jurisdiction of the Court in which they shall be required to serve.

(b) The number of names in the jurors' books, and

(c) The number of previous attendances of the jurors;

and that the sheriff should enter, against the name of each juror summoned, the date of each summons, and the jurors' attendance, and should, as far as possible, not summon any juror a second time who had served on a jury, until he had first summoned all those whose names are on the jurors' book.

That summonses for the attendance of jurors should be served by the constabulary, but with power to the judges of assize, by order, to substitute service by post in any particular venue.

That a right of peremptory challenges in civil cases in the Superior Courts, and in all trials of indictments for misdemeanours and *ex-officio* informations, be allowed to each party to the extent of six challenges.

That the Judge should have power, in criminal as well as civil cases, to order a view.

That all paid officials should be remunerated for the duties performed by them in relation to the jury lists according to a fixed rate.

That it is desirable to amalgamate the jury lists of counties of cities with those of the counties.

That the occupation of a house, or house and buildings without land, when rated to a certain value, should be a qualification of a juror in counties, such value to be defined for each locality, according to the circumstances of the same.

That it is desirable to abolish the Market Juries.

That it is desirable that juries should be selected by ballot from the panel, in criminal, as in civil trials.

26th June, 1874.

JURISPRUDENCE AND THE AMENDMENT OF THE LAW.

During the Social Science Congress at Glasgow, two papers were read on the question—Should Unanimity be Required by Juries? the first being supplied by Mr. Forsyth, M.P., and the second by Mr. Sheriff Clark.

Mr. Forsyth in his paper held that it was neither wise nor expedient to require unanimity. That would be an exception to the universal rule which prevailed in all other cases to be determined by the votes or opinion of a number of men, a majority decided the question at issue. This was the case in both Houses of Parliament, as in all municipal and parochial institutions. The rule requiring unanimity should be relaxed in civil and retained in criminal cases. He adhered to the opinions he had expressed in his *History of Trial by Jury* and in the House of Commons.

Sheriff Clark contended that the risks of miscarriage to which trial by jury was exposed required unanimity in the verdict. That was the only compulsitor adequate to insure that the issue should be fairly and fully tried. The essence and safety of jury trial consisted in the joint action of 12 minds brought into play by mutual intercommunion. Unanimity was an indispensable condition to its safe and effectual working.

Sir Joseph Napier had come to the conclusion that in civil cases the requirement of unanimity in juries was an exception to all rule. Where Judges had to decide on matters of law affecting life, liberty, and property, the majority of one carried the day. In the Legislature, which was said to be omnipotent, the majority of one determined the most important questions. He thought it would be wise to allow the majority of the jury to prevail, provided the Judge was satisfied with the conclusion; that would be quite as safe a rule as to insist on unanimity, which often led to injustice. In criminal cases there was more difficulty. In Ireland he had often seen the action of some one or two probably sympathizing jurors totally defeat justice. He thought the time had come when the system should be changed by giving up the requirement of absolute unanimity.

Judge Peabody had heard with great pleasure the two papers which had been read. He was very much of the same opinion with the right hon. and learned gentleman who had just spoken, where there was matter of doubt to be decided, it was practically out of the question to require an unanimous verdict of 12 men. It was a forced decision and not the fair independent judgment of 12 men, or even of a smaller number. He would have the number 12 reduced very considerably in civil cases. In criminal cases, however, he would not diminish the safeguards that protected the accused. In such cases he would insist on unanimity. He was strongly in favour of a public prosecutor, and was only surprised that England existed in all her greatness without such a functionary.

Mr. C. Clark, Q.C., entirely agreed with what had been said by Sir J. Napier. So far as the safety of the criminal was concerned, there might almost be an abolition of trial by jury, for the tendency of the age in criminal cases was as lenient as possible. The person for whom sympathy was felt was generally not the victim but the criminal. He thought that the required unanimity of juries was a mistake. The number of 12 was originally an honest necessity. It had ceased to be so by the change of circumstances. The remedy was not the appointment of a public prosecutor, but to make the means of prosecution easier, more rapid, and less expensive.

Sheriff Cowan agreed with the conclusions of the first paper.

Mr. Daniel, Q.C., thought the principle of unanimity a mischievous one, and whether the number of the jury was twelve or eight he would not enforce it. Sir John Coleridge, the Session before last, brought in a Bill abandoning the number of twelve, and adopted the number of seven. Accident prevented the passing of that Bill, and last Session a similar measure was introduced by Mr. Lopes, which had the support of the Government, but accident again prevented its passing. He thought in the vast majority of civil cases juries might be dispensed with as in the County Courts of England.

Digitized by Google

Mr. Webster, Q.C., stated that the opinions of the County Court Judges was against unanimity in civil cases, but those who had experience in criminal cases, such as Chairman of Quarter Sessions, were almost entirely in favour of unanimity in criminal cases. The general feeling was in favour of retaining it. They had much to learn on such subjects, and he hoped this Congress would not terminate without some practical measure being taken for assimilating the laws of England and Scotland.

Mr. J. W. Hastings said:—As Chairman of Quarter Sessions in his own county he had to try about 150 criminal cases in the course of a year, and he was entirely satisfied with the working of the jury system in such cases. He did not believe that there were three cases out of the 150 in which he was not satisfied with the verdict returned by the jury. By requiring unanimity they had a security for an exhaustive discussion by the jury which they could not obtain otherwise.

Mr. G. C. Miller, Q.C., read a paper "On Appeal," in which he maintained that the Appellate Jurisdiction of the House of Lords was, on the whole, thoroughly satisfactory. He said:—

The jurisdiction of the House of Lords had been lost, not because it worked badly in practice, but because it was founded upon a fiction; therefore, in the Court to be substituted for it the necessary Imperial character could not be obtained by merely calling it Imperial or by any other fiction. It could not be obtained by direct representation, *i.e.*, by constituting a Court containing representatives in fixed proportions from all parts of the Empire—first, because the Court would be too numerous; secondly, because the best men might be excluded for want of a vacancy, while a succession of inferior men got in as representatives of other bodies; neither could it be secured by official representatives, *i.e.*, by a system of *ex-officio* members holding defined judicial offices—first, because it would be as mere a fiction as the representation of the different counties in the House of Lords; second, because the *ex-officio* members, if they attended at all, would attend only appeals from their own counties, and this would destroy the limits of the Supreme Court. Neither was the principle of the Amendment Bill of 1874 satisfactory—"that the Government should select without limitation from every part of the Empire;" first, because the jealousy of the bodies excluded would impute jobbery in the appointments; second, because the appointment resting practically with the Lord Chancellor for the time being, this would give an unfair advantage to the Bench and Bar of England, who would be best known to the Lord Chancellor,

> "Segnius irritant animos demissa per aures,
> Quam quæ sunt oculis subjecta fidelibus."

There were resons more or less satisfactory for having none but Judges of not less than five years' standing appointed to this Court, which ought not to be a mere "First Division" of a Court, and whose Judges ought to occupy a higher position and be paid a larger salary than any other Judges of the land. There were also reasons founded on experience for fixing the *maximum* number of Judges at nine, and a quorum of five. Of these nine the Lord Chancellor for the time being must necessarily be president; but another ought to act *ex-officio*. They should be chosen by the Government from among Judges of not less than five years' standing in England, Scotland, and Ireland, and Chief Justices of similar standing in India and the colonies, subject to this limitation merely, that not less than one should be chosen from each of the four sources he had mentioned, leaving to the Government to select as many as they pleased, not exceeding five, from any one of them. This would prevent the Court from becoming a purely English Court, and would not so hamper the Government as to compel the appointment of inferior men or exclude them from appointing any exceptionally good men. It could never happen that more than five such could all come from the same country. This paper was merely a series of hints to invite discussion upon legislative action, not an exhaustive plan.

Mr. Daniel, Q.C., thought the Supreme Court of Judicature should be so constituted as to represent, for all purposes of the administration of justice in a proper and efficient form, all the interests of the various portions of the British Empire. He should like to have heard from Scotch lawyers the reasons which induced them to desire that the jurisdiction of the House of Lords should be retained. The decision of that question was essential to enable the Government to proceed with the amended Judicature Bill.

Mr. M'Laren believed the profession in Scotland would be satisfied if, in the constitution of the Supreme Court of Appeal, they were assured there should always be one Judge selected from the foremost among the judicial bodies of Scotland, and no less was due to Ireland.

THE REFERENCE SYSTEM.

However much men may differ in relation to the merits of the jury system, its most strenuous advocates must make one concession—it is rapidly falling into disuse. Before we advance another step let us put ourselves right upon the record, by declaring that we are not among those who see no good in the jury system. We consider the right to a trial by jury in all cases as of inestimable importance. We conceive, too, that some cases should never be tried without a jury. For example, we should be very reluctant to consent to hang a man, unless the evidence was sufficiently clear to convince a jury of twelve men of his guilt. But the exigencies of modern civilization have compelled suitors to waive this right in very many cases, and to adopt a substitute recommended by reasons of convenience and despatch. The dramatic characteristics of the law are fading out. The days of great advocates, and of eloquent advocacy, are passing away. The pomp and excitement of public trials are losing somewhat of their fascination for the multitude. Our public Courts have become, in a great measure, a mere convenience for plaintiffs who ask for damages and consequently want a jury. Cases which a generation ago would have filled the Court-room with open mouthed spectators from the rural districts, and occupied the attention of an entire community for days in succession, are now disposed of in a lawyer's dingy back room, with no other auditors, perhaps, than the young gentlemen who are supposed to be pursuing the study of the law in the referee's office, and the small boy who brushes the dust occasionally off his books, and builds his fires. Of course, under such a system, eloquence and the arts of advocacy are quite out of place. Appealing to the passions or prejudices of some parchment-faced old counsellor is rather up hill work for the speaker. The thousand and one little tricks of the profession are quite wasted on such a tribunal. It is of no use bringing a widow in weeds, and several fatherless children, before such an unfeeling Court. The accustomed asseveration of counsel, that never in the course of his professional experience has it been his fortune to present to the consideration of an enlightened Court a case of such incredible hardship and wrong upon his client, &c., &c., would be ridiculously inappropriate before a referee. Lovely woman's charm will not penetrate his pachydermatous hide, and now and then he has even been known to render judgment in favour of a railroad corporation. In vain would Erskine shake the powder from his wig, and extend his yellow-gloved hands, and vainly would Choate rumple his hair, and tear his coat tails in appeals to such a Court. As in commerce, the stately ship, with its towering piles of canvas, has yielded to the low black hull of the dingy steamer, so the dramatic glories of the Court-room have given way to the common-place of the trial by reference.

Now, at the risk of being accused of triteness, let us consider very briefly some of the more evident advantages of the new system. And first, is the great convenience of enabling suitors to try their causes with promptitude. This, in the large cities, is an advantage which is hardly appreciated by the dwellers in the rural districts. In counties where the calendars are small, lawyers can try their cases with reasonable despatch, and at the same time amuse the inhabitants and glorify themselves with the public show of the Courts. But in large towns and cities, where the bread-and-butter problem is more serious, the lawyer's greatest anxiety is to be spared long enough to reach his cause, and to find when it is reached that his client is still alive, and that his main witnesses still survive, and have not lost their memory by

Digitized by Google

age. It is very convenient to be able to have forty or a hundred Courts in session, in the same locality, on any day, and for any number of days. It enables lawyers to accomplish a great deal of business, which otherwise might only serve as a legacy to their sons.

Again, causes are tried much more carefully before referees than with juries. There is no chance for surprise under the reference system. Many a suitor has lost his rights because his counsel had not been able to foresee what his antagonist might, could, or would prove, and at the circuit such an omission is frequently fatal. But in a trial before a referee the facility for adjournment cures this trouble, and in the end the parties are better satisfied with their counsel or with themselves. Each party has had an equal chance; there has been no inequitable advantage to either; and he who is defeated has nothing to reproach himself with, or blame his counsel for; the fault is in the law, and the unsuccessful suitor consoles himself by insisting that the result 'may be law, but it is not common sense.'

Again, with a referee there is no possibility of disagreement. The disagreement of a jury is a very common occurrence. We do not remember ever to have read or heard of the disagreement of a referee. If there were no higher motive, the little matter of his fees, which, we dare say, the best of us have an eye to, as the donkey has to the bag of oats suspended at the end of a stick and held before his nose, would induce him to come to a conclusion. The expense to suitors and the public, caused by the failure of juries to agree, is a very serious item; and worse yet, the certainty of justice is very much diminished in the public estimation. One obstinate or corrupt man on a jury may work a vast amount of mischief. The leaven of evil may spoil the other eleven. Of course a single referee may turn out to be a bad or a prejudiced man, but the chance is only one-twelfth as great as with a jury; and if he is a good and fair man, his purpose cannot be defeated by others.

These seem to us the chief superiorities of the reference system—promptness, thoroughness, and conclusiveness. What defects are there in the system to counterbalance these solid advantages? It is claimed by its opponents that, although causes are more promptly reached, yet they drag in the trial, and are less speedily decided. This is true, and it is what we have claimed as an advantage. There is no consolation in a wrong verdict that it is quickly agreed on. If an innocent man is sentenced to be hanged, he scarcely regards it as a mercy that execution is ordered for the next day after sentence. It is unquestionably true that referees have fallen into undue laxity in regard to adjournments. But the abuse is no argument against a proper use of the system. Let adjournments be granted only on such terms as prevail at the circuit, or deprive the referee of fees for any day except when the trial actually proceeds, and this fault would be corrected.

Again, it is complained that the expense to the parties of a trial by reference is greater than by jury. We have some doubt whether this is true on the average. Where calendars are small, as in the sparsely populated districts, and causes are quickly reached after issue, it may be true; but in all populous localities parties are compelled to attend in readiness for trial, with all their witnesses, day after day, and sometimes term after term, before their causes are reached. This objection does not apply to references. On reflection, we think we should have dwelt upon this feature among the advantages of the reference system, rather than put ourselves on the defensive in regard to it. But suppose we grant the claim of our opponents, it simply amounts to this—the expense to parties is increased, but that of the public is lightened. This is just as it should be. It is a time-honoured maxim, although, perhaps, not to be found in Broom, that those who dance should pay the piper. We know of no reason, except necessity, why the public should pay the expense of determining private lawsuits.

It is also urged, sometimes, that a referee is a less advantageous tribunal for the trial of questions of fact than the jury. Insisting again that we have nothing against the jury in theory, we must confess that we never knew an instance of a lawyer who was unwilling to refer a good case—a case in which he depended solely on its intrinsic merits. It may be that referees are not quite so profuse in the matter of damages as juries are, and yet we have never heard that they are apt to be niggardly.

We are glad to note a growing disposition to refer actions, without regard to their character. Cases decided by referees are more often correctly decided than those tried amid the hurry and confusion of the circuit. The investigations of referees save an immense amount of labour to the appellate tribunals, and they make better lawyers of our profession. It is good for a lawyer to sit as a judge. It gives him candour and insight; takes away from his mind something of that one-sidedness which habits of advocacy are apt to give it; and in making him a better lawyer makes him a stronger man.—*Albany Law Journal.*

CHARGE AGAINST A BARRISTER.

At Reading, a gentleman, said to be a barrister-at-law, was brought before the borough magistrates charged with endeavouring to obtain £20 by false pretences from Messrs. Stephens, Blandy, and Co., bankers, Reading, by presenting a cheque for that amount, and representing that he had money in the National Bank, Broad-street, London. On the 24th of September he was introduced to Mr. Stephens by Mr. W. F. Blandy, a solicitor, and relative of one of the banking firm. He stated that he wanted to open an account, and was accepted as a client. He said he had no cheques with him, but expected some in a few days to pay in. He went away, but in about five or ten minutes returned and presented one for £20, drawn by himself on the National Bank, London, and asked that it might be cashed. Mr. Stephens accepted it, and gave it to the counter clerk to cash. The clerk pointed out that it was post dated Sept. 29, but notwithstanding was ordered to cash it. This was presented at the National Bank on the 25th by Messrs. Stephens and Blandy's London agents, and returned to them on the 30th marked, "No account." The prisoner was staying at the Great Western Hotel, Reading, and when seen he offered to pay the amount, but was given into custody. The defence pleaded was that the prisoner had reasonable expectation that he would have money in the National Bank, as he had banked with a branch of that bank. The magistrates remanded him till Wednesday, and then committed him for trial.

BANKRUPTCY LAWS.

Bankruptcy is and always will be, under any English or Continental laws, hard upon and painful to honourable men, who, by misfortune or errors of judgment, fail to meet their engagements; the disgrace consequent upon publicity being a severe blow to all right-thinking men, but to rogues who are devoid of the sense of shame, the chances of succeeding (under our present laws) in bold and imprudent trading are twenty to one in their favour. The reason of this is palpable. The principle of fair play is with us carried to such an extreme that until convicted every man is legally assumed to be innocent. This is doubtless sound in principle, but if we not only assume the innocence of a defaulting debtor, but go farther, and *invite* him, so to speak, to conceal every clue to the detection of his guilt, so that while the *onus probandi* is thrown upon the injured individual or upon the general body of his creditors, the *pièces de conviction* are generally only obtainable (if at all) at great loss of time and expense.

A man starts in trade upon borrowed capital, or even insolvent, obtains credit by misrepresentations, recklessly incurs debts without the slightest prospect of being able to discharge them, lives extravagantly, and diverts a portion of his assets, keeping no books, or only making pretence to do so. After a time he is pressed for payment; he puts off the evil day as long as possible, and when the limit is reached files a petition for liquidation. At the meeting he produces a statement of his affairs (the truth of which can only be tested at a heavy expense to his estate), offers no explanation as to his deficiency, and eventually is generally able to get through by making a ridiculously small offer. Perhaps, however, his creditors, being dissatisfied, decide to liquidate or to throw the estate into bankruptcy; in either case he obtains an extended period of protection, and probably, in

Digitized by Google

consequence of the trouble and expense entailed by following up the matter to its proper end, finishes by getting his discharge either for nothing or for a much smaller sum than was originally refused.

The French bankruptcy laws, and public opinion in France, go to the other extreme, and among the better classes the disgrace of a father's bankruptcy is a sufficient stigma to stand in the way of his children's marriage.

The German laws give more latitude; they are severe upon dishonest, and lenient towards honest insolvents. A house built upon a bad foundation will not stand, and the many good intentions contained in the 1869 Act are, for want of a proper basis, rendered ineffective. This basis can easily be created. Any one seeking or obtaining credit, either in trade, speculation, or otherwise, should by law be compelled to keep, *de die in diem*, a true record of *all* his business transactions, and any neglect to comply with such law should be *prima facie* an offence punishable by a specified term of imprisonment, reducible in the discretion of the judge, upon the *offender* proving satisfactorily that no fraud was intended or contemplated.—*The Accountant.*

THE LAW CLERKS' ASSOCIATION.

The Central Committee met on Monday evening at 207, Great Brunswick-street; Messrs. M'Dermott, Dowling, Jervise, Flynn, Sheridan, Power, Farrelly, and Devereux attended. The secretary announced that he had received from Lord O'Hagan a most satisfactory reply to the application he had recently made to his lordship to receive a deputation with the view of formally inviting him to deliver an inaugural address. His lordship said he was leaving Dublin for a tour to the East, and could not, therefore, at present, comply with the wishes of the committee, but he should be happy to hear of them again when he returned. The subcommittee appointed to consider and report on the best means of effecting the registration of law clerks, brought up their report for adoption. It proposed a system which would ensure the registration of both senior and junior clerks, and recommended that the scheme should be submitted by circular to the heads of the various law and equity offices, to the Incorporated Law Society, and to the leading solicitors, with the view of obtaining their opinions upon the question. After some discussion the report was unanimously adopted. It was then announced that the chess-room, fully supplied with every appliance for practising this scientific game, was now ready for the use of the Chess Club. The meeting then adjourned.

DIGEST OF RECENT ENGLISH DECISIONS.

SLANDER.

Words not actionable in themselves: special damage.—A statement false and malicious, but not in itself defamatory, made by one person in regard to another, whereby that other may probably under some circumstances, and at the hands of some persons, suffer damage, will not, even though damage has resulted in fact, support an action for defamation. A declaration alleged that the defendant falsely and maliciously spoke of the plaintiff, a working stone mason, "He was the ringleader of the nine hours system," and "He has ruined the town by bringing about the nine hour system;" and "He has stopped several good jobs from being carried out, by being the ringleader of the system at L.," whereby the plaintiff was prevented from obtaining bmployment in his trade at L. *Held*, that the words not oeing in themselves defamatory, nor connected by averment er by implication with the plaintiff's trade, and the alleged damage not being the natural or reasonable consequence of the speaking of them, the action could not be sustained. *Miller* v. *David*, L. R., 9 C. P. 118.

SHERIFF.

Action for false return of nulla bona: no seizure: prior writs fraudulent.—In an action against the sheriff of a false return of *nulla bona* to plaintiff's writ of *fi. fa.* for £125, it appeared that the defendant had not levied at all. There were goods of the execution debtor of the value of £50, upon which he might have levied. There were two writs of *fi. fa.* against the execution debtor for more than £50, lodged with the sheriff prior to the plaintiff's writ; but these prior writs were proved to be fraudulent as against creditors; the sheriff had, however, no information as to this. *Held*, that the plaintiff was entitled to recover the £50; that it was the sheriff's duty to have levied, and the plaintiff might then have disputed the validity of the prior writs, and so obtained the proceeds of the levy. *Dennis* v. *Whetham*, L. R., 9 Q. B. 345.

OBITUARY.

THE LATE MR. LEAHY, Q.C.

We regret to have to announce the death of Mr. Leahy, Q.C., who was Chairman of the County of Limerick. This gentleman died on the 13th day of October, 1874, at Newcastle, after a short illness, as he presided at the Quarter Sessions at Newcastle on last Saturday, and appeared in his usual health. He was called to the Bar in Hilary Term, 1833, and became Queen's Counsel in August, 1859. Mr. Leahy was much esteemed in the County over which he presided, and his judgments and decisions were regarded as universally sound. On Thursday a proper tribute was paid to his memory, when at the County Limerick Petty Sessions, Mr. Vanderkiste said he had been requested by Mr. H. Massy, senior magistrate of the county, who was unavoidably absent, to propose that the Court should adjourn out of respect for the memory of their late esteemed Chairman, Mr. Leahy, Q.C., whose sudden demise had cast a gloom among his many friends. He believed that his brother magistrates and the solicitors attending the Court would agree that they all had suffered a loss by the death of one who was a lawyer of the highest character and ability, a sincere friend, and an upright and painstaking judge. Mr. Delemege and the other magistrates, and Mr. Connolly on the part of the solicitors practising in Court, bore similar testimony, and the proposition of adjournment was unanimously agreed to. The clerk was directed to send the vote of condolence to Mrs. Leahy and family.

APPOINTMENTS.

THE SHRIEVALTY.—Owen Wynne, Esq., D.L., of Hazlewood, has been sworn in as Sheriff of the county of Sligo, in room of Commander Brereton, deceased. William Alexander, Esq., continues as Sub-Sheriff, and Mr. R. Peyton, 24, Westland Row, is their returning officer.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

ATTORNEYS' AND SOLICITORS' APPRENTICES.

The SESSIONAL EXAMINATION will be held on *Friday*, the *6th day of November, 1874*, at 10 30 o'clock, a.m.

Gentlemen proposing to be examined will have to leave their names at the Secretary's Office, Solicitors' Buildings, Four Courts.

By order,

WILLIAM HICKSON,

Professor.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from* 1*st* *to* 31*st* *July*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
July 1	William Henry Head, owner and petitioner	Sale	Tipperary	397 19 6	*John Julian*
„ 3	Daniel Spillane, owner; *Emily Leonard, petitioner*	Sale	Cork	64 3 1	*Thomas Ware*
„ 4	William Douglas, owner; *Catherine M'Cormick, petitioner*	Sale	Armagh	Greater part in owner's possession	*Henry R. Barker*
„ 6	Edward Knight, owner and petitioner	Sale	Cork	58 6 11	*John and Joseph Bennett*
„ „	John Kidd, owner and petitioner	Supplemental for partition.	—	—	*Maxwell & Weldon*
„ 7	John O'Brien and others, owners; *R. Casey and another, petitioner*	Sale under Partition Act	—	36 6 2	*Casey & Clay*
„ 9	Garrett Larkin, Margaret F. Larkin, Gerald J. Larkin, and Robert W. Larkin, owners; *E. A. Ennis, petitioner*	Sale	Galway and Roscommon	211 4 3	*T. F. O'Connell*
„ „	Christiana Pearson, owner; *Royal Bank of Ireland, petitioner*	Sale	Dublin	In owner's possession	*Orpen, Sons, & Sweeney*
„ „	James Blake, owner; *Rev. John Burke, petitioner*	Sale	Galway	91 15 0 tenement valuation	*M. M'Namara*
„ 10	Emanuel Hutchins, owner and petitioner	Sale	Westmeath	292 5 0	*E. Hudson*
„ 11	Mary Jagoe, owner and petitioner	Sale	Cork	60 9 0	*George Bernard*
„ 15	Eleanor Redington, John Redington, and Samuel P. Redington	Sale	Galway	197 19 4	*R. H. Beauchamp*
„ 16	Thomas Potterton Mathews, owner; *Thomas Potterton, petitioner*	Sale	Meath	10 0 0	*J. J. Hinds*
„ „	William E. Stewart and others, owners and petitioners	Sale	—	In owner's possession	*J. Julian*
„ 22	Arthur W. Ball, owner; *G. W. Thompson, petitioner*	Sale	Meath	639 10 0	*G. W. Thompson*
„ „	Alexander Curtis Lanauze, owner; *Charles Lewis, petitioner*	Sale	Dublin	200 0 0 estimated annual value	*F. G. Tincler*
„ 25	George M'Master and another, trustees of the Dublin Library Society, owners; *George William Fitzgerald, petitioner*	Sale	Dublin	In occupation of the Society	*G. D. Fottrell & Son*
„ 27	Assignees, James Lynam, owners; *James Madden, petitioner*	Sale	Roscommon	In owner's possession	*W. P. M'Evoy*
„ „	David Hunter, owner; *Maurice Hickey, petitioner*	Sale	Cork	79 0 0	*Edward O'Connor & Son*
„ 28	George Graham and wife, owners; *Andrew Clarke, petitioner*	Sale	Tyrone	Not stated	*Wilson & Frosts*
„ 29	Frederick A. M. Moore, owner; *George J. Robinson and another, petitioners*	Sale	Tyrone	473 2 0	*Longfield & Co.*
„ 30	Kilkenny Junction Railway Co. owner; *P. L. C. Paget and another, petitioners*	Sale	Kilkenny	In owner's possession	*Robert Murdock*
„ „	Edward Gillen, owner; *William Elliott and another, petitioners*	Sale	Donegal	Not stated	*Wilson & Frosts*
„ 31	Charles O'Neill, owner; *Robert E. Gibbings and another, petitioners*	Sale	Limerick	69 2 9	*D. C. Bastable*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Woods	Costs	*Kavanagh*
Bailey	Adjourned prove debts	*Mathews*
Franks *v.* Rathborne	Reference	*Bernard*

TUESDAY.

Before the COURT, at 11 o'clock.

M'Cutcheon	1st public sitting	*Tincler*
Hillsworth	do	*Findlater & Co.*
Laffan	do	*O'Reardon*
Curran	do	*Lett*
Spring	do	*Fitzgerald*
Hamill	do	*Molloy & Watson*
Ogle	do	*Larkin & Co.*
Same matter	1st composition sitting	*Perry & Co.*
M'Connell	Final examination	*Larkin & Co.*
M'Donald	do	*Rosenthal*
Rutledge	do	*Larkin & Co.*
Dillon	do	*Goff*
J. Creswell	do	*Mathews*
W. Creswell	do	*Mathews*
West	Examine witnesses	*Mathews*
Sloane	Audit and dividend	*Hamilton & Craig*
Singleton	do	*Hamilton & Craig*

Before the CHIEF REGISTRAR, at 12 o'clock.

Keany	Reference	*Lett*
M'Cosker	Costs	*Oldham & Eaton*
Hall	do	*Mathews*
Stirling	Settle posting	*Cronhelm & Co.*

WEDNESDAY.

Before the COURT, at 11 o'clock.

Cracroft *v.* Smyth	Special jury case	*Macrory* for plaintiff *O'Rorke* for deft.

Before the CHIEF REGISTRAR, at 12 o'clock.

Brady	Costs	*Larkin & Co.*
Farrelly	do	*Lett*

FRIDAY.

Before the COURT, at 11 o'clock.

Clarke	1st composition sitting	*Jones*
Connor	2nd composition sitting	*Oldham & Eaton*
Campbell	Final examination	*Rynd*
M'Ghee	do	*Rynd*
M'Cosker	do	*Oldham & Eaton*
Beban	do	*O'Brien*
Rowan	do	*Lynch*
Same matter	Adjourned motion	*Smith*
Guiney	Adj. final examination	*Beauchamp*
Connor	do	*Stuart*
Woods	do	*Oldham & Eaton*
Cupples	do	*M'Cully*

The following at 12 o'clock.

Hanlon	Sale	*Scallan*

Before the CHIEF REGISTRAR, at 12 o'clock.

Connor	Prove debts	*Oldham & Eaton*

VACANCY ON THE ENGLISH BENCH.—The *Freeman* says Mr. Justice Honeyman, who some time ago sustained a severe attack of paralysis, finds that although he is somewhat better he cannot safely continue his judicial duties. He therefore contemplates, as already announced, an early resignation, but the gentleman who has been named as his probable successor is by no means certain to get the vacant appointment. The fact is that Mr. Huddlestone is not popular with his party, and within the last two or three days, since the mention of his name for the vacancy, there have been unmistakable signs of disapproval, not only among his own party supporters, but also on the part of his party leaders. There is, therefore, considerable doubt whether he will be elevated to the bench at present.

According to the *Illustrated London News*, the will of Charles Gilpin, M.P. for Northampton, who died on the 8th ultimo, was proved on the 10th instant by Mrs. Anne Gilpin, the widow, Samuel Morley, M.P., and Thomas Beggs, the executors, the personalty being sworn under £10,000.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	OCTOBER Fri. 9	Sat. 10	Mon. 12	Tues. 13	Wed. 14	Thur 15
	Government.						
—	3 p c Consols	91⅞	91⅞–2	91¾⅞	91¾⅞	—	91⅞
—	New 3 p c Stock ..	91¾⅞	91⅞	91	91 90⅞	91	90⅞–1
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	108	—	—	—	—	107⅞
—	4 p c Oct. '88 } Bk. of Irel.	101⅞	—	—	—	101⅞	—
	Banks.						
100	Bank of Ireland ..	308¾	308¾	309	309½	310	—
25	*Hibernian Banking Co.* ..	61½	61¼	—	51¼	—	61½
15	*London Joint Stock* ..	—	—	—	—	—	50½
20	*London and Westminster* ..	—	—	—	—	78½	—
3½	*Munster Bank (Limited)*	8¾	—	—	3⅞	8¾⅞	—
30	*National Bank*	66¼	66⅛¼	66	56–¼	66⅛¼	66½
15	*National of Liverp'l (Ltd)*	—	14¾	—	—	—	—
25	*Provincial Bank* ..	—	—	91½	91½	91⅝	91
10	*Royal Bank*	30½	30⅝	30⅝	—	30⅝	—
	Steam.						
100	City of Dublin	108	—	—	—	—	—
10	Dundalk (Limited) ..	—	—	6⅛	—	—	6⅛
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	—	—
7	*Mining Co. of Ireland (Lt'd)*	—	—	—	6¾⅞	—	6⅞
2½	Wicklow Copper	—	—	—	—	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	10⅜⅞	10⅛⅝	10⅝
10	Dublin Tramways ..	—	—	—	—	6⅛	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	59	—	—
100	Dublin and Belfast Junct.	—	—	89⅞ 90	90	90	90
100	Dublin and Drogheda ..	113½	—	113¾	—	—	—
100	Dublin and Kingstown ..	—	—	—	209	—	—
100	Gt. Northern and Western	—	—	99	—	—	—
100	Gt. Southern and Western	—	—	108⅛	108¾⅞	—	108⅞
30	Irish North Western ..	—	—	—	—	2⅛	—
100	Londonderry & Enniskillen	—	—	—	—	—	67
100	Midland Gt. Western ..	82½	—	—	83	83⅛	83⅛⅝¼
50	Waterford and Limerick ..	—	—	31¼	31⅛–1	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	96½	—	—	—	96⅛	—
100	Dublin & Meath—1st, 5 p c	—	—	—	52	—	—
100	D., W., & W., 6 per cent ..	131	—	131	—	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1864)	—	53¾	—	—	—	—
100	Gt. North'n & West'n, 5 p c	—	—	110	—	—	—
100	Gt. South'n & West'n 4 p c	98	—	98	—	—	98–7⅞
100	Mid. Great Western, 5 p c	109	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	50	—	50	50
100	Do., 4½ p c	97	—	—	97	—	97
50	Do., new red, 1860–72, 5 p c	—	50⅞	50¾	—	50¾	—
50	Do., new red, 1873, 5 p c ..	—	—	—	50⅞	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	97	—	—	97
—	Dublin & Meath 4 p c ..	80	—	—	—	—	—
—	Do., 4½ p c	—	—	—	91	—	91
—	D., W., & W., 4½ p c ..	100	—	—	—	—	—
—	Gt. North'n & West'n 4½ p c	—	—	99	—	—	—
—	Gt. South'n & West'n, 4 p c	—	—	99½	99½	99½	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 15th October, 1874.
Of Deposit—2½ per cent., 15th October, 1874.

Name Days—October 29th, and November 12th, 1874.
Account Days—October 30th, and November 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FAY—October 12, at 27 Clarinda Park, East, Kingstown, the wife of Charles J. Fay, Esq., M.P., of a son.

FROSTE—October 13, at 34 Nelson-street, Dublin, the wife of Richard Pope Froste, Esq., A.B., solicitor, of a daughter.

MARRIAGES.

NUNN and BREEN—October 13, at St. Andrew's Church, Dublin, by the Rev. William Marrable, William B. Nunn, Esq., barrister-at-law, to Barbara Mary, daughter of P. Breen, Esq., J.P. Castlebridge, Wexford.

DEATHS.

GEOGHEGAN—October 16, at his residence, 55 Stephen's-green, East, Thomas Geoghegan, Esq., A.M., solicitor, in his 64th year. The Funeral will leave for Mount Jerome at 10 o'clock, sharp, on Monday Morning next. Friends will kindly accept this notice.

HOLMES—October 14, at 34 Summer-hill, Dublin, Frances Carleton Holmes, widow of William Holmes, Esq., of Barn Hill, Stewartstown, late Sessional Crown Solicitor for the County Tyrone.

WHITE—October 12, at Kinkora, Killaloe, Lizzie, eldest surviving daughter of the late Finch White, Esq., of Fort Henry.

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A MONTHLY JOURNAL OF JURISPRUDENCE AND INTERNATIONAL LAW for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

REEVES & TURNER, Law Booksellers, 100 Chancery-lane, London. 455

FORMS UNDER THE LAND ACT, Specially Drawn up by Mr. DONNELL, Barrister-at-Law.

Form of Dismiss	1d.
Form of Dispute	1d.
Form of Decree where Respondent has Appeared	1d.
Form of Decree where Respondent has Disputed the Claim	1d.
Notice of Claim	2d.
Notice of Submission to Arbitration	2d.
First Schedule to Statement	2d.
Second Schedule to Statement	2d.

Dublin: JOHN FALCONER, 53, Upper Sackville-street.

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

SALE,

On the 27th day of NOVEMBER, 1874.

In the Matter of the Estate of Edward Morgan, Owner; The Reverend John Hugh, Johnston Powell, and Edward Morgan, Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 27th day of NOVEMBER, 1874, At Twelve o'clock noon, At the Landed Estates' Court, Inns'-quay, Dublin,

In Three Lots,

The following Houses and Premises in the City of Dublin, Held in Fee:—

LOT 1 consists of the Dwelling-house and Premises, No. 15 High-street, producing a rental of £36 15s.

LOT 2 consists of the Dwelling-house and Premises, Nos. 8 and 9, and part of No. 7 Rosemary-lane, producing an estimated rental of £15 10s.

LOT 3 consists of the Dwelling-house and Premises, No. 173 Townsend-street, and 1, 2, 3, and 6, and part of 7, 8, and 9 Tennis-court, producing a rental of £9 4s 8d.

Dated this 20th day of August, 1874.

C. E. DOBBS, Examiner.

Proposals for the purchase by Private Contract, of all or any part of the Estate will be received up to the 14th day of November, 1874, by the Solicitor having carriage of the Sale, and if considered sufficient will be submitted by him to the Honourable Judge Flanagan, for his approval.

For Rentals and all further information apply at the Office of the Landed Estates' Court, Inn's-quay, Dublin;

JOHN BALL, Esq., Solicitor, 11 Hume-street, Dublin; or to
WILLIAM JOHNSTON, Solicitor having carriage of the Sale, 3 Palace-street, Dublin. 566

IN THE LANDED ESTATES' COURT.

FINGLAS, COUNTY DUBLIN, AND CITY DUBLIN.

Arthur Brathwaite Warre, Charlotte Sophie Cooper, and several others, Owners and Petitioners.

NOTICE is hereby Given, that Private Proposals for the purchase of all or any of the Unsold Lots of this Estate, being Lots 3, 5, and 7, in the printed Rental in this Matter, and consisting of the Lands of Tolka, Belvue, near Finglas, in the County Dublin, held in fee-simple; and the Houses and Premises, known as Nos. 53 High-street, and 12 Lower Kevin-street, both in the City of Dublin—the former held in fee, and the latter in fee-farm—will be received by me, and if deemed sufficient, will be submitted to the Honourable Judge Flanagan for approval, at his sitting after the present vacation.

Dated this 22nd day of July, 1874.

R. DENNY URLIN, Examiner.

JOHN J. TWEEDY, Solicitor having the carriage of the Sale, 29 North Frederick-street. 569

In the LANDED ESTATES' COURT, IRELAND.

COUNTY OF KILDARE.

SALE,

On FRIDAY, the 6th day of NOVEMBER, 1874.

In the Matter of the Estate of John Henry Ellis Ridley, Owner and Petitioner.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan,

On FRIDAY, the 6th day of NOVEMBER, 1874, In One Lot, At the Landed Estates' Court, Inns'-quay, Dublin, At the hour of Twelve o'clock noon,

The Perpetual Rent-charge or Annual Sum of £500, late Irish currency, equivalent to £461 10s 9d sterling, created by indenture dated the 5th day of May, 1722, and issuing and payable out of Lands of ample value, held in fee-simple, situate in the Barony of North Naas, and County of Kildare.

Portions of the said Lands were sold in the Incumbered Estates Court, on the 9th day of November, 1858, subject to said Perpetual Rent-charge, and produced upwards of £35,000.

The Tenement Valuation of the entire Lands is £2,992 4s 0d.

Proposals for the purchase of said Perpetual Rent-charge will be received by the Solicitor having carriage of the Sale, up to Tuesday, the 20th day of October, 1874, and submitted to the Court if satisfactory.

Dated this 17th day of June, 1874.

C. E. DOBBS, Examiner.

For Rentals and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; or to

HENRY SANDYS MECREDY, Solicitor having carriage of Sale, No. 70 Middle Abbey-street, Dublin. 502

IN THE COURT OF BANKRUPTCY, IRELAND.

GEOFFREY DAVIES, of the Barracks, Ennis, in the County of Clare, Gentleman, was on the 25th day of September, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 30th day of OCTOBER, 1874, and on TUESDAY, the 17th day of NOVEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

AYLWARD O'B. O'CONOR, Solicitor, 13 Hatch-street, Dublin. 567

SALE:

COUNTY CARLOW.

ESTATE in the County of Carlow FOR SALE. TO BE SOLD, with Landed Estates Court Title, One Undivided Moiety of an extremely desirable Estate, held in Fee, situate at Milford, in the County Carlow, and within four miles of the Town of Carlow, the whole producing at present an annual profit rent of £400, which will be increased to £600 per annum on the falling in of two annuities of £100 a-year each. Apply to

Messrs. J. D. MELDON & SONS, 14 Upper Ormond-quay, Dublin. 570

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, October* 17, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, OCTOBER 24, 1874. No. 404.

MARRIED WOMEN'S PROPERTY ACT.

OUR legislators are forced to march with the times in respect of the rights of women; but they do so with a mental protest, which has the effect of making the remedial Acts in some cases almost unintelligible, and, where intelligible, sometimes absurd. Strangely enough, the Lords have always been more willing than the Commons to allow married women a legal status, probably from the influence of the Chancellors and ex-Chancellors in the Upper House, who have experience of the advantage derived by society at large from the equitable doctrine of separate estate, with its attendant incident of restraint upon anticipation and powers of contracting, appointing, and bequeathing. The Commons held longer to the Common Law, and very reluctantly, indeed, allowed the women married since 9th August, 1870, to hold as their very own, without trustees or settlement, certain small classes and qualities of property, and particularly by the 7th and 8th sections, which permitted such married women to hold as their separate estate any personalty which they should acquire as next of kin, and any money not exceeding £200 which they should acquire by deed or will, without prejudice, however, to the trusts of such deed or will, and also the *rents and profits* of such realty as they should acquire by descent. The Act, *en revanche*, however, made them liable for the maintenance of their husbands and their legitimate children, though only to the Poor Law authorities. And in order, probably, to conciliate the support of indignant bachelors, who intended entering the holy estate of matrimony, the Act further provided that the future race of husbands should not be liable to pay the debts contracted by their wives before marriage, but provided that the wife might be sued for such debts, and her separate estate made liable, but, alas, providing no remedy for the creditors against the lady who married without a settlement and thus allowed her husband to become possessed of her estate by the effect of marriage at Common Law.

This provision worked considerable hardship. If the husband get no property with his wife, there is much to be said in favour of relieving him from his Common Law liability of paying her debts, and her separate estate was made liable by the 12th section, but it was monstrous that a man and woman should, under this state of the law, be able to cheat the wife's creditors by simply dispensing with a settlement. The new Act (cap. 50, 37 & 38 Vict.) removes the anomaly by enacting, in fact, that a husband shall now take his wife's fortune *cum onere*, that is, with a liability to pay her debts to the extent of that fortune.

The husband and wife may now be jointly sued for her debts before marriage; but it is provided that the husband shall in such action, and in any action brought for damages sustained by reason of any tort committed by the wife before marriage, or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the following assets:—

(1.) The value of the personal estate in possession of the wife, which shall have vested in the husband.

(2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:

(3.) The value of the chattels real of the wife which shall have vested in the husband and wife:

(4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:

(5.) The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person:

(6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors:

Provided that when the husband after marriage pays any debt of his wife, or has a jugdment *bonâ fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

THE CHAIRMANSHIP OF THE COUNTY LIMERICK.

WE announced in our last issue the death of Mr. Leahy, Q.C., who had been Chairman of the Quarter Sessions for the County of Limerick since 1864, and now we have to announce the acceptance, by Mr. Purcell, Q.C., of the vacant office. This gentleman's legal reputation and position at the Bar are so well known that it is unnecessary to remark on the fitness of the appointment. Limerick is, indeed, fortunate in securing the services of one of the very first Nisi Prius lawyers, who has also an extensive practice in Chancery and Bankruptcy, and is thus in every way adapted to discharge the duties arising out of the multifarious jurisdiction of the County Courts in that extensive and somewhat disturbed district. Under the presidency of such a man as Mr. Purcell there will be no reason for limiting the matters capable of decision in these important Courts, and every reason for increasing them.

The new judge is a staunch supporter of the present Government, and the legal profession were quite prepared to see the learned gentleman sharing in the most important legal duties of the administration in the impending changes. The best criterion of a barrister's ability is his success, because suitors and their attorneys can only be influenced by their desire to secure the best services available for them; and, judged by this test, Mr. Purcell's ability and fitness are of the most extreme order of merit, so that while we congratulate the suitors of the County of Limerick in their new judge, we think that the unanimous verdict of public and professional opinion is that he is capable of discharging still higher duties, and well deserving of still higher honours.

Digitized by Google

LAW AGENT TO THE CORPORATION OF DUBLIN.

The Corporation have at length elected Mr. John MacSheehy as successor to the late Mr. Smyth, in the office of Law Agent. The matter has been for some time in abeyance, pending, as it was understood, cetain arrangements with Mr. Morgan, who has discharged his onerous duties as one of the Law Agents for thirty years. We publish in another column a report of the proceedings, from which it will appear that there were several candidates, but the voting showed that Messrs. MacSheehy, Barry, and Clay, were the "favourites," and had, at all events, the advantage of being the best known. Any of the candidates would have well discharged the duties of the office, but the choice of the city fathers at last fell on Mr. MacSheehy, who has been for some time in practice in Dublin, and has acquired the esteem and regard of all who came in contact with him, as well for his personal qualities as for his high professional skill—essential requisites in his present position. This gentleman came from Limerick, like another very eminent solicitor who now fills an important Government office, and, like him, was connected with the Liberal party.

The salary of the office has been fixed at £800 a year, and as the conditions involve the surrender of private practice, we think the Corporation fortunate in securing so able a Law Agent at so comparatively small a remuneration. This election now being disposed of, we trust that due regard for economy in the distribution of our rates will permit the Corporation to grant the request of Mr. Morgan, conveyed in his letters—a request, too, which would be a positive gain to the ratepayers, as the increased salary sought would be less than the contingent fees arising out of increased legal business.

NOTANDA.

Debtors Act, 1872, s. 6; conditional order for committal; non-service within time limited for showing cause; evading service; making order absolute.—In this case a conditional order had been obtained, under the Debtors Act, 1872, s. 6, to commit a married woman who had been sued as sole defendant under the Married Women's Property Act, 1870. The order had been obtained on an affidavit, by the plaintiff, stating that, shortly after getting goods from him, the defendant had married in order to evade payment of the price, and that the defendant had separate property. The order had been granted by Fitzgerald, J., in Consolidated Chamber, August 7th, directing that it was to be made absolute unless cause shown by the defendant on or before August 14th; and service was directed to be made on the defendant, and, also, on her husband. Attempts made to serve the order on the defendant in person, in time before the 14th, failed, owing to the defendant having gone into concealment for the purpose of avoiding service. On September 1st, the defendant was discovered, and personal service was then effected, on the defendant and her husband, of the order, together with a notice stating that a motion to make it absolute would be moved on September 4th. On September 4th, *O'Reardon* appeared for the defendant, and applied to have the motion allowed to stand until September 11th—adjournment, thereupon, by consent. *Cleary*, on behalf of the plaintiff, now moved to make absolute the conditional order for committal. There was no appearance for the defendant. Lawson, J., made the order absolute (*Wilson* v. *Donnell*; Con. Ch., September 11th, 1874).

Summary Procedure on Bills of Exchange Act; motion, inter partes, *for leave to defend; defective copy of affidavit served.*—*Carton*, on behalf of defendant, moved, on notice, for leave to take defence to an action under the Summary Procedure on Bills of Exchange Act. *Weir, contra*—In the copy of the defendant's affidavit served, his name is not mentioned in the jurat, and it does not purport to be signed by him. It does not appear, therefore, to be a copy of an affidavit actually sworn; and, if the affidavit on the file is correct, the copy is not a true copy. The motion should be refused; *Mansfield* v. *Hacket*, 5 Ir. Jur. 46. [Fitzgerald, J.—The motion need not be on notice. It is moved on notice merely in order to inform the Court. Do you object to its being granted on the merits?] There is no other objection. *Motion granted.* (*Morrow* v. *Madine*; Con. Ch., Oct. 16, 1874.—See *Dillon* v. *Eastwood*, *ante*, 448).

THE CORPORATION OF DUBLIN.

A Special Meeting of the Municipal Council was held in the City Hall, on Friday, when the following business was transacted:—

THE SALARY OF MR. MORGAN.

The Lord Mayor—In deference to the request of one of our oldest officers, I ask the Council first to consider the letter of Mr. Francis Morgan, our Law Agent.

The Town Clerk read the following circular, dated the 19th inst., addressed by Mr. Morgan, City Law Agent, to the Lord Mayor, aldermen, and burgesses of Dublin:—

"My Lord Mayor and Gentlemen,—I most respectfully remind you that I had presented a memorial dated 1st July last, requesting an advance of my present salary of £400 to £600 per year. That application was founded upon the fact, first, that I have discontinued to transact any private business since 1st July, 1870; secondly, the very large increase of Corporation business immediately anticipated in my department by expiration of old and grant of new leases, the professional fees upon which paid into the borough fund, will nearly, if not entirely, recoup the required advance of salary. That memorial was referred to a committee of the whole Council, who have made a report dated 9th ultimo, which contained no reference to my position or salary, but recommended the appointment, on 23rd instant, of one new law agent at £800 per year, and £150 allowance for assistance. Upon debate of that report in council it was expressly stated, without dissent, that my position, after 32 years' faithful service, would be favourably recognised before the new election. I, therefore, on recommendation of several members of Committee No. 3, on 17th instant, make this respectful application to procure a suspension of the standing orders, and a resolution for an increase, from 1st instant, of my salary to £600 per year, including £100 per year allowance for assistance. All professional fees to be paid into the borough fund."

Mr. Dennehy moved the suspension of the standing orders that the letter might be taken into consideration.

The motion was negatived, Mr. Franklin being the dissentient.

ELECTION OF LAW AGENT.

The Lord Mayor nominated Alderman M'Swiney and Dr. Owens scrutineers of the ballot.

Sir John Gray said they should consider whether they ought to proceed to an election before disposing of Mr. Morgan's application which had been so long before them. He did not see how it could be done. They should first define the duties of the law agent.

Mr. French remarked that the business of the new law agent had been defined by resolution—namely, to act for No. 1 Committee, the Waterworks Committee, and the Public Health Committee, while Mr. Morgan's duties were confined to the borough fund.

Sir John Gray said it thus appeared that they were to have two solicitors—one who had been 32 years in their service, at a salary of £400 a year, and a new man whom they were now going to appoint at double that sum.

The motion for suspending the standing orders to consider Mr. Morgan's case was again put and negatived.

The Town Clerk stated that the candidates for the office of law agent were Messrs. G. F. Barry, M. C. Bentley,

Digitized by Google

W. K. Clay, John J. Dodd, V. B. Dillon, F. Hamilton, John MacSheehy, and O. W. Oates. He read a letter from Alderman Durdin withdrawing his name as a candidate, as he could not comply with the condition which required the law agent to give up his practice.

Alderman DURDIN—As a sequel to my letter I wish to thank the gentlemen on both sides of the house, who so kindly promised me their support, I may say that I got a large amount of support from them, and I feel grateful for it.

The several letters of applications were then read.

Alderman DURDIN said that, unless Mr. Oates was a solicitor duly admitted to the Courts of Chancery and Common Law in Ireland, he could not be appointed.

A poll was then taken, with the following result:—Barry 17; M'Sheehy 17; Clay 16; Hamilton 4; Bentley 3; Dodd 2.

Messrs. Barry, MacSheehy, and Clay were then voted for, with the following result:—Barry 20; M'Sheehy 20; Clay 19.

A third ballot was taken with the following result:—

M'Sheehy	35
Barry	24

The TOWN CLERK stated that 59 members voted.

The LORD MAYOR accordingly declared Mr. MacSheehy duly elected as the Law Agent of the Corporation.

ACTIONS FOR BREACH OF PROMISE.

The most cursory of newspaper readers must have observed during the last few years the growing frequency of actions for breach of promise of marriage, as well as a tendency to bring such actions in a higher class of society than would formerly have resorted to the process. The two circumstances combined suggest some inquiry into the grounds on which the remedy provided by the law for this particular class of injuries may be supposed to rest, as well as into those considerations which seem to govern the assessment of damages. Of course, it is commonly said that a man has no right to amuse himself by trifling with the affections of a woman, and that if he is so foolish as to precipitate an engagement before he knows his own mind, he deserves to be punished for it. As for the first class of offenders we have nothing to say. Few creatures are more despicable than a male flirt, and if such a one burn his fingers in attempting to show off his own powers of fascination we have no pity for him whatever. But for the second class of offenders there is more to be said than is commonly taken into account by juries, or than can very easily be urged by counsel for the defence. And at some of these points we propose to glance in the present article. As regards the woman, on the other hand, the ordinary proposition is that she is not to have her feelings wounded and her prospects blighted without any means of obtaining compensation. And here too, we think, some confusion of thought will usually be found to prevail as to the different classes of sufferers, and the different degrees in which it is possible to compensate them. Of course we are not embracing in this view of the subject cases in which promise of marriage has merely been a means to an end, and was perhaps not intended to be kept. Cases of that nature belong to a different category; and the action is usually brought for an injury which is known by a different name, and of which the breach of promise is only a great aggravation. We are now concerned mainly with those cases in which the plaintiff and defendant are on a footing of social equality, and in which nothing dishonourable has ever been thought of or attempted. And we must say that in these a man is often made to pay heavily for doing what, under the circumstances, was the wisest thing he could have done.

It has been said, we are aware, that if marriages were made by the Lord Chancellor they would turn out on the average as happily as they do now; a saying, however, which can only be taken to mean that love may follow as well as precede marriage between persons who are otherwise not radically unsuited to each other. The unhappiness of persons who marry without having ascertained beforehand the existence of the incompatibility would, of course, be just the same as ever. And the question that arises is this, Whether, when a man has made this unfortunate discovery, he is bound to rush upon his fate, or ought boldly to break off the engagement? We suppose, indeed, there could be but one answer to this question, except for the difficulty of ascertaining whether the gentleman is sincere. Incompatibility of temper, it may be urged, is a very convenient phrase, under which any amount of caprice or baseness may be cloaked; and if the man did not take the trouble to find it out before he made his offer he must take the consequences. But the answer to this is that it is frequently impossible to find it out before that event. To say nothing of the somewhat cynical theory that dissimulation is the natural armour of the whole female sex, and one which it is impossible to pierce without frequent or daily opportunities, will any one pretend to say that the acquaintance which in nine cases out of ten is all that comes before an engagement is sufficient for a man to make out anything of the character of his future wife? And we must remember, too, that the girl who will not shrink from bringing an action for breach of promise is exactly the one who is likely to require study, who is more likely to be acting a part and studiously concealing her defects during the preliminary stage of courtship. But it is not only character which eludes discrimination during this interesting interval; manners, habits, information, and a thousand nameless attributes besides can only be discovered in the unguarded intercourse of domestic life such as a received lover is admitted to at once, but of which, if a stranger, he has had no experience before. A man meets a girl at a ball or a picnic, at a watering-place or on a continental tour. He contrives an introduction, and all the rest follows in due course—frequently in the space of two or three months, or even less. But it is quite possible that when he follows the young lady behind the veil which has hitherto screened from his view her domestic life and habits, he may find her not what he had supposed her to be; that he may detect faults of temper, faults of taste, even personal habits of an unpleasant character, which, had he known them from the beginning, would have effectually prevented his proposals. Now what is he to do? The girl who appeared to him at one time the perfection of neatness and sweetness turns out to be a sloven or a vixen. The maiden who seemed a model of self-sacrifice, simplicity, and refinement, turns out to be selfish, artificial, and vulgar. What, we repeat, is to be done? Among a certain class of society, no doubt, there is a sort of general understanding that, even so, an engagement must not be broken off. Faith must be kept with a lady under any circumstances whatever, even at the cost of a life's happiness. But the sentiment is a legacy of past times, and, highly creditable as it is to the character of the feudal ages, it may be doubted whether it is altogether applicable to the conditions of modern society. Women are no longer the weaker sex, in the same sense in which the term was formerly applied to them. And at all events in this article we are hardly speaking of the class whom we suppose to be possessed by such traditions. Supposing a member of the middle classes, the greater part of whose leisure must necessarily be passed at home, and who has none of those refuges from domestic discomfort which are open to the wealthy and the high-born, placed in the situation we have described: is it not the wisest thing he could do to break off the engagement before the burden of marriage drives him, perhaps, to worse offences? An affirmative answer would be given to this question in the abstract by the majority of sensible people. The difficulty is to determine what is mere caprice, and what an honest conviction that the marriage is sure to be unhappy. And the worst of it is that the innumerable little circumstances on which such a conviction is based can rarely be set forth in court so as to produce their legitimate effect. On those rarer occasions when any attempt is made to justify or palliate breach of promise on any such grounds as we have indicated, they are usually turned into ridicule. Such things, in fact, are to be felt rather than described. And the impression created on his hearers by the cleverest advocate who ventures on this delicate ground is too often the reverse of what he wishes. Yet there is no doubt that numberless little actions and expressions which could not be described in public without seeming ludicrously trivial, are not so in reality, but consti-

Digitized by Google

tute trustworthy criteria by which character and breeding may be tested. A defendant, therefore, whose conduct has been guided mainly by observations of this nature is placed, it must be owned, in a very unenviable position. On the one hand is the conclusion of a marriage which he is morally and justifiably certain will prove a most unhappy one; on the other, his appearance in a court of justice with a case which mainly depends on evidence which cannot be explained. Of course there are plenty of men selfish enough and mean enough to plead objections of this nature when they have really no excuse for doing so, merely to disguise their own fickleness or folly. But there are undoubtedly a great number of cases in which such objections are sincere. And where they are sincere they ought to be esteemed valid. To determine when they are and when they are not so may be a difficult and delicate task, even when evidence is forthcoming, and when it is not, an impossible one. But greater stress should be laid upon this aspect of the question than is commonly done. And it should more frequently be remembered that a man may not hesitate to commit a breach of promise who is nevertheless too generous to adduce his reasons for it, even could he do so with effect.—*Pall Mall Gazette.*

SOME DECISIONS ON THE LAW OF JOINT-STOCK COMPANIES.

The Fiduciary Relations of Directors.

In our previous paper on this part of the law affecting joint-stock companies, we endeavoured to put before our readers some of the leading principles, as illustrated by a variety of cases. Starting from one which gave in a summary manner the essential duties of a director, we went on to examine a number of cases which threw light on some of the diversified questions there debated. The general result of our inquiries led to the conclusion that the fiduciary character of directors is fully recognized in our Courts of Chancery; that these courts will allow no fraud, no breach of trust to pass unpunished; that, in short, such courts will give to those in the position of *cestuis que trustent* all the protection and all the remedies which they afford to wards against a defaulting guardian. It is now a well-established doctrine that no director can by any subterfuge, however skilful, and however coloured, take advantage of his position to the detriment of the shareholders. Such being the leading principle, we wish, before finishing with the subject, to bring before our readers two recent cases, where the novel combination of facts made the task of deciding upon them a matter of greater complexity, and, consequently, of greater difficulty; and where it is of the highest importance to all concerned and in an especial degree to the commercial world, that the Judges whose duty it is to decide upon such cases, should apprehend and apply a correct and just *ratio decidendi.* In deciding upon the ordinary transactions of every-day life, it is not difficult to discover such a *ratio decidendi,* and learned judges are rarely called upon to reconsider a judgment of the court below upon such transactions. But all this is changed in such cases as those to which we are about to call attention.

This further illustration of the fiduciary relations of directors is afforded by the case of *Parker* v. *Lewis* (29 L. T. Rep. N. S. 199), which was decided in 1873. We give only such facts of the case as are material to our present question; though it will be found here, as in many other cases which have occupied our attention, that whatever throws light upon any one of the three topics to which we shall address ourselves, will probably throw light upon the others. A bill was filed by the registered officer of the National bank against certain of its directors to constrain them to refund to the bank some sums of money which the bank had been compelled or were compellable to pay under a compromise arising out of the case of *Gray* v. *Lewis* (L. Rep. 8 Eq. 526; 20 L. T. Rep. N. 282). The bank has already paid £54,000 under the compromise. One object of the bank was to establish branch banks, by means of which to carry on the business of bankers. The capital of the company was to consist of £1,000,000 in 20,000 shares of £50 each. The 125th clause of the deed of settlement gave to the directors the entire management. Sir John M'Kenna was a director from 1861 to Nov. 1868; Mr. Kitson, chairman of the International Contract Company, had proposed in 1865 that a company should be formed in London to purchase the concern of Laffitte and Co., of Paris. In the same year Lewis attended a preliminary meeting of the proposed company, and it was agreed in December of the same year that 40,000 shares in the company should be subscribed for in England. The International Contract Company guaranteed the subscription and the payment of £5 per share on the 40,000 shares at the National Bank, to the credit of the new company. The Contract Company being thus bound in a guarantee of £200,000, required the assistance of the managing director of the National Bank. Thereupon the bank agreed to discount the promissory notes of the International Contract Company for £200,000, Chas. Laffitte and Co. having agreed that, until the amount of the notes should be replaced to the bank, there should stand to the credit of Chas. Laffitte and Co. an amount equal to the sum which might remain unpaid on the notes; and that if the notes were not paid at maturity the National Bank was to pay the same out of the balance standing to the credit of Chas. Laffitte and Co., and to cancel the notes.

The bill charged that the defendants were well aware that the International Contract Company was not able to raise the sum of £200,000 without assistance so soon as the same would be required in order to obtain a settling day on the Stock Exchange, and that the defendants determined to use their influence with the National Bank to engage that bank in the bringing out of the proposed new company, and with that view to obtain from it a large credit in favour of the International Contract Company. The result of the proceedings was that the National Bank discounted the promissory notes of the International Contract Company to the extent of £230,000. In 1866 that company, as well as C. Laffitte and Co. (Limited) were ordered to be wound-up. His Honour decreed that as the directors had acted *ultra vires,* and had committed a breach of trust by their way of employing the moneys of the bank, they were therefore jointly and severally liable to refund the amount. This decision was reversed in the Court of Appeal.

A comparison of the judgment of His Honour with that of the Lords Justices cannot fail to be instructive. The Vice-Chancellor thought the defendants Lewis and Henshaw concluded by the decree in the above cited case of *Gray* v. *Lewis.* As for M'Kenna he was the most confidential servant of the company, and should have exercised all precaution; but the advancement of the money was an advance to a company which had no real existence, and for an improper purpose, viz., either for the purpose of buying its own shares, or for the payment of the deposits of the applicants for shares. This his Honour characterised as a fraud, and *ultra vires* of the bank; besides it was an advance upon security known to be bad. "The decisions of this Court have settled that directors of companies are trustees of the funds and property committed to their charge, and that as paid trustees they are at least as responsible for any misapplication of the trust property as ordinary unpaid trustees are for breaches of trust with regard to funds committed to them. If therefore directors apply the funds of a company for illegal or unauthorized purposes, and still more if they use them fraudulently, they will be compelled to restore whatever is misapplied."

Now we may be prepared for an examination of the judgment of the Court of Appeal. The Lords Justices reversed the above decision, on the ground that the compromise on which it was founded was wrong, the bank not being really liable to that which it had been ordered to pay in *Gray* v. *Lewis.* Hence the directors were not liable to make good the amount paid by the bank under the compromise. To simplify matters, it may be well to dwell briefly on that case. Gray, the holder of 200 shares in C. Laffitte and Co., filed a bill on behalf of himself, the other shareholders and the National Bank praying a declaration that the shareholders had been guilty of fraud, and that they might be ordered to make good the £200,000. Lord Justice James spoke strongly against the prayer of the bill:—"I am of opinion that this bill is demurrable upon almost every ground on which a bill can be demurrable

Digitized by Google

in this court. I am of opinion that there is a wrong plaintiff, that there is a wrong forum, and that there is no cause of action by a right plaintiff in a right forum. In the first place, it had been laid down in *Mosely* v. *Alston* (1 Phil. 790), and *Foss* v. *Harbottle* (3 Hare, 461), that where there is a corporate body capable of filing a bill, capable, in short, of suing, that corporate body is the proper plaintiff and the sole plaintiff. In this case Ch. Laffitte and Co. were incorporated. But suppose the bill was filed by the company, what then? It would be of no avail, for the proper remedy would be an action at law, as in *The British and American Telegraph Company* v. *Albion Bank* (26 L. T. Rep. N. S. 257; L. Rep. 7 Ex. 119). But with regard to the £230,000 no liability could arise between the companies, either at law or in equity. The transaction was simply one between the three companies, viz., the Inernational, the National Bank, and C. Laffitte and Co., through their directors. The one company was no more answerable through its directors than were the others. "The whole thing," said his Lordship, "was a trilateral contrivance between the directors of these three companies for the purpose alleged in the bill—for the purpose of making it appear that the company had moneys, which it had not, in order to deceive the Stock Exchange Committee by a false certificate of the estate of the company. That the object from the first was illegal and *ultra vires* appeared from the documents themselves. Everybody connected with the transaction must have been fully aware that no such application of the moneys could be authorized. Everybody must have been aware that the whole thing was a sham from the beginning to the end, and from a sham no action arises either at law or equity." Hence the bill could not be sustained. Lord Justice Mellish was of the same opinion, and remarked that there was no real monetary transaction at all. His Lordship summed up the effects of the transaction at law in a few words by saying, "everybody who is deceived by the transaction, everybody who is led to subscribe for shares or to buy shares, by reason of being led to believe that those 40,000 shares had been honestly subscribed for and paid for, is entitled to have a remedy both at law and in equity against those persons who have deceived him, but it must obviously be a personal remedy by each person who has been so deceived."

From this statement of the judgments of the respective courts of equity, we may learn some valuable lessons in the law of joint stock companies. Vice-Chancellor Malins considered there had been such a breach of trust as would make the defendants liable. The Lords Justices took the case on entirely different grounds, treating the whole transaction as a sham. Lord Justice Mellish applied the maxim: *In pari delicto potior est conditio possidentis*, and it must be admitted with the same learned judge that it would result from the judgment of the Vice-Chancellor that the concoctors of the frauds would get the whole benefit of the money, and it is manifestly contrary to the spirit of all sound legal institutions that the wrongdoer should reap a benefit from his wrongful act. We shall now be better able to understand the decision of the Court of Appeal in *Parker* v. *Lewis*. The Vice-Chancellor, in deciding this case, had relied on his previous decision in *Gray* v. *Lewis*, but inasmuch as the whole transaction was "fiction and a claim out of which no right or liability could arise to or be imposed by any of the companies," the ground of the decision is cut away. A careful examination of those cases will show no divergence from the principles pointed out in our former paper on the fiduciary relations of directors. The *ratio decidendi* is here altogether different. Hence the different result.—*Law Times.*

OUTLINE OF INTERNATIONAL LAW.

As International Law has now taken such a place in public opinion, that the daily papers devote leaders continually to it, we think it may be interesting to see what the thing means, and thus estimate the value of those productions which we read by force of custom, without considering that they treat of an almost unknown science, and certainly not possessed by intuition, as it is popularly supposed politics, literature, history, and political economy are. For this purpose we publish a syllabus of International Law, drawn up by Dr. Loewenthal, one of its most famous expositors.

Real International Law can be nothing else than *the aggregate of firmly established principles, agreed to and recognised by International Legislatures*, for the regulation of the mutual rights and relations of single civilized States, both singly and collectively. The measure and the test of these principles is the collective intelligence and the united interest of the respective nations.

But, according to Bluntschli, "the Law of Nations is the recognized universal understanding which holds the different States together in their union of justice and humanity, and which also affords to the subjects of each State a common legalized protection for their general human and international rights." Our modern States certainly recognise this "universal understanding," so far and so long as it appears advantageous to them to do so, but nevertheless vigorously resist it whenever it seems "needful." The extent of this "common legalized protection," for the subjects of each nation, is limited to their permission, *in time of peace*, to lead a quiet life, labour, eat, drink, and go to law, so far as their means permit. But directly a *war* breaks out, then the whole of these rights are suspended, so far as the subjects of the war-waging countries are concerned.

When Bluntschli, on another page, continues that—"It is not at the discretion of any State to disregard or repudiate the Law of Nations," and again adds, "The Law of Nations is one of the noblest parts of civilization," surely he must be indulging in irony, for we cannot seriously accept such statemements, unless, indeed, he alludes to something very different from what has hitherto been accepted as the "Law of Nations."

ACCEPTANCE OF THE LAW OF NATIONS.

Positive International Law is that which has definitely taken its position amongst international ordinances, inasmuch as it is rendered current and effectual on the ground of its agreed recognition, as manifested by means of enforcement and penalty on the part of the executive administrators of international justice, whereby also it is guarded against infraction.

THE ORGANS OF INTERNATIONAL LAW.

The organs of International Law are, or must be :—

1. A Convention of the chief officers of the various nations met to accord their formal sancteon to that Law in its modified form.
2. An Assembly for issuing detailed International Statute Law; such assembly being composed of delegates from each national Parliament.
3. The ambassadors, chargès d'affairs, and consuls of the respective nations.
4. An International Tribunal of Arbitration and Award, consisting of the Presidents of the Supreme Courts of the several nations.

INTERNATIONAL RIGHT OF REPRESENTATION.

In regard to the representation of single States in the International Legislature and in the International Tribunal, the subordinate members of a Confederation (for example the particular States of the German Empire) would not be entitled to specially distinct delegation to these general conventions.

FUNDAMENTAL PRINCIPLES OF THE LAW OF NATIONS.

The equilibrium of the various States consists in their peaceable juxtaposition in regard to each other. But this condition is only conceivable as a *permanent* one, on the basis of *codified* laws of nations, positively sanctioned by the Great Powers of the civilized world.

Hitherto an equilibrium amongst even the European nations has not been permanently attainable, because at any moment it has been contingent upon the will of any one State effectually to disturb such a settlement, and to render its claims illusory. Further, amidst the activity and the lively intercourse of nations in these modern times, it is impossible but that the occurrences and the connexions of one nation must affect others. Hence the latter are not in a position to remain indifferent to such of these events as

Digitized by Google

concern their common interests; and intervention on the part of a Congress of the chief authorities of nations, or an International Tribunal of Decision, would become an international duty, as, for example, in the case of the outbreak of a civil war in one of the States subject to the Law of Nations, or against the common danger of some single headstrong government.

The international "let alone," and "let be," are no longer admissible, on account of the ever increasing community of interests of modern nations. One-sided and self-prompted interventions of single States with the affairs of other States cannot henceforth be tolerated. Intervention should only take place through the regular organs of International Law, in such a manner as a Convention of chief authorities of nations shall agree upon in relation to the respective affairs at issue; and their decision shall only be of a temporary, or provisional nature, pending an appeal to the International Tribunal of Award. The decision of the latter must involve the execution and absolute acceptance of its decrees—except in cases where it relates to the form of a national government, or the nature of its constitution, in which case a general appeal must be made to the votes of the subjects of such government, by means of a *plebiscite*. Any independent state action, in the way of resistance and reprisals, after the decision of such Tribunal, is on no account to be allowed.

In accordance with these principles, one-sided national policies must not and ought not to be henceforth adhered to, to the extent which has hitherto prevailed. And in still greater degree, the national individuality and selfishness which have been wont to prevail, must increasingly give place to a *cosmopolitan* spirit in accordance with the breadth and extent of the Codified Law of Nations. For just in proportion to the established authority of International Law and its organs, *will the principles of individual nationality be far more securely protected*, than by means of those angry outbreaks of national passion which have hitherto rendered the history of mankind a record of brutal struggles and human butchery.

THE ADMINISTRATION OF INTERNATIONAL JUSTICE.

International Law must be thoroughly public and general in its procedure. Its enforcement will have reference to it according as it consists of international *civil* or *criminal* law.

The administration of International Civil Law, under which is included most matters affecting commerce, intercourse, sanitary regulations, and so forth, must be carried out in accordance with the principles of common law.

The administration of International Criminal Law will relate partly to infractions of a *possessive* character, and partly to those of an *organic* nature. The former consist of offences or acts of violence against the territory and property of a nation. The latter include offences against the subjects of a State and outrages against the general dignity and conscience of humanity, as, for example, the encouragement or sanction of slavery, or public religious persecution.

THE RE-ESTABLISHMENT OF OUTRAGED INTERNATIONAL LAW.

The re-establishment of outraged international law by means of punishment inflicted upon the offending parties is an absolute necessity, for without it the world would be plunged into social anarchy and demoralization.

This international punishment must be of the following description:

Either *pecuniary fines*, levied by the International Tribunal of Awards, and secured by the eventual *sequestration* of the territory and soil of the offending States, or by *distraint* on its moveable property.

Or, the *inhibition of all previously stipulated services to, and intercourse with, the State under sentence*, on the part of the other nations constituting the Common Tribunal.

Or, an *International Military Execution*, where such an extreme course may become necessary for the suppression of a common peril, or for the carrying out of the united sentence of a Convention of the chief communities of nations, and of the legalized supreme Tribunal of International Award.

It may be remarked, in conclusion, that the procedure of an International Tribunal must be absolutely independent, although constituted on the fundamental principles of ordinary legal procedure. An historic basis for the constitution of such procedure (although some alterations therein may be necessary) has already been furnished by the Arbitration regulations of the former German Diet, adopted on the 16th of June, 1817.*

THE LAW CLERKS ASSOCIATION.

A meeting of the Central Committee was held last evening at their rooms, 207, Great Brunswick-street. Mr. Farrelly presided, and Messrs. Jervis, Flynn, Devereux, Power, Sheridan, and Coyle, attended. The business was confined to passing the treasurer's accounts, to making arrangements for the forthcoming opening of the library and reading-room, preparing the catalogue of books, and selecting the newspapers and periodicals to be taken into the reading-room.

UNQUALIFIED PRACTITIONERS.

Recently at the Manchester City Police Court, Robert Dalton Law was charged, on a summons under the 37 & 38 Vict. c. 68, s. 12, with practising as an attorney without being in possession of the proper certificate.

Mr. Coatlupe, deputy chief constable, said that on Wednesday, September 16, the defendant was defending a prisoner named Lycett, and was practising before Mr. Headlam as an attorney. From inquiries made, witness believed he held no certificate at the time, and Mr. Headlam ordered proceedings to be taken. Witness asked the defendant if he had a certificate, and he made some reply, which witness understood to be "I have," or it might have been "I have not." At all events, defendant left the prisoner standing in the dock and disappeared from the court.

Mr. Watson, who was for the defence, said Mr. Law had held a certificate formerly for a great many years, and on this particular occasion he was asked by Mr. W. Bennet, who practised in the city court and other courts, to take a case for him. He (Mr. Watson) held a note from Mr. Bennet to this effect. Mr. Law, however pleaded guilty, and therefore it would be necessary to say no more than that he (Mr. Watson) believed the fact was explained in this way: Mr. Bennet asked him to hold a brief, and conduct a case for him, and Mr. Bennet assured him (Mr. Watson) that Mr. Law did not receive fee or reward, and merely took the case at the request of Mr. Bennet as a friend. In such a case, therefore, he (Mr. Watson) held that, although in strict law the defendant might be considered as acting as an attorney, he was not doing so for the prisoner so as to entitle him to claim any fee or reward for it.

Mr. Bennet was sworn, and he said the facts, as stated by Mr. Watson, were correct, and in the case in point the defendant had not received one farthing.

Mr. Rickards said the bench had given the case every consideration, but to his own knowledge the defendant had practised as an attorney in the court, and it appeared without a certificate, for several years. This was the first case which had arisen in that court under the recent Act, and but for the circumstances stated by Mr. Bennet, the full penalty of £10 would have been inflicted. The defendant would be fined £5, with the alternative of one month's imprisonment.—*Manchester Guardian.*

NOTES OF ENGLISH DECISIONS.

(From the *Law Times*.)

ARBITRATION—ADDITION OF TERMS TO THE SUBMISSION BY CONSENT.—The arbitrator, to whom a question of disputed compensation is referred under the Lands Clauses Consolidation Act 1845, has no power to state a special case for the opinion of a Superior Court. The agreement of the

* Vide the works of C. F. Eichhorn, "*De Differentia inter Austregas et Arbitres Commissarios*" (Göttingen, 1802); and of Von Leonhardi, '*Das Austrägalverfahren des Deutschen Bundes*, 1838."

Digitized by Google

parties to a reference under the Lands Clauses Consolidation Act 1845, has no power to state a special case for the opinion of a Superior Court. The agreement of the parties to a reference under the Lands Clauses Consolidation Act 1845, to give additional powers to the arbitrators or umpire not authorised by nor specified in that Act, does not make it cease to be a reference under that Act, nor does it bring it within the terms of sect. 5 of the Common Law Procedure Act 1854, "a reference by consent of parties," so as to enable the arbitrators or umpire to state a special case: (*Rhodes and another* v. *The Airedale Drainage Commissioners*, 31 L. T. Rep. N. S. 59. C.P.)

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

A QUESTION FOR SOLICITORS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Annexed circular was sent me by a correspondent in London requesting to know whether at this side of the water it is considered professional. Perhaps some of your readers can say. I omit name at present.

Yours truly,

DUBLIN, *21st October, 1874.* A SUBSCRIBER.

"Dublin, Chambers, ———

"I beg leave to enclose my card and to state that I have made arrangements for transacting upon an equal division of profits such legal business in Ireland as may be entrusted to me by members of the legal profession in England.

"Having carried on business in my present offices as above for upwards of twenty years, and enjoyed a considerable practice in Ireland during that period, and being personally well known to many of the judges on the Irish Bench and the most eminent members of the Irish Bar, I need scarcely say that I can furnish unexceptionable references as to my experience and capacity.

"I remain, yours very faithfully,

———

"N.B.—First-class English references furnished when required. Business transacted in any part of Ireland at the same scale of charges, and all moneys received remitted same day."

VOID POST OFFICE ORDERS, *alias* UNCLAIMED POST OFFICE ORDERS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—It was stated in the *Times* of the 30th ult. that the amount received by the Post Office for "Void Post Office Orders" during the past year amounted to £2,078 17s. 7d.

The expression "Void Post Office Orders" is rather ambiguous, it would be far better to say "Unclaimed Post Office Orders," for it is a fact that if from some cause or other parties do not apply to the Post Office for payment of Orders, that Department makes no effort whatever to discover the parties who should receive the amount, neither do they return the money to those who took out the Post Office Order.

Before a Post Office Order is issued, a party is required to give his or her name and address in full, as well as the name of those to whom it should be payable, and if incorrect instructions have been given, or any other circumstance arises by which the money is not paid by the Post Office, why is not the money returned to those who send it?

Letters addressed to parties who cannot be found are in due course opened, and, as far as possible, returned to the sender; why should not the same attention be paid to those who send Post Office Orders?

It must be evident that the lower classes are especially liable to suffer loss by this singular practice of the Post Office.

In cases where Post Office Orders are not claimed within a certain period, and communications to this effect are made to those who sent the orders, a small charge might be made by the Post Office for this extra work, but to take the money as though it had been legitimately earned cannot be justified.

Whilst on the subject, I may add it is commonly reported that considerable sums are often found in letters inaccurately addressed, and that money and other valuables have fallen out of letters. Is nothing done to discover to whom such belongs?

On reference to page 9 of the 20th Report of the Postmaster-General on the Post Office, the number of letters posted without any address last year (1873) was about 18,700, nearly 500 of which contained cash, cheques, or bills of exchange, of an aggregate value of more than £13,000. The Report does not state what became of this large amount.

It would be well to know what becomes of unclaimed money in the Post Office Savings Banks; doubtless, some parties lodge money in the Post Office Savings Banks without the knowledge of their families, and should an accident happen to them by which they lose their lives, is there any process by which the relatives could hear of such a circumstance, or would these amounts be also absorbed by the Post Office without any effort to find the parties to whom such is justly due?

I am astonished to read in page 17 of the same Report the following:—

"Of the Revenue from Money Orders £5,000 was derived from 'Unclaimed' Orders, a sum which included a balance of nearly £1,500 from the old 'Void Order Fund,' which, until 1871, had been used in aiding the Officers of the Department to insure their lives, but which in that year, with the exception of the £1,500, was paid into the Exchequer."

It seems very strange that it did not occur to the Post Office Authorities that the £5,000 was not theirs to do what they pleased with, or to insure the lives of their officers.

There is a great discrepancy between £5,000 (minus the £1,500) and the £2,078 quoted in the *Times*; in fact, on referring to page 45 of the last Report, the amount of "Unclaimed Money Orders" was as follows:—

1871	£20,707.
1872	3,502.
1873	5,167.

This latter, as has been stated, includes a balance of £1,500 left from the old "Void Order Fund;" how far back is not stated. neither does this Report state what was the annual receipts under this head prior to 1871, although the Report itself goes back to 1864.

Further comment by me is unnecessary, but steps should be taken to have a list of all unclaimed Post Office Orders published if the parties who sent the orders cannot be found.

I am, Sir,
Your obedient Servant,
HENRY ALLNUTT.

200, FLEET-STREET, *9th Oct., 1874.*

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

ATTORNEYS' AND SOLICITORS' APPRENTICES.

The SESSIONAL EXAMINATION will be held on *Friday*, the *6th day of November, 1874*, at 10 30 o'clock, a.m.

Gentlemen proposing to be examined will have to leave their names at the Secretary's Office, Solicitors' Buildings, Four Courts.

By order,

WILLIAM HICKSON,
Professor.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *from 4th August to 29th September*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Aug. 4	Edward Oliver Wheeler, owner; *Henry Egan, petitioner*	Sale	Kilkenny	68 19 1	*M. Shortall*
„ „	John Henry Knox, owner and petitioner	Sale	Mayo	1,005 19 1	*Keily & Lloyd*
„ „	Thomas Cooke, owner; *George Riddick, petitioner*	Sale	Dublin	34 0 0	*George Riddick*
„ 7	Robert J. Kennedy and another, trustees for sale under settlement on marriage of Humphrey Butler with Eliza M. Tewart, and Frederick B. Molineux Montegomerie and another, trustees for sale under settlement on marriage of Frederick Townsend with Mary E. Butler, owners; *Said Frederick B. M. Montegomerie and another, petitioners; and Partition Act,* 1868	Sale	Roscommon	300 15 6	*T. A. Cusack*
„ „	Richard M'Cartie, owner; *Daniel M'Cartie, petitioner*	Sale	Cork	Not stated	*C. J. Daly*
„ 11	George M'Donagh, owner; *Margaret M'Kinstry, petitioner*	Sale	Down	42 10 0 Tenement valuation	*Alexander M'Combe*
„ 14	Christopher Flynn, owner; *Nathaniel Bank, petitioner*	Sale	Dublin	In owner's possession	*Michael Larkin*
„ „	Elizabeth Smithwick and others, owners; *Elizabeth Smithwick and others, petitioners; and Partition Act of* 1868	Sale	Tipperary	162 1 8	*F. A. Barlow*
„ 18	Sir Richard Wallace, Bart., M.P., owner and petitioner	For declaration of title	Down and Antrim	56,903 4 0	*Longfield, Davidson, & Kelly*
Sept. 1	John F. Kirkwood, owner and petitioner	Sale	Mayo	820 6 2	*R. P. Bourke*
„ 4	George Kelly and Mary Kelly, his wife, owners and petitioners; and Partition Act of 1868	Sale	Dublin	49 0 0	*Casey & Clay*
„ 8	Mary Smith, owner; *Robert Seton, petitioner*	Sale	Queen's Co.	25 0 0	*Orpen, Sons, & Sweeney*
„ „	Michael Humphreys Moorhead, owner and petitioner	Sale	King's Co. and Queen's Co.	77 19 6	*William Pigott*
„ 11	Joshua A. Macklin, owner; *Thomas Hodgens, petitioner*	Sale	Wexford	Not stated	*J. G. Rynd*
„ „	Maria Corr, owner and petitioner	Sale	Roscommon	25 0 0 A grazing rent	*David Ferguson*
„ 15	John Berry, owner; *Joseph Morton, petitioner*	Sale	Dublin	89 7 7	*Casey & Clay*
„ „	James Lendrum, owner; *Margaret E. Hamiltion, petitioner*	Sale	Tyrone and Fermanagh	677 16 10	*Andrew Elliott*
„ „	William A. Goggin and another, owners; *Belinda Delmege, petitioner*	Sale	Limerick	436 0 0	*David Ferguson*
„ 18	John Whiteford and others, owners; *Henry Odlum, petitioner*	Sale	Dublin	86 0 0	*John Roe*
„ „	Emily G. D. Studdert and another, owners; *Scottish Amicable Insurance Co., petitioners*	Sale	Limerick	493 12 4	*P. J. Mayne*
„ 25	Assignees of John Rowan, Wm. Rowan, and Robert Rowan, owners; *Provincial Bank, petitioners*	Sale	Antrim	370 15 0	*Samuel Black*
„ „	Ellen Doyle, owner; *Edward Long, petitioner*	Sale	Cork	Not stated	*F. J. Hastings*
„ 29	Cornelius Crowley and others, owners; *Patrick Crowley, petitioner*	Sale	Cork	18 15 0 Poor Law valuation	*F. R. Wright & Son*
„ „	Rose M'Henry and others, owners; *D. M'Callion, petitioner*	Sale	Antrim	In owner's possession	*A. Caruth*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Joseph Andrews	Prove debts and vouch assignee's account	*Larkin & Co.*
Michael Farrell	Audit assignee's acct.	*Lett*
John Farrell	Prove debts	*M'Govern*
James Quiry	do	*Casey & Clay*

TUESDAY.

Before the COURT, at 11 o'clock.

Private arrangement	1st sitting	*Hogan*
do	do	*Perry & Co.*
do	do	*White*
do	do	*Jones*
do	do	*Casey & Clay*
do	do	*Mathews*
do	do	*Hunter*
Arthur G. Hay	Composition	*Mathews*
Ebenezer E. Brown		*Larkin & Co.*
Edward J. Wilson	1st public sitting	*Neilson*
William H. Lynch	Final examination	*Cronhelm & Co.*
John Molloy	do	*M'Evoy*
Malachie Murphy	do	*Hamilton & Craig*
John S. Maguire	do	*Oldham & Eaton*
Mason and Loobie	do	*Casey & Clay*
Patrick Heeny	Final examination and examine witnesses	*Lawler*
Patrick Mooney	Final examination	*Fottrell*
William Walker	Prove charge	*Benner*
John Byrne	do	*Fottrell*
Ludlow Berkeley	do	*Fottrell*

WEDNESDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

F. Barton	Prove debts	*Leachman*

THURSDAY.

Before the CHIEF REGISTRAR, at 12 o'clock.

James Keegan	Vouch account	*Ryan*

FRIDAY.

Before the COURT, at 11 o'clock.

Private arrangement	1st sitting	*Cavanagh*
do	do	*Mathews*
do	do	*Mathews*
do	do	*Casey & Clay*
Patrick Mason	Composition	*Kernan*
Thomas O'Brien	do	*Scallan*
Patrick Gordon	1st public sitting	*Walsh*
Ellen Gordon	do	*Walsh*
Geoffrey Davis	do	*O'Connor*
Richard Waring	do	*Browning*
Daniel Nolan	do	*Larkin & Co.*
Patrick O'Hagan	do	*Jones*
Thomas O'Brien	Final examination	*O'Connell*

Before the CHIEF REGISTRAR, at 12 o'clock.

Thomas O'Brien	Prove debts	*Scallan*
H. J. Hall	do	*Cronhelm & Co.*
Alexander Gray	do	*Cronhelm & Co.*
Patrick Nolan	Reference	*Stephens*

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	OCTOBER Fri. 16	Sat. 17	Mon. 19	Tues. 20	Wed. 21	Thur 22
	Government.						
—	3 p c Consols	91⅜	—	—	—	91¼	91⅛
—	New 3 p c Stock	90⅞–1	90⅞–1	90⅞–1	90⅞ 91	90⅞	91–0⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	108	108	108¼	108⅝
—	4 p c Oct. '88 } Bk. of Irel.	102	—	—	—	102	—
	Banks.						
100	Bank of Ireland	310	—	310½	—	311	311
25	*Hibernian Banking Co.*	—	—	—	61⅛	—	61⅛
20	*London and County*	—	—	—	—	—	64⅛
15	*London Joint Stock*	—	—	50⅜	—	50⅞	—
20	*London and Westminster*	—	—	78⅜	—	78⅜	—
3½	*Munster Bank (Limited)*	8⅞	—	9	—	—	—
30	*National Bank*	66–5⅞	65⅞	66	65⅞–6	65⅞–6	—
15	*National of Liverp'l (Ltd)*	14⅜	14⅞	—	—	—	—
25	*Provincial Bank*	—	90	—	90⅞	90	90⅜
10	Do. New	—	—	36⅛	—	—	—
10	*Royal Bank*	31	—	30⅞–1	—	—	30⅝
15	*Union of London*	—	47⅜	—	—	—	—
	Steam.						
100	City of Dublin	—	108	—	—	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	55½
	Mines.						
1	Killaloe Slate Co. (lit'd)	—	—	—	16/-	—	—
2½	Wicklow Copper	—	—	—	—	2⅞ 3	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅜	—	10⅜	10⅞	—	—
10	Dublin Tramways	6⅞ 7	—	7–⅛	7–⅛	—	—
100	Grand Canal	—	—	—	—	54	—
25	*National Assurance*	—	46	46–½	46½	46½	46½
9-4-7	*Patriotic Assurance*	11	10⅞	10⅞	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	69–½	69½	69½
20	Cork, Blackrock & Passage	10	—	—	10	—	—
100	Dublin and Belfast Junct.	90	—	—	—	90	90½
100	Dublin and Drogheda	—	—	114	115	115	—
100	Dublin, W'klow, & W'ford	—	77½	—	—	—	77½
100	Gt. Northern and Western	—	—	—	99	—	—
100	Gt. Southern and Western	—	109	109	109	108⅞	109
100	Midland Gt. Western	83	—	82⅞	—	83⅛	82½
50	Waterford and Limerick	—	—	3▸	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	96½	—	—	—
100	Dublin & Meath – 1st, 5 p c	52	—	—	—	—	—
100	D., W., & W., 6 per cent	—	—	—	130½	—	—
50	D., W., & W., 5 p c (1860)	—	55½	55½	—	55½	—
100	Gt. South'n & West'n 4 p c	98–7⅞	—	98	—	—	97⅞
100	Watfrd. & Ct'l Irel, 6 p c rd	—	—	77	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	50½
50	Do., new red, 1860–72, 5 p c	50⅜	—	50⅜	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	97	97	97	—	—	—
—	Dublin & Drogheda 4 p c	97½	—	—	97½	—	—
—	D., W., & W., 4½ p c	—	100	—	100	100	100
—	Gt. South'n & West'n, 4 p c	—	—	99½	99½	—	99½
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	100½
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	100½
—	Do., 4½ p c	—	—	103⅞	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4½ per cent., 15th October, 1874.
Of Deposit—2½ per cent., 15th October, 1874.

Name Days—October 29th, and November 12th, 1874.

Account Days—October 30th, and November 13th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

EATON and M'DONNELL.—October 17, at the Church of the Assumption, Dalkey, by the Rev. Robert Eaton, C.C., St. Agatha's, North William-street, Stephen Vincent Eaton, Esq., second son of the late Stephen Eaton, solicitor, to Mary Agnes, only surviving daughter of Bernard M'Donnell, Esq., Galveston, Texas, U.S.A.

JUDGE and SMITH—September 16, at Fleet-street M.E. Church, by the Rev. B. M. Adams, William Quan Judge, counsellor-at-law, to Ella Miller, daughter of Joseph Smith, Esq., both of Brooklyn.

DEATHS.

ARCHER—October 18, at Camden-street, William Archer, Esq., aged 82 years, last surviving son of William Archer, formerly of same street, solicitor, and nephew of the late Rev. Forster Archer, Inspector-General of Prisons in Ireland.

ARMSTRONG—October 10, at his residence, Clonmore, County Dublin, John Armstrong, Esq., barrister-at-law, aged 72 years.

HITCHCOCK—October 18, at Rathmines, Frederick William Hitchcock, Esq., aged 31 years, youngest son of the late Robert Hitchcock, Esq., Master of the Court of Exchequer.

LEAHY—October 13, in the 64th year of his age, suddenly, at Newcastle, County Limerick, John Leahy, Esq., Q.C., of South Hill, Killarney, Chairman of Quarter Sessions for the County of Limerick.

SHORTT—October 20, at No. 37 Harcourt-street, after a few days' illness, Frances, daughter of John Shortt, Esq., barrister-at-law.

Digitized by Google

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF WEXFORD AND KILKENNY.

ADJOURNED SALE.

SALE,

On FRIDAY, the 4th day of DECEMBER, 1874.

In the Matter of the Estate of Christian Wilson and Benjamin Torton Wilson, of Sleedagh, in the County of Wexford, Esquires, Owners and Petitioners

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 4th day of DECEMBER, 1874, At Noon, At the Landed Estates' Court, Dublin,

The following Estates, held in Fee and Perpetuity, situate in the Counties of Wexford and Kilkenny, In Eleven Lots (being the Lots remaining Unsold on the former Rental in this Matter):—

LOT No. 1—Part of the Lands of Sleedagh, in the Barony of Bargy, and County of Wexford, held in Perpetuity, consisting of the Mansion House and Demesne Lands and Plantations of Sleedagh, containing 171a 1r 25p, statute measure, or thereabouts, and of the estimated net yearly value of £334 2s 8½d.

LOT No. 2—Other Part of Sleedagh, held in Perpetuity, containing 95a 0r 36p, statute measure, or thereabouts, and producing a net yearly rental of £107 19s.

LOT No. 3—Part of the Lands of Cherriestown, in same Barony and County, held in Perpetuity, containing 69a 3r 34p, statute measure, or thereabouts, and producing a net yearly rental of £77 10s.

LOT No. 4—Other part of the Lands of Sleedagh, and part of the Lands of Cherriestown, in same barony and county, held in perpetuity, containing 55a 1r 1p, statute measure, or thereabouts, and producing a net yearly rental of £60 5s 10d.

LOT No. 5—Part of the Lands of Scar, in the same barony and county, held in fee, containing 85a 1r 22p, statute measure, or thereabouts, and producing a net yearly rental of £81 1s.

LOT No. 6—Other Part of the Lands of Scar, in same barony and county, held in fee, containing 68a 2r 38p, statute measure, or thereabouts, and producing a net yearly rental of £52 16s 4d.

LOT No. 7—Part of the Lands of Rochestown, in same barony and county, held in fee, containing 98a 1r 16p, statute measure, or thereabouts, and producing a net yearly rental of £94 17s 2½d.

LOT No. 8—Part of the Lands of Kilmannan, in same barony and county, held in fee, containing 45a 0r 5p, statute measure, or thereabouts, and producing a net yearly rental of £72 17s 2d.

LOT No. 9—Part of the Lands of Regan, in same barony and county, held in fee, containing 76a 2r 32p, statute measure, or thereabouts, and producing a net yearly rental of £57 17s 6d.

LOT No. 10—Part of the Lands of Ballylibernagh, in same barony and county, held in fee, containing 82a 2r 31p, statute measure, or thereabouts, and producing a net yearly rental of £96 2s 1d.

LOT No. 11—The Lands of Rossroe, in the barony of Gowran, and county of Kilkenny, held in fee, containing 147a 0r 5p, statute measure, or thereabouts, and producing a net yearly rental of £65 14s 8d.

Dated this 25th day of July, 1874.

R. DENNY URLIN, Examiner.

NUNN and JONES, Solicitors.

DESCRIPTIVE PARTICULARS.

The Wexford Estate lies well together, about 4½ miles from the Town of Wexford, from which there is direct communication with Dublin by Railway, and within 5 miles of the sea-coast, and 6 miles of the new Harbour at Rosslare.

The Lands of Rossroe are situate 4 miles from Thomastown, and are occupied by two tenants.

The Mansion House on Sleedagh is a stone edifice, handsomely situated, and the Demesne Lands have much valuable and ornamental timber thereon.

The projected Railway from Rosslare to Waterford will pass nigh the Demesne, and through the Lands of Kilmannan.

The purchaser will be entitled to immediate possession of the Lands on hands.

The tenants on these Estates are punctual in the payment of their rents.

Some old Leases have lately expired, and an increase in the rental may be calculated upon, as other old Leases have only a short time to run.

Proposals for the purchase of any of the Lots will be received by the Solicitors having the carriage of the Sale, up to the 10th day of November, 1874, and submitted to the Judge for approval.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Inn's-quay, Dublin; to

Messrs. JOHNS, HEWITT, and JOHNS, Solicitors, 12, Gardiner's-place, Dublin, or 29, High-street, Belfast;

LEONARD MORROGH, Esq., Solicitor, 5, Great Denmark-street, Dublin; or to

Messrs. NUNN and JONES, Solicitors having the carriage of the Sale, 6, Dawson-street, Dublin. 578

LANDED ESTATES' COURT, IRELAND.

COUNTY OF DUBLIN.

SALE,

On FRIDAY, the 6th day of NOVEMBER, 1874.

In the Matter of the Estate of William Noble, Owner; Nicholas Lynch, Petitioner.

TO BE SOLD, On FRIDAY, The 6th day of NOVEMBER, 1874, At the Hour of Twelve o'clock noon, Before the Honourable Judge Flanagan,

At his Court, Landed Estates' Court, Inn's-quay, In the City of Dublin, In One Lot,

The Dwelling-house and Premises now known as No. 2 Thornville, Rathgar-avenue, in the Barony of Newcastle, and County of Dublin, held under lease dated 14th February, 1868, for 393 years, at the yearly rent of £3, and estimated to produce a yearly profit rent of £27.

Dated this 17th July, 1874.

H. R. GREENE, Chief Clerk.

For Rentals and further particulars apply at the Landed Estates' Court, Four Courts, Inns'-quay, Dublin; or to

THOMAS J. FURLONG, Solicitor having carriage of Sale, 23, Eustace-street, Dublin. 535

LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE OF DECLARATION OF TITLE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of Hans Thomas Fell White, Owner and Petitioner.

WHEREAS the said Hans Thomas Fell White has made application to the Landed Estates' Court, Ireland, for a Declaration that he has a good and sufficient Title in fee-simple to the Lands of Kilburne, otherwise Kilborne, otherwise Kilbeirne, otherwise Glashhouse, commonly called the Halfploughland of Kilburn, situate in the barony of Fermoy, and county of Cork.

Now, this is to give Notice that the Court has investigated the Title to the said lands, and has decided that the said Hans Thomas Fell White has a good and sufficient Title in Fee to the said lands and premises, subject only to the yearly rent-charge or sum of £1 late currency of Ireland, being equal to the sum of 18s. 5d. present currency, created by a former conveyance of the said lands, made by Indenture dated the 17th of April, 1667, made between Ion Grove, Esq., on the one part, and John Grove, Gentleman, on the other part, which rent is payable for 1000 years, computed from the date of the said Indenture, and subject to the easements, set forth in the Rental; and to the Incumbrances set forth in the Schedule of Incumbrances, which Rental and Schedule of Incumbrances are now lodged in my office, and may be inspected by any person, and not subject to any leases or tenancies. And further take notice, that a draft Declaration of such Title has been settled, and may be inspected in my office; and that on the expiration of one month from the publication hereof, the Court will proceed to sign such Declaration, subject only as aforesaid. And all persons objecting to such Declaration, or having any Tenancy, Claim, or Incumbrance, not admitted in said Rental and Schedule, are hereby required, within the said period of one month, to show cause as they may be advised against the signing thereof; and no appeal against such Declaration of Title on behalf of any person, will lie after the signature and registration of the same.

Dated this 19th day of October, 1874.

R. DENNY URLIN, Examiner.

JOHN MAC SHEEHY, Solicitor having carriage of Order, 35 Gardiner's-place, Dublin. 580

STATUTORY NOTICE TO CREDITORS.

In the Goods of Joseph Holloway, late of Dundrum, in the County of Dublin, and formerly of Arran-quay, in the City of Dublin, Baker, deceased.

NOTICE is hereby Given, pursuant to the statute 22nd and 23rd Victoria, cap. 35, intituled "An Act to further amend the Law of Property and to Relieve Trustees," that all persons claiming to be Creditors of, or who have any claims or demands against the Estate and Effects of the said deceased—who died on the 8th day of September, 1874, at Arran-quay aforesaid—are hereby required to furnish particulars in writing of such claims or demands, on or before the 1st day of DECEMBER next, to the undersigned, as Solicitor for James Hanratty, of Lincoln-lane, in the City of Dublin, commission merchant, one of the executors named in the Will of said deceased, to whom Probate of the Will of the testator was granted forth of the principal Registry of the Court of Probate in Ireland on the 8th day of October instant.

And take notice that after the said 1st day of DECEMBER next the said executor will proceed to distribute the assets of said deceased among the persons entitled thereto, having regard only to the claims and demands of which he, or I, his Solicitor, shall then have had notice.

Dated this 9th day of October, 1874.

JAMES GOFF, Solicitor for said executor, 16, Bachelors'-walk, Dublin. 563

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, October 24, 1874.*

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, OCTOBER 31, 1874. No. 405.

IRISH MUNICIPAL ELECTIONS.—II.

Some weeks ago we directed attention to the complete revolution in the mode of conducting municipal elections in Ireland, effected by recent legislation, both as regards the nomination and the taking of the poll. On the one hand we showed that, by the extension to Ireland of certain provisions of the Municipal Corporations Act, 1859, and the repeal of the various corresponding provisions in the Towns Improvement Act, 1854, the Lighting and Cleansing Act, 1829, &c., &c., a wholesale assimilation of provisions as regards the nomination has been introduced; while, on the other hand, as regards the taking of the poll, the application of the provisions of the Ballot Act to municipal as well as parliamentary elections has entirely altered the practice. We then deferred for a future occasion the consideration of the mode of impeaching such election on the grounds of irregularity or improper practice thereat. Here again, we shall find, that partial assimilation to English procedure is now the order of the day.

By the 20th section of the Irish Local Government Act (34 & 35 Vict. c. 109), which received the royal assent on the 31st August, 1871, it is enacted that—"Where any person who voted, or who was qualified to vote at any election of members of the governing body of any town, thinks that there was, in respect of the election of any member of such governing body, *any undue or unlawful proceeding*, or, that such member was not at the time of such election duly qualified to act as such, it shall be lawful for such person, *within one month after such election*, to present a petition to the Court" (that is, the Irish Court of Common Pleas), "complaining of such undue or unlawful proceeding, or that such member was not duly qualified as aforesaid." The section then provides certain formalities to be pursued, and gives jurisdiction to the Court or a judge to adjudicate upon the validity of the election; but it is to the clear and comprehensive language of the earlier part of the section that we wish to direct particular attention. This Act extends to Ireland only. One year later a statute was passed—namely, the Corrupt Practices (Municipal Elections) Act, 1872)35 & 36 Vict. c. 60)—which imposes new disqualifications, and by section 12 enacts that "The election of any person at an election for a borough or ward may be questioned by petition before an election court constituted as hereinafter in this Act provided, and hereinafter in this Act referred to as the "Court"—

(1) "On the ground that the election was, as to the borough or ward, wholly avoided by general bribery, treating, undue influence, or personation.

"Or" (2) "on the ground that he was at the time of the election disqualified for election to the office for which the election was held.

"Or" (3) "on the ground that he was not duly elected by a majority of lawful votes."

And the section concludes with the following important clause:—"An election shall not, except in the manner provided by this Act, be questioned upon an information in the nature of a *quo warranto*, or, by or in any process or manner whatsoever *for a matter for which it might be questioned under the provisions of this Act.*" It is important to observe that this Act did not become law until the 6th August, 1872, one year later than the Irish Local Government Act; that it extends to England as well as Ireland; that it is the first and only Act, so far as regards England, establishing a tribunal for the trial of municipal election petitions, whereas in Ireland the more comprehensive provisions of the 20th section of the Local Government Act already existed; and, lastly, that the exclusive jurisdiction of the Election Court given by the later Act is restricted to petitions founded upon the three classes of grounds enumerated therein (*vide supra*).

The result of these enactments, as regards Ireland, is that the validity of every Irish municipal election may now, under the jurisdiction given by the Local Government Act, be tried by election petition to the Common Pleas, and that it must be so tried, if at all, in all cases falling within the above three classes; in all other cases the jurisdiction of the Queen's Bench remains intact. The question was raised even before the passing of the said Act of 1872, whether the jurisdiction of the Queen's Bench by information in the nature of a *quo warranto* had been taken away in such case by the Local Government Act: *the Queen* v. *Franklin*, Ir. R., 6 C. L. 239; the Court, however, were unanimously of opinion that they had jurisdiction, but, in granting the order, pointed out that it was the special circumstance in that particular case of the legislation referred to being then so recent that induced them, in the exercise of their discretion, to grant the order. "There is no doubt," says Fitzgerald, J., "that our jurisdiction cannot be taken away except by express words, and there are none such. It seems right, too, that the old common law jurisdiction of this Court, with all its incidents of appeal, &c., should be preserved intact; for otherwise the gravest cases, involving important public rights, would be left to the determination of a single judge in a summary manner, and without appeal. *I fully admit that, when the Legislature has given facilities for proceeding in a cheap and summary manner, and when a case arises in which there is no difficulty in fact or in law, it may be well to say to the relator, You had another remedy, speedier and cheaper, and therefore, in the exercise of our official discretion, we will not grant you liberty to proceed by* quo warranto." In the same year, and subsequent to that decision, the Corrupt Practices (Municipal Elections) Act was passed, and took away the jurisdiction of the Queen's Bench, as we have already pointed out, in certain classes of cases, chiefly involving questions of fact. As regards all other undue or unlawful proceedings at such elections, the Queen's Bench and election judges have still concurrent jurisdiction, and it is probable that in serious cases the former will still be frequently resorted to, as well as in cases where the validity of elections to fill up casual vacancies (*Queen* v. *Hampton*, 6 B. & S., page 933) is in question.

The importance of the twofold remedy consists in this, that the procedure by election petition is the simpler and cheaper in every case involving disputed facts, but that the petition must be presented within one month from the date of the election; on the other hand, the proceeding by information in the nature of a *quo warranto*, may possibly, if the Court, in its discretion, thinks fit to allow it, be commenced at any time before the end of the term following next but one, and for important cases allows an opportunity of appeal which does not exist in the other case. For instance, the case

Digitized by Google

of *Darley* v. *the Queen*, which is the leading case upon these informations, was ultimately decided by the House of Lords (12 Clerk & Finnelly's Reports, p. 520) on appeal from the Irish Court of Exchequer Chamber, on appeal from the Queen's Bench (2 Jebb & Symes' Reports).

The mode of proceeding by municipal election petition is now determined by the general rules of the Irish Court of Common Pleas, dated the 9th January, 1873, which purport to be made pursuant to the Local Government (Ireland) Act, 1871, and the Corrupt Practices (Municipal Elections) Act, 1872; they repeal all former orders. We have not space to particularise their various provisions as to the form of petition, mode of giving security, time and mode of trial, &c., &c., which are plainly enough stated, and correspond in great measure, but not entirely, to the English rules made under the latter Act.

BUILDING SOCIETIES.

On Monday next the Act of the late Session (37th & 38th of Vict., cap. 42) to Consolidate and Amend the Laws relating to Building Societies will come into operation, and effect some considerable alterations. The Registrar of Friendly Societies is to be Registrar under the Act, which has effect in the United Kingdom and Ireland. A definition is given of terminating and permanent societies, and provision is made to continue societies under the former Act. Societies are to be incorporated, and the enrolment to be sent to the Registrar. Any number of persons may establish a society under the new Act, either terminating or permanent, for the purpose of raising by the subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate by way of mortgage, and any society under the Act is to have power to hold land with the right of foreclosure, and may raise funds by the issue of shares, either paid up in full or to be paid by subscriptions. The land to be obtained by a society to be sold and converted into money. With respect to the liability of members, it is now declared that "the liability of any member of any society under this Act, in respect of any share upon which no advance has been made, shall be limited to the amount actually paid or in arrear on such share; and in respect of any share upon which an advance has been made, shall be limited to the amount payable thereon under any mortgage or other security, or under the rules of the society." There are 44 sections in the new Act, and a schedule of forms to be used in carrying the same into execution. The rules of a society are to be binding on the members and all persons claiming on account of a member. Officers are to give security and all surplus funds are to be invested. By one of the provisions the property of a society is to vest without a conveyance. The Court in this Act means in Ireland the Civil Bill Court, within the jurisdiction of which the office or place of meeting is situate.

COMMENCEMENT OF TERM.

Michaelmas Term will begin on Monday, and for the last week or fortnight the Four Courts have shown signs of awakening activity. The library is already filled, and even the Hall has its quota of lawyers. The promise of business is fair, not more than is usual, after the long inaction of the vacation, but still sufficient to prevent lawyers from despairing at their prospects. The Incorporated Law Society has made ample provision for the convenience of their members, by alterations in the Solicitors' Buildings. The coffee-room has been improved, and a very necessary step has been taken, in providing suitable accommodation for the reading-room and library, as well as the lectures and examinations which now go on each Term in that place. We wish the authorities (whoever they may be) would do as much for the Barristers' Library, which is as inconvenient, crowded, and ill-ventilated, as ever—even the clock in the Hall has not been set right; we wonder who is at fault.

NOTANDA.

Habeas corpus ad testificandum; trial of issues in Court of Bankruptcy; witness in prison.—Motion for a writ of *habeas corpus*, to bring up William Hancock Smith, for the purpose of being examined as a witness on the trial of Cracroft *v.* J. W. Smith, before the Court of Bankruptcy. The witness was a prisoner in the gaol of Belfast, undergoing a sentence of imprisonment for having conspired to defraud the Belfast Bank. The present application was made on behalf of the defendant in the pending issue. Having been served with a debtors summons at the suit of Cracroft, claiming £32,495 12s., he had applied to have same dismissed, on an affidavit denying the indebtedness. *Miller*, J., had ordered the question to be tried before the Court and a special jury; and counsel for the defendant had advised that it was necessary that the witness, who could give material evidence, should be examined on defendant's behalf. *Monroe*, in support of the motion.—[Fitzgerald, J.: Has the Court of Bankruptcy no power to compel the attendance of the witness?] It has not.—Fitzgerald, J.: Then you may take the order (*In re W. H. Smith*; Con. Ch., Oct. 16, 1874).

L. & T. Act, 1860, *s.* 70; *writ of restitution; jurisdiction.*—Motions that writs of restitution should issue, under the L. & T. Act, 1860, s. 70, to restore to Michael Hogan and Patrick Hogan, the respective defendants, or their assignees, the lands and premises respectively taken possession of, and that it be referred to Master Burke to take an account of what is due to plaintiffs, respectively, for rent and arrears of rent of the said lands and premises, together with the costs of the ejectments, and also to take an account of what the plaintiffs made, or what, without fraud, deceit, or wilful neglect, might have been made of the lands and premises, respectively, from the 6th of July, 1874—that being the date on which the plaintiff entered into possession—up to the making of his report by the Master. The motions were made in two actions of ejectment in the Court of Common Pleas, in which judgments had been marked, and possession of the lands recovered under writs of *habere*. The sums of £23 15s. 7d. and £21 15s. 7d., as endorsed on the writs, had been lodged in the Court of Common Pleas. Before the execution of the *haberes* the lands had been sold under writs of *fi. fa.*, in other actions against the present defendants, and were purchased by the execution-creditor; and, on the same day that the *haberes* were executed, but previous to their execution, the sheriff signed the conveyance to the purchaser. The motions were originally moved, Sept. 4, before O'Brien, J., in Consolidated Chamber, when *Purcell*, Q.C., objecting that a judge of the Court of Queen's Bench had not jurisdiction in the matter, *Carton* (with him *Smyth*) *contra*, said: The point appears to be at least doubtful; and, in order to avoid risk, we should prefer the motion to stand for a Common Pleas judge. Whereupon, O'Brien, J., said that it would be better to let the motions stand for a judge of the Common Pleas. The motions, renewed accordingly, were now granted, ordering restitution to the defendants' assignees, with a

Digitized by Google

reference to the Master in the terms of the notice of motion (*Stackpoole* v. *Hogan and others*, *Same* v. *Same;* before MONAHAN, C.J., in Chamber, Oct. 20, 1874).

L. & T. Act, 1870, *s.* 59; *appointment of administrator for purposes of Act.*—Mr. Robert Netterville Barron moved, on affidavit, for an order, under the 59th section of the Land Act, 1870, appointing him administrator of the deceased tenant, limited to the purposes of the Act, under the following circumstances:—Mrs. Catherine Netterville Barron died on the 2nd May, 1874, having previously made her will, bearing date 10th September, 1860, whereby she appointed Mr. John Hunt, solicitor, and Pierse Netterville Barron her executors, both of whom had duly renounced. The interest of the testatrix in part of the lands of Ballynacourty terminated with her life, and the reversioner, Mr. Stephenson, had intimated his intention of bringing an ejectment on the title against the lands. As the predecessor in title of the deceased tenant had expended about three thousand pounds in buildings and other permanent improvements, it became necessary to raise a legal personal representative to the deceased tenant for the purpose of claiming compensation under the provisions of the Acts. The Chairman directed the affidavit to be filed with the Clerk of the Peace, and stated he would consider the application, which he subsequently granted (Dungarvan Land Sessions; before G. Waters, Q.C.; Oct. 21, 1874).

B. A. Act, 1872, *s.* 71; *witnesses residing in London; order for examination before London Court of Bankruptcy.*—*Carton*, on behalf of H. Emmanuel and others, creditors of the bankrupt, moved for an order and request, pursuant to the 71st section of B. A. Act., 1872, to examine the bankrupt and his wife, and other witnesses, touching the claim of W. Dear of London, made in this matter, and that the aid of the London Court of Bankruptcy be sought for that purpose. The creditors and solicitor of the bankrupt all resided in London, and the bankrupt himself was at present there residing. HARRISON, J., ordered that the said bankrupt, his wife, and any other witness or witnesses that may be necessary, be examined, at such time and place as the London Bankruptcy Court may appoint for the purpose, and further, that aid be sought from the said Court for the purpose of carrying out the order, and that said Court be requested to be auxiliary to this Court, and to hold such sittings, make such appointments, and issue such process, and render such aid generally as may be necessary to give effect to the order (*Re H. L. Dymoke*, a bankrupt; Ba., June 5, 1874. A like order in the same mattter, August 11, 1874).

Arranging debtor; opposing arrangement; *creditor who has not proved debt; claimant returned on schedule.*—This was an adjourned second sitting in an arrangement matter. It appeared that an order had been made in a suit in the Court of Chancery, in which the arranging debtor was defendant, ordering him to lodge the sum of £590 to the credit of the cause, and that he had not complied with that order. The plaintiffs in the Chancery cause were returned by the debtor, in his statement of affairs, as creditors for the sum so ordered to be lodged, with the observation, "Disputed." It also appeared that, on the second sitting, the claimant had sought to be heard, but that Mr. Clay, solicitor for the arranging debtor, objected; and, in consequence, the matter was remitted to the Chief Registrar, who declined to return the plaintiffs in the Chancery cause as creditors or claimants; but one of the claimants, having made an affidavit and put forward a claim in respect of the sum of £590 on another ground, the Chief Registrar had admitted him as a "claimant" for the sum of £590, thereunder, as surety for the debtor in an administration bond. *R. D. Murray*, on behalf of the claimant, at the adjourned second meeting, objected to the arrangement. *Purcell*, Q.C., on behalf of the arranging debtor, objected to the claimant being heard, because he was not a creditor, and not having proved a debt, was not entitled to be heard or to vote. MILLER, J.: He cannot vote for or against the arrangement; but I have always permitted, and will always permit any party who has a claim against the estate of an arranging debtor to be heard, as informing the Court, in objection to an arrangement, or composition after bankruptcy (*Re W. an Arrangng Debtor;* Ba., Oct. 16, 1874. See *re C. H.*, 7 Ir. L. T. R. 70).

Sale of goods by parol; subsequent memorandum of bargain, omitting price; parol evidence of price; part-performance.—In an action for non-delivery of a consignment of ten casks of paraffin oil, sold by the defendants to the plaintiff at 1s. 3½d. per gal., it appeared, at the trial, that the agreement for the sale at that price had been entered into by parol, but that a written memorandum of the bargain signed by defendants' agent, and not by the plaintiff, was subsequently drawn up, which, however, omitted to mention the price. It, also, appeared that after the contract there was a delivery by the defendants, and acceptance by the plaintiff, of a number of other casks consigned under the same contract, and which the plaintiff paid for at the price so stipulated. A verdict was had for the plaintiff, which the defendants moved to change into one for them.—*O'Brien*, Q.C., (*Morphy* with him) for the plaintiff. *Heron*, Q.C., (*Webb* with him) for the defendants.—*Per Curiam:* Treating the written memorandum only as the defendants' admission of a previous contract on the terms mentioned in it, there was no principle of the common law preventing the plaintiff from proving, by parol evidence, that there was another term which had been omitted; but, the omission of the price rendered the memorandum insufficient to take the contract out of the operation of the Statute of Frauds. There having been a part-performance of the contract, however, the case was taken out of the statute and the plaintiff was entitled to recover. *Acebal* v. *Levy*, 10 Bing. 376; *Sievewright* v. *Archbald*, 17 Q.B., 103, followed. (*Jeffcott* v. *North Brit. Oil Co.;* Exch., Nov., 5, 8, 1873).

ROYAL DEBTS.—As the expenditure of the present Heir Apparent has been lately made a subject of extensive public comment, it is not indecorous to direct attention to the effective, but perhaps not very well-known Act, 35 Geo. 3, c. 135, entitled, "An Act for preventing the accumulation of debts by any future Heir Apparent of the Crown." By this statute then, which applies to every heir apparent after 1795, within fourteen days after a separate establishment is made by Parliament for the Heir Apparent, a plan of this establishment and salaries is to be made out, and all payments on account of the establishment are to be entered in a book which the Commissioners of the Treasury are bound annually to inspect. An account is to be made out, and all creditors paid quarterly. Arrears, if any, are to be carried to the account of the next quarter, "provided that no arrears of any sort shall, on any account or under any pretence, be carried on for more than two quarters of a year after the quarter when the same shall accrue due, and that if it shall happen that any arrears that shall have been carried on for two quarters of a year, the same shall be discharged out of the sum due in the quarter to which such arrear shall be carried, in preference to all demands." Finally, all demands are to be delivered within ten days after the expiration of the quarter in which they accrued, "every such debt shall be barred at law and in equity," and all "securities for money given in consideration of any demand whereof the particulars in writing shall not be delivered," according to the Act, "shall be void to all intents and purposes."—*Law Times.*

Digitized by Google

DAMAGES FOR BREACH OF PROMISE OF MARRIAGE.

The question of damages for breach of promise of marriage may be regarded from three different points of view. They may be regarded as a fine upon the man or as compensation awarded to the woman, and this compensation may be considered either as a solace to her wounded feelings or as atonement for her worldly loss. Strictly speaking, we suppose the idea of punishment ought not to enter into our conception of damages; but, practically, in nine cases out of ten all three considerations are mixed up together in a juryman's mind in deciding what damages should be given. And though what is called "substantial justice" may frequently be done by such a process, yet there is no doubt that it is done quite at random and without the security of any recognized or logical principle. The guilt of the man, for instance, and the injury inflicted on the woman, are by no means always co-extensive. And if we apportion no damages to the one we may greatly exceed or fall short of the just requirements of the other. Damages, moreover, if correctly regarded as a punishment, should be heavy enough as a general rule to exercise a deterring influence. But this, it is needless to say, they seldom or never are. Few men, we imagine, who think it desirable to break off a matrimonial engagement are deterred from doing so by the prospect of being "made to pay for it." Damages are always calculated with reference to the defendant's means, and though sometimes they may seriously inconvenience him, they are never intended to be ruinous. As a deterring punishment, therefore, damages may be regarded as nearly worthless. Let us next consider the value of them as a compensation to the injured person. If we presume the plaintiff to be a lady, as is undoubtedly the case sometimes, the injury may, no doubt, be very serious, and, what is more, it is aggravated by the very means which she adopts for the redress of it. On the ordinary doctrine of chances, her feelings perhaps may have been more deeply engaged than those of a person in an inferior position of life; while her chances of another match are incomparably more injured by the publicity of an action for a breach of promise than the chances of a milliner or a barmaid. If a lady is driven to appeal to a jury in her own behalf, the difference should always be taken into account. But it should also be remembered that when any real injury has been sustained by a woman in this situation of life it is probably one which no ordinary damages could compensate, and that revenge and not compensation is probably the motive of the action. To a lady of delicacy, and one whose feelings have been deeply wounded, it would simply be an insult to talk of pecuniary compensation. Imagine, for instance, Lily Dale bringing an action of this nature against Adolphus Crosbie. If such a step therefore is taken at all by a woman in this rank of life, it must be from either pecuniary or vindictive motives. If the former, how much money would really compensate her for her blighted matrimonial prospects, after the blight has been aggravated by the exposure of a public trial? Certainly no sum which juries in the present day are in the habit of awarding. Of course we do not mean to say that no girl who has brought an action against one man could ever engage the attentions of another; and there are girls who would regard their damages as so much capital to trade on in the matrimonial market, though the husband they would buy with such coin would not, perhaps, be of the highest stamp. But we say this: that a girl who is entitled to be called a lady, who has determined that marriage is her career in life, and who suddenly finds that career cut short or seriously impeded by the misconduct of a male deceiver, is not to be compensated with twelve or fifteen hundred pounds—the most, in all human probability, she would ever get. But over and above all these considerations is the one paramount objection to recognizing in marriage at all any venal or mercenary element. We know that in all classes such considerations do largely intermingle with it. We know that in the lower classes they must inevitably do so. But that does not lessen the repugnance with which we see persons who pretend to superior delicacy treating marriage as a matter of traffic, and appraising the loss of a husband at so many pounds sterling. The theory is that marriage is a matter of affection; and, though the practice differs very widely, we have never heard any one maintain that it ought to differ. We believe, indeed, that we do injustice to those young ladies who are plaintiffs in suits of this nature by supposing them to be actuated by the motives now in question. We do not believe they look forward to damages as any adequate reparation for the wrong they have endured; and certainly if they did, the rate of damages usually awarded would be far below the requisite amount. The object generally is to punish and expose the man, the plaintiff forgetting in her heat how much more she punishes herself.

Finally, we come to a class of cases in which alone, as it seems to us, is any justification of the existing practice to be found. There is no doubt a certain rank of life in which marriage is regarded as a livelihood, in which girls cannot well afford to indulge in the luxury of sentiment; and a man who will keep a house over their heads and find them bread to eat has an independent value of his own, totally apart from the affection he may or may not have inspired in them. In such a case as this the man who has injured a girl's chances by monopolizing her society, and then deserts herself, has done her a substantial wrong, for which he is bound to make amends. The theory, of course, is that a girl in this position of life is bound almost to accept any decent offer which she gets, and not, like the young lady, to wait for the one man she can love. This simplifies matters very much. General rules, of course, must not be construed too strictly. Young ladies, if they lose one man, may learn to love another; and waiting-maids and shop-girls have hearts to lose as well as other people. But, on the whole, the difference we have indicated is a real one, and gives to the action for breach of promise when brought by a girl of the latter class a definite and practical character which is wanting to it in other cases. Of course, even in these cases it may be equally unfair to the man. But that is not the present question. The present question is the validity of damages, and how far they hit the mark at which they are generally aimed. The work-girl who has lost the chance of a husband has lost a chance on which it is neither absurd or indelicate to place a money value. The young lady who professes to be governed by higher and more spiritual considerations has not suffered such a loss; and her professions represent a theory which, though violated every day in practice, should still be encouraged to the uttermost.

To sum up, money cannot compensate for the ravages of disappointed or betrayed affection. It cannot do this for anybody, from the highest to the lowest. It can hardly compensate for the loss of worldly prospects among the class who call themselves ladies, except upon a scale which is all but unknown to juries. There is no present probability, at least we see none, of these actions diminishing in frequency; on the contrary, they seem upon the increase. But the conclusion from the above considerations, and from those which we lately laid before our readers, seems to be that, regarded as a means of obtaining compensation for an injury, damages are vastly unsatisfactory; and that, regarded as the measure of the man's misconduct, they are entirely delusive. Damages awarded in actions of *crim. con.* have long been regarded with well-merited disfavour. And damages in actions for breach of promise of marriage, though not open to objections of equal magnitude, are, with the exceptions we have named, open to objections of the same kind, and should rather be discountenanced than encouraged.—*Pall Mall Gazette.*

GEOGRAPHICAL NAMES AS TRADE-MARKS.

It is a general and well-understood rule that geographical names cannot be appropriated as exclusive trade-marks. This rule, however, must be understood as applicable only to residents of the same place, and under circumstances free from fraud and misrepresentation. Several very important and recent cases will serve to illustrate the doctrine, and are worth a brief examination.

In *The Brooklyn White Lead Company* v. *Masury*, 25 Barb. 416, the parties both manufactured white lead in the city of Brooklyn. The plaintiffs had carried on the business for more than twenty years, marking their kegs with their name. The defendant changed his mark, and assumed the

name and mark of "Brooklyn White Lead and Zinc Company." There was, in fact, no such company, and the addition was apparently designed to make his goods pass for those of the plaintiffs. The court held that, as both parties dealt in the same article at the same place, they had an equal right to describe it as Brooklyn White Lead; and it was shown that many other companies had used the same designation. But the defendant's use of the word "Company" being false, was held to be fraudulent, and was enjoined.

The case of *Candee, Swan & Co.* v. *Deere & Co.*, 54 Ill. 439; 5 Am. 125, A. D. 1870, is next in chronological order. Both parties manufactured plows at Moline, and named and marked them "Moline Plows." The court say: "The question is then narrowed down to this: Can one manufacturer of an article at a particular town, whose wares have gained celebrity, appropriate as his own, to the exclusion of every other person in the same place, the name of the place, and thus prevent him from designating his manufactures as of the place where they are made? We do not think the cases go to this extent." It was in proof that others besides the parties manufactured plows at the same place, and branded them in the same way, and the court observe: "The words have acquired a generic meaning, and one manufacturer at Moline has the same right to use them that any other manufacturer there has." After citing the well-settled doctrine that no circular, price-list or advertisement can constitute a trade-mark, the court proceed in a strain which would do well for a meeting of grangers: "If to the exactions committed upon the agricultural portion of our people by the patentees of reapers and mowers, implements now indispensable, there shall be supperadded, a monoply in the manufacture and sale of plows, at a point so important as Moline, how shall the farmers bear this grievous and oppresive burden? * * * Monoplies are odious, against which the public sentiment has ever revolted, and what can be more odious and oppresive than the monoply of the manufacture and sale of plows?" If we were allowed to answer, we should say, harrows, for that would be "rubbing it in." But Judge Breese's law is sound, if his rhetoric *is* a little breezy.

In *Newman* v. *Alvord*, 51 N. Y. 89, A. D. 1872, the plaintiffs and their predecessors had for many years been engaged in manufacturing water-lime cement from quarries near Akron, Erie county, which they labelled and sold as "Akron cement," and to which they had given a reputation in the market. The defendants, knowing these facts, for the purpose of availing themselves of the reputation of the plaintiffs' cement, applied the word "Akron" to designate a similar cement, made by themselves at a quarry near Syracuse. It was *held*, that as against the defendants the plaintiffs were entitled to the exclusive use of the word "Akron." The decision was explicitly based on the fraud; the court said: "The question is not before us, and it is not necessary for us to determine whether any other owner of a portion of the same quarries could not manufacture cement, and label it Akron cement. The sole question to be determined is whether the plaintiffs, who were the only persons engaged in manufacturing and selling the real Akron cement, which is known and has a reputation in market as such, can be protected in the use of the word 'Akron,' against the defendants, who used it to defraud the plaintiffs and deceive the public." The court cite the case of *See* v. *Haley*, L. R. 5 Ch. Ap. Cases, 155. In the latter case, the plaintiffs had long carried on business as coal dealers, in Pall Mall, London, under the name of "The Guinea Coal Company," and were frequently called "The Pall Mall Guinea Company." The defendant, who had been their manager, set up a similar business in the same street, under the style of "The Pall Mall Guinea Coal Company." It appeared that there were other Guinea coal companies in London, yet the court held that the plaintiffs were entitled as against the defendant to the exclusive use of the name assumed by the latter. The Lord Justice conceded that the plaintiffs had no property in the name, but held that the defendant's conduct was fraudulent.

Wotherspoon v. *Currie*, L. R. 5 H. of L. 508, A. D. 1872, seems a rather robust exercise of equity. Fulton & Co. had carried on the business of starch-making at Glenfield, near Paisley. They called their starch "Glenfield Double Refined Powder Starch." They sold the business and stock to the plaintiffs. The latter carried on the business for some years at Glenfield, and then removed the works to Maxwelltown, also near Paisley. The manufactory and the manufacture retained the name of "Glenfield." The defendant was a starch and corn-flour manufacturer at Paisley, but resided at Glenfield during the whole time that Fulton & Co., and the plaintiffs had carried on the starch works there. In 1868 he made an arrangement with the son of the senior Fulton, by which he acquired possession of a small portion of his premises at Glenfield, and began making starch there. His affidavit disclosed that he set up the business at Glenfield because of the excellence of the water and the cheapness of labour there. The defendant did not label his manufactures "Glenfield Starch," but put the word "Glenfield" as the place of manufacture. The labels read, the one: "Glenfield Patent Double Refined Powder Starch, exclusively used in the Royal Laundry," with the name and address of the manufacturer at *London*; the other, "The Royal Palace Double Refined Patent Powder Starch, Currie & Co., Starch and Corn Flour Manufacturers, Glenfield." Glenfield was a hamlet of some sixty inhabitants. Now one would suppose that the imitation, if any, was in the other parts of the label than in the word "Glenfield," but the court seemed to think otherwise, and restrained the defendant's use of that word and nothing else. It is not altogether clear what ground the holding was put upon, but the Lord Chancellor seems to base it on the idea that "Glenfield" was not a town or parish, but simply an estate of that name, and all the judges writing opinions seem to think that the defendant meant to profit by the use of that name at the expense of the plaintiff. It may well be that he did, but if so, we cannot conceive why his whole label should not have been suppressed. Nor can we conceive why a manufacturer may not lawfully designate his goods by the name of the place of manufacture, whether it have sixty or sixty thousand inhabitants. In either case the name is employed to designate the locality where the particular body of people live, whether sixty or sixty thousand. Why has not a man a right to go to either place, set up a particular manufacture, whether new or previously carried on at the place, and put his name on the goods with the addition of the name of the place? Why is it not as lawful for one man, residing at a given place, to set up there the manufacture of a particular article and adopt the name of the place to describe the manufacture, as for another, who has been a resident of that place and has previously set up the manufacture of a similar article and named it after the place of manufacture, to remove the manufactory to a different place, and carry the name with him? We think the plaintiff ought to have been restrained from monopolizing the name of the place, as against an actual resident, when he himself had become a non-resident. The sum of the two labels, in respect of the word "Glenfield," was simply this: the plaintiff indicated that his starch was made at Glenfield, when in reality it was not, but used to be; the defendant indicated that his starch was made at Glenfield, and in reality it was. The House of Lords in this case reversed the Lord Justice, and in this case, as in a good many others in England, it seems to us the higher you go the worse law you get.

The case of *Radde* v. *Norman*, L. R. 14 Eq. Cas. 348, A. D. 1872, was a clear case of a fraudulent and unauthorized use of a geographical name. The plaintiff had derived from the ducal Anhalt government the exclusive right to export a crude salt called "Kainit," found at Leopoldshall, in that duchy. The word "Kainit" and "Leopoldshall" entered into all the plaintiff's advertisements and circulars, and the article became generally known as "Leopoldshall Kainit." The defendants at Liverpool issued a circular, offering for sale "Leopoldshall Kainit," and enticed away some of the plaintiff's customers. The use of these words was enjoined.

The same may be said of *Lea* v. *Wolf*, 1 N. Y. S. C. Rep. 626. The plaintiff had for many years manufactured at Worcestershire an article known as "Worcestershire Sauce." Defendant commenced the manufacture, at another place, of an article of similar character under the same name, and imitated the size, colour, and general appearance of the plaintiff's labels, wrappers, etc. The defendant's

Digitized by Google

use of the words "Worcestershire Sauce" was enjoined. The court laid down the principle: "As a general rule, geographical names cannot be appropriated as trade-marks; but the rule has its exception, where the intention in the adoption of the descriptive word is not so much to indicate the place of manufacture, as to entrench upon the previous use and popularity of another trade-mark."

Finally, the Supreme Court of the United States have passed on this question in *Delaware & Hudson Canal Company* v. *Clark*. Both parties were engaged in mining coal in the Lackawanna valley, and both designated their coal as Lackawanna coal. The plaintiffs claimed the designation as their peculiar trade-mark, and sought to restrain the defendant's use of the word, but it appearing that he was not practising any fraud, the relief was denied.—*Albany Law Journal.*

RECENT DECISIONS.

EQUITY.

Vendor and Purchaser—Statute of Frauds.

Sale v. *Lambert*, M.R., 22 W. R. 478, L. R. 18 Eq. 1.
Potter v. *Duffield*, M.R. 22 W.R. 585, L. R. 18 Eq. 9.

In sales by auction of real estate the name of the vendor is frequently omitted from the particulars and conditions of sale. Having regard, however, to the authorities which require that in order to satisfy the Statute of Frauds, the written agreement for the sale of lands must specify both parties "either nominally or by a sufficient description" (Dart on Vendors, &c., 4th ed. p. 202), and to the fact that on a sale by auction, the agreement usually signed by the purchaser and auctioneer does not make any disclosure of who the vendor is, this is a very dangerous practice, and one likely to give rise to many questions in suits for specific performance. Two of these questions were decided in the above-mentioned cases.

In the first of these cases the Master of the Rolls held that the expression "the proprietor" was a sufficient description of the vendor to satisfy the statute. In the second, the same learned judge held that the expression "the vendor" was not sufficient. To take the latter case first, we think that there can be little doubt that the decision is unimpeachable. The very fact of there being a sale implies that there is some one selling; and when a man signs the usual memorandum acknowledging himself "a purchaser," he implies the existence of a vendor. The use of the term "vendor" therefore in the particulars or conditions of sale does not import into them anything that was not there before, and the matter stands just as if there was no express reference to the seller in the whole transaction.

The question whether the description of the vendor as being "the proprietor" ought to be held to be a sufficient description within the statute is rather more difficult. The learned judge said the question in the case was, "Can you find out from the memorandum who the vendor is?" And he thought that the word "proprietor" was an excellent description. Now with very great deference it appears to us that it can hardly be said that from the memorandum in the case you could find out who the vendor was. All that the printed document showed was that the vendor either was, or claimed to be, the proprietor, or in other words, "the owner in fee." The identity of the person answering this description was as much a matter to be ascertained by parol evidence as that of the person described in *Sale* v. *Lambert* as "the vendor."

The learned judge did not think any authority was needed to support his view of the case; but he referred to *Hood* v. *Lord Barrington* (L. R. 6 Eq. 218) as being in point. In that case the vendors were described as the executors of A. B., and this was held sufficient. But to describe a man as the executor of another is as good and definite a description as to describe, say, a learned vendor as being the Master of the Rolls. The decision in *Hood* v. *Lord Barrington* will support the sufficiency of the description of proprietor, when there is a register of proprietors, and the vendor is described as the registered proprietor of the land. But to hold that at present the term proprietor is a sufficient description is to go far beyond the authorities, and tends to file down to a mere shadow the rule that both parties must be sufficiently described. If "proprietor" is sufficient, "the owner of a power of sale" or "the mortgagee" or "the trustee" must also be sufficient. And it is difficult to see, if these terms are sufficient, why omissions or expressions from which these terms must be implied are not also sufficient. This would send the court roving over the conditions to extract a description of the parties to the contract, and would give rise to all kinds of subtleties. The decision seems to us a concession to the popular manner of framing conditions—a manner persisted in notwithstanding the deliberate decisions of the courts as to the necessity of the contract containing a sufficient description of both the parties thereto.—*Solicitors' Journal.*

THE LAW CLERKS' ASSOCIATION.

THE REGISTRATION OF LAW CLERKS.

The sub-committee recently appointed by a General Meeting of the Associated Law Clerks of Ireland to consider the best means of establishing a registry of properly qualified law clerks have prepared a unanimous Report, of which we subjoin an epitome.

The Report refers to the many evils that have arisen, owing to the absence of any system of registration of trained law clerks; the loss to employers and clients by the mistakes and want of knowledge of badly instructed clerks; the additional labour and responsibility incurred by barristers, chief clerks, registrars, and the examiners at the Courts and at the Legacy and Succession Duty Offices, in trying to transact business with clerks unacquainted with the most elementary principles of their business; and it states that one of the chief clerks in Chancery, with the view of discountenancing the employment of such persons, has recently refused to allow the costs of attendances to solicitors, who were represented before him by imperfectly instructed clerks. It then recommends that the Association should, with the approbation of the Incorporated Law Society, endeavour to obtain from the Judges a General Order, establishing a general registry of law clerks, after the following plan:—The registry to be kept in duplicate, one copy at the Courts and one at the offices of the Associated Law Clerks of Ireland. Upon this registry every law clerk of five years' standing whose employer would certify to his character and ability should be placed, and should receive a certificate of registration, which would entitle him to practise as a law clerk in all the offices of the Law and Equity Courts, and would confer upon him the status of a registered or associated law clerk. There should be subdivisions of this registry, upon which provincial clerks and the various grades of in-door clerks, draftsmen, costs drawers, conveyancers, engrossers, and ordinary writing clerks should be entitled to be placed, and also a supplemental registry for junior clerks, which, it is suggested, should be managed thus:—Every existing junior clerk should be placed upon it upon the certificate of his employer, and as to future junior clerks, it is proposed that when a youth enters a solicitor's office he should obtain from the Association a preliminary, or junior clerk's, certificate, and should have his name entered upon the roll of junior clerks. After the lapse of five years the junior clerks should be entitled to apply for a final, or senior clerk's, certificate, which should be issued to him upon his passing an examination in such branches of the business of a law clerk as should be decided on by the Council of the Association. These certificates should be renewed from time to time, and the Judges and Masters of the Courts should have power to revoke or suspend the certificate of any clerk misconducting himself. The Report then proposes that the views of the Council of the Incorporated Law Society and of the principal officers of the Courts should be ascertained upon the subject, and concludes with enumerating the advantages which would accrue to every person interested in the administration of justice by the operation of the system of registration sketched out, the chief of which is that the labour and responsibility of employers and the officials would be considerably lightened by the working of the registry, which would

Digitized by Google

permit none but qualified law clerks to attend the hearing and trial of causes, the taking of accounts, the preparation and taxation of costs, the settlement of rentals and schedules, and the performance generally of the detail work of the profession.

The Report was prepared by the four members nominated to serve on the sub-committee, and was unanimously confirmed at a meeting of the committee of the Association. The subject is a highly important one, and is well worthy of the consideration of every branch of the legal profession.

JUDICIAL INTEGRITY.—In an interview with a reporter of the *New York Herald*, Mr. Charles O'Conor so far forgot that discretion which becomes defeated counsel, as to intimate that the late decision of the New York Court of Appeals, in what are known as the "Ring Suits," was influenced by political motives. We regret that one who stands, both in respect of his ability and professional integrity, confessedly at the head of the American bar, should have set such an example to his professional brethren, and we trust it will turn out that the reporter misunderstood his remarks. We have been accustomed to hear laymen accuse judges of deciding legal questions on political grounds; witness, for instance, the insinuation made by the editor of *Harpers' Weekly* against the opinion of Chief Justice Chase in the legal tender cases. But until a judge commits a flagrant and palpable breach of duty, the good opinion of the bar should hedge him round about. Counsel should endeavour, by their courteous and honourable treatment of the judges, to make them *feel* that they are honourable men, whether they are intrinsically so or not. Such treatment will preserve the integrity of a good judge, and improve that of a bad one.—*The Central Law Journal.*

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

WRIGHT *V.* MONTGOMERY.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—As you take so much interest in behalf of the tenants of Ulster, I beg to trouble you with a few remarks on this case, determined at the last Newtownards Land Sessions by the Chairman of the Quarter Sessions, R. Johnston, Esq., Q.C., a gentleman who is held in great respect in the County of Down for his able administration of the Land Laws, and who rarely causes dissatisfaction by his judgments either to the landlords or tenants. This case, you are aware, was remitted back to the Chairman for a rehearing by the Judge at Assize, who had reversed the decision of the Chairman, holding, on the evidence produced before him (and which was not before tendered) at the last Summer Assizes in Downpatrick, that the Ulster Tenant-right did not exist on the holding, although admittedly existing on the estate of the respondent, and directed that a new claim, or claims, should be filed, dealing with the claimant's claims for buildings and improvements under the 4th section of the Landlord and Tenant Act of 1870, and also stating that this was not to prejudice the claimant in making any application for an amendment of her claim, or to lodge a fresh claim, if so advised.

Notwithstanding the directions of the learned Judge, that the claimant should not *be prejudiced* in applying to the Chairman to have her claim amended, or in making a new one—which directions plainly showed that the learned Judge had no doubt it could be legally done, but provided against objections, as he thought, as far as possible—Mr. Montgomery's advisers strenuously resisted any such thing, and contended that no amendment could take place, &c. The Chairman was not much influenced by the arguments adduced on behalf of the respondent in this regard, and promptly and righteously overruled their points respectively, endeavouring to frustrate the claim of the tenant to her rights under the *grand protection* of the 3rd clause of Mr. Gladstone's *Magna Charta* to Ireland. This was objection No. 1, made by the landlord, who, no doubt, is an honourable gentleman, and against whom I do not wish to say anything disrespectful.

Sir, your readers are aware of the facts of the case, so I need not here recapitulate them; suffice it to say, that the claimant's husband held some 32 acres under Mr. Montgomery, at the rent of 32s. per acre, near Greyabbey, and the main question before the Chairman which arose in the case was:—"Had the respondent demanded from his tenant an unreasonable rent, which the tenant refused to pay, and which the Chairman held to be a disturbance under the Act?" The Chairman, in dealing with this question, stated, according to the published reports (and let it be known to all landlords, whether good, bad, or indifferent):—"Mr. Montgomery demanded an increase of rent. He is, in my opinion, guilty of *capricious, arbitrary,* and *unreasonable* conduct. I, believing that the respondent acted in an unreasonable manner, think that he is entitled to no consideration when I come to make my award." Sir, this appears pretty plain language; but fancy the landlord's advisers endeavouring, on technical grounds, to ride off in the case, without allowing the claim of the poor widow and orphan children to be investigated under the 3rd section, and under which the Chairman afterwards declared that she was entitled to the sum of £143 8s. in hard cash.

This appears bad enough, "but worse remains behind." The case, as you are aware, was originally heard before the Chairman in April last, at the Land Sessions at Newtownards, and the claim was a large one, being over, I believe, £1,000, for tenant-right, improvements, &c.; it was heard patiently, and well argued on both sides at great length, but not a syllable was uttered at the *first hearing* as to the allegation set up on the second before the Judge at the Assizes, viz.:—"That the respondent had made a contract with his deceased tenant, Hugh Wright, that the holding was not to be subject to tenant-right." The dead man could not, of course, be produced, and this contract was, therefore, held proved. The defence at the first hearing was a totally different one, viz.:—"That the respondent having taken up the farm from a former tenant who was in arrear, and given it to the claimant's husband, without charging him anything for it, had thereby '*acquired*' the tenant-right under the Act, and, therefore, it ceased to exist."

The pronouncement of the chairman on these different defences is most instructive. He says (according to the reports) in the course of his judgment—"The claimant filed her claim under the Ulster custom, unconscious of any agreement with her husband. I am bound to say the only argument pressed upon me at the first hearing was as to the landlord having 'acquired' the property, &c., under the Act." The learned chairman goes on to say—"Had I heard the same evidence as the judge, I would probably have decided as he did; however, not only was no such evidence given before me, but no hint was dropped that any such evidence could be given." Sir, let your contemporaries, champions of the landlord's rule, learn and inwardly digest the foregoing, and if it does not banish from their minds the alleged valuelessness of Mr. Gladstone's Act to the Tenants of Ulster, it will be something wonderful to relate. Is it not monstrous that evidence can be produced (previously unheard of, although case heard at great length), for the assizes when the tenant is in complete darkness of the defence intended to be relied upon, and after all expense incurred, to be driven out of Court by pure surprise.

We hear so much talk of what good landlords have done and were prepared to do without the pressure of law, that such facts as are here mentioned are calculated to cause a shudder of horror to any tenant in contemplating what bad or even indifferent landlords would have done—aye, or even dare to do—in the face of such a law as we are blessed with. Away with such transparent humbug. For the future the tenants won't be more deceived. Suppose we had not had such an Act, let the farmers of Down say how much poor widow Wright and her orphans would have received from her indulgent landlord, instead of her receiving, by a righteous award, the sum of £247 9s. 6d. nett. Even this is much below the mark. Echo answers:

Digitized by Google

How much? If such things were done in the "green tree, what may we not expect in the dry."

Yours, &c.,

A. R. D.

Belfast, *19th Oct., 1874.*

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

Attorneys and Solicitors' Apprentices.

SESSIONAL EXAMINATION.

The Sessional Examination, fixed for the 6th day of November next, is unavoidably postponed until the morning of *Tuesday, the 10th of November, at 10 o'clock, A.M.*

Gentlemen proposing to be examined will have to leave their names at the Secretary's Office, Solicitors' Buildings, Four Courts, Dublin.

By order,

WILLIAM HICKSON,

Professor.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. Judge Flanagan.

MONDAY.

In Chamber.—John Crotty, confirm sale.—Trustees Burleigh, do.—J. A. Dyer, do.—Assignee Wright, do.—Assignees M'Nulty, do.—Trustees Morgan, do.—R. W. Parker, do.—T. H. Greer, do.—R. G. Brinkley, to issue advertisement for policy insurance.—John Kidd, to appoint surveyor.—A. Molloy, to stay proceedings.—L. Proctor, allocation.

In Court.—Trustee DeBazancourt, payment.—John O. Evans, objection to schedule.—M. Derham, to make order absolute.—Francis Brew, do.—H. O'Beirne, do.—E. Sweeny, ditto.

Before Examiner (Mr. Dobbs).

S. J. Hood, rental.—R. Burr, do.—Cook, do.—Archer, do.—Treacy, do.—J. Magill, do.—William Kemmis and another, ditto.

TUESDAY.

In Chamber.—E. Henderson, confirm sale.—E. M'Cann, do.—J. Campbell, do.—F. Keegan, to dismiss.—Assignee Wright, amend rental.—John Jackson, allocation.

In Court.—W. Allen, payment.—J. Roe, schedule.—H. Dempsey, do.—Assignee Elliott, do.—A. B. Warre, do.—M. Keogh, to examine witnesses.—Same, to make order absolute.—P. Lawless, for liberty to proceed.

Before Examiner (Mr. Dobbs).

H. Gillinan, rental.—M. Crawford, do.—F. Brady, ditto.

WEDNESDAY.

In Chamber.—E. Geraghty, to dispense with survey.

In Court.—C. P. Campion, final schedule.—S. Bateman, do.—C. Dower, do.—L. Murphy, do.—Trustees Burleigh, do.—J. H. Bowley, do.—T. Radcliff, do.—R. A. Denny, do.—F. W. Leppen, ditto.

Before Examiner (Mr. M'Donnell).

C. Keane, rental.—John Hastings, do.—P. Maguire, do.—Trustee Ingram, do.—Countess of Kingston, ditto.

Before Examiner (Mr. Dobbs).

R. M. Sadlier, rental.—A. H. Griffith, ditto.

THURSDAY.

Before Examiner (Mr. Dobbs).

Keane, rental.—H. W. Wilberforce, ditto.

FRIDAY.

Sales at 12 o'clock.

J. M'Nally.—1 lot.
M. M'Donnell.—1 lot.
J. Lowry.—1 lot.
S. Butcher.—1 lot.
J. H. Hall.—1 lot.
William Noble.—1 lot.
J. H. E. Ridley.—1 lot.
Sophia C. Lees.—1 lot.
Administratrix Humphrey.—1 lot.
Reverend W. C. Gorman.—2 lots.
H. Campion.—2 lots.
F. Beatty.—3 lots.
Bridget Hastings.—7 lots.

Before Examiner (Mr. M'Donnell).

B. Quirke, rental.—Monerea Marsh Company, do.—H. Campbell, do.—W. Blair, do.—Trustees O'Hagan, do.—S. J. Bever, do.—Stapleton, trustee Power, do.—A. E. Graves, ditto.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the Chief Registrar, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Eugene Sheehan	Prove debts and vouch assignee's account	*O'Connell*
Jeremiah O'Grady	do	*Scallan*
R. H. Collister	do	*Mathews*
Philip Brown	Vouch assignee's acct.	*Forsythe*
Anthony Connor	Vouch mortgagee's act.	*Macnamara*
Richard Boyle	do	*Larkin & Co.*
Michael Ryan	do	*Findlater & Co.*
John Brady	Vouch	*Larkin & Co.*
John Byrne	do	*Fottrell*

Digitized by Google

TUESDAY.

Before the COURT, at 11 o'clock.

Private arrangement	2nd sitting	*Stuart*
do	do	*Benner*
do	do	*Goff*
do	1st sitting	*Findlater & Co.*
do	do	*Perry & Co.*
do	do	*White*
Henry G. Prossor	1st public sitting	*Delandre*
William Purcell	do	*Goff*
John J. Hogan	do	*Casey & Clay*
Smith Young	do	*Casey & Clay*
Daniel Leahy	Final examination	*Scallan*
Daniel Cullen	do	*Larkin & Co.*
Daniel Kilbride	do	*Beauchamp*
Hazleton and Shepperd	do	*H. C. Neilson*
George M'Donnell	do	*Mathews*
John J. Hennessy	do	*Thompson*
Benjamin Norman	do	*H. C. Neilson*
David F. Jones	do	*Mathews*
Wm. Fitzgerald	do	*Mathews*
John R. Duggan	do	*Findlater & Co.*
Hugh S. Guiney	do	*Beauchamp*
BernardM'Lenigan	do	*Mathews*
Wallace & Magill	Prove charge	*Torrens*
William Melcalf	Examine witnesses	*Oldham & Eaton*

Before the CHIEF REGISTRAR, at 12 o'clock.

Daniel Shea	Prove debts and vouch	*Perry & Co.*
Patrick Lurgane	do	*Perry & Co.*
G. R. Donovan	do	*Perry & Co.*
Walter O'Donnell	do	*Maxwell & Weldon*
Cochrane & Lyons	Vouch mortgagee's act	*Malcomson*
do	Reference	*Malcomson*

THURSDAY.

Before the COURT, at 11 o'clock.

William Collins	Charge and discharge	*Tracey & Nagle*

Before the CHIEF REGISTRAR, at 12 o'clock.

John H. Brett	Prove debts and vouch	*Larkin & Co.*
William Foxall	do	*Oldham & Eaton*
Simon Boland	do	*Mathews*
B. T. O'Brien	do	*Scallan*
John Byrne	do	*Scallan*
Timothy Buckley	do	*Scallan*
S. W. Tomlinson	do	*Scallan*
Daniel Lenihan	do	*Scallan*
James Keegan	Vouch	*Ryan*

FRIDAY.

Before the COURT, at 11 o'clock.

Private arrangement	1st sitting	*Perry & Co.*
do	do	*Wilson*
do	do	*Larkin & Co.*
do	do	*Casey & Clay*
Walton and Nolan	Final examination	*Larkin & Co.*
James O'Beirne	do	*Perry & Co.*
Michael Ryan	do	*Perry & Co.*
Wm. Connaghton	do	*Larkin & Co.*
T. H. M'Cutchen	do	*Tincler*
W. H Hillsworth	do	*Findlater & Co.*
Denis Curran	do	*Lett*
James J. Spring	do	*D. & T. Fitzgerald*

Before the CHIEF REGISTRAR, at 12 o'clock.

Joseph Creswell	Prove debts and vouch	*Mathews*
William Creswell	do	*Mathews*
John Davey	do	*Hamilton & Craig*
George Marshall	do	*Redington*
William Cannon	do	*Goff*
Brittain & O'Toole	Vouch	*Molloy & Watson*
John Flanagan	do	*Goff*
Martin Hegarty	do	*Larkin & Co.*
Nash Harty	do	*Larkin & Co.*

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	OCTOBER Fri 23	Sat. 24	Mon. 26	Tues. 27	Wed. 28	Thur 29
	Government.						
—	3 p c Consols	91⅞	91⅞	91⅞-2	91⅞-2	91⅞-2	91⅞-2
—	New 3 p c Stock ..	91-⅛	91-⅛	91-⅛	91-⅛	91-⅛	91-⅛
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	101⅞-2	102	102	—	—	102
	Banks.						
100	Bank of Ireland ..	311	311	—	310¾	310½	311
25	*Hibernian Banking Co.* ..	61¼⅜½	—	—	61⅜	61½	61½
15	*London Joint Stock* ..	50½	—	—	50⅞	50½⅝	—
20	*London and Westminster* ..	78½	—	—	78½	—	—
3½	*Munster Bank (Limited)*	—	—	—	—	9½	—
30	*National Bank*	-	66	66⅛	—	66-⅛	66½
15	*National of Liverp'l (Ltd)*	14¾	14¾	14⅞	—	—	—
25	*Provincial Bank* ..	—	90⅞	—	90⅝½	90-⅛	90⅛¼
10	Do. New ..	36½	36½	—	—	36	36
10	*Royal Bank*	30⅛	30⅛	30⅛	30⅞¼	30⅛	—
	Steam.						
100	City of Dublin	—	108½		108⅛	—	108⅛
50	Dublin and Glasgow ..	—	—	—	—	—	62½
10	Dundalk (Limited) ..	-	—	—	-	—	6⅞ 7
	Mines.						
3½	*Berehaven (Limited)*	-/6	16/6	—	—	-/6	--
1	Killaloe Slate Co. (lit'd) ..	—	6¾⅛	16/6	16/6	—	—
7	*Mining Co. of Ireland (lit'd)*	6⅞	—	6¾	6¾	—	6¾⅞ 7
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅝⅛	10⅛	10⅜⅝	10⅝⅛	10⅛⅝	10⅝⅛
10	Dublin Tramways ..	—	7-⅛ 7	—	6¾ 7	—	—
7½	*M'Swiney & Co., limited*	—	—	7⅜⅝	7⅜⅝	—	7⅜⅝
9-4-7	*Patriotic Assurance* ..	—	—	10⅞	-	10⅛⅝	--
	Railways.						
10	Athenry and Tuam ..	2⅛	—	—	-	—	—
50	Belfast and Northern Cos.	--	69⅞	—	69⅞	—	—
50	Cork and Bandon ..	—	—	—	—	25	—
20	Cork, Blackrock & Passage	—	—	—	9⅞ 10	—	—
100	Dublin and Belfast Junct.	—	—	90⅛	—	—	—
100	Dublin and Kingstown ..	--	—	209½	-	—	—
100	Dublin, W'klow, & W'ford	77½	—	—	—	--	—
100	Gt. Southern and Western	109⅛	109⅞	109⅛	109⅛	109	—
100	Do. do. free of Stamp	—	—	109⅞	109⅛	109⅛	—
100	Midland Gt. Western ..	—	—	82	—	—	82⅛
50	Waterford and Limerick ..	31	—	—	—	—	31⅞
	Railway Preference.						
100	Dublin & Meath – 1st, 5 p c	—	52	—	—	—	—
100	D., W., & W., 6 per cent ..	—	--	—	131	—	—
100	Gt. South'n & West'n 4 p c	—	98½	—	—	98½	—
100	Londonderry and Enniskillen B, from Oct '66 5 p c	—	—	—	—	102	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	50⅞
50	Do., new red, 1860–72, 5 p c	—	—	—	--	50½	50
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	97½	—	—	97½
—	D., W., & W., 4½ p c ..	—	100	100	100	—	—
—	Gt. North'n & West'n 4½ p c	—	99⅞	99⅞	—	—	--
—	Gt. South'n & West'n, 4 p c	—	99⅛	99⅞	—	—	—
--	Midland Gt. West'n, 4½ p c	100½	—	—	—	—	—
—	Waterford & Central 5 p c	—	—	—	—	—	100
—	Waterf'd & Limerick 4½ p c	99	—	—	—	—	—
—	Do., 4½ p c	103	—	—	—	—	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—4½ per cent., 15th October, 1874.
Of Deposit—2½ per cent., 15th October, 1874.
Name Days—November 12th and 28th, 1874.
Account Days—November 13th and 30th, 1874.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FLANAGAN—October 26, at No. 20 Fitzwilliam-place, Mrs. Woulfe Flanagan, of a daughter.

M'CAMMON—October 27, at 77 Pembroke-road, the wife of Thomas A. M'Cammon, Esq., barrister-at-law, of a son.

MARRIAGES.

HAMILTON and PURCELL—October 27, at St. Mary's, Shandon, by the Rev. F. S. Hamilton, vicar and vicar-choral of Ross Cathedral, and father to the bridegroom, assisted by the Rev Dr. Neligan, LL.D., Trevor Stannus Hamilton, Esq., of Millen, Rosscarbery, to Margaret Helivia, daughter of Richard Harris Purcell, of Burnfort Park, Esq., barrister-at-law, both of this County.

Digitized by Google

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

COUNTIES OF WEXFORD AND KILKENNY.

ADJOURNED SALE.

SALE,
On FRIDAY, the 4th day of DECEMBER, 1874.

In the Matter of the Estate of Christian Wilson and Benjamin Torton Wilson, of Sleedagh, in the County of Wexford, Esquires, Owners and Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 4th day of DECEMBER, 1874, At Noon, At the Landed Estates' Court, Dublin,

The following Estates, held in Fee and Perpetuity, situate in the Counties of Wexford and Kilkenny, In Eleven Lots (being the Lots remaining Unsold on the former Rental in this Matter):—

LOT No. 1—Part of the Lands of Sleedagh, in the Barony of Bargy, and County of Wexford, held in Perpetuity, consisting of the Mansion House and Demesne Lands and Plantations of Sleedagh, containing 171a 1r 25p, statute measure, or thereabouts, and of the estimated net yearly value of £334 2s 8½d.

LOT No. 2—Other Part of Sleedagh, held in Perpetuity, containing 95a 0r 36p, statute measure, or thereabouts, and producing a net yearly rental of £107 19s.

LOT No. 3—Part of the Lands of Cherriestown, in same Barony and County, held in Perpetuity, containing 69a 3r 34p, statute measure, or thereabouts, and producing a net yearly rental of £77 10s.

LOT No. 4—Other part of the Lands of Sleedagh, and part of the Lands of Cherriestown, in same barony and county, held in perpetuity, containing 55a 1r 1p, statute measure, or thereabouts, and producing a net yearly rental of £60 5s 1½d.

LOT No. 5—Part of the Lands of Scar, in the same barony and county, held in fee, containing 85a 1r 22p, statute measure, or thereabouts, and producing a net yearly rental of £81 1s.

LOT No. 6—Other Part of the Lands of Scar, in same barony and county, held in fee, containing 68a 2r 33p, statute measure, or thereabouts, and producing a net yearly rental of £52 16s 4d.

LOT No. 7—Part of the Lands of Rochestown, in same barony and county, held in fee, containing 9-a 1r 16p, statute measure, or thereabouts, and producing a net yearly rental of £94 17s 2½d.

LOT No. 8—Part of the Lands of Kilmannan, in same barony and county, held in fee, containing 45a 0r 5p, statute measure, or thereabouts, and producing a net yearly rental of £72 17s 2d.

LOT No. 9—Part of the Lands of Regan, in same barony and county, held in fee, containing 76a 2r 32p, statute measure, or thereabouts, and producing a net yearly rental of £57 17s 6d.

LOT No. 10—Part of the Lands of Ballylibernagh, in same barony and county, held in fee, containing 82a 2r 31p, statute measure, or thereabouts, and producing a net yearly rental of £96 2s 1d.

LOT No. 11—The Lands of Rossroe, in the barony of Gowran, and county of Kilkenny, held in fee, containing 147a 0r 5p, statute measure, or thereabouts, and producing a net yearly rental of £65 14s 8d

Dated this 25th day of July, 1874.

R. DENNY URLIN, Examiner.

NUNN and JONES, Solicitors.

DESCRIPTIVE PARTICULARS.

The Wexford Estate lies well together, about 4½ miles from the Town of Wexford, from which there is direct communication with Dublin by Railway, and within 5 miles of the sea-coast, and 6 miles of the new Harbour at Rosslare.

The Lands of Rosroe are situate 4 miles from Thomastown, and are occupied by two tenants.

The Mansion House on Sleedagh is a stone edifice, handsomely situated, and the Demesne Lands have much valuable and ornamental timber thereon.

The projected Railway from Rosslare to Waterford will pass nigh the Demesne, and through the Lands of Kilmannan.

The purchaser will be entitled to immediate possession of the Lands on hand.

The tenants on these Estates are punctual in the payment of their rents.

Some old Leases have lately expired, and an increase in the rental may be calculated upon, as other old Leases have only a short time to run.

Proposals for the purchase of any of the Lots will be received by the Solicitors having the carriage of the Sale, up to the 10th day of November, 1874, and submitted to the Judge for approval.

For Rentals, Maps, and further particulars, apply at the Registrar's Office, Landed Estates' Court, Inn's-quay, Dublin; to

Messrs. JOHNS, HEWITT, and JOHNS, Solicitors, 12, Gardiner's-place, Dublin, or 29, High-street, Belfast;

LEONARD MORROGH, Esq., Solicitor, 5, Great Denmark-street, Dublin; or to

Messrs. NUNN and JONES, Solicitors having the carriage of the Sale, 6, Dawson-street, Dublin. 578

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

SALE,
On the 27th day of NOVEMBER, 1874.

In the Matter of the Estate of Edward Morgan, Owner; The Reverend John Hugh, Johnston Powell, and Edward Morgan, Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, On FRIDAY, The 27th day of NOVEMBER, 1874, At Twelve o'clock noon, At the Landed Estates' Court, Inns'-quay, Dublin,

In Three Lots,
The following Houses and Premises in the City of Dublin, Held in Fee:—

LOT 1 consists of the Dwelling-house and Premises, No. 15 High-street, producing a rental of £36 15s.

LOT 2 consists of the Dwelling-house and Premises, Nos. 8 and 9, and part of No. 7 Rosemary-lane, producing an estimated rental of £15 10s.

LOT 3 consists of the Dwelling-house and Premises, No. 173 Townsend-street, and 1, 2, 3, and 6, and part of 7, 8, and 9 Tennis-court, producing a rental of £9 4s 8d.

Dated this 20th day of August, 1874.

C. E. DOBBS, Examiner.

Proposals for the purchase by Private Contract, of all or any part of the Estate will be received up to the 14th day of November, 1874, by the Solicitor having carriage of the Sale, and if considered sufficient will be submitted by him to the Honourable Judge Flanagan, for his approval.

For Rentals and all further information apply at the Office of the Landed Estates' Court, Inn's-quay, Dublin;

JOHN BALL, Esq., Solicitor, 11 Hume-street, Dublin; or to

WILLIAM JOHNSTON, Solicitor having carriage of the Sale, 3 Palace-street, Dublin. 566

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN LYNCH, of Great Brunswick-street, in the City of Dublin, Draper, was on the 27th day of October, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 20th day of NOVEMBER, 1874, and on TUESDAY, the 8th day of DECEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

CASEY & CLAY, Solicitors, 21 Saint Andrew-street, Dublin. 584

SALE:

SALE OF
Well-secured Ground and Profit Rents, arising out of Recorded Estates.

COUNTY OF KILDARE AND COUNTY OF THE TOWN OF DROGHEDA.

TO BE SOLD BY AUCTION, On MONDAY, the 9th day of NOVEMBER 1874, At Twelve o'clock noon, In Messrs. BENNETT & SON'S Public Sale-rooms, No. 6 UPPER ORMOND-QUAY, DUBLIN,

By direction of the Representatives of the late JOHN MACKAY, Esq.,

Several valuable and well-secured Profit Rents, payable out of the Town and Lands of Ballytore, situate in the County of Kildare, held in fee; and out of the Lands, Houses, and Premises, in the County of the Town of Drogheda, held under leases for long terms of years.

The Estates will be Sold in Seven Lots so as to suit small capitalists, and as they have all been recorded under the provisions of the Record of Title Act, purchasers will not have to go to any expense of investigating Title, &c.

For Rentals and further particulars apply to

Messrs. BENNETT & SON, the Auctioneers, No. 6 Upper Ormond-quay, Dublin; or to

Messrs. WM. FINDLATER & CO., Solicitors for the Vendors, 35 Upper Ormond-quay, Dublin. 577

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, October 31, 1874.*

Digitized by Google

// THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, NOVEMBER 7, 1874. No. 406.

FORGED CHEQUES.

It seems to have been supposed, until recently, that the statutable protection granted by the 16th & 17th Vic., c. 59, s. 19, to a banker paying a cheque, of which the payee's signature was forged, extended not only to the banker on whom the cheque was drawn, but also to any banker who happened to pay such cheque when presented to him for payment. But the case of *Ogden* v. *Benas* (22 W. R. 805), recently decided in the Court of Common Pleas in England, has put an end to this opinion. It is well known that formerly, in order to exempt a cheque from stamp duty, it was necessary that the cheque should be for the payment of money to bearer on demand on a banker residing or transacting his business within ten miles from the place where the cheque was drawn, and that such place must be specified on the face of the cheque. In the old Stamp Act, 56 Geo. III., c. 56, and in the exemptions mentioned in Schedule I., these particulars are set out. This circle was subsequently extended by 9 Geo. IV., c. 49, s. 15, to a radius of fifteen miles from the place where the cheque was drawn. The exemption was continued by the 16th & 17th Vic., c. 59, which statute first imposed a stamp duty of one penny upon drafts or orders, for the payment of any sum of money to the bearer or to order on demand; but was finally repealed by the 21 Vic., c. 20, whereby all cheques were charged with a duty of one penny. It is now, therefore, unnecessary to specify on a cheque the place where it is drawn. The use of cheques vastly increased in consequence of these enactments, so that bankers found it necessary to obtain some protection against forged signatures. Accordingly, it was enacted by the 16th & 17th Vic., c. 59, s. 19, that—"Any draft or order drawn upon a banker for a sum of money payable to order on demand, which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such endorsement, or any subsequent endorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any endorser thereof." Now, it is plain that the party protected by this section is the banker on whom the cheque is drawn, and he only; the section expressly protecting "such banker," which refers back to the words, "any draft or order drawn upon a banker for a sum of money payable to order on demand." Consequently, any other banker receiving the forged cheque by endorsement, is not protected if he pays the money. This last was the case of *Ogden* v. *Benas*, where a cheque was drawn for twelve guineas, by the plaintiff, on the London and County Bank in London, payable to Vincent Willis, or order in payment of an overdue account. The cheque so drawn was forwarded by the plaintiff, to the payee at Liverpool, by post, but was stolen in transit. After the theft was committed, a person presented the stolen cheque at the counter of the defendants, who were bankers and money-changers at Liverpool, and asked to have it cashed. He was asked who he was, and replied by striking out the name "Vincent Willis," and wrote it beneath in apparently the same handwriting. He was then told to call again the next day but one. The defendants then crossed the cheque, and forwarded it to their correspondents in London, the City Bank, and they, in turn, presented it to the plaintiff's bankers, by whom it was paid. The London correspondents then remitted the money to the defendants, who paid it over, less a small commission, to the person signing. That signature turned out to be a forgery, and the question was,—Is the plaintiff to be prevented from following his money into the hands of parties not entitled to it? The statute, as said before, only protects the one party, and does not alter the nature of the transaction, so that the London and County Bank alone came under the saving section. It was contended on behalf of the defendants that they were merely agents of the London and County Bank; but this argument was upset by the fact that they had discounted the cheque for profit, and were, in fact, acting independently for reward to themselves. There was no negligence on the part of the plaintiff, and the London and County Bank were clearly not responsible for the forgery, because the transaction had taken place in Liverpool; they had not dealt with the forger, and had no means of testing his signature. Clearly then, by the Common Law, the defendants were liable for paying the money to a wrong party, and it would appear that it evidently was the intention of the Legislature that they should be so, or the probability of such a case arising would have been provided for.

CHANCERY AND CIVIL BILL COURTS.

It is seldom that the judges are anxious to have the business removed from their courts, but the case of *M'Guirke* v. *Eccles*, which came before the Vice-Chancellor this week, drew from him a very decided expression of opinion, that it was a great pity that the Chairmen of Quarter Sessions had not jurisdiction given them to deal with administration suits when the assets were small. The learned judge said, what every one must admit to be true, that the Quarter Sessions Courts could administer small estates at a trifling cost. This, he is reported to have said, would be one of the most beneficial law reforms that could be effected in this country.

The case before the learned judge in this instance was an administration suit where the entire amount litigated was about £100, and no blame could possibly be attached to the parties, as there is no other tribunal in this country for settling such questions. There is, however, a case reported in a former number of this Journal (*M'Donnell* v. *Sullivan*, 1 Ir. L. T. 260) which shows the want of an inferior equity jurisdiction in a most striking manner. It was a suit to enforce payment out of the separate estate of the respondent, Mrs. O'Sullivan (a married woman), of a sum of £19 8s. 10d. due by her to the petitioner on foot of shop goods supplied by him to her order during her coverture. A civil bill for the amount of the debt had been brought at the Athlone Quarter Sessions of April, 1866, against her husband, Mr. O'Sullivan; but it appearing that Mrs. O'Sullivan was entitled to a separate income of her own, and that her husband had privately warned her not to contract any debts, the case was dismissed upon the authority of

Digitized by Google

Jolly v. *Rees* (15 C. B., N. S. 628). The Lord Chancellor naturally asked if a decree could be made by the Court for so small an amount. In *Lambert* v. *Lambert* (2 Ir. Eq Rep. 210), Lord Plunket dismissed a bill to restrain waste, when the damage done was trifling. The counsel for the plaintiff (Mr. Monahan) said in that and other similar cases the Court refused to entertain the suit because the party might have proceeded by civil bill; but in this case there was no remedy except by a cause petition in this Court. In England the Consolidated Order IX. 1, provides that "every suit, the subject matter of which is under the value of £10, shall be dismissed, unless it be instituted to establish a general right, or unless there shall be some other special circumstances which, in the opinion of the Court, shall make it reasonable that such suit should be retained." In Ireland there is no general order dealing with the amount for which a decree may be made, and the Lord Chancellor accordingly made a decree for payment of the debt *with costs*.

The anomaly pointed out in the latter case is more strongly developed by the Married Women's Property Acts, which, while they provide a right of action at common law, leave the creditors of the married women to their former remedy at equity for debts contracted by the wives on the credit of their separate estate. This becomes the more objectionable when we remember that it has been decided that the husband is not liable when the goods are supplied on the credit solely of the wife. In *Metcalfe* v. *Shaw* (3 Camp. 22), where the goods were ordered by the wife alone; and the plaintiff took from her a promissory note for the amount in her own name. Lord Ellenborough said: "The action clearly cannot be maintained (against the husband) on the note, as the wife had no authority from her husband to make it, and, I think, he is not liable for any part of the goods, on this plain ground, that they were not supplied on *his* credit, and the plaintiff looked to the wife only for payment. The credit was given to the wife, not to the husband."

Even questions arising under these Acts between husband and wife, can in Ireland only be settled in the Court of Chancery, while in England it is provided by the same section that the parties shall have the option of going for relief to the County Courts. These inferior courts in England, however, have an extensive equitable jurisdiction in other matters, such as administration, partnership, and the like, as well as in regard to the statutable separate estate. It must not be forgotten that the effect of such an extension to the similar Irish Courts, would be to give an opportunity for materially lessening the Chancery establishments.

NOTANDA.

Bill to perpetuate testimony; parties; marriage within prohibited degrees; 5 & 6 Will. IV., c. 54.—Demurrer to a bill, praying for the examination of the defendant in order to perpetuate his testimony. The bill alleged that, by the will of the plaintiff's grandfather, the plaintiff was now, in the events which had happened, entitled to the first estate in tail-male in certain lands in the county Clare, expectant on the decease without legitimate issue of the defendant, who is tenant for life thereof. In 1823 the defendant married Miss Hannah Knox, by whom he had three sons and five daughters. On the death of that lady the defendant went through a marriage ceremony with her sister, and has several children by her. Of the three sons by his first wife, one died in America some years ago unmarried, and the other two had gone abroad, and had not been heard of for several years, and were supposed to be dead. The bill alleged that the plaintiff was apprehensive that, after the defendant's death, some person or persons might pretend that he or they were the lawful son or sons of the defendant, and, therefore, the plaintiff was desirous of having the defendant examined, and his evidence perpetuated. The defendant demurred to the bill, on the grounds that it did not allege that the defendant had an interest in disputing the plaintiff's claim, that in fact the defendant had no interest in disputing it; that the testimony sought to be perpetuated was not necessary for the establishment of the plaintiff's claim; and that the defendant's sons by his second marriage should have been made parties to the bill, and also the persons entitled in remainder expectant on the determination of the plaintiff's estate tail. *Mr. Robertson*, in support of the demurrer.—*Mr. Walsh*, Q.C. (with him *Mr. Cleary*), *contra*.—Lawson and Brooke, Lords Commissioners, allowed the demurrer on the ground that, *prima facie*, the defendant's sons by his second marriage were legitimate, and should have been made parties to the suit, and have the opportunity of establishing their rights, if any. Besides, it did not appear from the bill that the defendant's second marriage took place subsequent to 1835, and the Act 5 & 6 Will. IV., c. 54, passed in that year, to prohibit marriages within certain degrees of affinity or consanguinity, while it avoided all marriages within such degrees celebrated subsequent to the passing of that Act, did not affect any such marriage celebrated prior to its passing (*Molony* v. *Molony*; Ch., June 11, 1874).

Debtors Act, 1872; debt accruing before passing of Act; rent accruing after, under an agreement of tenancy executed prior to 1872.—Motion, on behalf of the plaintiff, for liberty to issue a writ of *ca. sa.* on foot of a judgment obtained for £40, being for a half-year's rent which did not commence to accrue until after the coming into operation of the Debtors Act, 1872, and subsequent thereto had fallen due, under a written agreement of tenancy executed prior to the passing of the Act. The officer had refused to issue the writ. The motion had been moved *ex parte* before Fitzgerald, J. (Con. Ch., Aug. 28), *J. Murray*, in support of it, citing *re M.*, 8 Ir. L. T R. 34, 77, when, Fitzgerald, J., said that he would consider the application of that case, and directed that notice should be served. The motion being now renewed accordingly, *Keogh*, for the defendant, applied for an adjournment. [Fitzgerald, J.—Will anything be really gained by an adjournment? It appears to me, at present, that upon the authority of *re M.*, 8 Ir. L. T. R. 34, 77, the plaintiff is entitled to issue the writ.] It being intimated that a settlement might be come to, the motion was adjourned to a subsequent day, before which date the debt was paid (*King* v. *Kennan*; Con. Ch., Oct. 16, 1874).

Presentment by Grand Jury; Peace Preservation Act, 1870, s. 39; agrarian crime; amount of compensation; alteration of area; costs.—Appeal on behalf of a ratepayer against an award of the grand jury, granting £1,200 to Mr. George Whiteford, for injuries received by him on May 26th, 1874, when an attempt was made to assassinate him. The facts appear in the judgment of the Court.—*J. A. Curran*, in support of the appeal, contended that there was no sufficient proof that the crime was of the character commonly known as "agrarian," the meaning of which word, as applied in the section, was explained by the subsequent words, "arising out of any illegal combination or conspiracy." There was no evidence of combination or conspiracy. The compensation awarded was excessive. The Court had power to reduce it, and also to alter or enlarge the area on which it was assessed. It was assessed on the poorest part of the barony, and there was no evidence that the crime was perpetrated by any one in the

Digitized by Google

barony.—*Walker*, Q.C., *contra*, contended that the Court had no jurisdiction to extend the area or alter the district on which the compensation was assessed. If the Court had power to alter the measure of compensation, that power should not here be exercised by reducing it, as the amount awarded was only reasonable.—Palles, C.B., in pronouncing judgment, said that, bearing in mind that there was no appeal from his decision, he had considered this case very carefully. The first question he had to ask himself was, did this crime come within the 39th section of the Act? What, then, was the meaning of the words "of the character commonly known as agrarian, or arising out of any illegal combination or conspiracy?" It was urged by Mr. Curran that the words, "or arising out of any illegal combination or conspiracy," were simply an explanation of or an amplification of the word "agrarian." Now, he could only observe if that is so, a very strong term, "commonly known," was prefixed to "agrarian," because where such a term occurs in an act of parliament as "commonly known," it is used for the purpose of indicating the ordinary signification of a crime of a certain known character. But, further, if Mr. Curran's argument was correct, "commonly known as agrarian, or arising out of any illegal combination or conspiracy" are synonymous, and he would be obliged to reduce the words to that class of illegal combination or conspiracy immediately connected with land, or such matters as in their nature are agrarian. In his opinion he should deal with the words "of the character commonly known as agrarian" as one thing, and "or illegal combination or conspiracy" as something else. The true meaning of the section is, "of the character commonly known as agrarian, or arising out of any illegal combination or conspiracy"—the words following "or" are antithetical to the words which immediately follow the word "crime." If it were otherwise he would be obliged to strike out a great number of words, and limit the operation of a great number of other words. Mr. Curran argued that there was no evidence to show that this was a crime "commonly known as agrarian." In his (the Chief Baron's) opinion agrarian was something in relation to the occupation of land. Therefore, he had to consider whether this was a crime of that character which is known to arise out of, and in respect of the occupation of land. He was sorry to say that the history of the country enabled them to point out a crime of that peculiar class; and he might say this particular sort of crime was not only in the contemplation of the Legislature, but known to them, and recognized as a class of crime "commonly known." He was bound to act on the evidence only, and, no matter what his own idea might be, he felt himself coerced to the conclusion that this was of that class of crime "commonly known as agrarian." The judge must be affirmatively satisfied that the crime is of such a character as brings it within that class. In this case it appears that during a considerable number of years Mr. Whiteford was at peace with his neighbours; no circumstances were pointed at to make him subject to enmity by any one. Then notices to quit were served, ejectments were brought, the whole identifying him with the ownership of land, although his sister was the owner of the land. The ejectments came on for hearing before the learned Chairman of this county; decrees were pronounced, but were not to issue till the land claims were disposed of. This was done on the 8th of April, and the amount awarded was lodged. In Mr. Whiteford's evidence it appeared that on some day in the week preceding Sunday, the 26th of May, he stated to the tenants he would require possession of the lands, though he did not take possession, on the 25th. The tenants said they were not ready to give up the possession on that day, and after some controversy on the subject, Monday, the 27th, was fixed. He (the Lord Chief Baron) was very much struck by Mr. Curran's argument on the nature of this crime; but suppose a person was on trial for this outrage, and it could be proved in evidence that he had been in possession of the farm for a length of time—(these tenants were in possession)—that notices to quit were served upon them; ejectments were brought and decrees pronounced; that claims under the Land Act were made, and that a certain award was made by the chairman; and that on the day following the Sunday the decrees were to be executed, the question he asked himself was, could all these matters be properly and legally given in evidence as a proof of motive alleged to influence this deed? He had no doubt it would be evidence. He guarded himself now in the fullest way as to making a suggestion of guilt against any person, but the law in this country assumed that no crime is committed for which there is not some motive. And, casting about the surroundings of this case, and having regard to their ordinary knowledge of human affairs, on the evidence here he should ask himself the question, and himself answer it, what was the motive for this crime? It was competent for Mr. Curran to give evidence pointing to some other motive. Was it accidental or malicious? What was the motive for this particular crime? He could not help coming to the conclusion, after the evidence, that there was a motive which must operate strongly upon the minds of particular persons or class of persons; and, operating on the minds of those persons, what motive must have led to this dreadful deed being committed on the day previous to the day the evictions were to take place? He found himself coerced to the conclusion that this was of that class of crime "commonly known as agrarian." The next point which he had to consider was one that, from the commencement of the case, he had no doubt about at all. That was the amount to be awarded to Mr. Whiteford. He agreed with Mr. Walker that in this particular section the amount ought not be fixed as a deterrent, though he thought the section itself was intended as a deterrent. The amount was not to be fixed further than as affording fair and reasonable compensation under the circumstances. On this point he would apply the same rules as if he were now trying an action at the suit of Mr. Whiteford against the county, or some person responsible for the wrongful act which resulted in this dreadful injury—he was dealing with it as a matter in which compensation alone was to be considered. Mr. Whiteford was in the prime of life, and before this outrage was committed upon him he could reasonably look to have 25 or 30 years of life before him; he was not in very affluent circumstances, but was able to maintain himself respectably in the county, and against his character or reputation it was not possible any imputation could be made. All he (the Lord Chief Baron) could say was, if he found that man's life and health interfered with in the way proved before him, the only way it could be considered was as a matter of money, although he was painfully and sensibly reminded that no amount could compensate him for the loss of his eye. Still he must try to find some money measure. Then, he had to consider the question of actual expense, particularly the medical expenses attending this injury, involving, at one time life, at all times the future health of the person on whom this cowardly attack was made, and to allow liberal damages. The man was right in employing medical men, and this involved an expense of nearly £200, in addition to the other expenses incident to the case—for instance, the cost of this appeal, with which he had no power to interfere. All

Digitized by Google

these things considered, he thought that the compensation awarded was by no means excessive. As to the question of the area on which it was to be assessed he had some difficulty. Upon the best consideration he could give this section—though he was not wholly free from doubt—he was of opinion that he had no jurisdiction to alter this area. At the same time, if he had the jurisdiction, he was not satisfied, with the absence of that knowledge which the grand jury necessarily must have, that he ought to interfere with the decision of the grand jury. "Such money to be raised off the county at large, or the barony, half-barony, or other district, at the discretion of such grand jury." There are two things pointed out to be the subject of consideration. First, the sum of money—which must be just and reasonable—and then the area of taxation, which is left to the discretion of the grand jury. No person in the district has any special equity to be exempted. "The judge shall affirm or make such presentment for such sum as to him shall seem fit." It stops there, and does not deal with the second matter at the discretion of the grand jury. On the whole, in the result he should affirm the presentment, in the words in which it was made by the grand jury, but he did not think he had power to give costs. (*Killeen*. app., v. *Whiteford*, resp.; Queen's County Assizes, July 11, 1874.)

THE CHANCELLORSHIP OF IRELAND.

All parties connected with the administration of justice—the Judges, the lawyers, and the officers of the Courts—are in a state of anxious and irritating suspense, and the public share their dissatisfaction. They ask with some impatience, Where is the Lord Chancellor, the constitutional head of the Judicial Bench, who ought to take his place in the Superior Court of this kingdom at the opening of the legal year? How long is the office to remain in commission? Nine months have passed since the Government took the reins of power. How much more time do they want to complete their arrangements for carrying on the business of the country? Are we still to have a triumvirate enthroned in the highest Court, and the legitimate *regime* which alone can command the loyal respect and confidence of the Bar and the public virtually deposed? It is admitted on every side that the business of the Court has been efficiently done and suitors have not been put to any inconvenience; but the fact that everything is in a transition state produces a restless and discontented feeling. It is not the interest of the political opponents of the Government to allay this irritation, but rather to inflame it still more; and, perhaps, it is owing to this view of their true policy that rumours are circulated that it is the intention of the English Ministry to abolish the office of Lord Chancellor of Ireland altogether, regardless of the unpopularity of such a measure in this country. They affect to see in the continuance of the present provisional arrangement a settled purpose to familiarize the public with the idea of change, and to exhibit practical proof that it may be made without any injury to the interests of public justice and with manifest advantage in a financial point of view. The friends of the Government find it difficult to remove the prejudice which is excited by this exceptional state of things. There is, of course, an obvious explanation or excuse; but all are not willing to admit its validity. It is understood that Dr. Ball, the Chancellor elect, whose elevation to the Bench, whenever it is made, will be hailed with universal satisfaction, cannot yet be spared by the Government—that his aid will be required in Parliament to pass the Judicature Bill. It might be supposed that the measure has been sufficiently explained, and that as it would, undoubtedly, have been passed last year if the Session had been prolonged for a few days, there will be no difficulty in re-introducing it, and, therefore, there is no need of his services. But the Bill in preparation is likely to be different in some essential respects from that of last year. It will not be open to the objection that it is a servile copy of the English Act, made without reference to the distinctions between the English and Irish machinery and practice in Law and Equity, but specially drawn to suit the circumstances of the country. In the last Bill the English Act was copied with the minute exactness of a Chinese tailor following the pattern set before him, and the result was that it proved to be an uncomfortable and awkward misfit. One judicial arm was too long, another too short, and the skirts of official patronage to which so many like to cling were too stinted to satisfy expectants. Whether the new Bill will please them better remains to be seen, but it will be, at all events, made to measure. But, irrespective of the necessity for retaining Dr. Ball in Parliament, to pass the Judicature Bill, there are other difficulties in the way of his retirement from office at present.—*The Times*.

THE LATE STOCKBROKING CASE.

The legal and commercial world of Dublin have been occupied during the last ten days with a trial involving issues of considerable importance to larger communities. The point in dispute, when stripped of all accessory circumstances, is sufficiently simple. A stockbroker brought an action against a person on whose behalf he had entered into large transactions on the Stock Exchange in this city for the balance of account, amounting to more than £32,000; and the claim was resisted as one that could not be enforced at law because it was a gambling debt. A statute passed in the reign of her present Majesty, simplifying and amending the law on the subject, provides that all contracts or agreements by way of gaming or wagering shall be null and void, and that no suit shall be brought or maintained for recovering any sum of money alleged to be won as a wager, and the counsel for the defence argued that under this statute the claim of the plaintiff could not be maintained. It requires some little confusion of mind to guess how this line of defence could be made to assume a plausible appearance. It was proved by abundance of evidence, and, indeed, not contested, that the plaintiff bought and sold according to the directions of the defendant, and it was also allowed, after some little discussion, that the sum claimed might be taken as the balance which the plaintiff had been called upon to make good through the default of the defendant to complete the bargains which had been made on his account. The plaintiff was, in fact, a broker and nothing more, looking for his own reward to the commissions he was entitled to charge on the transactions completed on the defendant's behalf. Under no construction of the words could it be said that the suit was brought to recover "a sum of money alleged to be won upon any wager;" and if the action failed at all, it must have failed on the ground that the contract of agency between the broker and the defendant was "a contract by way of gaming or wagering." And this seems to have been the argument of the defendant's counsel. It was clear enough that the defendant was simply gambling in the orders he gave for purchases and sales of the several stocks in which he dabbled, and it is no more than a reasonable conclusion that the plaintiff must have been aware, soon after his acquaintance with the defendant, if not at first, that the defendant or the persons for whom he said he was acting were simply gambling. He or they speculated for a rise or speculated for a fall, and varied their speculations from day to day, and almost from hour to hour—their conduct being like that of scores, perhaps hundreds, of other persons who daily seek gain and excitement from the variations of prices on the Stock Exchange. But a broker who acts as the agent of such persons, even if thoroughly aware of their motives and hopes, does not enter into "a contract by way of gaming or wagering" with them; he does not gain what they lose, and lose what they gain in the bargains he concludes for them; and the utmost that can be said is that he acts as an agent to facilitate their gambling, just as a porter might who carried their messages for them. A good deal might, perhaps, be said in favour of extending the law so as to prevent any person from recovering money which he has been obliged to pay on account of another in pursuit of a contract entered into by him on behalf of that other if he has reason to believe that the transaction was in its conception a mere

Digitized by Google

gambling speculation, but the law does not at present aim at such stringency. It does not say that every contract with a gambler enabling him to gamble or sustaining him in gambling shall be void, but that, where a gaming or wagering contract is made, the winner shall not be helped by the law to recover his gains. The hesitation of the Dublin Jury to arrive at a verdict, lasting nearly eight hours, may, perhaps, be interpreted to indicate an opinion on the part of some of them that the law ought to go to the length we have hypothetically suggested, but in the end they were content to take the law as it stands, and found a verdict for the plaintiff for the sum claimed.—*The Times.*

ANOTHER STOCKBROKING *CAUSE CELEBRE.*

The *Freeman* understands that a financial case, rivalling if not exceeding in interest the great suit of Cracroft *v.* Smith, may soon form the subject of judicial inquiry. The parties are all resident in Dublin, and the briefs are, we are told, already printed. The case, if it ever comes to trial, will give the public some idea of the extent to which "speculation" on the Stock Exchange may be carried, even with limited "capital." The transactions which will be the subject of the suit amount in all to some millions of "purchases" and "sales;" and questions of "contango," "brokerage," and rights of foreclosure of great interest may be expected to be discussed.

IRISH LAW STUDENTS.

During the present legal term an alteration which will affect the Irish Law Students eating dinners in England will, it is said, be put in force for the first time. The new regulation will make it compulsory that Irish students shall pass at least one examination in England. The object of this is, of course, to make the *raison d'etre* of students from Dublin attending the English Inns at all more apparent and important. In the hope of getting through the necessary number of dinners before the new order is officially published, large bodies of King's Inn students are now putting in an appearance at the Temple and Lincoln's Inn.

LAW APPOINTMENTS.

It was generally rumoured in the Hall and the Library on Thursday that both the Attorney and the Solicitor-General were about to be at once advanced to the Bench, Dr. Ball becoming Lord Chancellor, and Mr. Ormsby Judge of the Landed Estates' Court. It was even since said that the officials of the Landed Estates' Court had received an intimation to the effect that from an early date two judges would preside in that court. Should these rumours be accurate, it is said in some quarters that Mr. David Plunket, Q.C., M.P., would succeed to the Attorney-Generalship, an appointment which would secure for the Government the assistance of an experienced and distinguished parliamentarian with a safe seat in the House. It will be remembered that when the Government first acceded to power, Mr. Plunket was offered the Solicitor-Generalship, and declined the post. Should he become Attorney-General, Mr. May, the Law Adviser, will become Solicitor-General, while the Law Advisership will probably fall to Mr. Gibson, Mr. Falkiner, or Mr. James Hamilton. We give those rumours for what they are worth, without pledging ourselves to their accuracy.—*Freeman.*

THE LODGER FRANCHISE.

Revising barristers are in conflict on a question which, measured by the number of persons whom it affects, is of considerable importance. It relates to the construction to be put upon the section of the Reform Act of 1867, by which the lodger franchise is conferred. At a recent sitting of the Registration Court for the borough of Greenwich, the revising barrister, Mr. Phillips, delivered judgment on a claim in which the meaning of this section was brought directly under examination. The claimant held as tenant three rooms in a house wholly let out in separate apartments, the landlord not residing on the premises, nor in any way retaining to himself the general control of the house and the outer door; and the tenant having claimed for these three rooms as for lodgings occupied by him as a lodger, the only question to be considered was (the value and period of occupation being sufficient) whether he had or had not occupied the lodgings "as a lodger." The revising barrister, in the course of a careful judgment, observed that the word "lodger" had, by a course of decisions extending over a series of years, acquired a precise legal meaning—that, namely, of a person who has, by agreement with the owner of a house (his landlord), the use and enjoyment of one or more rooms in the house, the legal possession being in the landlord. The question, then, in the case was whether the word lodger in the 4th section of the Act of 1867 (under which the claim was preferred) was used in its ordinary legal meaning, or in a new and more extended one. He was of opinion that it was there used in the former sense. The Act provides that any part of a house occupied as a separate dwelling, and separately rated shall be a dwelling-house, and thereby points to the case of a person being entitled to vote as an inhabitant householder for part of a house. Then the same Act introduces the lodger franchise in contradistinction to that of the inhabitant householder, and forming a different subject-matter of qualification; and the only mode of giving effect to this distinction was to take the word "lodger" in its ordinary legal sense. In this sense the claimant was not a lodger, the legal possession of the rooms being in him, and not in his landlord. The claim was, therefore, disallowed; and without hazarding any opinion on this decision, it cannot but be noticed that the opposite ruling would have had the effect of very widely extending the lodger franchise, inasmuch as in that case there would seem to be nothing to prevent any tenant, at all events of a portion of a house, who, being entitled to, has omitted to qualify himself for, the householder franchise, from claiming to be registered as a lodger. However, an opposite decision to that of Mr. Phillips has lately been delivered in another of the revising courts, and it is to be hoped that the question may be finally settled by a case taken to the Court of Common Pleas.—*Pall Mall Gazette.*

COURT OF QUEEN'S BENCH.

JAMES CANTWELL, Appellant; JOSEPH DOWLING, Respondent.

In this matter a summons has been issued at the suit of Joseph Dowling, a constable of the B division of Metropolitan Police, against Mr. James Cantwell, proprietor of the Star and Garter Hotel, D'Olier-street, for having, on the 24th February, 1874, kept his house open for the sale of intoxicating liquors between the hours of eleven and twelve o'clock at night. The information of the constable was that on the occasion in question he found twenty-six persons sitting at different tables, most of them having drink before them. Mr. Cantwell said that these persons were either lodgers in the house or were *bona fide* travellers. On the hearing of the summons it was found that eleven of the parties were actually lodgers, that five or six others were *bona fide* travellers, and no evidence was given respecting the remainder. Mr. Woodlock, under the circumstances, convicted Mr. Cantwell, and imposed a penalty of £1, but consented to state a case for the opinion of the Court. In this case Mr. Woodlock said he found that every reasonable precaution was taken by Mr. Cantwell to exclude all persons who were not either lodgers or *bona fide* travellers, and that both he and his employés believed that those in the house belonged to either category. The questions submitted for the consideration of the Court were—Does the onus of proof lie on the hotel-keeper to prove that all persons found drinking after closing h urs are either lodgers or *bona fide* travellers; and, secondly, is the *bona fide* belief that all persons to whom intoxicating drink was supplied after closing hour were either lodgers or *bona fide* travellers a sufficient answer to the summons?

Mr. Heron, Q.C. (instructed by *Messrs. Ennis and Son*), now appeared to move that the conviction be quashed.

The *Solicitor-General* (instructed by *Mr. W. Lane Joynt,* Solicitor to the Crown and Treasury) said he had considered the matter, and was prepared to consent that the conviction should be quashed, without costs. The offence could never arise under the new Licensing Act, inasmuch as the hotel-keeper would be privileged if he gave drink to lodgers or *bona fide* travellers.

Digitized by Google

Mr. Justice FITZGERALD.—After having made *bona fide* inquiries?

Solicitor-General.—Yes.

Mr. Justice FITZGERALD.—And having a *bona fide* belief in the result of these inquiries?

Solicitor-General.—Yes; and so Mr. Woodlock has found in this matter. The present enactment, it strikes me, would not leave a man open to a prosecution under the circumstances disclosed here. We, therefore, consent that the conviction shall be quashed.

Mr. Justice FITZGERALD.—It must be the act of the Crown, and not that of the Court. I shall, certainly, never be a party to quashing a conviction which I believe to be right.

Solicitor-General.—It is the act of the Crown certainly. We do not think the circumstances would constitute an offence under the new Act.

Mr. Justice O'BRIEN.—Perhaps the better course would be to allow the case to be struck out of the list.

LORD CHIEF JUSTICE.—But if it be struck out the conviction will stand.

Solicitor-General.—Well, if your Lordships please, I will open the circumstances of the case.

Mr. Justice FITZGERALD.—There is no necessity. If you, representing the Crown, state to the Court that, having considered the matter, you have come to the conclusion that the conviction may be quashed, the officer will record the consent, and the order will go.

The conviction was then, by consent, declared quashed, without costs.

LIABILITY OF RAILWAY COMPANIES FOR UNPUNCTUALITY.

BECKE V. THE GREAT WESTERN RAILWAY.

At the Reading County Court, October 21, in the case of "Becke v. the Great Western Railway," tried before Mr. H. I. Stonor, in which the plaintiff appeared in person, Mr. Wightman Wood being counsel for the defendants, the following judgment was delivered by the Judge:—

"This is an action tried by me at the July Court, or previously to the vacation in August, upon which I reserved my judgment until the September Court, and, at the request of the defendants' counsel, I further postponed it until the October Court. The plaintiff, who is a solicitor, is treasurer of the County Court of Henley and other places, sued the defendants for 6s. 6d., the expense of a conveyance from Twyford to Henley, which the plaintiff incurred in consequence of the defendants' non-performance of a contract by them to convey him from Reading to Henley by a certain train. The facts to which the plaintiff deposed, or which were admitted, are as follows:—On Tuesday, the 5th of May, the plaintiff took a first-class return ticket from Reading to Henley by the train timed by the defendants' tables to arrive at Reading at 10.25, and to leave Reading at 10.30; to arrive at Twyford at 10.40, and to leave Twyford at 10.45, and arrive at Henley at 11 a.m. The train arrived at Reading punctually at 10.25, but did not leave Reading till 10.39, so that it was detained at Reading nine minutes beyond its proper time. On arriving at Twyford, the plaintiff found that the train at Henley had just left, and there was no other train for an hour. He took a fly and got to Henley in about half an hour. The delay at Reading was occasioned principally by the want of porters to put luggage into the train. The train was a very light one, the plaintiff being the only first-class passenger. The plaintiff had frequently witnessed delays at the Reading and other stations on the defendants' line occasioned by the same cause. The plaintiff admitted that he was cognizant of a notice which the defendants prefixed to their time-tables, and that he purchased his ticket subject to such notice and to a regulation identical with such notice contained in the several regulations of the company. Such notice and regulation are in the following terms:—'The published train-bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations, it being understood that the trains shall not start from them before the appointed time, but the directors give notice that the company do not undertake that the trains shall start or arrive at the time specified in the bills, nor will they be accountable for any loss, inconvenience, or injury which may arise from delay or detention, unless upon proof that such loss, inconvenience, injury, delay, or detention arose in consequence of the wilful misconduct of the company's servants. The granting of through tickets to places off the company's lines is an arrangement made for the greater convenience of the public, but the company will not hold themselves responsible for any delay, detention, or other loss or injury whatsoever arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over other lines or companies, nor for the arrival of this company's own trains in time for the nominally corresponding trains of any other company. Passengers booking at intermediate stations can only do so conditionally upon there being room in the train.' The defendants declined to call any evidence, and contended, firstly, that the contract in question was not broken, inasmuch as it did not bind the defendants to convey the plaintiff to Henley at any given time, but only within a reasonable time, and that if the plaintiff had waited and proceeded by the next train they would have conveyed him there within a reasonable time; and, secondly, that if the contract was broken, the defendants were not liable, because, in order to render them liable, the plaintiff was bound by the above regulation to show that the delay arose from the wilful misconduct of the company's servants, and that he had failed to do so. On both sides it was intimated that the case was brought before me for the purpose of bringing it before the Court of Appeal, so as to settle the important question of the liabilities of railway companies as carriers of passengers for delays upon their lines, which has lately been so frequently raised in County Courts. It is now exactly a year since Mr. Forsyth brought his action against the present defendants—the Great Western Railway Company—in this court, in which he proved that a train in which he had travelled had been prevented from arriving at Reading at the time specified in the table by repeated and considerable delays, apparently without any reasonable cause, and I then held that the defendants were bound to show reasonable cause for such delays, which the defendants failed to do, and I, therefore, gave judgment in favour of the plaintiff, with liberty to the defendants to appeal; but, unfortunately, they neglected to comply with the rules of the Court relative to appeals, and lost the opportunity which was then afforded to them. Since then similar actions have been brought in several of the County Courts, and I believe that all my learned brethren before whom such cases have come, with the exception of the learned judge of the Bath County Court, Mr. Caillard, have taken the same view which I did, and that in every case liberty of appeal has been given, but that no appeal has yet been brought. The present case is certainly not nearly so strong a case of delay and apparent neglect as Mr. Forsyth's, and there is also a distinction between the two cases, inasmuch as Mr. Forsyth's contract with the company was subject to a different notice and regulation from that which is now contained in the tables of the defendant, and, in point of fact, the notice and regulation were altered by the defendants immediately after the decision of Mr. Forsyth's case with a view of further restricting their liability. Such alteration consisted in omitting the following words:—'Every attention will be paid to insure punctuality so far as practicable,' which were prefixed to the notice, and the addition to the stipulation that they will not be responsible for delays or detention to the following words:—'Unless upon proof that such delay or detention arose in consequence of the wilful misconduct of the company's servants.' Reserving for the present the consideration of the validity and operation of the notice and regulation as altered, I will consider, firstly, the contention of the defendants that the contract between them and the plaintiff was merely to convey him to Henley in a reasonable time, and that the contract was not broken by the delay at Twyford, inasmuch as there was another train to Henley at the expiration of an hour, which would have conveyed him there in a reasonable time. Now, I at once concede that the contract between the defendants and the plaintiff was to convey the latter to Henley in a reasonable time. Such

Digitized by Google

was the liability of carriers of passengers at Common Law, and Railway Companies have only the same liabilities. This is expressly declared by the 89th section of the Railway Clauses Act, 1845 (which, I presume, is incorporated in the Great Western Railway Act; at all events, so far as the Henley Branch Railway); but, independently of that clause, I do not think that Railway Companies would be further liable than other carriers of passengers at Common Law. What, then, is the liability of carriers of passengers at Common Law? Simply to use all reasonable means to convey passengers to their destinations in the reasonable times which they have expressly fixed on, which, if not so fixed, juries may determine. Before the introduction of railways there were frequently coach proprietors who agreed to perform their promises in so many hours, and, therefore, to use every reasonable means and diligence for that purpose, and if by reason of their neglect of such means or want of such diligence they failed to complete their contracts, there can be no doubt that actions must have lain against them. Of course, the condition of the roads, which were not under their control, and many other circumstances, and especially sudden accidents, would have been valid defences to such actions, and therefore they were often very difficult to try. Moreover, the proprietors seldom if ever entered into these special contracts as to time excepting when there was great competition, and then they used their best endeavours, as did also their servants (who were often stimulated by a system of premiums or fines), to perform these contracts with the greatest exactitude. Actions for the breach of such contracts were consequently very rare, and I have not been able to find a report of any case of the kind. In most cases, however, the coach proprietors merely contracted to convey the passenger to a particular place, without specifying any time, and were only bound to perform their contract within a reasonable time, which, as I have already said, was for a jury to determine, regard being had to all the circumstances of the case. Railway companies, on the other hand, have invariably fixed their own times of arrival, and thereby fixed what are reasonable times, and if they fail, from want of due diligence, to perform their contracts, I think that they are clearly liable in the same manner as coach proprietors under similar contracts. Having the absolute control of their lines, and their lines being less liable to be affected by the weather than the roads, they have in these respects much less difficulty in performing their express contracts than coach proprietors. On the other hand, they are open probably to more numerous and serious accidents as to their engines and carriages than the coach proprietors were as to their coaches and horses. But, however this may be, the effect of weather on the lines and accidents of many kinds will, doubtless, constitute valid defences to actions brought against them, as they did against actions brought against coach proprietors under similar circumstances. In the case of 'Denton v. the Great Southern Railway Company,' 5 'Ellis and Ellis', 865, the Court of Queen's Bench decided that the publication of time tables amounted to an express promise to run trains to the places and at the times stated, and Mr. Sergeant Wheeler, the learned Judge of the Marylebone County Court, in his elaborate judgment in the case of 'Turner v. the Great Western Railway,' last May (reported in the *County Courts Chronicle*, 4 N.S., 387, and also in the *Law Times* and *Law Journal*), observes with regard to railway companies, 'that the question of reasonable time is no longer left at large, but is, in fact, fixed by the companies themselves, subject of course to accidents which reasonable care could not provide against.' In the present case it is quite clear that the absence of porters at the Reading Station, which reasonable care might (as far as appears) have prevented, occasioned the detention of the plaintiff at Twyford, and as he was able to procure a conveyance by which he got to Henley substantially half an hour sooner than the railway company were prepared to convey him by the next train, I think that he was justified in hiring it, and that (subject to the next question) he is entitled to recover its cost against the defendants. The next question which remains for me to consider is, whether the notice and regulation contained in the defendants' tables deprive the plaintiff of his right to recover against the defendants. Now, this notice and regulation as altered came before the learned Judge of the Marylebone County Court in the case I have already referred to, and he there commented upon it so fully and so ably that I cannot do better than quote his remarks. Referring to the notice and regulation which came before me in Mr. Forsyth's case, he observes :—

"'The company's notice of August commenced with these words,—"Every attention will be paid to insure punctuality as far as practicable." This really is all that the law requires. "But," continued the notice, "the directors do not undertake that the trains shall arrive at the time specified in the time table." Here I may remark that, irrespective of any notification by the company, the law does not imply any such undertaking, its requisitions being simply that there shall be no failure of punctuality for want of reasonable care and diligence. The notice then adds, "Nor will the directors be accountable for any loss, inconvenience, or injury which may arise from delay or detention," and subject to their paying every reasonable attention they would not be accountable for the consequences of any delay or detention. Since August the notice has been materially changed. The passage about paying every attention to insure punctuality is omitted, and the company expressly promise nothing, but the omission is immaterial, because what they do not promise the law implies against them. The next change is the addition to the stipulation that they will not be responsible for delay, in the words, "unless upon proof that it arose from the wilful misconduct of their servants." Upon the faith of their present notice, the defendants contend in effect that they are unfettered as to times of starting and arrival, notwithstanding their time-tables, in the absence of proof of wilful misconduct on the part of their servants. To such a proposition it is somewhat difficult to listen with patience.'

"In 1870 in the case of 'Buckmaster v. the Great Eastern Railway Company,' 23 *Law Journal*, Exchequer 471, which was an action for damages sustained by the plaintiff by reason of the company not starting a train as advertised in their time-bills, and in which the plaintiff obtained a verdict, Baron Martin said that it was mere nonsense for companies to say, as in effect the company in that case had said,—'We will be guilty of any negligence we think fit, and we will not be responsible;' and with respect to the notice in this case the learned Judge of the Marylebone County Court thus concludes :—'I am of opinion that it is *ultra vires* so far as it professes to attach to the right of travelling on their own line, the condition that the company will not be responsible for any shortcomings of their servants not a[mounting] to wilful misconduct, whatever that term may mean.' In this view as to invalidity of the stipulation in question I fully concur. It seems to me to be a monstrous proposition that the railway companies, who are bound by their special Acts and the Railway Clauses Consolidation Act, 1845, sec. 86, to carry passengers at rates fixed within certain limits, should be able to affix to their contracts with the passengers a stipulation which, if valid, would deprive the passengers of their common law right to the performance with due diligence of the company's contract with them. There is one other remark I would wish to add—viz., that the restriction as to the company's liability for not corresponding with other trains contained in the notice and regulation in question only extends to cases where their trains fail to correspond with trains of other companies, and not with other trains of their own, which is the present case. Having stated my opinion as to the liability of the company at common law and of the invalidity of the above notice and regulation, so far as it restricts such liability in the present case, it still remains for me to consider the last point raised by the defendants, viz. :—Whether, if the notice and regulation were valid, and the plaintiff was bound by it to show wilful misconduct on the part of the defendants' servants, he has shown it in the present case; in other words, whether the absence of the porters through their own fault, or by the orders of superior servants of the company, was, under all the circumstances of the present case, in point of law, 'wilful misconduct,' and I think with some doubt that it ought to be so held; and on this point I wish to refer once more to the judgment of the learned judge of the Marylebone County Court, in 'Turner v. the Great Western Railway Company,' and the

Digitized by Google

authorities therein cited as to the legal interpretation of the words 'wilful misconduct.' The only case that I am aware of that militates against my view is that of 'Russell v. the Great Western Railway Company' (*County Courts Chronicle*, vol. 4, N.S., p. 385), before the learned Judge of the Bath County Court—to whom I have already referred—in which he held that the altered notice or regulation was valid and operative to restrict the defendants' liability to cases of proved wilful misconduct on the part of their servants, but from what I have said it will be seen that I cannot concur in his view. Upon the whole, I am in favour of the plaintiff on all the points of law and facts involved in this case, and a verdict will therefore be entered for the plaintiff for the amount claimed, with costs, and with liberty to the defendants to appeal within one month.

We understand that the Great Western Railway Company have complied with the preliminary formalities, and have already lodged the notice and grounds of appeal against the recent decision of the Judge of the Reading County Court in the action brought against them by Mr. Becke. The appeal is to the Court of Queen's Bench.

THE LAW CLERKS' ASSOCIATION.

The library and reading rooms of this Association were formally opened for the use of the members at their central and commodious premises, No. 207 Great Brunswick-street. The library at present consists of upwards of two hundred volumes of law-books, including all the latest text-books and books of practice in conveyancing, equity, and law, and about one hundred volumes of general literature. The reading-room is supplied with the leading Dublin and London newspapers, the illustrated papers, and the chief weekly leading periodicals. These rooms and the chess-room will be open every evening for the future.

THE NEW SETTLED ESTATES ACT.

Of the many short Acts which were passed in the last session to amend or extend the operation of longer enactments before in force, the Leases and Sales of Settled Estates Amendment Act deserves particular attention. The general purport of the Act is unmistakably in the direction of untrammelling property as much as possible. There has been so much talk lately on the land question in England, proceeding both from lawyers who can, and from doctrinaires who cannot, estimate the immense difficulties involved, that some legislation was inevitable. And as usual, that legislation takes the form of patching up by amendment and extension the law already in force. It may, perhaps, be an objectionable method of reform, thus to introduce changes in our legal system by minute and almost imperceptible steps, instead of proceeding on comprehensive principles. But it is more in harmony with English traditions to act thus cautiously and tentatively. The present Act, though short, occupying a single page of the statute book, may be productive of very impartant consequences. The earlier Act, 19 & 20 Vict. c. 120, was a great step in advance upon pre-existing law. It relaxed the excessive rigour of the operation of settlements, and made it possible to deal with settled estates in such a way as to meet alterations in circumstances which were not, or could not have been, foreseen by the settlor. At the same time proper limits were marked out, which the persons interested were bound to observe, and proper consents had to be obtained before action was possible. But it is evident that some of the parties whose consent was required, either from want of intelligence or a desire to benefit unduly by existing arrangements, or from other improper motives, might refuse his consent to a very advantageous method of dealing with the property. The obstinacy of a single person might thus stand in the way of the interests of many. The present Act is intended to remedy this inconvenience. Such consent may hereafter, subject to the limitations of the Act, be dispensed with. Those limitations are considerable, as not a single step can be taken except under the direction of the Court. When the required concurrence has not been obtained, the Court is to prescribe a form of notice to be given to the person so refusing consent, requiring him to notify, within a period also fixed by the Court, whether he assents to, or dissents from, such application, or submits his right to the Court. If no answer to the notice be received, the person to whom such notice shall have been given is to be deemed to have submitted his rights to the Court. Of course, in considering the application, regard is to be had to the number of persons and their respective interests, who submit their rights to the Court, as compared with those who do not. It is, we suppose, to be presumed, that in case of frivolous or needless applications, to which it would not be for the benefit of all persons concerned that the Court should accede, the Court would have power to charge the whole costs upon the applicants. There are, moreover, one or two important particulars as to which we could wish the Act had been more explicit. The third section concludes with the words :—And every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto." These words seem by implication to repeal the 18th section of the original Act, whereby power is given to grant an application saving the rights of non-consenting parties. As such consent is no longer requisite, the power of thus giving a restricted permission might be deemed to be, as it were, merged in the fuller powers given by the present Act. There is little doubt, however, that the Court would, if found beneficial, adopt the midway course, saving the rights of the objectors. Nor, on any reasonable interpretation, can the 26th section of the first Act be considered as repealed, which prevents the Court from exercising the powers of the Act in case of "an express declaration or manifest intention that they shall not be exercised" contained in the settlement itself. The present statute, in spite of the narrowness of its range, is certainly a step in the right direction, and will, we trust, be beneficial in its operation.—*Law Times*.

WILLS AND BEQUESTS.

The will, dated January 10th, 1874, of the Right Honourable Abraham Brewster, late of No. 26, Merrion-square, Dublin, who died on the 26th July last, was proved in Ireland, on the 24th ultimo, by the executors, Robert Gray Watson, Edward Cane, Thomas Vesey Nugent, and Robert Abraham Brewster French Brewster, the aggregate value of the personal estate in England, Ireland, and Scotland amounting to £127,369 18s. 8d., and the Irish probate was resealed at the principal registry, London, on the 16th instant. The testator gives numerous legacies to his relatives and others; his furniture, house in Merrion-square, and his house and lands at Roebuck, to his "darling" grandson, Robert Brewster French, absolutely; he devises all the rest of his real, copyhold, and leasehold estates in strict settlement, the first tenant for life thereunder being his said grandson; the residue of his personal estate is settled upon similar trusts. Any person taking the estates under such settlement is to assume within one year the surname of Brewster. In the provision as to his funeral, the testator directs that no hatbands or scarves are to be given or worn except to the clergyman and parish clerk who shall officiate.

Judicial Services.—In the last financial year the pensions for judicial services in Great Britain amounted to £58,681 3s. 3d., and in Ireland to £17,258 18s. 8d.

The Law of Arson.—The *Albany Law Journal* reports a case wherein it was held that a husband living with his wife and having a rightful possession, jointly with her, of a dwelling-house which she owned, and they both occupied, was not guilty of arson at common law, in burning such dwelling-house; this rule, it was held, is not changed by a statute securing to the wife her separate property; though, under the statutes of the State, a man may be guilty of arson in burning his wife's house as he may be in burning his own.

Digitized by Google

LAW STUDENTS' JOURNAL.

KING'S INNS, HENRIETTA-STREET, DUBLIN.

MICHAELMAS TERM, 1874.

LAW STUDENTS.

The memorials of the undernamed gentlemen, addressed to the Benchers of the Honorable Society of King's Inns, and praying for admission as Students of Law, will be taken into consideration by the Standing Committee of the Benchers, at its meeting on Thursday, 12th inst.

1. WALTER FIZWILLIAM STARKIE, student, T.C.D., eldest son of William Robert Starkie, of Cregane Manor, in the county of Cork, Esq., J.P., R.M. Certificate signed by William M. Johnson, Esq., Q.C.
2. FREDERICK WILLIAM PENNEFATHER, A.B., Cambridge, youngest son of Edward Pennefather, of Fitzwilliam-place, in the city of Dublin, Esq., Q.C. Certificate signed by William Anderson, Esq.
3. MARTIN JOSEPH BLAKE, student, T.C.D., sixth son of Valentine O'Connor Blake, of Tower Hill, in the county of Mayo, Esq., D.L., J.P. Certificate signed by Edmund B. Lawless, Esq., Q.C.
4. CHARLES ANDREW O'CONNOR, student, T.C.D., third son of Charles Andrew O'Connor, late of Roscommon, in the county of Roscommon, Esq., solicitor, deceased. Certificate signed by John Adye Curran, Esq.
5. GARRETT THOMAS NAGLE, student, T.C.D., only son of Garrett Nagle, late of Clogher, in the county of Cork, Esq., Deceased. Certificate signed by H. C. Plunkett, Esq.
6. GEORGE HILL SMITH, second son of George Smith, of the Paymaster-General's Office, Dublin Castle, Esq. Certificate signed by Francis MacDonagh, Esq., Q.C.
7. ALEXANDER HOLMES, Student, T.C.D., fourth son of Samuel Crawford Holmes, of Synge street, in the City of Dublin, Esq. Certificate signed by William Harty, Esq.
8. RICHARD EDMUND MEREDITH, fourth son of William Rice Meredith, of Kenilworth-terrace, Rathgar, in the County of Dublin, Esq., Solicitor. Certificate signed by T. A. Purcell, Esq., Q.C.
9. DENIS M'CARTHY MAHONY, jun., Student, T.C.D., second son of Denis M'Carthy Mahony, of The Island, Rochestown, in the County of Cork, Merchant. Certificate signed by George Waters, Esq., Q.C.
10. FRANCIS MORGAN DEAN, A.B., University of Dublin, second son of William Edward Dean, of Winton-road, in the County of Dublin, Esq. Certificate signed by John Monroe, Esq.
11. JOHN TORRENS, A.B., Oxford, eldest son of James Torrens, of Edenmore, in the County of Antrim, Esq., Solicitor. Certificate signed by George A. C. May, Esq., Q.C.
12. RICHARD DELMEGE CROTTY, B.A., Queen's University, eldest son of the Reverend William Crotty, late of Galway, Presbyterian Minister, deceased. Certificate signed by Philip Lyster, Esq.
13. JOHN FINDLAY FRAZER, A.B., University of Dublin, second son of William Frazer, of Harcourt-street, in the City of Dublin, Esq., F.R.C.S.I. Certificate signed by William Drury, Esq.
14. MICHAEL JOSEPH DUFF, second son of Timothy Duff, of Shannon street, in the City of Cork, Esq. Certificate signed by Hugh MacDermot, Esq.
15. WILLIAM VINCENT KANE, Student, T.C.D., fourth son of William Joseph Kane, late of North Great George's-street, in the City of Dublin, Esq., deceased. Certificate signed by Valentine J. Coppinger, Esq.
16. FRANCIS JOHN JONES, Student, T.C.D., eldest son of the Reverend Andrew Armstrong Jones, of Kilmore, in the County of Tipperary. Certificate signed by Philip Lyster, Esq.
17. JOHN WALLACE, Student, T.C.D., third son of the Reverend Henry Wallace, of Belfast, Presbyterian Minister. Certificate signed by A. G. Richey, Esq., Q.C.
18. ARTHUR WARREN SAMUELS, Student, T.C.D., second son of Arthur Samuels of Langara, Kingstown, in the County of Dublin, Esq., Solicitor. Certificate signed by Samuel Wallace, Esq., Q.C.

BARRISTERS.

The memorials of the undermentioned Students of Law, addressed to the Benchers, and praying to be admitted to the Degree of Barrister-at-Law, will be taken into consideration by the Benchers at their meeting on Monday, the 9th inst., or at such other time as shall for that purpose be appointed.

1. EDWARD HOWLEY, Esq., eldest son of Patrick Culkin Howley, late of Rathellen, in the county of Sligo, Esq., J.P., deceased. Certificate signed by Michael O'Shaughnessy, Esq., Q.C. To be proposed by the Right Hon. Mr. Justice Barry.
2. FRANCIS W. B. DUNNE, Esq., A.B., University of Dublin, second son of the Reverend John Henry Dunne, late of Dunshaughlin, in the county of Meath, deceased. Certificate signed by C. H. Hemphill, Esq., Q.C. To be proposed by Mr. Serjeant Armstrong.
3. RICHARD BARRY O'BRIEN, Esq., third son of Patrick Barry O'Brien, of Kilrush, in the county of Clare, Esq. Certificate signed by D. C. Heron, Esq., Q.C. To be proposed by the Right Hon. Mr. Justice Fitzgerald.
4. ROBERT FANNIN OLPHERT, Esq., A.B., University of Dublin, third son of Wybrants Olphert, of Ballyconnell, in the county of Donegal, Esq., D.L. Certificate signed by Edward Gibson, Esq., Q.C. To be proposed by the Solicitor-General.
5. WILLIAM STEEN, Esq., B.A., Queen's University, second son of William Steen, late of Owen O'Cork, in the county of Down, Esq., deceased. Certificate signed by A. M. Porter, Esq., Q.C. To be proposed by George A. C. May, Esq., Q.C.
6. GEORGE BRABAZON HERBERT NASH, Esq., B.A., University of France, eldest surviving son of Francis Herbert Nash, of Synnott-place, in the city of Dublin, Esq., A.M. Certificate signed by Charles Leech, Esq., Q.C. To be proposed by the Right Hon. the Lord Chief Baron.
7. JOHN WINTHROP HACKETT, Esq., A.B., University of Dublin, eldest son of the Rev. John Winthrop Hackett, of Harcourt-street, in the city of Dublin. Certificate signed by R. J. Lane, Esq., Q.C. To be proposed by the Right Hon. Sir Joseph Napier, Bart.
8. NORRIS EDMUND WALLACE, Esq., A.B., University of Dublin, second surviving son of the Reverend Thomas Wallace, of Belfield, in the County of Dublin. Certificate signed by John H. Orpen, Esq. To be proposed by the Right Hon. William Brooke.
9. PHILIP HENRY BAGENAL, Esq , A.B., Oxford, second surviving son of Philip Henry Bagenal, late of Benekerry, in the County of Carlow, Esq , deceased. Certificate signed by Thomas W. Bell, Esq. To be proposed by the Right Hon. the Recorder of Dublin.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Preliminary Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland), 1866."

DUBLIN MICHAELMAS TERM, 1874.

ENGLISH HISTORY.

1. Under what king did the Saxon power in England reach its greatest height, and what were the chief events of his reign?
2. Into how many classes were the Saxons divided, and with whom did the monarchy end?

Digitized by Google

3. In whose reign were the Channel Islands added to the kingdom of England?

4. Name the Cinque Ports, say when they were first fortified, and in whose reign the Tower of London was built?

5. At what battle, and in whose reign, were the Barons defeated and Simon de Montford killed?

6. When was the battle of Otterbourne fought, and between whom?

7. What tax caused the insurrection of Wat Tyler, and what addition to the City arms was made after he was killed?

8. When and where was the first great naval victory over the French gained?

9. Mention some of the principal battles fought during the Peninsular War?

10. Give a short account of the South Sea bubble and its consequences?

11. What English Monarch first adopted the title of "King of France," and who was the last who bore it?

12. Name the chief victory gained by Lord Clive, and its consequences?

GEOGRAPHY.

1. What is the angle at which the plane of the Earth's orbit is inclined to the plane of the Equator, and what are the effects of this inclination?

2. What is a Meridian? Why so called?

3. What is the meaning of *solstice?* When is the summer and when the winter solstice, and how caused?

4. Trace the course of the Mississippi, its principal branches, and the chief towns on its banks?

5. Name the boundaries of Russia, and what are its principal rivers?

6. Name the point at which Denmark terminates northwards, and the seas and channels on either side of it?

7. Where are the following situate:—
Cape Hatteras, Gulf of Salerno, Hartz Mountains, Palk's Straits, Sierra Morena?

8. For what are the following towns famous:—
Dundee, Toledo, Xeres, Carrara?

9. By what Frith are the Orkney Islands separated from Scotland? How many compose the group, and what is the principal called?

10. In what counties are the following situate:—
Dunstable, Winchelsea, Whitby, Stroud, Truro?

ARITHMETIC.

1. If the rent of 12A. 2R. 30P. is £28 8*s*. 9*d*., what is the rent of 69A. 3R. 20P.?

2. Reduce 17*s*. 9*d*. to the decimal of a pound.

3. If a man earns £1 7*s*. per week, and expends 2*s*. 10*d*. per day, how much should he have saved in the year?

4. What will be the expense of carpeting a room 24 feet long and 15 feet wide, with carpet ¾ yard wide at 5*s*. 6*d*. per yard?

5. If the yearly profits of an investment be £10 13*s*. 6*d*. per cent., how much must be invested to bring an annual return of £460 14*s*. 10*d*.?

6. What is the interest of £4,780 10*s*. 6*d*. for 137 days, at £3 5*s*. 6*d*. per cent.?

BOOK-KEEPING.

1. How do you balance a cash account? How a goods account?

2. How should the following transactions be entered in the ledger:—
   (*a*.) When your debtor compounds with you, and you receive part of the debt in discharge of the whole.
   (*b*.) When interest is received for money lent.

3. What is the general rule for journalizing? Illustrate it by examples.

4. Open a cash account, enter the following transactions, and balance the accounts:—

		£	s.	d.
March 1st—	Cash on hand, - - - -	146	0	0
„ „	Paid John Smith, - -	25	0	0
„ „	Received cash for sales this day,	56	10	0
„ 2nd—	Paid for goods, - - - -	18	0	0
„ „	House-rent, - - - -	25	10	0
„ „	Sales for cash, - - - -	15	5	0
„ 3rd—	Paid Thomas Jones, - -	75	0	0
„ „	Received from John Smith,	18	0	0
„ „	Sales for cash, - - - -	28	10	0

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

Preliminary Examination for Apprentices to Attorneys, pursuant to "The Attorneys and Solicitors Act (Ireland), 1866."

DUBLIN MICHAELMAS TERM, 1874.

EXAMINATION FOR THE SOCIETY'S PRIZE.

GRECIAN HISTORY.

1. Give some account of the War of the Epigoni. The return of the Heraclidæ.

2. When and between whom was the Thirty Years' Truce concluded?

3. Give some account of the Sacred Wars.

4. What cities did Epaminondas found in Peloponnesus? Mention the most remarkable events in his career, and in what battle was he slain.

ROMAN HISTORY.

1. For what is the siege of Veii remarkable?

2. What was the immediate cause of the first Punic War, and what were the terms of the peace which concluded it?

3. Who were the members of the first, and who of the second Triumvirate?

4. What were the reforms proposed by Tiberius Gracchus, and what was his fate?

ENGLISH HISTORY.

1. State the circumstances under which the petition of rights was framed.

2. What king was called the English Justinian? and state his claims to that title.

3. What ministers formed the "Cabal?" Give some particulars respecting their characters and their policy.

4. Mention the origin, the date, and some of the principal events of the "Seven Years' War."

LOGIC.

1. Explain the nature of the hypothetical syllogism.

2. How are simple propositions divided with respect to quantity and quality conjointly, and how designated?

3. Explain and illustrate the meaning of the *mood* of a syllogism—the *figure* of a syllogism.

4. What is the meaning of *induction?* How does Whately account for the fact that induction has been regarded as a distinct kind of argument from the syllogism?

5. Into what classes does Whately divide fallacies? Explain the meaning of *Ignorantia elenchi, Petitio principii*.

GEOGRAPHY.

1. Mention and describe briefly some of the Island groups of the Pacific.

2. For what are Leipsic, Kissingen, Dacca, and the Lipari Islands famous?

3. Trace the course of the Indus, Zambesi, Ticino, and describe the countries through which they flow.

4. Through what straits, bays, and seas would a ship pass in sailing from Southampton to Ceylon?

Digitized by Google

ARITHMETIC.

1. Find the value of $\frac{3}{8}$ of £5 13s. 9d.

2. A. pays half-yearly £10 1s. 3d. income-tax; find his income, the tax being 7d. in the £.

3. If the carriage of 6 cwt. 3 qrs. 0 lbs. for 124 miles cost £3 4s. 8d., what weight should be carried 93 miles for £1 4s. 3d?

4. The shares in a speculation are £3 15s. A person buys 77 shares when they are 4 per cent below par, and sells them at 1 per cent. premium; what is his gain?

FRENCH.

1. Translate and explain :—

(1.) Le satirique des *Guêpes* put s'en moquer et traduire sur la scène ce pauvre artisan qui jour et nuit répète le plaidoyer du rhéteur qu'il doit improviser devant ses juges.

(2.) La Gaule, au dire de Juvénal, était la pépinière des avocats.

(3.) La délation est partout, elle s'exerce à la façon d'une industrie et soutient le faste de plus d'une maison.

(4.) Si l'avocat de nos jours, en lisant les *Plaideurs*, a ri d'aussi bon cœur que ses anciens confrères, il a mieux fait puisqu'il a su se corriger et rendre la satire quelque peu surannée.

(5.) Il fut arrêté de nouveau et ne dut la vie, comme tant d'autres, qu'aux événements de thermidor.

(6.) L'amertume de ces critiques démontrait assez que la droite ne voulait rien entendre au mécanisme de la constitution.

2. Describe the position of the bar in (1) Geneva and in (2) Turkey.

1. Distinguish *avant* and *devant*, *dans* and *en*, giving examples.

2. Write down the past participles of *courir*, *croire*, *croître*, *battre*, *bâtir*, *absoudre*.

3. Distinguish :—

(1.) Je l'ai vu peindre (if l' is fem.)
Je l'ai vue peindre.

(2.) Il vint à me parler;
Il en vint à me parler,

(3.) Il faut plus qu'un homme pour le faire;
Il faut plus d'un homme pour le faire.

(4.) Mon jardin vaut plus que le vôtre;
Mon jardin vaut mieux que le vôtre.

4. Explain *gare*, *sursis*, *séculaire*.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

ATTORNEYS AND SOLICITORS' APPRENTICES.

SESSIONAL EXAMINATION.

THE SESSIONAL EXAMINATION, fixed for the 6th day of November next, is unavoidably postponed until the morning of *Tuesday, the 10th of November, at 10 o'clock, A.M.*

Gentlemen proposing to be examined will have to leave their names at the Secretary's Office, Solicitors' Buildings, Four Courts, Dublin.

By order,

WILLIAM HICKSON,
Professor.

COURT PAPERS.

SUPERIOR COURTS OF COMMON LAW.

List of Days to Plead, and Mark Judgment.

NOVEMBER, 1874.

Plaint Served on		Filed not later than	Last Day to Plead	Entitled to Judgment
Monday,	.. 2 Nov.	11 Nov.	16 Nov.	17 Nov.
Tuesday,	. 3 „	12 „	17 „	18 „
Wednesday,	.. 4 „	13 „	18 „	19 „
Thursday,	.. 5 „	14 „	19 „	20 „
Friday,	.. 6 „	16 „	20 „	21 „
Saturday,	.. 7 „	17 „	21 „	23 „
Monday,	.. 9 „	18 „	23 „	24 „
Tuesday,	.. 10 „	19 „	24 „	25 „
Wednesday,	.. 11 „	20 „	25 „	26 „
Thursday,	.. 12 „	21 „	26 „	27 „
Friday	.. 13 „	23 „	27 „	28 „
Saturday,	.. 14 „	24 „	28 „	30 „
Monday,	.. 16 „	25 „	30 „	1 Dec.
Tuesday,	.. 17 „	26 „	1 Dec.	2 „
Wednesday,	.. 18 „	27 „	2 „	3 „
Thursday,	.. 19 „	28 „	3 „	4 „
Friday,	.. 20 „	30 „	4 „	5 „
Saturday,	.. 21 „	1 Dec.	5 „	7 „
Monday,	.. 23 „	2 „	7 „	8 „
Tuesday,	.. 24 „	8 „	8 „	9 „
Wednesday,	.. 25 „	4 „	9 „	10 „
Thursday,	.. 26 „	5 „	10 „	11 „
Friday,	.. 27 „	7 „	11 „	12 „
Saturday,	.. 28 „	8 „	12 „	14 „
Monday,	.. 30 „	9 „	14 „	15 „

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—Whiteford, as to petition.—M. L. M'Ghee, for carriage.—M. Cahill, objection.—C. T. Campion, private offer.—M. Keogh, as to rent-charge.—T. H. Greer, to disallow sale.—T. Bell, payment.

IN COURT.—Trustees Egan, tenant's objection.—A. J B. Burke, do.—A. Brennan, do.—Assignees H. Skelton payment.—W. Allen, do.—H. Haig, for directions.

Before EXAMINER (Mr. Dobbs).

R. Burr, rental.—William A. Treacy, do.—Going, do.—Church Commissioners (Armagh), ditto.

Before EXAMINER (Mr. M'Donnell).

C. Dower, vouch.—R. A. Denny, do.—S. Bateman, do.—H. Stevenson, ditto.

TUESDAY.

IN CHAMBER.—S. Crowe, as to order.

IN COURT.—D. A. Ker, for liberty to appeal.

Before EXAMINER (Mr. Dobbs).

Tuite, final notices.

WEDNESDAY.

IN CHAMBER.—F. Lepper and others, final schedule.

Before EXAMINER (Mr. Dobbs).

Trustees Usher, to take account.

Before EXAMINER (Mr. M'Donnell).

S. Clarke and another, rental.—M. Hyndman, do.—G. Fossitt, do.—J. O. Bloomfield, do.—William Young, do.—Scott, do.—J. M'Creeght, do.—J. H. Bowley, vouch.

THURSDAY.

Before EXAMINER (Mr. M'Donnell).

J. Hastings, rental from 4th.—E. Geraghty, vouch.

Digitized by Google

FRIDAY.

SALES AT 12 O'CLOCK.

RIGHT HON. F. FRENCH.—1 lot.
T. T. LANNIGAN.—1 lot.
WILLIAM HAMMOND AND OTHERS.—2 lots.
TRUSTEES MOORE.—3 lots.
H. L. DWYER.—3 lots.
J. N. FERRALL.—5 lots.
J. RIDDICK.—9 lots.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Henry Page	Prove debts and vouch	*Molloy & Watson*
James M'Aleenan	do	*Molloy & Watson*
John Woods	do	*Oldham & Eaton*
Hugh M'Kenzie	do	*Larkin & Co.*
Francis Keegan	do	*Boughey*
Michael Ryan	do	*Findlater & Co.*
Owen Dunne	do	*Rynd*
James W. Dillon	Vouch account	*Toomey*

TUESDAY.

Before the COURT, at 11 o'clock.

Ebenezer E. Brown	1st composition sitting	*Larkin & Co.*
Robert F. Ofle	2nd composition sitting	*Perry & Co.*
Mary Gibson	1st public sitting	*Oldham & Eaton*
William Cannon	Final examination	*Goff*
Joseph Farrar	do	*MacSheehy*
Daniel Leahy	do	*Larkin & Co.*
Malachi Murphy	do	*Hamilton & Craig*
George M'Donnell	do	*O'Reardon*
John J. Hennessy	do	*Thompson*
John Molloy	do	*M'Evoy*
Patrick Mooney	do	*Fottrell & Son*
William Metcalfe	Examine witnesses	*Oldham & Eaton*
William Sheehan	do	*Scallan*
B. M'Lenegan	Audit and dividend	*Mathews*
Walter O'Donnell	do	*Oldham & Eaton*
William Holmes	Audit mortgagee's act.	*Larkin & Co.*
Philip M'Cusker	Motion	*Fay & M'Gough*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Mary Williams	Prove debts and vouch	*Oldham & Eaton*
Gillman and Potter	do	*Larkin & Co.*
David Rutledge	do	*Larkin & Co.*
M. Bradshaw	do	*Larkin & Co.*
Henry Abbott	do	*Larkin & Co.*
Mary Leahy	do	*Larkin & Co.*
Wm. Connaghton	do	*Larkin & Co.*
Harley Keough, Brothers	do	*Perry & Co.*
Hazleton and Sheppard	Reference under order of 24th July, 1874	*Collins*
George P. Magrath	Inquiry under 138th General Order	*Hickie*
Patrick K. Reid	do	*Goff*

WEDNESDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Thomas Murray	Costs	*Molloy & Watson*
James Hegarty	do	*Proctor*
Samuel Doyle	do	*Mathews*
Owen Dunne	do	*Scallan*
Andrew Moir	do	*Mathews*
Wallace & Magill	do	*Leachman*
James M'Aleenan	do	*Lynch*
Folliott Barton	do	*Leachman*
Same matter	Prove debts	*Leachman*
John Barrett	Reference	*Jordan*

THURSDAY.

Before the COURT, at 11 o'clock.

Patrick Hanlon	Charge & discharge	*Larkin & Co.* for charge; *Fay & M'Gough* for discharge
William Collins	do	*Tracey & Nagle* for charge; *Perry & Co.* for discharge
Edward Law	Motion	*Neilson*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Iver M'Donnell	Prove debts and vouch	*M'Govern*
James Murray	do	*Hamilton & Craig*
Alex. D. Stewart	do	*M'Govern*
J. J. Hennessy	do	*Thompson*
James Fortune	do	*Thompson*
John Keane	do	*Casey & Clay*
Thomas Murray	do	*Casey & Clay*
William Foxall	do	*Oldham & Eaton*
Timothy Buckley	do	*Scallan*
J. & H. Brett	do	*Larkin & Co.*
Same matter	Examine witnesses	*Larkin & Co.*
John Hogan	Vouch account	*M'Govern*
Patrick Farrell	do	*M'Govern*
Robert Courtney	Vouch mortgagee's act.	*D. & T. Fitzgerald*
Patrick Nolan	Reference	*Stephens*
T. F. O'Neill	Vouch mortgagee's act	*Larkin*
Same matter	Vouch assignee's acct.	*Maxwell & Weldon*
James Murray	Vouch mortgagee's act.	*Larkin & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

Thos. M'Cutcheon	1st composition sitting	*Casey & Clay*
Mary Smith	do	*Benner*
Andrew M'Bride	1st public sitting	*Perry & Co.*
Edward S. Wilson	Final examination	*Neilson*
E. E. Brown	do	*Larkin & Co.*
Henry Davey	do	*Neilson*
Joseph Creswell	do	*Mathews*
Daniel Nolan	Examine witnesses	*Larkin & Co.*
Edward Quigley	do	*Kernan*
G. & R. Ferguson	Audit and dividend	*Larkin & Co.*
Michael Kappock	do	*Jones*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Hugh S. Guiney	Prove debts and vouch	*Beauchamp*
J. W. & R. Rowan	do	*Oldham & Eaton*
Michael O'Sullivan	do	*Larkin & Co.*
Walton and Nolan	do	*Larkin & Co.*
Thomas M'Connell	do	*Larkin & Co.*
John Marsden	do	*Tatlow & Armstrong*
Timothy O'Connell	do	*Bradley & Son*
John T. Maguire	do	*Oldham & Eaton*
Hugh J. Hall	do	*Cronhelm & Co.*
Martin Mahony	Vouch account	*Bradley & Son*

ADJUDICATIONS IN BANKRUPTCY.

Crawford, Thomas Reginald, Glenageary, county Dublin, and Dame-street, Dublin, attorney-at-law. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *H. C. Neilson*, solr.

Gallivan, John, Farranenagh, Kerry, farmer. Sittings, *Friday, November* 20, and *Tuesday, December* 8. *Mathews*, solr.

Garroway, James, Castle-lane, Belfast, publican. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Thompson*, solr.

Grant, Michael, King-street, Waterford, sailmaker and shipowner. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Forsythe*, solr.

Holland, Mathew, Dromart, Armagh, farmer. Sittings, *Tuesday, November* 20, and *Friday, December*, 8. *Atkinson and Froste*, solrs.

Kelly, Martin, Athlone, county Roscommon, grocer and spirit dealer. Sittings, *Tuesday, November* 27, and *Friday, December* 15. *Hamilton and Craig*, solrs.

Malcomson, James, Main-street, Cavan, county Cavan, watch and clock maker. Sittings, *Friday, November* 27, and *Tuesday, December* 15. *Rynd*, solr.

Digitized by Google

Meares, George and Company, Crampton-quay, Dublin, stay and shirt manufacturer. Sittings, *Friday, November* 27, and *Tuesday, December* 15. *Rynd*, solr.

Parsons, John, trading as John Parsons and Co., Drogheda, Louth, Draper. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Larkin and Co.*, solrs.

Rose, William, 35, King-street, Waterford, seed merchant. Sittings, *Friday, November* 27, and *Tuesday, December* 15. *Scallan*, solr.

Ryan, James, Dunmore, Galway, grocer. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Hamilton and Craig*, solrs.

Stapleton, William, 1 Lower Mount-street, Dublin, grocer. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Hamilton and Craig*, solrs.

Walsh, John, Bandon, Cork, grocer and baker. Sittings, *Tuesday, November* 24, and *Friday, December* 11. *Larkin and Co.*, solrs.

DIVIDENDS IN BANKRUPTCY.

Law, Samuel, and Law, William, trading as Samuel Law and Sons, Hazelbank, Banbridge, county Down, flax spinners. 4th and final dividend, 9¼d. in the £, making, with former dividend, 8s. 9¼d. in the £. C. H. James, official assignee. *Hewitt, Johns, and Beauchamp*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	OCT. Fri 30	OCT. Sat. 31	NOVEMBER Mon. 2	NOVEMBER Tues. 3	NOVEMBER Wed. 4	NOVEMBER Thur 5
	Government.						
—	3 p c Consols	91⅞–2	91¾⅞	—	91⅞–2	—	92
—	New 3 p c Stock ..	91⅞	91–⅛	—	91⅞–1	91¾⅞⅞	91¾⅞
	INDIA STOCK.						
—	5 p c July '80} Trsfble. at	108⅛	—	—	108⅛	—	—
—	4 p c Oct. '88} Bk. of Irel.	102⅛	102¼⅜	—	102¼⅜	102¼	102⅜⅝
	Banks.						
100	Bank of Ireland ..	—	312	—	312	312	—
25	*Hibernian Banking Co.* ..	—	—	—	61	—	60⅞
15	*London Joint Stock* ..	50⅛	—	—	50⅛	—	50⅜⅝
20	*London and Westminster* ..	—	78	—	—	—	—
3½	*Munster Bank (Limited)*	9¼⅜	—	—	—	—	—
30	*National Bank*	66¼⅛	66⅜⅝	—	66⅜⅝	66½–7	66¾⅞
15	*National of Liverp'l (Ltd)*	—	—	—	—	14⅜⅝	14⅜⅝
25	*Provincial Bank* ..	—	—	—	90⅛	—	—
10	Do. New ..	—	—	—	—	36	—
10	*Royal Bank*	—	30¼	—	30⅛	—	30⅛
	Steam.						
50	British & Irish	—	—	—	52	—	—
100	City of Dublin	108⅜	—	—	—	108⅜	109
50	Dublin and Glasgow ..	—	—	—	62⅛	—	—
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	55¼	—	—
10	Dundalk (Limited) ..	—	—	—	—	6⅛	—
	Mines.						
3½	*Berehaven (Limited)*	–/6	—	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	7¼	—	—	—	—	—
2½	Wicklow Copper	—	—	—	2⅜	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅛	10⅜⅝	HOLIDAY	10⅜⅝	10⅛	10⅛
10	Dublin Tramways ..	6⅜¼	6⅛		6⅛	6⅛	6⅜⅝
100	Grand Canal ..	—	—		54¼	—	54¼
7½	*M'Swiney & Co., limited*	7⅜¼	—		—	—	—
25	*National Assurance* ..	—	—		—	47	—
9-4-7	*Patriotic Assurance* ..	10⅛	—		—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	—	69⅞	69⅜¼	69⅞
100	Dublin and Belfast Junct.	—	—	—	90⅞	90⅞	90⅜⅝
100	Dublin, W'klow, & W'ford	77⅛	—	—	—	—	—
100	Gt. Southern and Western	—	—	—	109	109½	—
100	L'nd'n, Brighton, Sth Coast	90⅛	—	—	90⅛	—	—
100	Midland Gt. Western ..	82⅛	—	—	82⅜	—	—
50	Waterford and Limerick ..	31⅛	32	—	32	33	33¼
	Railway Preference.						
6½	Cork & Bandon, 5½ p c ..	—	—	—	6⅜⅛	—	—
50	D., W., & W., 5 p c (1860)	55	—	—	—	—	—
100	Grand Trunk of Canada, 1	—	—	—	71⅛	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	—	99	—
10	Irish North Western A 5 p c	—	—	—	4	—	—
100	Do., Divd Com A 5 p c ..	—	—	—	30	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	—	—	50⅛	—	50⅛
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	97⅛	97¼
—	D., W., & W., 4½ p c ..	100	—	—	100	100	—
—	Gt. South'n & West'n, 4 p c	99½	—	—	99⅛	99⅛	—
—	Irish Nth Westn 1st C 5 p c	101	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	102⅛	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 15th October, 1874
Of Deposit—2½ per cent., 15th October, 1874.

Name Days—November 12th and 28th, 1874.

Account Days—November 13th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

HAMILTON—November 3, at Annefield, Dundrum, County Dublin, the wife of John Hamilton, Esq., solicitor, of a daughter.

ACCOUNTANTS:

N. PETERSON & SON, PUBLIC ACCOUNTANTS, AUDITORS, AND EXPERTS, ULSTER CHAMBERS, 18, FLEET-STREET, DUBLIN

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A MONTHLY JOURNAL OF JURISPRUDENCE AND INTERNATIONAL LAW for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

REEVES & TURNER, Law Booksellers, 100 Chancery-lane, London.

455

LEGAL POSTINGS:

In the LANDED ESTATES' COURT, IRELAND.

SALE,

On FRIDAY, the 13th day of NOVEMBER, 1874.

COUNTIES DUBLIN AND ROSCOMMON.

MOUNT TALLANT, COUNTY OF DUBLIN,

AND

PART of the LANDS of CLONSERANE and KILLIVACAN, in the COUNTY of ROSCOMMON.

In the Matter of the Estate of John Riddick, Owner; Richard Charles Pratt and John Hamilton, Petitioners.

TO BE SOLD, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Inns'-quay, In the City of Dublin, At Noon,

On FRIDAY, the 13th day of NOVEMBER, 1874.

LOT No. 1—The House and Premises known as Mount Tallant Cottage, with Land thereto, of the estimated yearly value of £85, to be sold primarily liable to the fee-farm rent of £64 12s 6d, in exoneration of Lots 2 to 7, and of the net estimated value of £20 7s 6d.

LOT No. 2—The House and Premises known as No. 1, Mount Tallant Terrace, which produces an annual profit rent of £32.

LOT No. 3—The House and Premises known as No. 2, Mount Tallant Terrace, which produces an annual profit rent of £38.

LOT No. 4—The House and Premises known as No. 3, Mount Tallant Terrace, which produces an annual profit rent of £38.

LOT No. 5—The House and Premises known as No. 4, Mount Tallant Terrace, which produces an annual profit rent of £38.

LOT No 6—The House and Premises known as No. 5, Mount Tallant Terrace, which produces an annual profit rent of £38.

LOT No. 7—The House and Premises known as No. 6, Mount Tallant Terrace, which produces an annual profit rent of £38.

LOT No. 8—Nine-tenth Undivided Parts of the Lands of Killivacan, and Killivacan Bog, situate in the barony and county of Roscommon, held in fee, producing an annual profit rent of £48 1s 9d.

LOT No. 9—Nine-tenth Undivided Parts of Part of the Lands of Clonserane, situate in the barony and county of Roscommon, held under fee-farm grant, indemnified against head rent, and producing an annual profit rent of £86 15s 3d.

Dated this 17th day of July, 1874.

R. DENNY URLIN, Examiner.

ALFRED H. MIDDLETON, Solicitor.

DESCRIPTIVE PARTICULARS.

Lots 1 to 7 (Mount Tallant Cottage and Terrace) are situate on the high road leading from Harold's Cross to Terenure, close to Kenilworth-square, in the Rathmines Township, and the neighbourhood is improving daily, being healthy, convenient, and respectable. Mount Tallant Cottage is a detached residence, standing upon nearly 4 acres, with entrance lodge and carriage drive. The houses forming the terrace front the high road, and are in good repair, and are to be sold indemnified from all rent.

Lot 8—The Lands of Killivacan are free from rent, and are situate near Strokestown. The rent of this Lot is paid by one tenant, whose lease will expire in 30 years. The tenement valuation is £119 15s.

Lot 9—The Lands of Clonserane are indemnified from all rent, and also convenient to Strokestown, and are held by tenants from year to year. The tenement valuation is £92.

For Rentals, Maps, and further particulars apply at the Landed Estates' Court, Inns'-quay, Dublin; to

JOHN RIDDICK, Esq., the Owner, 17 Bachelors'-walk; or to ALFRED HANCOCK MIDDLETON, Solicitor for Petitioners, having carriage of Sale, 26 Eustace-street, Dublin.

595

Digitized by Google

In the LANDED ESTATES' COURT, IRELAND.

COUNTY AND CITY OF DUBLIN.

SALE,

On FRIDAY, the 20th day of NOVEMBER, 1874.

In the Matter of the Estate of William Tighe Hamilton and Frederick Fownes Hamilton, Trustees and Executors named in the last will and testament of John Bell, deceased, Owners and Petitioners.

TO BE SOLD BY PUBLIC AUCTION, In Thirteen Lots, Before the Honourable Judge Flanagan, At his Court, Landed Estates' Court, Inns'-quay, In the City of Dublin,

On FRIDAY, the 20th day of NOVEMBER, 1874, At Noon.

LOT 1—Part of the Lands of Simmons Court, now called Mount Erroll, containing 13 acres, 1 rood, 20 perches, statute measure, held under lease dated the 8th day of December, 1821, for 99 years, from the 29th September, 1821, subject to the yearly rent of £92 15s 4d sterling, payable half yearly, on the 25th March and 29th September, and of the net annual value of £102 4s 8d, and situate in the Barony of Rathdown and County of Dublin.

LOT 2—The Dwelling-house and Premises No. 32 Bridge-street, Lower, in the Parish of St. Audeon and City of Dublin, held under lease dated 28th January, 1846, for the term of 100 years, from the 25th of March, 1841, subject to the yearly rent of £5 sterling, payable half yearly on the 25th of March and 29th September, and producing a well-paid profit rent of £40 sterling.

LOT 3—The Dwelling-houses and Premises 83 and 84 Heytesbury-street, Parish of St. Peter and City of Dublin, producing the net annual profit rent of £41 15s 6d.

LOT 4—The Dwelling-houses and Premises 85 and 86 Heytesbury-street aforesaid, producing the net annual profit rent of £52.

LOT 5—The Dwelling-houses and Premises 87 and 88 Heytesbury-street aforesaid, producing the net annual profit rent of £56.

LOT 6—The Dwelling-houses and Premises 89 and 90 and 91 Heytesbury-street aforesaid, producing the net annual profit rent of £82 15s.

LOT 7—The Dwelling-houses and Premises Nos. 1 and 2 Pleasant-street, Parish of St. Peter and City of Dublin, producing the net annual profit rent of £65.

LOT 8 The Dwelling-houses and Premises Nos. 3 and 4 Pleasant-street aforesaid, producing a net annual profit rent of £66.

LOT 9—The Dwelling-houses and Premises Nos. 5 and 6 Pleasant-street aforesaid, producing the net annual rent of £61.

LOT 10—The Dwelling-houses and Premises Nos. 7 and 8 Pleasant-street aforesaid, producing the net annual profit rent of £63.

LOT 11—The Dwelling-houses and Premises Nos. 9 and 10 Pleasant-street aforesaid, producing the net annual profit rent of £66.

LOT 12—The Dwelling-house and Premises 8, 9, and 10 Camden-row aforesaid, with Building Ground, producing the net annual rental of £106.

LOTS 3 to 12 inclusive, are held in fee-farm, and are jointly subject to the head rent of £4 4s 6d, which is primarily charged on Lot 3, in indemnification of all the other lots.

LOT 13—The Plots of Ground, Dwelling-houses, and Premises, 99, 100, 101, 102, 103, 104, 105, 106, and 107, Coombe, and the Dwelling-houses and Premises and Yards in Skinner's-alley, held partly in fee-farm and partly for long terms of years, and producing the net annual rental, or of the net annual value, of £164 12s, or thereabouts.

Dated this 2nd day of July, 1874.

C. E. DOBBS, Examiner.

Private Proposals for the purchase of all or any of the foregoing Lots will be received by the Solicitor having carriage of the Sale up to the 25th day of October, 1874, and will be submitted, without further notice, to the Honourable Judge Flanagan for his approval, on the 2nd day of November, 1874.

DESCRIPTIVE PARTICULARS.

Lot 1—This Lot consists of a handsome Residence, with Out-office, Lawn, Orchard, and beautifully laid out Gardens, with an entrance Lodge and Premises situate on the road from Dublin to Stillorgan, in the Pembroke Township, adjoining the splendid residence known as "Montrose," and is situate within a convenient distance from the City of Dublin.

Lot 2 consists of a substantial Business House and Premises, No. 32 Bridge-street; and the rent is punctually paid.

Lots 3 to 12 consist of substantially and well-built Dwelling-houses and Premises, set to solvent tenants at reasonable rents; and in order to suit small capitalists the property has been divided into small Lots.

Lot 13 consists of several Dwelling-houses, Gardens, Yards, and Premises, with a large Garden attached situate on the Coombe, and Skinner's-alley, and are admirably suited for a timber and builders' yard, and Dwelling-house; and are held at nominal rents under the Earl of Meath.

For Rentals, particulars, and Conditions of Sale, apply at the Registrar's Office, Landed Estates' Court, Inn's-quay, Dublin; to

ROBERT JOHNSTON, Esq., Solicitor, 8 Lower Ormond-quay, Dublin; to

H. S. MARTLEY, Esq., Solicitor, 24 Westland-row, Dublin; and to

THOMAS TIGHE MECREDY, Solicitor for the Owners having carriage of the Sale, 28 Westmoreland-street, Dublin. 551

IN THE COURT OF BANKRUPTCY, IRELAND.

JAMES GARROWAY, of Castle-lane, Belfast, in the County of Antrim, Publican, was on the 27th day of October, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 24th day of NOVEMBER, 1874, and on FRIDAY, the 11th day of DECEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

CHARLES RUSSELL and BENNETT THOMPSON, Solicitors, 9 Lower Sackville-street, Dublin. 587

IN THE COURT OF BANKRUPTCY, IRELAND.

JAMES MALCOMSON, of Number 70 Main-street, Cavan, in the County of Cavan, watch and clock maker, was on the 3rd day of November, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 27th day of NOVEMBER, 1874, and on TUESDAY, the 15th day of DECEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

JAMES G. RYND, Solicitor, No. 1 Lower Ormond-quay, Dublin. 596

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

MICHAEL CAPPOCK, of Navan, in the County of Meath, general merchant and shop-keeper, a Bankrupt.

A Public Sitting will be held before the Court, at the Four Courts, Dublin, on FRIDAY, the 13th day of NOVEMBER, 1874, at the hour of Eleven o'clock in the forenoon, to Audit the Assignee's Account and make a dividend in this matter.

Dated this 29th day of October, 1874.

A. F. LLOYD, Deputy Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

ROBERT JAMES JONES, Solicitor for the Assignee, 17 Eustace-street, Dublin. 594

SALE:

SALE OF

Well-secured Ground and Profit Rents, arising out of Recorded Estates.

COUNTY OF KILDARE AND COUNTY OF THE TOWN OF DROGHEDA.

TO BE SOLD BY AUCTION, On MONDAY, the 9th day of NOVEMBER 1874, At Twelve o'clock noon, In Messrs. BENNETT & SON'S Public Sale-rooms, No. 6 UPPER ORMOND-QUAY, DUBLIN,

By direction of the Representatives of the late JOHN MACKAY, Esq., Several valuable and well-secured Profit Rents, payable out of the Town and Lands of Ballytore, situate in the County of Kildare, held in fee; and out of the Lands, Houses, and Premises, in the County of the Town of Drogheda, held under leases for long terms of years.

The Estates will be Sold in Seven Lots so as to suit small capitalists, and as they have all been recorded under the provisions of the Record of Title Act, purchasers will not have to go to any expense of investigating Title, &c.

For Rentals and further particulars apply to

Messrs. BENNETT & SON, the Auctioneers, No. 6 Upper Ormond-quay, Dublin; or to

Messrs. WM. FINDLATER & CO., Solicitors for the Vendors, 35 Upper Ormond-quay, Dublin. 577

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, November* 7, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, NOVEMBER 14, 1874. No. 407.

JUDICIAL STATISTICS.

In a late case at Consolidated Nisi Prius, which was on a bill of exchange, and undefended, Mr. Baron Dowse, addressing the jury and the bar, said:—

"This case is an illustration of the futility of what are called "judicial statistics," or calculating the amount of business done in the courts by the amount of money recovered during each year. I have often sat in the Court of Exchequer from morning to night, and the amount recovered was only half a crown, but it was to try a question of right; yet here we have in less than five minutes disposed of £5,592. I suppose it will be told in England that we took three weeks to do that. This proves the humbug of "judicial statistics," as showing how the courts ought not be kept in Ireland from the small amount of money disposed of."

This statement, as usual, appeared in the public papers, and drew a reply from Mr. Sullivan, M.P. for Louth, who is also, we believe, on his way to the bar. This gentleman, in rather a long letter addressed to a contemporary, says:—

"Baron Dowse told his audience that the judicial statistics took as the criterion of an Irish judge's work, as compared with an English judge's work, the amount of money disposed of. That, and that alone, was the test which he intimated to the public those statistics applied. Either his lordship had seen and read those statistics, and knew what he was talking about, or else he had not seen them, or made himself acquainted with a public document on which he was passing solemn, I mean facetious, judgment. The Parliamentary document convicts his lordship of singular want of candour to say the least, for out of some twenty-five tests only one in any way turns upon the amount of money recovered, whereas all the rest turn upon the number of cases tried, &c. In truth, in framing the form of my return, earnest care was taken to include every conceivable heading or test that could fairly be expected to give an impartial result. Here are the items applied for by me, and supplied in the Parliamentary Return, 291, ordered by the House of Commons to be printed, 15th July, 1874:—

COMMON LAW.

A. Total number of writs of summons and plaint returnable to the three law courts.
B. Total number of writs for sums not exceeding £20.
C. Total number of writs for sums exceeding £20 but under £40.
D. Total number of defences filed.
E. Total number of judgments entered up in the three law courts.
F. Total number of proceedings in chambers.
G. Total number of causes tried both in town and on circuit.
H. Total number of verdicts given both in town and on circuit.
I. Total amount for which verdicts were given.
K. Total number of verdicts for £20 and under.
L. Total number of bills of costs certified by law taxing masters.
M. Total number of causes entered for trial in the three courts and in the Consolidated Nisi Prius.
N. Total number of causes entered for trial on circuit.
O. Total number of causes entered for trial in town and on circuit.
P. Total number of causes tried on circuit.

CHANCERY.

Q. Total number of bills filed.
R. Total number of answers filed.
S. Total number of summonses issued.
T. Total number of orders made in Chancery, whether drawn up by registrars or in chambers.
U. Total number of bills, informations, and special cases heard.
V. Number of bills of costs certified by Chancery taxing masters.
W. Total number of orders drawn up in the Registrar's office.

ADMIRALTY.

X. Total number of causes instituted.

PROBATE.

Y. Total number of probates and administrations granted at the principal registry.
Z. Causes.
A.A. Motions.
B.B. Trials.

DIVORCE AND MATRIMONIAL COURT.

C.C. Motions.
D.D. Trials.

"This list, copied from the Parliamentary paper, will show whether Baron Dowse's description of the document is fair and accurate.

"And, now, let us sweep away altogether the comparison of amounts recovered. What other test, measure, or standard of comparative work will his lordship take, so that we may obtain an idea how many judges England should have if we have none too many? Shall we take total numbers of defences filed? In Ireland, 2,341; in England, 21,467—so that England, on this test, ought to have 120 common law judges if we have only enough! Shall we take total number of writs of summons and plaint? Ireland, 17,136; England, 63,926. Shall we try total number of judgments entered up in the three law courts? Ireland, 4,481; England, 23,554. Not a word here as to the amounts of money involved; not a word here as to the only test which Baron Dowse would have the public believe was applied in those statistics. What test would his lordship consider fair? I might go through the whole list; and the facts would show that, if we have not too many judges for the work in Ireland, there ought to be at least forty common law judges in England! Even his lordship's favourite idea of a time test is against him. Each English judge sat on an average 211 days; each Irish judge 142 days—even lunch-taking days, I suppose, included."

We have made this long quotation from Mr. Sullivan's letter, because his position and ability demand recognition; and while we believe the learned Baron to have been perfectly right, we may say that Mr. Sullivan comes under the imputation himself of not having read or understood the statistics on which he founds his tirade. For we find the very matters that he dwells on so much, to the apparent disadvantage of our Judges, thoroughly explained by Dr. Hancock, from whose Judicial Statistics for Ireland, p. 94, we make the following extract:—

The inquiries of English and Irish Law and Chancery Commissioners in 1863 showed an arrear of business in the Superior Courts of Common Law in England. The statistics of 1872 indicate that, notwithstanding the increased number of Judges appointed since 1867, in consequence of the jurisdiction as to election petitions then conferred on the Judges of these Courts, there was still an arrear of business.

The chief end of all common law proceedings is to lead up to a trial at "*Nisi Prius*," and to secure a proper verdict, and to carry out the judgment founded thereon.

Digitized by Google

In the three Superior Courts of Common Law in England in 1872 no less than 145 trials were postponed "for want of time to try" the cases. The fact of such a block of business had, no doubt, a considerable effect upon other postponements. The postponements by consent amounted to 43, and the postponements by order of the Courts and causes stayed to 202. This forced stoppage of cases, again, led to cases being referred, but the statistics as to these are not shown separately from cases withdrawn. The number of withdrawals, including cases referred, &c., amounted to 883. These, with 121 causes struck out, left only 1,147 causes tried out of 2,538 for trial.

When a permanent arrear of business of this kind occurs, the statistics no longer indicate the natural amount of business that would be brought before the Courts if there was time to dispose of it. Again, the cases disposed of cease to be average cases, for in such a state of business there will be a strong tendency to postpone or refer to arbitration the most complicated cases and those most likely to occupy time.

This is shown in the Court of Chancery in England, where the two heaviest and most complicated cases for winding up Insurance Companies, instead of being disposed of by the ordinary machinery of the Court, were by special Acts of Parliament respectively referred to arbitration. The cases were, however, of such importance in a legal point of view, that the parties secured the services of ex-Lord Chancellors, and when one of these died, of an ex-Master of the Rolls, to act as arbitrators.

The proceedings before these arbitrators, who were really acting as extra Chancery Judges, do not appear in the English Judicial Statistics, because, under the statutes in the respective cases, these eminent dignitaries were legally acting as private arbitrators, and hence the English statistics necessarily omit a large part of real Chancery business.

Thus there is in the Court of Chancery in England, as well as in the Superior Courts of Common Law, a clear indication of an inability, for want of time, to dispose of all the business properly belonging to the Courts.

In Ireland there is in some of the Courts a similar indication of inability, in point of time, to dispose of the business.

Thus, in the Court of Queen's Bench in Ireland, out of 214 causes entered for trial in 1873, 103 were sent to a second Judge to try, and only 22 were returned as tried in the primary Court, while the same number of 22 causes were returned as "postponed for want of time to try."

The Judicature Act passed for England and the Bill proposed for Ireland are calculated, by facilitating the transfer of business from one Court to another, and by extending the period of the year for trials at *Nisi Prius*, to obviate some of the causes of these delays; but in exact proportion to the extent of these changes, will the statistics of past years affected by the delays of procedure fail to afford a safe guide as to the amount of future business when the causes of delay have been removed.

The Irish Land Act, by giving legal recognition to tenants' claims for improvements and under Tenant-right usages, has, besides the direct business of determining the questions as to these subjects between landlord and tenant, brought the large amount of tenants' property thus recognised more completely within the jurisdiction of the Courts in suits for administration of tenants' assets, in questions arising out of family arrangements and settlements and wills, and in creditor and bankruptcy proceedings.

When the principles sanctioned by the English Judicature Act have been completely extended to Ireland, the full effect of this change will, from the size of Irish tenants' holdings, appear chiefly in the increased business in the Civil Bill Courts of the Chairmen of Counties and Recorders, which correspond to the English County Courts.

The appeals from the Irish County Courts are heard by the twelve Judges of the Common Law Courts on Circuit or at the Consolidated Nisi Prius Courts in Dublin, in the form of rehearings, and not, as in England, in the form of error from inferior Courts—case stated, or mere appeal without rehearing.

The new business arising from the complete recognition of tenants' property, to the value of many millions, will, when the pending legal reforms are completed, thus have a large effect upon the business of the Irish County Courts and the Circuit Judges.

Sir Colman O'Loghlen's Act of the present Session conferring jurisdiction on the Irish County Courts in questions of right of way and title to land will have a further effect in increasing the business of these Courts and the business on Circuit.

THE COLLEGE HISTORICAL SOCIETY.

The meetings of this Society are looked upon as public events, and have an interest extending far beyond the walls of the College. In the case of the opening meeting of this session public interest was very much aroused, as it was generally expected that at least one legal candidate for University suffrages would have an opportunity of proving his mettle. For an account of what happened on the occasion we must refer our readers to the daily papers; but we desire to call attention to the Auditorial Address, which was in some danger of having its merits overlooked in the midst of other circumstances. The Auditor for the year, Mr. Matheson, who was lately called to the Bar, chose as the subject of his Address, "The Decline of Patriotism," and worked out his thesis with admirable dialectic skill. His illustrations were taken from the whole course of European history, and his opinions are free from the taint of Positivism, which is the yawning gulf into which those have stumbled who have of late years taught the lessons of history. It is not, however, necessary to agree with Mr. Matheson's conclusions to admire his extensive knowledge, rhetorical skill, and strong argumentative power. His opinions are, shortly, that patriotism is the result of a common religion, a common history, and a common foe, and as peoples have less of these in common, they become less patriotic and more cosmopolitan. Mr. Matheson runs off here, and perhaps unnecessarily, into "fraternity" and "humanity," the other elements of selfishness, and a sympathy outstepping the narrow limits of home, tribe, and creed—complete forces which produce the tendency of patriotism to decline. We should remark that in no sense except that of Aristotle could this essay be deemed political, and as a fair specimen of its qualities we reprint the concluding passages:—

"And as long as the old spirit of Patriotism lives, so long must men continue to recognize a relationship involving duties and obligations which cease with national boundaries; they must feel themselves bound to their countrymen as against all mankind; and hold a right to regard all outside their own land as in the truest sense foes. And as long as this is so, international strife must flourish, and history repeat itself. The general decline of Patriotism, therefore, must surely mark as an era in the history of the world, when it opens a volume as yet unread; when the past ceases to be a criterion of the future; when the stratagems and conflicts of nationalism visibly assume autumnal hues, and nations are no more than the spreading branches of the old human tree. 'The golden age' seems to recede in pro-

Digitized by Google

portion as we approach nearer to it. But if there is any foundation whatever for the belief which we find so hard to shake off- that the human race has before it destinies transcending anything which it has yet realised—the general decline of the old spirit of Patriotism must at least herald the advent of a time bright with sunshine and hope, in the Catholicism of charity and peace.

"And what results must we expect to flow from its decline, on our national selves? Stripped of the spirit of Patriotism, the future history of our country may be far less romantic than its past; it may compare in interest, but very poorly, with that of contemporary nations; statistics may monopolise its pages to an alarming extent—but will it be less happy and useful? The combined effect of the two forces whose operations I have endeavoured to trace, must surely be—nay, actually has been, to make us realise more and more our position as members of the human family—to whom happiness is an all important blessing—suffering and want a painful curse; and who have a right to struggle honestly to attain the former and avoid the latter. We may in consequence concentrate our energies more and more to secure those ends for ourselves—we may become more selfish, if you like to call it so; but we shall also be more and more willing to recognise in others the same right to struggle for the ends which they in common with us prize—we will be more ready to assist them when they honourably fail. We may therefore, as a nation, cease to give birth to patriots of the old Rule Britannia type—men struggling for the glory of Britain, and ready to shed their life's blood in her cause; but every day must find amongst us a larger band of heroes, searching out the wrongs of the oppressed and the wants of the needy, and ready to spend their whole life's energy to make "Ginx's Baby" a fiction, and "the Song of the Shirt" a dream. The name of Britain may fade and die as a name to be feared; it must every day rise and grow, in the stature of a healthy fame, as the hallowed centre of philanthrophy and love!"

MR. THEOBALD PURCELL, Q.C.

The Limerick Quarter Sessions concluded on Saturday evening, before Mr. Theobald Purcell, Q.C. Previous to the rising of court, Mr. Jonas Blackall, solicitor, addressing his worship, said—One word, sir, before you retire. On behalf of the attorneys who have practised here before you at this sessions, I am requested to thank you very sincerely for the great courtesy you have observed towards every member of the profession, and to express their opinion of the satisfactory manner in which you have discharged the important duties that came before you. The Chairman said—Gentlemen, all I can say is that the kind observations which Mr. Blackall, on your behalf, has addressed to me, came entirely on me by surprise. I am not aware, really, that I have done anything to deserve them. All I can say is, and I do say it most sincerely and honestly, that I shall endeavour to deserve them, and I hope that the intercourse which has existed between us since I have come down here may continue in the same pleasant manner, as long as I remain Chairman. I will not say that I would not be tempted into some higher post if I got the opportunity or an offer of it; but I certainly would not desire to have my lines cast in a pleasanter place than they are at present if I am to continue as Chairman. I am very much indebted, indeed, to the practitioners of this court for their kindness, and I must say that I have never known a court where the business was carried on with such despatch. I wish you all, gentlemen, good-bye, until next December. His worship then retired.

LAW AND EQUITY.

The case of *Morrison* v. *Thompson* (22 W. R. 859, L. R. 9 Q. B. 480) affords an illustration of what we have on several occasions maintained, that the main difference between law and equity is not in principle but in procedure. There has been a very general impression (sanctioned by a note to Co. Litt. 117a., note 161) that if an agent acts for his own interest in the conduct of his principal's business, and by violating his fiduciary duty obtains a profit for himself, the principal is entitled in equity to claim the profit which the agent has unduly made, but that at law his only remedy is to sue the agent for any damage which he can show himself to have sustained by the agent's neglect of duty. Such damages might sometimes amount to the sum which the agent had made for his own profit, but they need not, and in many cases it would be difficult, and in some impossible, to show that they ought to be so measured.

In *Morrison* v. *Thompson* the plaintiff had employed the defendant as his broker to purchase a ship for him. The vendor had employed another broker, named Scott, to sell the ship, on the terms that if Scott could sell it for more than £8,500 he might retain the excess. The defendant bought it for the plaintiff through Scott, under an arrangement by which the defendant was to receive £225 10s. of the purchase-money, being part of the excess which Scott was entitled to retain under his agreement with his own principal. The plaintiff was held entitled to recover this sum from the defendant as money had and received to his use; and in delivering the judgment of the Court, Cockburn, C.J., after referring to various authorities, lays down the law as follows:—"In our judgment, the result of these authorities is, that whilst the agent is bound to account to his principal or employer for all profits made by him in the course of his employment or service, and is compellable to account in equity, there is at the same time a duty, which we consider a *legal* duty, clearly incumbent upon him, wherever any profits so made have reached his hands, and there is no account in regard to them remaining to be taken and adjusted between him and his employer, to pay over the amount as money absolutely belonging to his employer. This was precisely the case with regard to the money in question acquired by the defendant in the course of his employment without the knowledge or sanction of the plaintiff. It was actually in his hands, subject to an immediate duty to hand it over to his employer. Under these circumstances, the money, being the property of his employer, can only be regarded as held for his use by the agent, and must consequently be recoverable in an action for money had and received."—*The Solicitors' Journal.*

"NEPHEW AND NIECE."

Scotch cousins are proverbial. In Ireland when a man has a title, or has won renown, the number of his relations in ascending, descending, and parallel lines, increases enormously. In England the expectation of a legacy creates uncles and aunts. Throughout the Isles there is amazing latitude and looseness of expression in claims of relationship. But it is sad to think that the contagion has spread to our Courts of Law and Equity, and that suitors fight, and judges differ, over the meaning of words which are daily in the mouths of men, women, and children, and which, for all that, do not seem to be at all understood.

In the current number of our Reports we have a painful illustration of this kind of ambiguity. In *Wells* v. *Wells*, the testatrix gave "to her niece, Ann Borman, her large china dish and basin and three china plates," and then proceeded, after other specific legacies, to bequeath a sum of money equally among all her nephews and nieces living at her death (*Wells* v. *Wells*, 43 Law J. Rep. (N.S.) Chanc. 680). It was contended that, as Ann Borman had been designated as "niece" in the early part of the will, she was to be taken as one of the beneficiaries under the general bequest, although she was not niece in blood to the testatrix, but only child of the sister of the husband of the testatrix. The Master of the Rolls held that Ann Borman must be excluded from the general gift, and that the words "nephews and nieces" in the latter part of the will must be taken in their proper sense; that is, as meaning "child of brother or sister." His lordship said that the question before him was not one of law but of the English language, and that the duty was cast upon him of deciding between the opinion of the Court of Exchequer Chamber on the one hand, and the Lords Justices of Appeal on the other.

The cases presented to the consideration of the Master of the Rolls, and between which he thought that he was called upon to decide, were *In re Blower's Trusts*, Law Rep. 6

Digitized by Google

Chanc. App. 351; and *Grant* v. *Grant*, 39 Law J. Rep. C. P. 140, 272. In the case of *Blower's Trusts*, the question was whether "great-nephews and great-nieces" were to share in a bequest to "nephews and nieces;" and the argument in favour of that theory rested on the fact that in one instance the testator had designated a great-nephew as "his nephew." But, as he had correctly described his great-nephews in ten instances in the same will, the Court might fairly have taken refuge in the supposition that the word "nephew" had once appeared as a clerical error for "great-nephew." *Grant* v. *Grant* was a much more interesting case. It originally came before Lord Penzance upon the issue of probate of the will (39 Law J. Rep. (N.S) P. & M. 17). The testator appointed "his nephew, Joseph Grant, executor." His wife's nephew, Joseph Grant, had resided with him many years and managed his business He had a nephew also of the same name, son of the testator's brother. Lord Penzance admitted parol evidence as to which Joseph Grant was intended, and decreed probate to the nephew of the testator's wife. Precisely the same question came before the Court of Common Pleas in an action of ejectment, and that Court took the same view of the matter as Lord Penzance had taken. So also did the Court of Exchequer Chamber on appeal. But the Master of the Rolls preferred the decision of the Lords Justices to that of the Exchequer Chamber.

Perhaps next session, when the Judicature Act is again under consideration, section 25 will be improved by the addition of a clause determining whether the Courts of Equity or the Courts of Common Law have correctly interpreted the meaning of the words "nephew and niece," when occurring in a will. At present the conflict of opinion is direct.—*Law Journal.*

THE MARRIED WOMEN'S PROPERTY ACTS OF 1870 AND 1874.

The statute passed in the last session amending the Married Women's Property Act of 1870 appears to be a fair average specimen of modern legislative capacity. We have become accustomed to patchwork law making. A statute on some important subject is passed one session; it is very soon found to be unintelligible or incomplete, or to leave cases unprovided for which were obviously within its scope and intention. Puzzled Judges do not know how to act, and have to take one of two alternative courses, either of which is sufficiently unpleasant. They must either decide against their own convictions of what is right, or they must give effect to the claims of justice by a non natural interpretation of words, extending or restricting the cases embraced by the actual terms of the law. In this way, in many cases, the law on a particular subject has to be laboriously gathered, partly from the obscure wording of statutes, and partly from the often no less obscure utterances of individual Judges. And in the latter case the difficulty is enhanced by the necessity of eliminating the irrelevant circumstances which belong only to the particular case which the Judge is deciding. This sort of thing goes on for some time, until it is found necessary for the Legislature to interfere. The result, however, of that interference is not seldom to make matters worse than they were before. For, instead of repealing *in toto* the earlier statute, and in intelligible language re-enacting what is needful, our law-makers give us what they are pleased to term an Amendment Act, or an Act to amend an Amendment Act; and the latter Act is, as a rule, no better drawn than the earlier. Notwithstanding all this, her Majesty's subjects are presumed to know the law: *Ignorantia legis non excusat.*

Although the Act which we have chosen as the text for these remarks only covers about a page and a half of the Law Reports, it appears to be very little, if at all, better than its fellows. It begins with a comprehensive moral statement, which in the sequel is considerably modified, and subjected to such limitations and restrictions as amount practically to contradiction. We quote the words of the preamble:—"Whereas it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment." The natural inference from the first of these sentences would be that hitherto a woman could not hold property independent of her husband's control, and that the Act was about to declare summarily that all property belonging to a woman at her marriage was to be for her separate use. So far, however, is this expectation from being realised that the operative part of the Act does not say a word on the subject of a woman's separate estate in property vested in her before marriage. From the succeeding words it might be imagined that before the present Act a husband was not in any circumstances liable for his wife's ante-nuptial engagements, but that henceforth he will be liable. It is almost needless to say that expectation is again falsified. The law remains very much what it was before. The large terms employed in the introduction lead us to expect a comprehensive and inclusive measure, whereas the law is in reality altered only in respect of a few comparatively unimportant details. Before the present statute the prenuptial debts of a wife were payable out of her separate property, and they continue to be so payable. The statute itself only repeals a single section of the Act of 1870—viz., section 12—which enacts that a husband is not to be liable for the debts of his wife contracted before marriage, but that the wife shall be liable to satisfy such debts out of her separate property. The first section of the Act of the last session enacts simply that a husband and wife married after the passing of the Act may be jointly sued for any such debt. After the general maxim that it is not just that a husband should not be liable for his wife's debts, we are told husband and wife are to be jointly liable. After this flourish of words we are not surprised to find that the second section in effect declares that it is just that a husband should not be so liable. The words of that section are: "The husband shall in such action, and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife, be liable for the debt or damages respectively to the extent only of the assets hereinafter specified." Those assets are enumerated in the fifth section, and include nothing but what may be reckoned under the head of the woman's separate estate. The rest of the Act is taken up with details as to the method of obtaining judgment, recovering damages, and discriminating where necessary, between the liability of the husband and that of the wife. The concluding section of the Act is naively expressed, and one would think might be taken for granted. "Provided," it says, "that when the husband after marriage pays any debt of his wife, or has a judgment *bonâ fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment, the husband shall not in any subsequent action be liable." It seems scarcely necessary, with such pomp of phrase, to enact that a husband need not pay a debt of his wife's twice over. It would appear from the joint effect of the Act of 1870 and that of the present year, that a husband is in no case liable to pay his wife's *ante*-nuptial debts out of his own property. The latter statute, in flat contradiction to the words of its preamble, lays down this rule much more explicitly than the earlier one. From the words of the statute of 1870 it is not quite clear whether the husband is liable in case his wife has no property of her own. It is now, however, expressly declared that a husband may be called upon to pay his wife's debts to the extent *only* of assets which belong to her. We do not require elegance or brilliancy of style in the framers of our statutes, but it is not surely too much to expect that they should express themselves in simple and intelligible language, so that when the subject matter allows, he who runs may read.

It may not be unsuitable to notice in this place the very misleading character of the marginal analyses which are supplied to the successive paragraphs of Acts of Parliament. It is of course desirable that for the purpose of rapidly gaining a knowledge of the substance of enactments, these annotations should be as brief as possible; but *Dum brevis esse laboro obscurus fio*, and considerable difficulties may arise where important provisions are not noticed. In the Act of 1870, for example, to sect. 7, the words are appended: "Personal property coming to a married woman not exceeding £200, to be her own." The section really makes separate property of any value to which the woman becomes entitled

Digitized by Google

as next of kin to an intestate, and the limit applies only to the case of property to which she becomes entitled by deed or will. The analysis of sect. 7 is "Freehold property coming to a married woman, rents and profits only to be her own." The section refers to a freehold customary and copyhold property vesting in her by descent as heiress or co-heiress of an intestate. Many more instances might be given, but these will suffice as general samples. No stronger arguments than these could be adduced by the opponents of codification. But these defects are easily avoidable, and we trust the day will come when statutes will be expressed in grammatical and intelligible terms. We certainly have not yet reached that happy consummation.—*The Law Times.*

NOTES OF ENGLISH DECISIONS.

(From the *Law Times.*)

NEGLIGENCE—DAMAGE CAUSED BY REPAIRS OF HIGHWAY—LIABILITY OF SURVEYOR—5 & 6 WILL. 4, c. 50, s. 56.—The carriage of plaintiff, who was driving by night along a highway, was upset by some repairs which were not sufficiently lighted; and this action was brought for the damage against the surveyor appointed by the vestry at a salary. The defendant had, by order of the vestry, contracted with another person to do the work required at so much per yard, the vestry finding materials. The jury found there was negligence in not lighting the road, but that the defendant did not personally interfere in doing the work, or in directing the road to be left in such a condition as it was: Held, that the defendant was not liable for the damage suffered by the plaintiff, either at common law, or by reason of sect. 56 of 5 & 6 Will. 4, c. 50. (*Taylor* v. *Greenhalgh*, 31 L. T. Rep. N. S. 184. Q.B.)

EXECUTORS—PARTNERS—ASSETS EMPLOYED IN TRADE—PROFITS.—A testator was partner in a business under articles, by which, on the death of any partner, his share was to be taken by the survivors at a price to be ascertained from the last stock-taking, to be paid in instalments extending over two years, with interest at £5 per cent. He appointed three executors, one of whom was a partner in the business, the second became a partner some time after the testator's death, the third was never concerned in it. The value of the testator's share was ascertained, but not paid, but was allowed to remain for some years in the hands of the firm, who treated it in their books as a debt, and allowed interest on it at £5 per cent., with yearly rests. The business was prosperous and well established. One of the residuary legatees, on becoming entitled to her share, refused to accept payment on the above footing, and filed a bill against the executors, claiming to be entitled to a share of the profits arising out of the use of the testator's capital: Held (affirming the judgment of the court below), that the plaintiff was not entitled to any account of profits; the mere delay by the executors in calling in a debt due to the testator from a firm of which some of them were members, not giving his estate any right to share in the profits of the business, as the articles of partnership constituted a complete contract of purchase which could not be rescinded by mere delay, in the absence of fraud, the stipulations as to time not being of the essence of it. *Jones* v. *Foxhall* (15 Beav.) disapproved: *Vyse* v. *Foster*, 31 L. T. Rep. N. S. 177. H. of L.)

TRESPASS—ADJOINING MINES—WATER—OVERFLOW OF FROM ONE MINE TO ANOTHER.—The plaintiff and the defendants were the owners respectively of adjoining mines, and on the surface of the defendants' land were certain openings and hollows, partly caused by the subsidence of the ground from their mining operations beneath, and partly made by the defendants for the purpose of such operations. A watercourse ran across the defendants' land, the course of which was diverted by them in the year 1865 into another, and, as they alleged, improved channel across their land. An unusualy heavy rain flood in November, 1871, caused the banks of the diverted watercourse, which were sufficient for all the ordinary seasons, to burst, and the water escaping thence flowed into and accumulated in the openings and hollows above-mentioned, where also the surface rain water had already collected in an unusually large quantity, and whence, through natural chinks and fissures, as well as through a cut at the bottom made by the defendants for quarrying purposes, the collected water passed into their mine, and flowed thence into and flooded the plaintiff's mine, which was on a lower level. In the natural condition of the land the water would have been dispersed over the whole surface and been comparatively harmless. No negligence, apart from the above facts, was chargeable against the defendants in their mining operations. At the trial of an action by the plaintiff, to recover damages for the injury thus caused to him, the above facts having been proved, the defendants' counsel proposed to show by evidence, that the diverted channel of the watercourse was an improvement upon the original one, and that more water would have escaped from the old channel into the openings and hollows, and greater damage have been done to the plaintiff, and also that the defendants had adopted all reasonable precautions sufficient for ordinary emergencies. The learned judge declined to receive such evidence, holding it to be immaterial, as he ruled that the case was governed by the decision of the House of Lords in *Rylands* v. *Fletcher* (19 L. T. Rep. N. S. 220), affirming the judgment of the Exchequer Chamber in the same case 14 *ibid.* 523), and that the defendants were absolutely liable from the consequences resulting from their having caused or suffered the water to collect in the manner above-mentioned. The Court of Exchequer upheld this ruling of the learned judge at Nisi Prius, and discharged a rule for a new trial, and on appeal therefrom it was held by the Court of Exchequer Chamber (Lord Coleridge, C.J., and Keating, Quain, Grove, Archibald, and Honyman, JJ.), reversing that decision, and making the rule absolute, that the case was not in every conceivable aspect governed by *Rylands* v. *Fletcher (ubi sup.)*, and that the water arising from the diverted watercourse and that coming from the natural surface overflow, were distinguishable, and might possibly admit of the application to each of different considerations; that the case had been stopped too soon, and that if the rejected evidence had been received, there might have been questions for the jury; and, therefore, that there ought to be a new trial, at which the opinion of the jury should be taken as to whether what the defendants did was done by them in the course of the reasonable, ordinary, and proper working of their mine: (*Smith* v. *Fletcher and others*, 31 L. T. Rep. N. S. 190. Ex. Ch.)

CAN DOCTORS SUE?—An important decision has been given by Sheriff Lees in the Sheriff Court, Airdrie, on the question, "Is a physician who is not registered as a surgeon entitled to charge for surgical services?" The question arose out of an action brought by Dr. Gibb against Mr. Jenkins for the sum of eight guineas for service performed in cutting off both the legs of Jenkins's son, which were injured by a railway accident. The interlocutor issued on Tuesday by the Sheriff decides against Dr. Gibb. "I think," says the Sheriff, "that the defender is right in maintaining that the legitimate and only way of reading the words of the 31st section of the Medical Act is as implying that a medical man is entitled to recover in a court of law charges for services only when rendered under a qualification which appears on the register. In the present case the services rendered and the expenses incurred were for a matter purely surgical; and as the pursuer is only registered on a medical qualification, I hold in law that he is not entitled to recover charges for such services, and I therefore assoilzie the defender." This decision will make physicians careful in future not to indulge in amputation. At the same time, patients who prefer to have their limbs cut off by their family physician really should not strain their legal rights to the utmost limit.

ATTORNEYS APPRENTICES' PRELIMINARY EXAMINATION.—At the recent examination, held on October 30th and 31st, when out of 35 candidates entered, only 14 passed, the following gentlemen from Dr. Mortimer's class were successful:—Mr. John Moran 2nd, and recommended to compete for the Society's prize; Mr. A. Tisdall 4th; Mr. J. Quinn 5th; Mr. A. Fetherstonhaugh (late of Rathmines School); Mr. W. R. Collum (late of Raphoe Royal School).

Digitized by Google

REVIEWS.

The Institutes of Justinian: Edited as a Recension of the Institutes of Gaius. By THOMAS ERSKINE HOLLAND, B.C.L., of Lincoln's Inn, Barrister-at-Law; formerly Fellow of Exeter College, Oxford. Oxford: at the Clarendon Press. 1873.

That the study of Roman Law is useful, and ought to be encouraged, is now so well admitted, that the only question of doubt is how to commence it. "Sandars' Justinian" has hitherto been the work most affected by English students, and probably it is the best available for them; but when they become familiar with the language and ideas of their author they find that he represents but one stage in the development of his subject, and they find it necessary to consider his own authorities and prototypes. To those who have arrived at this stage of knowledge we recommend the volume at the head of this notice. In it they will find references to parallel passages and rules in the old jurists—most frequently, of course, to Gaius, Ulpian, and the Digest. The complete utility of the work is recognized when the reader sees that every cognate passage is collated. It is needless to say that the scholarship is excellent, and the work is in every respect worthy of Mr. Holland's reputation as a jurisprudent, civilian, and lawyer.

The Principles of Equity, intended for the Use of Students and the Profession. By the late EDMUND HENRY TURNER SNELL, of the Middle Temple, Barrister-at-Law. Third Edition. By JOHN RICHARD GRIFFITH, of Lincoln's Inn, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell-yard, Temple-bar. 1874.

THE King's Inns and the Incorporated Law Society, we believe, require their students to be familiar with the leading principles of equity, and in former times the unhappy aspirants had to wade through Mitford's Equity Pleading, and White and Tudor's Leading Cases, hoping at the end of two or three years they might succeed is showing sufficient knowledge of a plea, demurrer, and answer, or of the maxims of equity to satisfy a by no means strict examination. Now, however, text books really suitable to the students abound, and it is easier for those of the present day to obtain a fair knowledge of equity than it was twenty or thirty years ago to master its first principles. This facility is solely due to the improvement in the text writers and the abundance of books written specially for beginners in the study of law.

Equity can never be made easy, nor is it desirable that it should be so; but in the fact of the large equitable jurisdiction conferred recently—that is, since 1853—upon Common Law Courts, and the extension of equitable principles and rules, to the exclusion of Common Law, contemplated by the Judicature Bill, it behoves every practitioner to know as much as possible of equity with as little expense of time as possible, and for this purpose we know of no better work than Mr. Snell's. It presents in a small compass the substance of "The Leading Cases," and of Story's work on "Equity Jurisprudence," while students will be delighted to find clear, logical, and intelligible explanations of its most mysterious process and development. The work professes to be based on the lectures of Mr. Birkbeck, but it has now reached its third edition in a few years, and is admirably noted up with the latest decisions and enactments. We find particularly good information concerning the equitable and statutable rights of married women, and the priorities of equitable and legal, registered and unregistered, mortgages. Counsel, attorney, and student, will find it a useful, and especially a *safe* guide in what it professes to teach.

We have received the first number of a new legal journal, entitled, *The Law*, which appears well managed and selected. Its articles are, we confess, more interesting, if less learned, than those of the *Law Magazine and Review*, probably because, as we find from internal evidence, they are written by younger men. The articles in the present number, on "The Effect of the Judicature Act," and "The Registration of Bills of Sale," are particularly good.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

THE LEGAL EXAMINATIONS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I remember in the IRISH LAW TIMES some months ago a wish expressed by a correspondent that the Council of Examiners would publish an authorized list of books out of which the Final and Sessional Examination questions should be set, and I beg to say that I am quite at a loss to know what is the course for a knowledge of which I am responsible. I attended Mr. Hickson's lectures and passed his examinations in Broom and Williams, but I have seen questions in the final papers that were not answered in these books.

May I remind you of the promise contained in a late number of the IRISH LAW TIMES, to publish the questions and answers, as was formerly done. Nothing could be more useful to us, students, as it saved us money and time; and, I think, these answers were interesting even to attorneys, as I frequently saw my master with other lawyers reading and discussing them.

A STUDENT.

[If our correspondent will extend his reading in Common Law to "Smith's Contracts" and "Williams' Personal Property," and in Conveyancing, &c., to "De Moleyns' Landowners' Guide," and "Snell's Equity," we think he will be able to answer any question put at any of the examinations to which he refers. We shall be happy to re-commence the plan of giving the questions and answers at each law examination, as our correspondent seems to set so high a value on the matter; and, therefore, the next issue shall contain the Common Law paper of the last examination answered.—ED. I. L. T.]

AN ACTRESS'S MARRIAGE SETTLEMENT.—At the Lambeth County Court, on Tuesday, two interpleader issues were tried to test the validity of a marriage settlement executed by the defendant, Mr. Roland Gideon Israel Barnett, of Grenada-lodge, Stockwell-park-road, in favour of Miss Nellie Power, the well-known actress, on his marriage with her a few months ago. Mr. Godfroy, a hairdresser in Fulham-road, and Mr. Harwood, a flour factor, of Canterbury-road, Kilburn, had each obtained a judgment in the Brompton County Court, by virtue of which execution had been issued against Mr. Bartnett's goods. As Mr. Barnett resided in the Lambeth district, the warrants had been executed by the officers of the Lambeth Court, Mr. Godfroy's warrant being for £23 and Mr. Harwood's for £45 10s. When the goods were seized the trustees under the marriage settlement paid the money under protest. The property included a brougham and a pair of horses, which were seized among other articles. Mr. Barnett was called to support the claim of the trustees, and he stated that he had executed the deed for the purpose of securing a home for his wife in case he should fall into difficulties. In cross-examination he admitted that he was in embarrassed circumstances at the time of his marriage. He bought the brougham and pair of horses named in the deed with a view to his marriage and to amuse his wife. Mr. Thomas, who appeared for the execution creditors against the claim, contended that as the marriage setttlement was executed when Mr. Barnett was insolvent, it was fraudulent and void, and that the claim of the trustees could not be sustained. Mr. Moojen, in support of the claim, urged that as Mr. Barnett's wife was no party to the fraud, if there had been one, she ought not to suffer in consequence, Mr. Barnett never having mentioned to her that he was in difficulties. The judge decided that the marriage settlement was valid, and that, with the exception of a third horse seized, which Mr. Barnett admitted was not named in the schedule, the property must be restored to the trustees.

Digitized by Google

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

DUBLIN, MICHAELMAS TERM, 1874.

At the Examination of Applicants seeking to become Apprentices to Attorneys, held on Friday, the 30th, and Saturday, the 31st of October, 1874, the following were adjudged by the Court of Examiners to have passed said Examination, and their names are arranged in order of merit, viz.:—

1. WM. H. CORKER,	8. JOHN J. GORMLEY,
2. JOHN MORAN,	9. EDWIN E. MASON,
3. FRANCIS MAC C. CONNER.	10. A. FETHERSTONHAUGH,
4. A. W. B. TISDALL,	11. PHILIP J. DOWNING,
5. JOHN QUINN,	12. WM. R. COLLUM,
6. EDWARD V. GARLAND,	13. EDWARD KELLY,
7. ALEXANDER AMBROSE,	14. JAMES R. BARKLIE.

The other Candidates on the list have been postponed.

The first two Candidates on the "Admitted List," namely, WM. H. CORKER and JOHN MORAN, are to be permitted to compete for the Society's Prize at next Michaelmas Term (1875) Prize Examination.

As to the Examination for the Society's Prize,

The Court of Examiners have awarded a Gold Medal and £10 to Mr. JOHN HARVEY HOGAN.

DUBLIN, MICHAELMAS TERM, 1874.

At the Examination of Applicants seeking admission as Attorneys, held on Monday, the 2nd, and Tuesday, the 3rd of November, 1874, the Court of Examiners decided that the following Candidates who presented themselves, should be allowed the Examination, and their names were arranged in order of merit, as follows:—

1. WM. H. P. FRY,	9. JOSEPH D. FISHER,
2. JOHN F. SMALL,	10. ROBERT J. M'MORDIE,
3. HUNT W. HARDMAN,	11. WM. T. ROWAN,
4. JAMES MORIARTY,	12. ARTHUR BOUGHEY,
5. WALTER NOLAN,	13. ARTHUR W. JONES,
6. PATRICK J. B. DALY,	14. EDWARD MOORE,
7. THOMAS BROWN,	15. AMBROSE E. O'RORKE.
8. WM. S. O'BRIEN LEAHY,	

The other Candidates on the list were postponed.

The Court of Examiners awarded a Gold Medal to Mr. WM. H. P. FRY; a Silver Medal to Mr. JOHN F. SMALL; and a Special Certificate to Mr. HUNT W. HARDMAN.

The President (Sir RICHARD J. T. ORPEN) distributed the following Prizes to successful Candidates, awarded at last Trinity Term Final Examination, viz.:—A Gold Medal to Mr. JAMES HENRY; Silver Medals to Messrs. WILLIAM BAXTER and TIMOTHY NEVILLE; and Special Certificates of Merit to Messrs. WM. H. MEREDITH, FRANCIS FITZMAURICE, HENRY EXHAM, and WILLIAM M. LANE.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—M. Gage, proposal.—Reverend T. Townsend, examine delay.—Annie Rogers, do.—M. Keogh, apportionment rent.—J. H. Bowley, allocation.

IN COURT.—T. M. Wood, for carriage.—H. Haig, from 9th.—A. J. B. Bourke, ditto.

Before EXAMINER (Mr. Dobbs).

S. J. Hood, rental.

TUESDAY.

IN COURT.—Reverend John Fawcett, final schedule.—F. Keegan, from 3rd.

WEDNESDAY.

Before EXAMINER (Mr. Dobbs).

George Bowles, proofs.

Before EXAMINER (Mr. M'Donnell).

Trustees O'Donel, vouch.—S. Bateman, do.—M. H. Sankey, rental.—A. H. Wood, do.—F. M. O'Connor, do.—A. M. Nicholson, do.—Stapleton trustee Power, ditto.

THURSDAY.

IN COURT.—D. S. Ker, from 10th.—G. Hamilton, from 12th.—C. Crawford, ditto.

FRIDAY.

SALES AT 12 O'CLOCK.

P. BALFE.—1 lot.
TRUSTEE JOHN BELL.—3 lots.
N. E. ABBOTT.—3 lots.
R. G. BRINKLEY.—3 lots.
JOHN PHELAN.—3 lots.
F. A. WINTER.—3 lots.
N. ORMSBY.—5 lots.
LORD DARTREY.—12 lots.

SALE IN BELFAST.

DANIEL SHIPP.—1 lot.

Before EXAMINER (Mr. M'Donnell).

S. W. C. Smith, rental.—W. D. Alleyn, do.—Marquis of Waterford, re-settle lot 72.

LANDED ESTATES COURT.

SALES

Nov. 6th.—Before the Hon. JUDGE FLANAGAN.

COUNTY OF KILKENNY.—Estate of Anne Innes, administratrix of Christopher Humphrey, deceased, owner and petitioner. Part of the lands of Brownstown, within the Liberties, of the City of Kilkenny, containing 138a. 1r. 21p. statute measure; held under lease for residue of term of 999 years, from 1st May, 1747. Sold in trust for A. Meany for £2,000. Solicitor, *Arthur Boyd*.

COUNTY OF KILDARE.—Estate of John Henry Ellis Ridley, owner and petitioner. A perpetual yearly rent charge of £500 a year late currency, equivalent to £461 10s. 9d. sterling, charged on fee-simple estates in the barony of North Naas, and County of Kildare. The total value of the lands, liable to the rent charge, is £2,992 4s. Sold in trust for William Ruddell for £10,320. Solicitor, *Henry S. Mecredy*.

COUNTY OF LEITRIM.—Estate of Harcourt Lees, owner; *ex-parte* Sophia Cornelia Lees and others, petitioners. Part of the lands of Corcople, otherwise Cloonoosa, barony of Carrigallan, containing 341a. 2r. 17p. statute measure, held in fee-simple; producing a yearly profit rent of £110 9s. 5½d. Sold in trust for James O'Rourke for £2,620. Solicitor, *George Bernard*.

COUNTY OF DUBLIN.—Estate of Wm. Noble, owner; Nicholas Lynch, petitioner. The house and premises known as No. 2, Thornville, Rathgar Avenue, held under lease dated 14th of February, 1868, for 393 years, estimated net rental £27. Sold to Mr. Daniel M'Ilwee, for £315. Solicitor, *Thomas J. Furlong*.

COUNTY OF LIMERICK.—Estate of John Hall, owner; *ex-parte* Robert Cook, petitioner. Part of the lands of Ballinacurra Weston, comprising Prospect Hill and lands adjoining them, situate in the parish of St. Michael, held under lease dated 12th November, 1843, for a term of 99

Digitized by Google

years. Sold in trust for Dr. John Cook for £2,300. Solicitors, *Molloy and Watson.*

County of Kerry.—Estate of the Most Rev. Samuel Butcher, Lord Bishop of Meath, and another, trustees for sale under the will of Vice-Admiral Samuel Butcher, deceased, and the said Most Rev. Samuel Butcher and others, owners and petitioners. Part of the lands of Listimurriagh, containing 31a. 0r. 9p. statute measure, situate in the barony of Magonihy, held under lease. The sale was adjourned. Solicitor, *John Maunsell.*

County Down.—Estate of Isabella Lowry, otherwise Moody, and James Moody Lowry, owners; Theophilus Edward St. George, and Francis Ellis, petitioners. Part of the lands of Ballytrim, comprising Ballytrim proper and the 'Stump,' containing 57a. 3r. 30p. statute measure, held in fee, and part of the lands of Tullychin, held under a tenancy from year to year, and containing 18a. 0r. 30p. statute measure, in the barony of Dufferin, County of Down; ordnance valuation £104 10s. Sold to William P. Ringland for £2,100. Solicitor, *Robert Maddock.*

City of Dublin.—Estate of Mary M'Donnell, widow, and others, owners; *ex-parte* John M'Eldon and another, petitioners. Houses on Ballybough-road and King's-lane, parish of St. Thomas, held under lease; profit rent £40. Sold in trust for R. Doyle for £800. Solicitor, *Thomas J. White.*

County of Meath.—Estate of James M'Nally, owner; Thomas R. Maher, petitioner. Part of the lands of Tullymedan, otherwise Tullymeadow, containing 20a. 3r. 30p. statute measure, held in fee, in the barony of Lower Deece; net annual rental £22. Sold in trust for Lord Dunsany, for £1,010. Solicitor, *Francis Tierney.*

County of Cork.—Estate of Henry Campion, owner; William Henry Hill, petitioner.

Lot 1.—Part of the lands of Leitrim, known as Upper and Lower Leitrim, with their sub-denominations of Knockatile and Ballyoran, containing 437a. 3r. 35p.; net annual rental £259. Sold in trust for William J. Doherty for £5,700.

Lot 2.—Part of the lands of Ballynaparka South, containing 32a. 2r.; net annual rental £37 3s. 5d. This lot was withdrawn. Solicitors, *Henry Noblett and Son.*

County of Mayo.—Estate of Bridget Hastings, owner; Patrick Hastings, petitioner.

Lot 1.—The plot of ground, with the houses and premises thereon, situate in Altmont-street, Westport, held under fee-farm grant, dated February, 1856. Sold to Mr. Patrick Toole for £450.

Lots 2 and 3.—Sale adjourned.

Lot 4.—Part of the townland of Streamstown, with houses and premises thereon, containing 93a. 2r. 11p. statute measure, held under lease dated 21st August, 1838, for three lives. Sold to Mr. P. Toole for £650.

Lot 5.—The dwelling-house, offices, and lands of Cherry Cottage, containing 8a. 3r. 35p.; held under lease. Sold to same purchaser for £105.

Lot 6.—The lands of Gowel, containing 27a. 3r., held under lease; yearly profit rent £11 10s. Sold to Mr. Toole for £65.

Lot 7.—Not sold. Solicitor, *John Griffin.*

County Antrim.—Rev. W. C. Gorman.

Lot 1.—Part of the lands of Tannaghmore East, containing 248a. 3r. 16p., held under fee-farm grant, situate in the barony of Upper Toome, and producing an annual profit rent of £223 9s. Sale adjourned.

Lot 2.—Other part of same. Sale also adjourned. Solicitor, *H. J. P. West.*

County Wicklow.—F. Beatty, owner and petitioner.

Lot 1.—The life estate of owner in a fee-farm rent of £30, issuing out of part of Baltinanima and part of said lands, containing 186a., situate in the barony of Ballinacor; total annual profit rent £63 18s. 6d. Sale adjourned.

Lots 2 and 3.—Also adjourned. Solicitor, *J. T. Fox.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Thomas Clarke	Prove debts and vouch	*Casey & Clay*
Anthony Connor	do	*Macnamara*
Thos. M'Clelland	do	*Neilson*
Hazleton and Sheppard	do	*Neilson*
Benjamin Norman	do	*Neilson*
Wallace & Magill	do	*Neilson*
Elder and Adams	do	*Neilson*
Morrison and Ferguson	do	*Neilson*
Patrick Luigane	do	*Perry & Co.*
Patrick Monahan	Vouch account	*Perry & Co.*
John Taylor	do	*Neilson*
John Farrell	Prove debts	*M'Govern*
G. & R. Ferguson	do	*Perry & Co.*
Michael Stanley	Costs	*Casey & Clay*

TUESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Clarke	2nd composition sitting	*Jones*
Malachi Murphy	1st composition sitting	*Hamilton & Craig*
Arthur G. Hay	2nd composition sitting	*Mathews*
William Sheehan	Examine witnesses	*Scallan*
Same matter	1st public sitting	*Scallan*
James Robinson	do	*M'Cully*
Richard Bell	Final examination	*Doyle*
Patrick Gordon	do	*Walsh*
Ellen Gordon	do	*Walsh*
Geoffrey Davies	do	*O'Conor*
Richard Waring	do	*Browning*
Daniel Nolan	do	*Larkin & Co.*
Patrick O'Hagan	do	*Jones*
James M'Bride	do	*Mathews*
Benjamin Norman	do	*Neilson*
Malachi Murphy	do	*Hamilton & Craig*
William Cannon	do	*Goff*
Hugh S. Guiney	do	*Beauchamp*
Ludlow Berkeley	Examine witnesses	*Casey & Clay*
William Metcalfe	do	*Oldham & Eaton*
Joseph Creswell	Motion	*M'Cay*
A. J. Cunningham	do	*Boughey*
John Davey	Audit	*Hamilton & Craig*

Before Chief Registrar or Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
W. H. Hillsworth	Prove debts and vouch	*Findlater & Co.*
Samuel H. Walker	do	*Findlater & Co.*
L. De Savigny Ashe & Co.	do	*Robinson*
A. M. Sheridan	do	*Findlater & Co.*
John Brooks	do	*Casey & Clay*
Mason and Looby	do	*Casey & Clay*
Alexander Gray	do	*Cronhelm & Co.*
Simon Boland	do	*Mathews*
Mary Williams	do	*Oldham & Eaton*
David Rutledge	do	*Larkin & Co.*
Henry Abbott	do	*Larkin & Co.*
Mary Leahy	do	*Larkin & Co.*
James Murray	do	*Hamilton & Craig*
Thomas Murray	do	*Casey & Clay*
Patrick O'Brien	Vouch account	*Findlater & Co.*
James Keegan	do	*Ryan*
James W. Dillon	do	*Toomey*
James Harbison	Prove debts	*M'Cully*
G. R. Donovan	do	*Perry & Co.*
Hazelton and Sheppard	Reference	*Collins*

WEDNESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Patrick Hanlon	Charge & discharge	*Larkin & Co.* for charge; *Fay & M'Gough* for discharge

Before Chief Registrar or Chief Clerk, at 12 o'clock.

John Leckey	Costs	*Smith*
Andrew Moir	do	*Mathews*
G. & R. Ferguson	do	*Perry & Co.*
B. M'Lenegan	do	*Mathews*

THURSDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Ludlow Berkeley	Prove debts and vouch	*Casey & Clay*
John Gleeson	do	*Casey & Clay*
Mary L. M'Ghee	do	*Perry & Co.*
Philip M'Cusker	do	*Perry & Co.*
Thomas Cooke	do	*Perry & Co.*
Michael Hughes	do	*Perry & Co.*
S. W. Tomlinson	do	*Scallan*
Harley Keough, Brothers	do	*Perry & Co.*
Richard Boyle	Vouch account	*Casey & Clay*
John Devar	do	*Casey & Clay*

FRIDAY.

Before the Court, at 11 o'clock.

John Lynch	1st public sitting	*Casey & Clay*
Robert Lawler	do	*Lett*
John Gallivan	do	*Mathews*
Matthew Holland	do	*Froste*
Mary Smith	do	*Oldham & Eaton*
Mary Leahy	Final examination	*Larkin & Co.*
Henry G. Prossor	do	*Delandre*
William Purcell	do	*Goff*
John J. Hogan	do	*Casey & Clay*
Smith Young	do	*Casey & Clay*
Miles Roland	do	*Meldon & Sons*
James J. Spring	do	*D. & T. Fitzgerald*
George Hamill	do	*Molloy & Watson*
John D. Seale	Examine witnesses	*Hamilton & Craig*
William Stapleton	do	*Hamilton & Craig*
Richard Bell	Prove charge	*Kavanagh*
John R. Murphy	Audit and dividend	*Oldham & Eaton*

The following at 12 o'clock.

Denis Curran	Sale	*Lett*

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Robert F. Ofle	Prove debts and vouch	*Perry & Co.*
Joseph Creswell	do	*Mathews*
William Creswell	do	*Mathews*

SATURDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

John Barrett	Reference	*Jordan*
Same matter	Prove debts	*Perry & Co.*

ADJUDICATIONS IN BANKRUPTCY.

Coffey, Daniel, Athy, county Kildare, baker and shopkeeper. Sittings, *Friday, December* 4, and *Tuesday, December* 22. *Mara and Cullen*, solrs.

Flannery, Francis, Ballaghaderreen, county Mayo, draper. Sittings, *Tuesday, December* 1, and *Friday, December* 22. *Findlater and Co.*, solrs.

Hamilton, James, Enniskillen, county Fermanagh, printer and stationer. Sittings, *Tuesday, December* 1, and *Friday, December* 18. *Colman*, solr.

Lynch, Owen, Oldcastle, county Meath, grocer. Sittings, *Tuesday, December* 1, and *Friday, December* 22. *Hamilton and Craig*, solrs.

M'Donnell, Thomas, 8, Richmond-avenue, Fairview, county Dublin, gentleman. Sittings, *Tuesday, December* 1, and *Friday, December* 18. *Dutch*, solr.

Malet, Laurence M., of Moville, in the county of Donegal, gentleman. Sittings, *Tuesday, December* 1, and *Friday, December* 18. *Lawless*, solr.

O'Beirne, Edward S., Smithfield, Dublin, and Templeogue Lodge, Terrenure, county Dublin, salemaster. Sittings, *Tuesday, December* 1, and *Friday, December* 22. *Findlater and Co.*, solrs.

O'Beirne, Edmund, Kells, county Meath, gentleman and farmer. Sittings, *Tuesday, December* 1, and *Friday, December* 22. *Larkin and Co.*, solrs.

Seale, John D., Rathdowney, Queen's county, grocer and spirit dealer. Sittings, *Tuesday, December* 1, and *Friday, December* 22. *Hamilton and Craig*, solrs.

Whitford, Ellen, of Athy, county Kildare, grocer and provision dealer, widow. Sittings, *Tuesday, December* 1, and *Tuesday, December* 15. *Gerrard*, solr.

Whitney, Philip, Longford, county Longford, grocer and baker. Sittings, *Tuesday, December* 1, and *Friday, December* 18. *Hamilton and Craig*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	NOVEMBER Fri. 6	Sat. 7	Mon. 9	Tues. 10	Wed. 11	Thur 12
	Government.						
—	3 p c Consols	92	92	—	92–⅛	—	92⅛
—	New 3 p c Stock ..	91⅛	91⅛	91⅛–1	91⅛⅛	91⅜⅜	91⅛⅛
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102⅝	102½	—	102⅝½	102⅝½	102⅝⅝
	Banks.						
100	Bank of Ireland ..	—	311½	—	—	—	312
25	*Hibernian Banking Co.* ..	60½	60⅝	60½	—	60½	60⅝
20	*London and County* ..	—	—	—	—	—	64½
15	*London Joint Stock* ..	—	51½	51⅝	—	52⅜⅜⅝	—
20	*London and Westminster* ..	—	—	—	—	77⅜	—
3½	*Munster Bank (Limited)*	9½	—	—	9⅜	—	9⅜⅜
30	*National Bank*	67	66⅞–7	67	—	67–⅛	67
15	*National of Liverp'l (Ltd)*	14⅜⅞	14⅞	14⅞15	14⅞–5	—	15
25	*Provincial Bank* ..	91	—	91¼	91⅜⅜	91½	91½
10	Do. New ..	—	36½	37	—	—	37
10	*Royal Bank*	30½	—	30½	30⅝	30⅝½	30½
15	*Union of London* ..	—	—	—	—	—	49¾
25	Union of Australia ..	—	—	—	—	—	52⅝
	Steam.						
50	British & Irish	—	—	—	52	—	52
100	City of Dublin	109	—	—	—	109	—
50	Dublin and Glasgow ..	—	—	62⅝½	—	—	—
10	Dundalk (Limited) ..	6½	—	—	6½	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	1/-	—	—	1/-
7	*Cape Copper M. Co. (lit'd)*	—	28½	—	29–½	—	—
1	Killaloe Slate Co. (lit'd) ..	—	17/-	—	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	7	7⅛⅜⅛	7½	7⅜⅜	8
2½	Wicklow Copper	—	—	—	2⅜⅛	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅝½	10⅝½	—	10⅝⅝	—	—
10	Dublin Tramways ..	6⅛⅝	6⅛⅝	6½	6½	6¼	—
25	*National Assurance* ..	—	—	47½	47½	—	—
9-4-7	*Patriotic Assurance* ..	10⅝	—	—	—	—	10⅝
	Railways.						
50	Belfast and Northern Cos.	69⅝	69⅝	—	69⅞70	70	—
50	Cork and Bandon ..	—	—	—	26½	—	27
100	Dublin and Belfast Junct.	90½–1	—	—	—	—	—
100	Dublin and Drogheda .	—	—	—	—	—	114½
100	Gt. Northern and Western	99	—	—	—	—	—
100	Gt. Southern and Western	109½	—	—	109⅝	109⅝	109½
100	Do. do. free of Stamp	—	—	109⅝½	—	—	—
100	Midland Gt. Western ..	—	82⅝	—	82½⅝	82⅝	—
50	Ulster	—	68½	—	—	—	—
50	Waterford and Limerick ..	—	—	32⅝⅜⅝	32½	32⅝	—
	Railway Preference.						
50	D.. W., & W., 5 p c (1860)	55	—	55⅝	—	55⅝	—
50	Do. do. (1865)	—	—	—	54	—	—
100	Gt. South'n & West'n 4 p c	—	—	—	99½	—	99½
10	Irish North Western A 5 p c	—	—	—	—	—	4
100	Mid. Great Western, 5 p c	—	—	111½	—	—	111½
50	Watfd. & Limerick, 5 p c rd	—	—	—	50½	—	—
50	Do., new red, 1860–72, 5 p c	50½	—	50⅝½	—	—	—
50	Do., new red, 1878, 5 p c ..	50⅝	50⅝	—	50⅝	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	97½	—	—
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	100½	—	—	—	—
—	Gt. South'n & West'n, 4 p c	—	99½	—	—	99½	99½
—	Irish Nth Westn 1st C 5 p c	101½	—	—	—	—	—
—	L'derry & Enniskillen 5 p c	—	109½	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	102⅝	102⅝½	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—4½ per cent., 15th October, 1874.
Of Deposit—2½ per cent., 15th October, 1874.

Name Days—November 28th, and December 15th, 1874.
Account Days—November 30th, and December 16th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

ARGLES—November 6, at 36 Northumberland-road, Dublin, the wife of Edward Delzonche Argles, Esq., solicitor of a daughter.

LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY, IRELAND.

EDWARD S. O'BEIRNE, of Smithfield, in the City of Dublin, and Templeogue Lodge, Terenure, in the County of Dublin, Salesmaster, was on the 25th day of September, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 4th day of DECEMBER, 1874, and on TUESDAY, the 22nd day of DECEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to Charles Henry James, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

WM. FINDLATER & CO., Solicitors, 35 Upper Ormond-quay, Dublin. 598

PUBLICATIONS:

THE LAW MAGAZINE AND REVIEW; A Monthly Journal of Jurisprudence and International Law for both branches of the Legal Profession.

NEW SERIES.—PRICE TWO SHILLINGS.

The only Monthly Magazine devoted exclusively to the interests of the Profession at Home and Abroad.

Reeves & Turner, Law Booksellers, 100 Chancery-lane, London. 455

ACCOUNTANTS:

N. PETERSON & SON, PUBLIC ACCOUNTANTS, AUDITORS, and EXPERTS, ULSTER CHAMBERS, 18, FLEET-STREET, DUBLIN.

☞ ANSWERS TO ADVERTISEMENTS. ☜

LETTERS for the following are lying at the Office of this Paper:—LEX; and R.

WANTS:

TO SOLICITORS' CLERKS.—Wanted, a Managing Clerk. He must be thoroughly acquainted with the general business of a Country Practitioner's Office, and well recommended as to character. Apply to
582 ANDREW M'CLELLAND, Solicitor, Banbridge.

OFFICES TO LET:

TO BARRISTERS or SOLICITORS.—A Large Room TO BE LET as an Office, in the House, 61, Dawson-street. 581

BINDING "THE IRISH LAW TIMES."—Subscribers are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions, printed uniformly with The Irish Law Times, and bound up with The Law Times, or bound up separately, at proportionate Rates,

AT THE

Office of The Irish Law Times and Solicitors' Journal, 53, UPPER SACKVILLE-STREET, DUBLIN.

CASES for holding The Irish Law Times, and Solicitors' Journal, for One Year, can be had, Lettered on side, Price—whole-bound Cloth, 3s.; half-bound Leather, 4s.; whole-bound Leather, 5s., by Post 4d. extra, at the Office of the Journal, 53, Upper Sackville-street, Dublin.

MISCELLANEOUS:

"The source of many a writer's woe has been discovered."

PENS! PENS!! PENS!!!

"They come as a boon and a blessing to men,
The Pickwick, the Owl, and the Waverley Pen."

"The misery of a bad Pen is now a voluntary infliction."
Another Blessing to men! The Hindoo Pen.

1,200 Newspapers recommend them.—See *Graphic*, 17th May, 1873.
Sold by every respectable Stationer. Post, 1s. 1d.

Patentees—Macniven & Cameron, 23 to 33, Blair-street, Edinburgh.
600

JEREMIAH D'ARCY, SCRIVENER, LAW STATIONER, AND PRINTER.

OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

JOHN O'MALLEY, 4, SAINT ANDREW-STREET, DUBLIN, *Law and General Stationer*, SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.

Licensed to Sell Law and General Stamps. 310

T. KILMARTIN and SON, SCRIVENERS AND LAW STATIONERS, Established 1867, 21, KING-STREET, BELFAST.

IRISH CIVIL SERVICE AND GENERAL BUILDING SOCIETY.

Office—8, COLLEGE-STREET, DUBLIN.

President—ALEXANDER PARKER, Esq., J.P.

Purchasers in the Landed Estates' and other Courts can obtain, without delay, from One-half to Three-fourths of the Purchase Money from the Irish Civil Service and General Building Society, repayable by easy Instalments.

Loans are also advanced for the following purposes, viz.:—
To Build or Improve Houses,
To Redeem Mortgages,
To Pay off Incumbrances,
To Complete the Purchase Money of Property Sold by Private Hand.

The Legal Expenses do not amount to one-third of the sum usually charged in such cases.

All transactions not exceeding £500 are exempt from Stamp Duty.

The Society has already advanced over THREE HUNDRED THOUSAND POUNDS on Mortgage.

DEPOSIT DEPARTMENT.

Sums from £10 upwards are received on Deposit.

Rate of Interest, from 1st February until further Notice, FOUR POUNDS per Cent.

To the Depositor the following Guarantees are given:—

The Paid-up *Share* Capital exceeds £120,000.

The Business of the Society is restricted by Act of Parliament to making Advances on Mortgages of Freehold or Leasehold Properties.

The entire amount received on Deposit cannot, under the Rules, exceed one-third of the value of the balance outstanding on Mortgage.

The Prospectus and every information may be had, free of expense, on application to

307 ALFRED H. MERCER, Secretary.

A WELL RECOGNISED AND FREQUENT SOURCE OF

DISEASES of the MOUTH, TONGUE, and GUMS, Is contact with the Cement of Envelopes over the preparation of which proper cleanly supervision is rarely exercised. We pay strict attention to this department: but to obviate all danger—at the same time combining safety to the contents—Mr. Hely, of this firm, invented and perfected

THE EUREKA ENVELOPE, For which Her Majesty granted Letters Patent, No. 524, under the Great Seal. The adhesive matter being placed on the under flap, the great advantage is obtained that the Mouth and Tongue are applied to

FRESH CLEAN PAPER, Not more expensive than ordinary Envelopes of similar qualities.

☞ *Order from your Stationers. We Supply the Trade only.*

HELY, HARRIS, & CO., Alexandra Envelope Works, 9 to 11, DENMARK-STREET, DUBLIN.

Upwards o three hundred hands employed in the production of Envelopes. 371

Printed and Published by the Proprietor, John Falconer, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, November* 14, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, NOVEMBER 21, 1874. No. 408.

THE DUTIES OF CARRIERS IN THE PROTECTION OF GOODS.

A RECENTLY reported case in England has defined and explained a portion of our law which has somewhat unaccountably not been provided for in the countless volumes of reported cases which have in England to do duty for a systematic code. This is the more remarkable, as the facts which occurred in the case can be of no unusual nature, and the doctrine which has at length been definitely laid down must exercise a most important effect on the relations subsisting between the extensive and important class of carriers and the general public. The facts of the case we allude to (*The Great Northern Railway Co.* v. *Swaffield*, 43 L. J. R. (N. S.), C. P. 161) were as follows:—The defendant sent a horse, unattended, by the plaintiffs' train consigned to himself. Upon the arrival of the horse, there being no one to receive the horse on the defendant's behalf, and his residence being unknown to the servants of the company, the horse was sent by the station-master to a livery stable. Shortly after the servant of the defendant presented himself at the station, and demanded the horse. He was informed that he was at the livery stable. The livery stable keeper refused to deliver up the animal unless 2s. 6d. were paid for his keep for the night. This was refused by the defendant's servant. The next day the station-master offered to pay the sum out of his own pocket, but this was declined by the defendant. After the lapse of some days, the company informed the defendant that the horse would be delivered to him by the livery stable keeper without payment from him, but that they would reserve the right of proceeding against the defendant for the amount paid by them to the livery stable keeper. After some further correspondence, in which the defendant refused to pay the livery stable keeper, the plaintiffs sent the horse to the defendant, and paid the livery stable keeper, without any threat of legal proceedings on his part. The sum of £17 was claimed by him as stable charges for the keep of the horse, and which was admitted to have been a demand of a reasonable nature. The company sued the defendant in the County Court, but the defendant obtained a decision in his favour, on the ground that there was no contract, express or implied, upon which the company could recover. It was argued, on behalf of the defendant, that the defendant was clearly entitled to have had the horse delivered to him on the day it arrived, because a carrier has a lien for the carriage, but not for warehousing the goods, and having wrongfully detained the horse in the first instance, they could not have recovered expenses which would never have been incurred but for their own wrong. This view of the case, however, the Court declined to entertain. Pollock, B., observed, if the case had rested on that occasion, he should have held that the company was wrong; but it was distinctly shown that the defendant might have had the horse the next day, but declined. It then became necessary to decide what was the duty of the company under these circumstances. Had the case been a case of carriers by water, the law would have been beyond doubt. The case is expressly provided for by the provisions of the codes of almost all civilized Europe, as in the French code, arts. 222 and 403; the Spanish code, art. 935; and more especially in the German mercantile code, art. 504. This latter code, with great clearness and precision, lays down the course of action to be pursued by the master of the vessel in taking care of the articles entrusted to him. In extreme cases, to avert considerable loss, on account of imminent deterioration or other causes, he may resort to sale or hypothecation to procure means for their preservation or transport. It, however, is not necessary to resort to foreign authorities to support the doctrine, as the law was laid down as regards water-carriers with great clearness in the recent cases of *Notara* v. *Henderson*, 42 Law J. Rep. (N. S.) Q. B. 158; and *Cargo ex "Argos,"* 32 Law J. Rep. (N. S.) Adm. 49, 65; in the latter of these cases a cargo of petroleum was shipped from London to a foreign port, to be taken out on the arrival of the vessel, or else a heavy demurrage was to be paid. On the arrival of the vessel at the foreign port, on the dangerous nature of her cargo being discovered, the goods were not permitted to be landed. After waiting some days, the master of the vessel took the cargo back to London. It was held that the master had, under the circumstances, authority to carry back the goods, and the shipowners were entitled to homeward freight and expenses while stopping at the foreign port, though not to demurrage. Such being the law in the analogous case of water-carriers, it remained to the Court, guided by such analogy, to declare the duties of land-carriers. Pollock, B., observed:—"I do not know any decision of English law by which an ordinary carrier of goods by land has been held entitled to recover this sort of charge against the consignee or consignor." In the unanimous judgment of the Court it was held that the company were entitled to recover, because there existed a duty of taking care of the horse. Pigot, B., in his judgment, remarked:—"What were the carriers to do? They were bound, out of ordinary feelings of humanity, to feed and take care of the horse. That became necessary in consequence of the defendant's own conduct. The expense was, therefore, rightly incurred, and there is an implied contract which entitles the plaintiffs to recover the expense from the defendants." Their lordships pointed out the manifest injustice which would exist if there were a duty imposed upon the company without the correlative right. The necessity for this duty being cast upon the plaintiffs is ably demonstrated by the Chief Baron—"The question arises, what it was the duty of the Railway Company to do. We need only ask ourselves the question as a matter of common sense Had they any choice? They must either have allowed the animal to stand somewhere on their station till it was starved, a place of danger where it would have been exceedingly improper to have allowed it to remain, or they must have turned it into the highroad, to the danger of itself and all the Queen's subjects, or else they must have put it into safe custody; in other words, have put it where they did, namely, under the care of a livery stable keeper, who lived close at hand." We think this decision cannot fail to obtain the approval, not only of the profession, but of any man who has the slightest acquaintance with the subject of the transport of goods. Not only is it in analogy with the law, as laid down by foreign legislatures in the admirable systematic codes which regulate abroad the questions

Digitized by Google

of this nature, but also it is in harmony, as pointed out by the Chief Baron, with the dictates of sound common sense.

SALARIES OF JUDGES.

In the 52nd year of Henry III., *anno gratiæ*, 1267, at the little village of Marlebridge, now Marleborough, in Wiltshire, a Parliament was held, in which was passed a statute, now known as the Statute of Marlebridge. Robert Walerand, "learned in the lawes of the realme, penned and preferred the act," and to him defendants are indebted for the first act giving them costs in cases in which they are successful. I give the translation of part of chapter VI. of this statute contained in Coke's Second Institutes of the "Laws of England." And if any chief lords do maliciously implead such feoffees, faining this case—namely, where the feoffments were made lawful, and in good faith, then the feoffees shall have their damages awarded, and their costs *(missæ suæ)* which they have sustained by occasion of the foresaid plea, and the plaintiffs shall be grievously punished by amercement. Coke's note on this probably contains the first application of the doctrine of implied malice. It is as follows: "And where this statute saith *malitrosæ implicitavernit*, if the matter be fained, and without just ground, the law implyeth malice in this case. *Muth litigant in foro non est aliquid lucreutur sed ut vexent alios.* Therefore justly did this act, which gave an action in a new case, give damages and costs to the defendant if he were maliciously vexed thereby without cause."

Chapter I. of the Statute of Glocester (6 Edw. I. Lan du grace mcclxviii) is the first statute that gave costs to the plaintiff. By this, said Lord Coke, it may be collected that justice was good and cheap of ancient times.

The chancellor of William the Conqueror was an officer of the King's Household; his salary was "five shillings a day, a simnel and two-seasoned simnels; one sextary of clear wine, and one sextary of household wine; one large wax candle and forty pieces of candle." A simnel is a kind of rich cake, generally made in a three-cornered form. The term is applied in Solop to a plum cake with a raised crest. A sextary of wine is a pint and a half. The chancellor was expected to drink a quart and a pint of wine daily. Lord Eldon, who could drink any *given* quantity of wine, would have made little of this. It is said that he and his brother, Lord Stowell, usually drank more than *four* bottles of port when they dined together. During the sessions of Parliament, at his dinner, although the time for his repast was very short, he seldom drank less than the above allowance to the chancellor—three pints. He was the last three-bottle chancellor.

Geoffrey, son of Henry II. by the Fair Rosamond, while chancellor, had a grant of 1,000 marks annually; but this was to the King's son rather than to the chancellor. Thomas de Caulelupe, in the year 1265, was allowed 500 marks annual fee, "*ad sustentationem suam et clericorum cancellaria nostræ.*" Richard de Middleton, chancellor about 1270, received, besides this allowance of 500 marks, in two years, as fees, £973 16s., out of which he paid the clerks of chancery. These disbursements are not fully given, but did not amount to more than the odd £73 16s.

The regular salaries of the judges were very small, with but few exceptions. Hugh Bigot and Ralph Basset, chief justiciaries, during the latter part of the reign of Henry III., had a yearly allowance of a thousand marks, but Robert de Burs had a grant of 100 marks only; the other judges received from £20 to £40 each.

Henry de Bathonia, in 1250, was granted £100 a year for his "*in officio justiciario.*" William de Wilton, who was Chief Justice of the Common Pleas about 1261, also received a grant of the same amount; these salaries depended on the pleasure of the King, and varied during the reign of Henry III. alone from £10 to £40. The robes of the judges, however, were supplied at the expense of the King. Robert de la Lege and William de Cliff rd, while Chancell rs of the Exchequer, had an allowance to each of £40 per annum.

Edward I., the "English Justinian," was also "Malleas Scotorum," and was engaged in war the greater part of his reign (1272-1307). He needed and took all the money that he could raise to carry on his wars, and his judges, as well as the Scots, suffered. Their salary was reduced, and many of them were heavily fined. None of the chief justices received over 60 marks a year, except that the allowance of 100 marks annually was continued to Gilbert de Preston, who presided in the Common Pleas at the death of Henry III. Some of the judges received 50 marks, and some only 40; the Barons of the Exchequer received 30 marks. These small salaries were increased by fees, but to how great an extent is unknown. On the return of Edward I. from France, in 1289, his judges were accused of bribery and extortion; the King immediately instituted inquiries, the result of which was that nearly all the judges were fined, disgraced and removed. Robert de Hengham, Chief Justice of the King's Bench, was fined 7,000 marks, equal to about $350,000, but he was afterward restored to the bench, and his fine reduced to 800 marks, a sum equal to $40,000. Solomon de Rochester and Richard de Boyland were each fined 4,000 marks; others were fined 3,000 marks, others 2,000, and others 1,000 marks. We have a right to infer from the size of these fines either that the judges were guilty of great extortions, or that the King was very much in need of money; probably the latter, as some of the judges were restored to their places Yet the largest of these fines is not larger than the one imposed on Lord Chancellor Bacon, £40,000.

At the beginning of the reign of Edward III. the salary of the Chief Justices of the King's Bench and Common Pleas was £40 each, that of the other judges 40 marks each; the King's attorney received £10 with occasional gifts. William de Nersefield, in 1366, received £100 for the prosecution of those who killed John du Coupland. John de Ashwell had a special grant of £10 for his services in prosecuting for the King. It was enacted in the twentieth year of Edward III. that the judges should take no reward from any but the King, "for this cause we have increased the fees of the same our justices." John Knyoct, Chief Justice of the King's Bench, had 100 marks a year granted him in addition to the salary of £40 as long as he should remain in office, and many of the other judges had grants from £20 to £30 in addition to their salaries of 40 marks. Some of the serjeants were employed as justices of assize, and received for that duty £20 a year. In 1388, the judges were allowed for their summer robes ten ells of green cloth, with an addition of twenty-four ells to the Chief Justices of the King's Bench and Common Pleas. The Chief Baron of the Exchequer had the same robes as a puisne judge. These allowances and salaries were continued to the judges during the reign of Richard II., Henry IV., Henry V., and Henry VI., except that the three robes allowed to each judge in the reign of Edward III. were, in that of Henry VI., reduced to two, "one with fur at Christmas, and the other with linen at the Feast of Pentecost." In addition to his salary and allowance the Chief Justice of the King's Bench had a yearly grant of 180 marks (£120); the Chief Justice of the Common Pleas, £93 6s. 8d; each of the other judges 110 marks, and the justices of assize £20 each per annum. The Chief Justice of the King's Bench received, taking into consideration the difference in the purchasing power of money, a salary about equal to that of one of the justices of the Superior Court of the city of New York, and a puisne judge received a salary about equal to that of a justice of the Marine Court in the same city. Where we read that a justice of the King's Bench, in the time of Henry V., received a salary of 150 marks (£100), we are apt to consider him greatly underpaid; but as a general thing, a judge in those days left more money or property at his death than one does now. William Paston, a judge of the Common Pleas, in the reign of Henry VI., left at his death, in 1444, in cash in his house in London £1,460 2s. 4d, and in Norwich, £950 16s. 5d., besides rings of gold weighing 13¼ oz.; 24 lbs. 11 oz. of gilt plate, and 92 lbs. 2 oz. of ungilt plate, an amount of money equal, at least, to $150,000. He was a judge from Oct. 15, 1429, to the day of his death, Aug. 14, 1444, and in a time when each justice took an oath that he will take no fees or rewards "for to be of counsel with no man, but only with our sovereign lord the King." Their labours were not severe; they held court only from 8 a.m. till 11 a.m.; the afternoon they spent in "contemplation and prayer." A justice of the Supreme Court sitting at Chambers in the city of New York hears more motions in

Digitized by Google

one month than than the King's Bench heard in a year, at any time from Littleton to Coke, and even later. The General Term of the First Department, in the months of March and May, 1874, heard and decreed one hundred and eighteen causes, while the justices of the King's Bench, at the Easter and Trinity Terms, 1818 (see 1 Barn. & Ald.), heard and decreed only forty-eight. Mr. Justice Lawrence had on his motion calendar for the month of July, 1874 (a vacation month too), upwards of four hundred and fifty motions, many of them involving very important interests. Besides these, there were hundreds of applications for injunctions, orders of arrests, warrants of attachments, and other orders, all needing care and attention. The writer had a motion along in the eighties on the third Monday motion calendar for September, and, having some other business to attend to, waited an hour, but waited too long, for Mr. Justice Donohoe had reached and passed his motion, and was hearing, when the writer entered Chambers, No. 143. His honour had in one hour called, heard or set down for another day, or taken the papers—in fine, had done something to or with 140 motions in one hour, at the rate of seven in three minutes. The wonder is, not that our judges make mistakes, but that they make so few of them. A lasting reputation is not made by a judge at *nisi prius*, but by the ability of his written opinions. The words of the judge are not now, as they were in the good days of old, recorded as they fall from his lips. If he wishes to rear a monument more lasting than brass, he must do as Horace did, rear it on parchment. To write an able opinion takes time; it also takes time to write many opinions less than able, so that to obtain this perennial reputation he must give less than "*sex horas somno*," and more than "*todidem legibus acquis*" of Sir Edward Coke.—*Albany Law Journal.*

LIABILITY OF RAILWAY COMPANIES FOR DELAY.

The County Courts offer valuable facilities for enforcing punctuality on Railway Companies. Several decisions have been given in actions brought by passengers, and all, with one exception, have been adverse to the companies. In the most recent case, the Great Western Railway Company, who were defendants, relied upon a notice prefixed to their time-tables that they would not be accountable for any loss, inconvenience, or injury arising from delay or detention, unless upon proof that it arose "in consequence of the wilful misconduct of the company's servants." The plaintiff took a first-class ticket from Reading to Henley by the train timed to arrive at Reading at 10·25 and to leave Reading at 10·30, to arrive at Twyford at 10·40 and to leave Twyford at 10·45, and arrive at Henley at 11 a.m. The train arrived at Reading punctually at 10·25, but did not leave Reading till 10·39. On arriving at Twyford the plaintiff found that the train to Henley had just left, and there was no other train for an hour. He took a fly and got to Henley in half an hour. The delay at Reading was occasioned principally by the want of porters to put luggage into the train. The train was a very light one, the plaintiff being the only first-class passenger. The plaintiff, who is a solicitor and treasurer of the County Court of Henley and other places, sued the defendants for 6s. 6d., the expense of a fly from Twyford to Henley. The plaintiff admitted that he was cognizant of the notice already quoted.

Upon these facts three questions arose—(1.) What was the contract between the company and the plaintiff? (2.) Was that contract affected by the notice? (3.) Was the notice itself affected by "wilful misconduct" of the company's servants?

The answer to the first question is easy. The contract between the company and the plaintiff was to convey the plaintiff to Henley in a reasonable time; and the question of reasonable time is no longer left at large, but is fixed by the company's time-table, subject to accidents which reasonable care could not provide against. This contract arises on the purchase of a ticket, unless it be qualified by the notice; and thus comes the second question, to which the obvious answer is that the notice is *ultra vires* so far as it professes to attach to the right of travelling on the company's own line the condition that the company will not be responsible for any shortcoming of their servants not amounting to wilful misconduct. Thus far we have adopted the substance, and almost the exact words, of the judgment given in the Reading County Court, and the answers to the first two questions are enough to decide the case. Upon the third question, whether there was "wilful misconduct of the company's servants, the Judge of the County Court thought, "with some doubt," that there was; and here we incline to differ from him. But if he were wrong, his error would not affect the soundness of his judgment on the main question. It was stated by the plaintiff, and not denied by the defendants, that "the delay at Reading was occasioned principally by the want of porters to put luggage into the train." It appears to us an abuse of language to say that this delay "arose in consequence of the wilful misconduct of the company's servants," which are the words of the notice. The porters at Reading are no more able than other people to do two things at one time. If there are not enough of porters to do the work of the station, the fault must lie with the managers of the company or with the company itself, but in neither case should we think the expression "wilful misconduct" applicable. Upon this point we are not without authority, and it happens to be furnished by another case against the same company. In this case the plaintiff's goods were placed in a truck to be attached to a train passing the High Wycombe station late at night. The train brought some cattle to the station, and the defendants' servants, in order to prevent the cattle from being kept in their trucks till the next day, drove them into a yard, from which they strayed upon the railway, and upset the train, thereby injuring the plaintiff's goods. The plaintiff had undertaken to relieve the defendants from liability for damage unless it arose from "wilful misconduct" of their servants. When this case came before the Court of Queen's Bench, Mr. Justice Blackburn said that there was admittedly no malice in what the servants did, and he agreed that there might be many cases of wilful misconduct without malice, but he did not agree that culpable negligence was necessarily wilful misconduct. The cattle were driven into a yard which communicated with the line. This was not the usual course of proceeding, but the object of doing so on this occasion was to deliver the cattle to their consignees that night. There might have been some neglect by the company's servants, but "I cannot see," said the learned Judge, "how they can possibly be said to have been guilty of wilful misconduct." There was nothing to show that what they wilfully did—that is, drive the cattle into the yard—was likely to cause injury to the plaintiff's goods, or that they had knowledge of any danger to which they were exposing either the cattle or the train by what they did. Mr. Justice Quain remarked on the difficulty of defining the negligence which amounts to wilful misconduct so as to justify a conviction for manslaughter. "Something of the same kind," he said, "is intended here; but without defining it exactly, it is sufficient that the facts here show no culpable negligence at all, and negligence must be culpable to constitute wilful misconduct."

An appeal is, we believe, intended from the judgment of the Reading County Court, and the company may rely on the case we have quoted to establish that there was no "wilful misconduct of their servants" causing the plaintiff to be delayed in his arrival at Twyford. But they will thus only show that the notice was not displaced by circumstances, supposing that notice to be otherwise applicable to the plaintiff, and this will be their point of difficulty. These notices, to be valid, must be reasonable. The company has no power to impose unreasonable conditions upon passengers, and the Judge of the County Court has held this condition to be unreasonable, and he is supported by authority in so holding. In an action brought against the Great Eastern Railway Company for delay in starting a train, the defence was that the company by notice affixed to their time-tables declared that "they would not hold themselves responsible for delay, or any consequences arising therefrom." The plaintiff, a miller living at Framlingham, held a season ticket, and was accustomed to travel to Lodnon by the defendants' railway to attend the Mark Lane Corn Market. He came one day to the station at the usual time; the carriages were ready, but the engine had not

Digitized by Google

steam up, and could not go. Mr. Baron Martin, who tried the case, made short work with the notice limiting liability. "It is," he said, "mere nonsense for the defendants to say, as in effect they say, 'We will be guilty of any negligence we think fit, and will not be responsible.'" It will be observed that in that case the notice was general that the company would not be responsible for delay, whereas in the present case the company announced that they will not be responsible for delay, unless caused by the wilful misconduct of their servants. It may be argued, therefore, that the ruling of Mr. Baron Martin in the former case is not an authority for the decision in the latter. There can, however, we think, be little doubt that the notice given by the Great Western Company is invalid. They say that they will only be responsible for wilful misconduct, and, as there may be culpable negligence which is not wilful misconduct, they say in effect that they will not be responsible for such culpable negligence, whereas it is clear that they must be liable.

But it is a different question whether, under the circumstances of this particular case, the defendants' claim to be discharged from their ordinary duty of keeping time would be reasonable, irrespective of any notice which they may have given. It will of course be conceded that a literal and absolute performance of the undertaking contained in their time-tables could not be exacted from them. Their duty is, as stated by the Judge of the Reading County Court, "to use all reasonable means to convey passengers to their destinations in the reasonable times which they have expressly fixed." The question, therefore, is, whether they used "all reasonable means" in the present case. It may be allowed that the case is not so strong against the company as that which came before Mr. Baron Martin. "Here," said he, "a train is advertised, the plaintiff gets to the station, and finds the train there and the engine without steam up—the horse in the stable unharnessed." It was stated in that case that an hour and a half was needed to get steam up. In the present case the want of porters at the Reading station caused a delay of only nine minutes, which caused the plaintiff to miss the train at Twyford. There have been judges on the Bench who have leaned strongly against extending the liability of railway companies, and it is not impossible that such a judge might view this case differently from the Judge of the County Court If the case came before a jury, they might probably consider that unnecessary delay at Reading was combined with unnecessary punctuality at Twyford. If the train must wait at Reading because the porters were engaged, it might be thought that the train could wait at Twyford until the train from Reading had arrived. Assuming that the trains on the branch line to Henley are under the control of the defendants, they surely ought to have so managed as to protect the plaintiff from the consequence of delay caused, as was admitted, by the imperfection of their own arrangements at Reading. We think that the view which a jury would be likely to take of the case was fairly expressed by the Judge of the County Court when he said, "It is clear that the absence of porters at the Reading station, which reasonable care might have prevented, occasioned the detention of the plaintiff at Twyford, and as he was able to procure a conveyance by which he got to Henley half an hour sooner than the railway company were prepared to convey him by the next train, I think that he was justified in hiring it, and that he is entitled to recover its cost against the defendants."

In another recent case a decision involving the same principle was given in the Burnley County Court against the Lancashire and Yorkshire Railway Company. In that case the Judge held that, although the company do not guarantee the arrival and departure of the trains at the times stated, and do not hold themselves accountable for any injury which may arise from delay, and "make such terms part of the contract with the passenger," yet they are bound to use all ordinary means within their power to perform their contract; and if they omit to use such means and show no sufficient reason for the omission, they fail to perform the duty which the law imposes upon them of using reasonable care and diligence in conveying the passenger to his destination according to their contract with him. The plaintiff in that case took a ticket at Burnley for Barnsley. The train by which he started ought to have reached Wakefield in time for a train starting from that place for Barnsley. But the train from Burnley to Wakefield was accidentally delayed, and the train started from Wakefield for Barnsley before the plaintiff arrived at Wakefield. It appeared, however, that the plaintiff and other passengers from Burnley arrived at Wakefield soon after the departure of the train for Barnsley, and if the station-master at Wakefield had known that they were coming he would have detained that train for them. An accident had occurred soon after leaving Burnley which rendered it impossible for the passengers from Burnley to reach Wakefield at the usual time. Afterwards an arrangement was made for forwarding these passengers to Wakefield, and if, when this arrangement was made, the station-master at Wakefield had been informed of it, he would have detained the train starting for Barnsley until the Burnley passengers arrived at Wakefield. The Judge of the County Court held that the railway company were guilty of negligence in not sending this information by telegraph to Wakefield. As the train for Barnsley had left Wakefield before the plaintiff arrived there, he had to wait several hours for the next train, and thus he arrived at Barnsley too late to do his business, and had to go there on another day, and incurred expense which he now recovered against the railway company.

In one of the few reported cases of this kind that have been brought before Judges of the Superior Courts, the plaintiff proved only that it was Whitsun Monday, and the train by which he travelled, being heavy, was late, and he missed an appointment. The late Mr. Justice Crompton held that, without some evidence of negligence, the plaintiff could not recover against the company. Among the recent cases in which Judges of County Courts have decided against railway companies, the best known is that of Mr. Forsyth, M.P. This was a stronger case of delay than that which has given occasion to these remarks, as indeed the Judge of the Reading County Court, who decided both cases, admitted.

It may not be amiss to observe the light which this dissension throws upon the utility or necessity of that accumulation of reports of cases which is often treated as a reproach to the English law. We have been trying to ascertain what view Judges are likely to take of complaints against railway companies of delay in carrying passengers. There has been a growing disposition to entertain such complaints, and in order to measure this growth we collect as many cases of this class as we can readily find, and compare their features. In order to do this we have recourse to the various legal periodicals which report select cases from the County Courts and rulings of Judges of the Superior Courts sitting at *nisi prius*. All this, be it observed, lies beyond the regular reports of cases in the Superior Courts, of which the bulk is sufficiently alarming. The truth is that the liability of railway companies in these cases is being established and defined, and while this process is going on it is necessary to note every word that falls from the Judges who are concerned in what is virtually law-making. It seems, therefore, that not only law reports but also legal periodicals are inevitable, although cumbrous, parts of our legal system.—*Saturday Review.*

RECENT DECISIONS.

Drury v. Wills and Another.

A guarantee by a solicitor in the name of his firm held not to bind the partner.

Thursday, October 15.

(Before H. J. Stonor, Esq., Judge.)

In this case, which was heard at the last court, his Honour delivered the following judgment:—This case was heard before Mr. Austin, who was so good as to sit here as my deputy at an extra court, held during the vacation. The plaintiffs sued the defendants for £11 5s., in respect of rent due to him from a gentleman of the name of Russell (for whom the defendants acted as solicitors), upon an agreement or guarantee contained in a letter written to the plaintiff by the defendant Wills in the following terms:—"53, Carter-lane, Doctors' Commons, E.C., the 16th June,

Digitized by Google

1874. Gentlemen,—Referring to the interview which our Mr. Watts had with you on Friday last with regard to Mr. Russell's desire to be released from his tenancy of Burpham Lodge, we are now instructed to request that, acting as agents for Mr. Russell, you will endeavour to let the house and premises, and for that purpose advertise the same, and do whatever else you deem necessary. In the meantime Mr. Russell will be glad if you will take possession of the premises on his behalf, and also carry out your suggestion of employing a man to keep them in order. We will send you cheque for balance of rent to the 24th inst. in a few days. Yours truly, Wills and Watts.—Messrs. Drury and Bullen." The plaintiff at the trial gave further *viva-voce* evidence as to the consideration for such guarantee, and the surrounding circumstances of the case. The learned Deputy Judge reserved his judgment to enable him to refer to the authorities on the subject, and has since communicated to me his judicial opinion that the defendant Wills, by the above letter, gave a guarantee to the plaintiffs on behalf of himself and his partner Watts for the payment of the rent due from Mr. Russell to the plaintiff, but that he had no authority to bind his partner, the defendant Watts. In that opinion I concur so far as I can do so without having heard the *viva-voce* evidence given at the trial. I shall direct a verdict to be entered for the plaintiff against the defendant Wills, and a verdict for the defendant Watts. The guarantee clearly required a stamp, which had not been affixed previously to the trial, although it has been subsequently; and for this, amongst other reasons, I shall give no costs to the plaintiff against the defendant Wills, nor shall I give any costs to the defendant Watts against the plaintiff, inasmuch as I think that the latter had a right to assume that the defendant Wills had obtained the consent of his partner, the defendant Watts, to the guarantee. The case of *Harrison* v. *Jackson* (7 T. R. 207); *Hedley* v. *Bainbridge* (3 Q. B. 316); and *Hadeham* v. *Young* (5 Q. B. 836), apply directly to the present case, and the law and authorities upon the subject generally will be found in Mr. De Collyar's valuable treatise on guarantees recently published.

Ex parte Croker, *re* Browne and Roberts (8 I. L. T. R. p. 169).

A question of some practical interest was decided in the early part of the year by the Court of Appeal in Chancery in Ireland, in a case of *Ex parte Croker, re Browne and Roberts*, only reported by our contemporary, The Irish Law Times. Administration suits for the purpose of winding-up an intestate's estate were concurrently instituted in the English and Irish Courts. A decree was first made in the English court, and the bulk of the assets transferred to England, and the decree subsequently made in the Irish court was made subject to that in the English court. An Irish creditor, however, sought to obtain a decree against the administrator under the English estate, directing him to pay the amount of the debt whether there were assets or not, on the ground that the removal of the assets from Ireland was a *devastavit*. The Lord Commissioner, in giving judgment, said: "The Irish creditor is not to be prejudiced, and I take it that the duty of the courts here is to give him complete protection as far as they can. On the other hand, the English courts would have no right to control the proceedings here; all that they could do would be to restrain any creditor within their jurisdiction from taking a proceeding, in Ireland, which would hinder the administration of the assets. But the court here will endeavour to co-operate with the English court, to secure what is generally convenient for the creditors. If there should be a conflict between the courts of the two countries, each must stand on its strict rights. It makes no real difference, that I can see, that the same person is Irish and English administrator; the Irish administrator is responsible to this court for the assets in Ireland. It is well settled that where the assets are transferred, as in this case, there is a reciprocity observed, and the *lex fori* is the same in both countries." Consequently the administrator and receiver under the English suit who had acted strictly in accordance with the decree of the English court, were held protected from proceedings by the Irish creditor in the Irish court.—*Law Times.*

THE COURT FOR CONSIDERATION OF CROWN CASES RESERVED.

Westminster, November 14.

(Present—Lord Chief Baron Kelly, Mr. Justice Lush, Mr. Justice Brett, Mr. Justice Quain, and Baron Pollock.)

The Queen *v.* Hazelton.

The prisoner in this case was indicted before the Common Serjeant of London for having fraudulently procured goods by false pretences. The prisoner had bought goods and had paid for them by checks drawn upon various banks, saying that he wished to pay ready money for the goods. The prisoner had opened accounts with these banks, but at the time he drew the checks there were at some of the banks but very trifling and insufficient sums in his name with which to meet them, and at the other banks his account was overdrawn. The false pretences alleged in the indictment to have been made by the prisoner were as follow:—1. That at the time of giving the checks he then had money to the amount of the check at the bank upon which it was drawn; (2) that he then had authority to draw upon the bank for that sum; (3) that the check which he gave was a good and valid order for the payment of the amount named in it; (4) that he then had a banking account with the bank upon which the check was drawn, and where his account was overdrawn. The jury found that the prisoner, at the time he gave the respective checks, did not intend to meet them, and intended to defraud. The prisoner was found guilty, but was respited in order to obtain the opinion of this Court whether there was any evidence upon which the jury could properly have convicted the prisoner of having made any of the false pretences alleged in the indictment. One count, charging the second and third of the above false pretences, was in respect of a check drawn upon a bank at which the prisoner's account was overdrawn, and the Court held that, under this count, the prisoner was properly convicted.

Lord Chief Baron Kelly, in giving judgment, said that an implication arises in giving a check that the person giving it has authority to draw the check on the bank, and that there is an implied representation that the check is a good and valid order for the payment of its amount; and that, as in this case the prisoner knew that the checks would not be honoured, the conviction was right.

Conviction affirmed.

The Advantages of Irresponsible Arbitration.—Lord Romilly appears to be throwing the European Assurance Society Arbitration into a state of confusion. He has for some time past abandoned the principles which Lord Westbury laid down on the subject of novation. He holds that they are wholly irreconcilable with those previously laid down by Lord Cairns, and that they are not consonant with the law. He has now gone even further; he has gone the extreme length of reversing one of Lord Westbury's decisions. In *Harman* and *Pratt's cases* Lord Westbury had, shortly before his death, decided that there was no novation, and that the policy-holder was entitled to concurrent proof against each of four amalgamated companies. Lord Romilly has now heard the cases again, and has decided that there was a novation, and that the company which originally granted the policies is wholly relieved from liability. In doing this he seems to have persuaded himself that he was not hearing an appeal from a decision of Lord Westbury. But he had "endeavoured to put Lord Westbury out of sight altogether;" and he had "looked at the case as if it had been his own judgment, and as if, on considering subsequent cases, he had concluded he had come to a wrong conclusion." This is, manifestly, a most delusive argument; the rehearing was nothing more nor less than an appeal from a judgment of Lord Westbury, fully considered, and explicitly stated. Those who are interested in the winding-up are somewhat appalled by these see-saws of opinion, for they do not know when they are to consider their cases really settled. Lord Romilly may discover other mistakes, made either by himself or by Lord Westbury; and, no doubt, the shareholders, who consider themselves aggrieved by Lord Westbury's decisions, will do their best to have some of them reconsidered.—*Law Times.*

Digitized by Google

DEATH OF MRS. DOWSE.

We regret to announce the death of Mrs. Dowse, wife of the Right Hon. Baron Dowse. The melancholy event occurred on the 15th inst., at the family residence, in Mountjoy-square, after a short illness. The lamented lady was well known as a patroness of most of the charitable institutions in the city, and the poor have lost in her a sincere and liberal friend.

ADMISSION AS ATTORNEY.

Mr. William Fry, junior, of this city, who obtained first place and the gold medal at the recent Final Examination of the Incorporated Law Society, was, yesterday, duly admitted as an Attorney of her Majesty's Courts of Common Law in Ireland.

IN CHANCERY.

LORD CHANCELLOR'S CHAMBERS,
The 28th of August, 1874.

REGULATIONS

To be observed at the Chambers of the Lord Chancellor, in relation to the business of the released Masters transferred pursuant to the General Order of the 4th of July, 1874.

When an application is necessary in relation to any business appertaining to the offices of either of the released Masters in Ordinary transferred pursuant to the General Order of the 4th of July, 1874, a Certificate of the state of the proceedings in the cause or matter, and a note stating the names of the solicitors for all the parties who have appeared therein, in the forms respectively given in the schedule to these regulations, shall be procured and left at Chambers; and thereupon a summons in the form also given in said schedule shall issue, directed to the solicitors for the several parties in such cause or matter named in such note as having appeared.

THE SCHEDULE REFERRED TO BY THE FOREGOING REGULATION.

[*Form of Certificate of state of proceedings.*]

In Chancery.

[*Title.*]

I hereby certify that on the 8th of August, 1874, being the date from and after which the Right Honourable William Brooke and Jeremiah John Murphy, Esquire, were released as Masters in Ordinary of the Court of Chancery in Ireland, pursuant to the General Order of said Court, dated the 4th of July, 1874, this [cause *or* matter] was pending in the office of the said [*name of Master*] and that the last proceeding in said [cause *or* matter] was [*state the nature and date of the last proceeding*].

Dated this 1874.

[*To be signed by the Examiner or Registrar.*]

[*Form of Note of names of Solicitors and parties for whom they have appeared*]

[*Title.*]

I *or* we certify the names of the solicitors concerned in this cause *or* matter, and the parties for whom they appeared, are as follows:—

Names of Solicitors	For whom concerned

Dated 187 .

} Solicitor for

[*Form of the first Summons in a cause or matter transferred to Chambers, pursuant to the General Order of the 4th of July,* 1874.]

In Chancery.

[*Title.*]

Let all parties concerned attend at the Chambers of the Lord Chancellor at the Four Courts, Dublin, on the day of 187 , at of the clock in the noon, on the hearing of an application on the part of [*name of the applicant*] for an order that the further proceedings in this [cause *or* matter] shall henceforth be continued, carried on, and prosecuted according to the practice in force at the said Chambers for the conduct of suits commenced after the first day of Michaelmas Term, 1867, and that [*state the further object of the application*], which application will be grounded on, *&c.*

Dated this day of 187 .

This summons was taken out by of solicitor for, *&c.*

To

JOSEPH NAPIER, *C.S.*
JAMES A. LAWSON, *C.S.*

REVIEWS.

The Liquor Licensing Laws of Ireland, containing the Licensing Acts, 1872-1874, &c. By ANDREW REED, B.A., Barrister-at-Law. Dublin: Printed and Published by Alexander Thom, 87 and 88, Abbey-street. Price 3s.

THE object of this work, as the editor states in his preface, is to supply a hand-book containing all the laws in force relating to the licensing and management of public-houses (hotels, taverns, &c.), spirit grocers', beer retailers', wholesale beer dealers', and wine refreshment houses, all of which require the certificate granted by the magistrates, or their implied consent (in the case of wine refreshment houses), before being licensed by the Commissioners of Inland Revenue. The work opens with eight introductory chapters of practical and useful information. Chapter I. contains the first licensing statute passed for Ireland (10 & 11 Charles I., ch. 6), in which will be found the first principles of Irish licensing law. Chapter II. furnishes an accurate summary of all the Irish licensing statutes, from 1825 to 1871, at present in force. Chapters III. and IV. give an excellent abstract and review of the Licensing Acts, 1872-1874. Chapter V. furnishes a description and classification of the various licenses for the sale by retail of intoxicating liquors, and recounts the disqualifications for holding the same. Chapter VI. contains a full description of the public-house license, and of the proceedings required to be taken to obtain the grant, transfer, or renewal of such license; also the principal excise rules for charging duty, and the legal rights and liabilities of hotel-keepers, &c. Chapter VII. contains the procedure for the grant, transfer, and renewal of beer retailers', spirit grocers', and wholesale beer dealers' licenses. Chapter VIII. treats of the refreshment-house wine license, describes how it is granted, &c., and the procedure to be adopted upon the justices objecting to the grant, transfer, or renewal of such license—after which is given a complete set of all the forms required in the proceedings under the licensing laws, which are most accurately and carefully prepared. Then follows the text of the Licensing Acts, 1872-1874, with useful explanatory notes to almost every section, and of twelve other Licensing Acts, namely, the Licensing Act, 1825, the Licensing Act, 1833, the Licensing Amendment Act, 1836, the Spirit Grocers' Act, 1845, the Spirits Act, 1854, the Spirits Act, 1855, the 23 & 24 Vic., c. 35, the Refreshment-houses and Wine Licenses Act, 1860, the Beer-houses Act, 1864, the Beer-houses Amendment Act, 1871—to which Acts, also, explanatory notes are furnished. A census return of towns having a population over 5,000, together with a copious index, complete the work. In the notes all the recent and

Digitized by Google

important decisions are quoted. This book is a marvel for cheapness, considering the amount (250 pages) of useful information it contains. We consider it the most useful work yet presented to the public on the important subject of which it treats. It is full, clear, and comprehends every branch of the liquor licensing laws, and is adapted to the use of general as well as professional readers. In short, every magistrate, barrister, solicitor, petty sessions clerk, police officer, excise officer, and licensed trader, should possess this most useful legal hand-book.

We have received the following books for review—

Principles of Conveyancing. An Elementary Work for the Use of Students. By HENRY C. DEANE, of Lincoln's Inn, Barrister-at-Law. London: Stevens & Haynes, Bell Yard, Temple-bar.

A Practical Treatise on Solicitors' Book-keeping by Double Entry. By ROBERT HENRY RICHARDSON, Associate of the Society of Accountants in England, Law Accountant and Auditor. London: Published and Sold by the Author, Ravenscourt Park, Hammersmith; Reeves and Turner, 100, Chancery-lane, W.C.

The J. P'S. Pocket Guide. By J. HUTCHINSON Dublin: John Ireland & Son, 13, Ellis's-quay.

CORRESPONDENCE.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

We hold over the letter of "An Apprentice," as he has not complied with our Rule as to sending his name and address.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—T. W. Browne, amend order.—E. J. Quirke, examine delay.—T. Keegan, from 17th.—N. Doherty, do.—E. Geraghty, allocation.—F. P. Rowley, proposal.—A. D. M'Gusty, payment.—J. Shuldham, ditto.

IN COURT.—W. R. Burleigh, final schedule.—J. H. Ryan, re-entry of final schedule.—J. C. F. Greer, do.—W. O'Brien, payment.—G. Gaynor, from 19th.—J. M'Creight, to sell discharged of annuity.—P. Dane, objections.

Before EXAMINER (Mr. M'Donnell).

E. Purdon, rental from 13th.—Trustee Jones, to take account.

Before EXAMINER (Mr. Dobbs).

Rev. J. Fawcett, proofs.—John Elliott, rental.—C. Mackay, ditto.

TUESDAY.

IN CHAMBER.—H. N. Latimer, examine delay.—T. Murray and others, allocation.—D. Shipp, confirm sale.

IN COURT.—Lord Dartrey, final schedule.—Assignees M'Nulty, do.—G. Rallegh, do.—T. Howley, from 17th.—D. S. Ker, from 19th.

Before EXAMINER (Mr. Dobbs).

Rev. J. Sullivan, rental.—Executrix Rae, proofs.

WEDNESDAY.

Trustee O'Brien, tenant's objection.

IN COURT.—John Stanley, final schedule.—G. Niddru, do.—G. Surnam, re-entry final schedule.—M. W. Knox, ditto.

Before EXAMINER (Mr. M'Donnell).

J. Campion, vouch.—C. O'Callaghan, rental.—P. Barden, do.—T. Bennett, ditto.

FRIDAY.

SALES AT 12 O'CLOCK.

A. J. B. BOURKE.—1 lot.
T. P. FRENCH.—1 lot.
E. MORGAN.—3 lots.
D. DARCY.—3 lots.
R. BLACKHALL.—4 lots.
TRUSTEE WILLIAM JONES.—7 lots.
SIR D. BAXTER.—8 lots.

LANDED ESTATES COURT.

SALES

Nov. 13th.—Before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN.—Estate of William Hammond and others, owners and petitioners.

Lot 1.—The house and premises, No. 5, George's-quay, held under lease dated 2nd July, 1767, for a term of 999 years. Sale adjourned.

Lot 2.—The house and premises, 23, City-quay, held under lease dated October, 1838, for a term of 61 years; producing a profit rent of £28 17s. 10d. Sold to Mr. John Kearns for £150. Solicitor, *Arthur Ellis.*

CITY OF DUBLIN.—Estate of Henry Law Dwyer, owner and petitioner, continued in the name of Jane Dwyer, as executrix of the said Henry L. Dwyer.

Lot 1.—House and premises, 1, Upper Camden-street, held, with houses 2, 3, and 4, in the same street, under lease dated 20th March, 1857, for the residue of a term of 249 years; net annual profit rent, £36 16s. 8d. Sold to Mr. Thomas Early for £465.

Lot 2.—House and premises, No. 2, Upper Camden-street, held under the same lease; net annual profit rent, £20. Sold in trust for John Muldoon for £280.

Lot 3.—House and premises, No. 3, Upper Camden-street; net profit rent, £21 10s. Sold to Mr. J. J. Adams for £270. Solicitor, *William Whitton.*

COUNTY KILKENNY.—Estate of Richard Steele Hawksworth and another, executors and trustees of the Rev. John Tydd Moore, owners and petitioners.

Lot 1.—The lands of Inchencarron, otherwise Welshe's House, County Kilkenny, containing 979a. 2r. 31p., held in fee. Sale adjourned.

Lot 2.—Part of the same lands, containing 87a. 3r. 20p., held in fee; yearly profit rent, £24 17s. 4d. Sold to Mr. P. Ryan for £10.

CITY OF DUBLIN.

Lot 3.—The plot of ground and three dwelling-houses in Upper Dominick-street, City of Dublin, held under lease dated 13th October, 1806, for a term of 999 years; net yearly rental, £17 13s. 1d. Sold to Mr. John Byrne for £260. Solicitor, *Thomas Turpin.*

COUNTY OF DUBLIN.—Estate of John Riddick, owner; Richard C. Pratt and John Hamilton, petitioners.

Lot 1.—Premises known as Mount Tallant Cottage, situate in Rathmines Township, held under fee-farm grant dated 1st May, 1874; net annual value, £20 7s. 6d. Sold in trust for Mr. Donohoe for £825.

Lot 2.—House and premises, No. 1, Mount Tallant-terrace, held under fee-farm grant dated 1st May, 1874, indemnified from rent; net annual rental, £32. Sold to Mr. Farrington for £530.

Lot 3.—No. 2, Mount Tallant-terrace, part of same holding; net annual rental, £38, Sold to same purchaser for £555.

Lot 4.—No. 3, Mount Tallant-terrace, part of same holding; net rental £38. Sold to same purchaser for £555.

Lot 5.—No. 4, Mount Tallant-terrace, part of same grant; net annual rental, £38. Sold to same purchaser for £555.

Digitized by Google

Lot 6.—No. 5, Mount Tallant-terrace, part of same holding; annual rental, £38. Sold to same purchaser for £665.

Lot 7.—No. 6, Mount Tallant-terrace, same holding; net rental, £38. Sold to Mr. D. Donohoe for £690.

COUNTY OF ROSCOMMON.

Lot 8.—Nine-tenths undivided part of the lands of Killiracken, held in fee; net rental, £48 19s. Sold to J. Riddick, in trust, for £2,000.

Lot 9.—Sale adjourned.

Lot 10.—Nine-tenths undivided part of the lands of Clonserne, held under fee-farm rent. Sale adjourned. Solicitor, *A. H. Middleton.*

COUNTY OF ROSCOMMON.—Estate of the Right Hon. Fitzstephen Ffrench, owner and petitioner, continued in the name of his administrator. Part of the lands of Ballyglass West, Meelick, Kilrodary, and in the barony of Frenchpark, containing 7,073a. 1r. 27p., statute measure, held under lease dated 16th October, 1863, for the term of twenty years, from the date of lease, and producing a net annual profit rent of £948 12s. The sale was adjourned. Solicitors, *V. B. Dillon and Son.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Banbridge Extension Railway Co.	Motion	*Murland*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Francis Keegan	Reference order, 23rd October	*Meade & Colles*
Same matter	Prove debts and vouch	*Boughey*
Patrick Flood	Vouch mortgagee's act.	*Maxwell & Weldon*
Patrick Mason	Prove debts and vouch	*Kernan*
James M'Aleenan	do	*Molloy & Watson*
John Woods	do	*Oldham & Eaton*
Benjamin Norman	do	*Neilson*
H. M'Kenzie	do	*Larkin & Co.*
Morrison and Ferguson	do	*Neilson*

TUESDAY.

Before the COURT, at 11 o'clock.

John Parsons	1st public sitting	*Larkin & Co.*
Thos. R. Crawford	do	*Neilson*
James Garroway	do	*Thompson*
Michael Grant	do	*Forsythe*
John Walsh	do	*Larkin & Co.*
William Stapleton	do	*Hamilton & Craig*
James Ryan	do	*Hamilton & Craig*
Jeremiah Black	Final examination	*Lynch*
William Campbell	do	*Rynd*
J. W. & R. Rowan	do	*Lynch*
Same matter	Motion	*Smith*
Thomas M'Connell	Final examination	*Larkin & Co.*
John Molloy	do	*M'Evoy*
Henry Davey	do	*Neilson*
J. Mason and P. Looby	do	*Casey & Clay*
William H. Harris	Motion	*Neilson & Son*
John F. Maguire	Examine witnesses	*Oldham & Eaton*
Michael Hughes	do	*Perry & Co.*
G. & R. Ferguson	Audit and dividend	*Larkin & Co.*
B. M'Lenegan	do	*Mathews*
Richard Boyle	do	*Casey & Clay*
John Byrne	Audit mortgagee's act.	*Fottrell & Son*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Thomas Murray	Prove debts and vouch	*Casey & Clay*
James Fortune	do	*Thompson*
L. De Savigny Ashe & Co.	do	*Robinson*
G. R. Donovan	do	*Perry & Co.*
John Gleeson	do	*Casey & Clay*
John J. Hennessy	do	*Thompson*
Thomas F. O'Neill	Vouch mortgagee's act.	*Maxwell & Weldon*
Sarah Meglaughlin	Vouch account	*Larkin & Co.*
James Armstrong	do	*Larkin & Co.*
Philip M'Cusker	Costs	*Bradley & Son*

WEDNESDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

————	Costs	*Bernard*
Andrew Moir	do	*Mathews*
G. & R. Ferguson	do	*Perry & Co.*
Same matter	do discharge queries	*Perry & Co.*
John Flanagan	do	*Goff*
William Cannon	do	*Goff*
John Brooks	do	*Persse & MacEgan*
G. & R. Ferguson	Reference order, 13th October, 1874	*Persse & MacEgan*

THURSDAY.

Before the COURT, at 11 o'clock.

Samuel Doyle	Charge & discharge	*Meldon & Son* for charge; *Mathews* for discharge

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Iver M'Donnell	Prove debts and vouch	*M'Govern*
Potter & Gillman	do	*Larkin & Co.*
Ludlow Berkeley	do	*Casey & Clay*
Mary Leahy	do	*Larkin & Co.*
Robert Courtney	Vouch mortgagee's act.	*Fitzgerald*
Joseph Creswell	Costs	*Lett*
John Marsden	do	*Tatlow*
Henry Abbott	do	*Larkin & Co.*
Mary Leahy	do	*Larkin & Co.*

FRIDAY.

Before the COURT, at 11 o'clock.

Michael Reilly	2nd composition sitting	*Mathews*
George Meares	1st composition sitting	*Rynd*
Same matter	1st public sitting	*Perry & Co.*
William Rose	do	*Scallan*
Martin Kelly	do	*Hamilton & Craig*
James Malcomson	do	*Rynd*
Mary Gibson	Final examination	*Oldham & Eaton*
Andrew M'Bride	do	*Perry & Co.*
Ebenezer E. Brown	do	*Casey & Clay*
James O'Beirne	Audit and dividend	*Perry & Co.*
E. D. Maccaud	do	*Perry & Co.*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Michael Stanley	Prove debts and vouch	*Neilson*
Anthony Connor	do	*Macnamara*
John J. M'Cosker	do	*Rosenthal*
Hugh S. Guiney	do	*Beauchamp*
J. W. & R. Rowan	do	*Oldham & Eaton*
John F. Maguire	do	*Oldham & Eaton*

ADJUDICATIONS IN BANKRUPTCY.

Greer, John M., 68, Apsley-place, Belfast, county Antrim, commission agent. Sittings, *Friday, December* 11, and *Tuesday, December* 29. *Jones*, solr.

Digitized by Google

Kealy, James, Newtown Mills, Trim, county Meath, miller. Sittings, *Friday*, *December* 11, and *Tuesday*, *December* 29. *Casey and Clay*, solrs.

Norris, Michael, of the town of Drogheda, miller. Sittings, *Friday*, *December* 11, and *Tuesday*, *December* 29. *Lett*, solr.

M'Carthy, Henry, of Ballinahinch, county Down, grocer. Sittings, *Friday*, *December* 11, and *Tuesday*, *December* 29. *Lett*, solr.

O'Sullivan, Eugene, Main-street, Dungarvan, county Waterford, tin-plate worker and dealer, and hardware merchant. Sittings, *Friday*, *December* 11, and *Tuesday*, *December* 29. *Larkin and Co.*, solrs.

Quinan, Edward Johnston, of Harcourt-street, Dublin, M.D. Sittings, *Tuesday*, *December* 5, and *Tuesday*, *December* 22. *Tatlow*, solr.

Silk, Robert, Loughrea, county Galway, ironmonger and general merchant. Sittings, *Friday*, *December* 11, and *Tuesday*, *December* 29. *Byrne*, solr.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	NOVEMBER Fri 13	Sat. 14	Mon. 16	Tues. 17	Wed. 18	Thur 19
	Government.						
—	3 p c Consols	92-⅛	92-⅛	91⅞	92-⅛	92	92-⅛
—	3 p c Reduced	—	—	91⅞	—	—	—
—	New 3 p c Stock ..	91⅝¾	91¾⅝	91⅞	91-⅛	91-⅛	91⅞-1
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	109	—	—	—	—
—	4 p c Oct. '88 } Bk. of Irel.	102⅞	—	103	—	103	—
	Banks.						
100	Bank of Ireland ..	—	—	312	—	—	—
25	*Hibernian Banking Co.* ..	60¼	60	60	60¼	60¼⅛	60
20	*London and County* ..	—	—	—	64¼	—	54¼
15	*London Joint Stock* ..	—	—	52½	—	53	53
20	*London and Westminster* ..	—	77¾⅞	—	—	78½	—
30	*National Bank*	67	66⅞-7	66¼⅞	66¾⅞	66⅞	66⅞-7
15	*National of Liverp'l (Ltd)*	15-⅛	—	15⅛	15-⅛	15⅛	—
25	*Provincial Bank* ..	91⅞	—	91⅛	—	—	90¾⅞
10	*Royal Bank*	30⅛	—	30⅛	—	—	—
15	*Union of London* ..	—	—	—	49⅛	—	49¾⅞
25	Union of Australia ..	—	—	52½	—	53⅛	—
	Steam.						
100	City of Dublin	—	x d	—	106⅛	—	107
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	55½	55½	—
	Mines.						
3½	*Berehaven (Limited)*	1/-	—	—	—	—	—
1	Killaloe Slate Co. (lit'd) ..	—	—	—	—	17/3	17/6
7	*Mining Co. of Ireland (lit'd)*	7⅛	—	7¾	—	—	—
2½	Wicklow Copper	—	—	2⅞	3⅛	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅞	—	10⅞ 11	—	10⅞	—
46-3-1	Commercial Buildings ..	—	—	—	—	48	—
10	Dublin Tramways ..	—	6⅛	—	—	6⅛	6⅛¼
100	Grand Canal ..	55	—	55	—	—	—
25	Ir. C. S. & Gl Building Co.	—	—	30	30	—	—
25	*National Assurance* ..	47½	47½	47½	—	—	47½
9-4-7	*Patriotic Assurance* ..	10⅝	—	10⅝	—	—	—
	Railways.						
50	Cork and Bandon ..	27	—	—	—	—	—
100	Dublin and Belfast Junct.	—	—	—	90¾⅞	90¾⅞	—
100	Dublin and Drogheda	—	—	—	—	114	—
100	Dublin, W'klow, & W'ford	77⅛	—	—	—	—	—
100	Gt. Southern and Western	109⅝	109⅝	109⅛	109⅛	109¼	109¼
100	Do. do. free of Stamp	109⅞	109¾⅞	—	—	—	109⅞
100	L'nd'n, Brighton, Sth Coast	92⅛	—	—	—	—	—
100	Midland Gt. Western ..	82⅞	82⅛	82¼	82⅛-2	82	82
50	Waterford and Limerick ..	32⅞	—	32⅞	—	—	—
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	96	—
100	Do. do. 4½ p c	—	—	—	103⅛	—	—
6½	Cork & Bandon, 5½ p c ..	—	—	—	6⅞	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	97	—
50	D., W., & W., 5 p c (1860)	—	—	—	55⅛	—	—
100	Gt. South'n & West'n 4 p c	—	99⅛	99⅛	—	99⅛	—
10	Irish North Western A 5 p c	4	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860-72, 5 p c	—	50¾⅞	—	—	51	—
50	Do., new red, 1873, 5 p c ..	50¾⅞	—	50⅞	—	51	—
	Railway Debentures.						
—	Dublin & Meath 4 p c ..	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	91	—	—
—	D., W., & W., 4½ p c ..	—	—	—	—	102⅛	—
—	Gt. South'n & West'n, 4 p c	99⅞	—	—	99⅛	—	—
—	Waterford & Central 5 p c	—	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	102⅛	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—5 per cent., 17th November, 1874.
Of Deposit—3 per cent., 17th November, 1874.
Name Days—November 28th, and December 15th, 1874.
Account Days—November 30th, and December 16th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

THE NEW IRISH REPRESENTATIVE PEER.—John Henry Reginald Scott, Earl of Clonmel, who has been chosen one of the Representative Peers for Ireland, in the room of the late Lord Annesley, is the elder of the two sons of John Henry, third earl, by the Hon. Annette De Burgh, eldest daughter of the late General Lord Downes. He was born in March, 1839, and was educated at Eton. He held for a few years a commission as lieutenant in the 1st Regiment of Life Guards, and is a magistrate for the County of Kildare. He succeeded to the title as fourth earl at his father's death, in 1866, and he is new to Parliamentary life, having never held a seat in the House of Commons. The earldom of Clonmel dates from 1793, having been conferred on the Right Hon. John Scott, Lord Earlsfort, sometime Chief Justice of the Court of King's Bench in Ireland.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.

DOWSE—November 15, at her residence, 38 Mountjoy-square, Kate the beloved wife of the Right Honourable Baron Dowse, aged 46 years.

FROSTE—November 12, at 34 Nelson-street, Martha, the infant child of Richard Pope Froste, Esq., solicitor, aged 4 weeks.

MISCELLANEOUS:

T. KILMARTIN and SON,
SCRIVENERS AND LAW STATIONERS,
ESTABLISHED 1867,
21, KING-STREET, BELFAST.

IRISH CIVIL SERVICE
AND
GENERAL BUILDING SOCIETY.

OFFICE—8, COLLEGE-STREET, DUBLIN.

PRESIDENT—ALEXANDER PARKER, ESQ., J.P.

Purchasers in the Landed Estates' and other Courts can obtain, without delay, from One-half to Three-fourths of the Purchase Money from the Irish Civil Service and General Building Society, repayable by easy Instalments.

Loans are also advanced for the following purposes, viz.:—
To Build or Improve Houses,
To Redeem Mortgages,
To Pay off Incumbrances,
To Complete the Purchase Money of Property Sold by Private Hand.

The Legal Expenses do not amount to one-third of the sum usually charged in such cases.

All transactions not exceeding £500 are exempt from Stamp Duty.

The Society has already advanced over THREE HUNDRED THOUSAND POUNDS on Mortgage.

DEPOSIT DEPARTMENT.

Sums from £10 upwards are received on Deposit.

Rate of Interest, from 1st February until further Notice, FOUR POUNDS per Cent.

To the Depositor the following Guarantees are given:—

The Paid-up *Share* Capital exceeds £120,000.

The Business of the Society is restricted by Act of Parliament to making Advances on Mortgages of Freehold or Leasehold Properties.

The entire amount received on Deposit cannot, under the Rules, exceed one-third of the value of the balance outstanding on Mortgage.

The Prospectus and every information may be had, free of expense, on application to

307 ALFRED H. MERCER, Secretary.

A WELL RECOGNISED AND FREQUENT SOURCE OF
DISEASES of the MOUTH, TONGUE, and GUMS,
Is contact with the Cement of Envelopes over the preparation of which proper cleanly supervision is rarely exercised. We pay strict attention to this department: but to obviate all danger—at the same time combining safety to the contents—Mr. HELY, of this firm, invented and perfected

THE EUREKA ENVELOPE,
For which Her Majesty granted Letters Patent, No. 524, under the Great Seal. The adhesive matter being placed on the under flap, the great advantage is obtained that the Mouth and Tongue are applied to

FRESH CLEAN PAPER,
Not more expensive than ordinary Envelopes of similar qualities.

☞ *Order from your Stationers. We Supply the Trade only.*

HELY, HARRIS, & CO.,
ALEXANDRA ENVELOPE WORKS,
9 to 11, DENMARK-STREET, DUBLIN.

Upwards of three hundred hands employed in the production of Envelopes. 371

JEREMIAH D'ARCY,
SCRIVENER, LAW STATIONER, AND PRINTER.

OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

JOHN O'MALLEY,
4, SAINT ANDREW-STREET, DUBLIN,
LAW AND GENERAL STATIONER,
SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.
Licensed to Sell Law and General Stamps. 310

"The source of many a writer's woe has been discovered."
PENS! PENS!! PENS!!!
"They come as a boon and a blessing to men,
The Pickwick, the Owl, and the Waverley Pen."
"The misery of a bad Pen is now a voluntary infliction."
Another Blessing to men! The Hindoo Pen.
1,200 Newspapers recommend them.—See *Graphic*, 17th May, 1873.
Sold by every respectable Stationer. Post, 1s. 1d.
Patentees—MACNIVEN & CAMERON, 23 to 33, Blair-street, Edinburgh.
600

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—
WM. MORTIMER, M.A., LL.D.,
26, York-street, Dublin.
600½

PUBLIC NOTICES:

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.
(*Incorporated by Royal Charter*).

Notice is hereby Given, that the Ballot for a Council of this Society, for the Year to end 26th November, 1875, will be held at the SOLICITORS' HALL, FOUR COURTS, DUBLIN, on SATURDAY, the 21st of NOVEMBER, instant, commencing at Eleven and terminating at Three o'clock on same day.

Members in Arrear of their Subscriptions will be required to Pay the same previous to their Votes being recorded.

By Order,
JOHN H. GODDARD, Secretary.
Solicitors' Buildings, Four Courts, Dublin,
6th November, 1874. 589

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.
(*Incorporated by Royal Charter*).

The GENERAL HALF-YEARLY MEETING (after Michaelmas Term) of this Society, will be held at the SOLICITORS' HALL, FOUR COURTS, DUBLIN, on THURSDAY, the 26th NOVEMBER, instant, to receive the Report of the Council, and the Report of the Scrutineers of the Ballot, and transact other business.

The Chair to be taken at Two o'clock precisely.

By Order,
JOHN H. GODDARD, Secretary.
Solicitors' Buildings, Four Courts, Dublin,
6th November, 1874. 590

ACCOUNTANTS:

N. PETERSON & SON,
PUBLIC ACCOUNTANTS, AUDITORS, AND EXPERTS,
ULSTER CHAMBERS,
18, FLEET-STREET, DUBLIN

WANTS:

TO SOLICITORS' CLERKS.—Wanted, a Managing Clerk. He must be thoroughly acquainted with the general business of a Country Practitioner's Office, and well recommended as to character. Apply to
582 ANDREW M'CLELLAND, Solicitor, Banbridge.

BINDING "THE IRISH LAW TIMES."—
SUBSCRIBERS are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:— Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions, printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates,
AT THE
Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL,
53, UPPER SACKVILLE-STREET, DUBLIN.

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause of Caroline Anne Kearney, plaintiff; William Kearney, the Rev. Patrick Kearney, and Thomas MacCormack, Defendants—the Creditors (if any) of

EDWARD KEARNEY, late of Lockhart Station, in the Colony of Victoria, Australia, sheep farmer, and formerly of Williamstown, in the County of Westmeath, in Ireland—who died in or about the month of October, 1865—are, on or before the 9th day of December, 1874, to send by post, pre-paid, to Mr. WILLIAM MOONEY, of No. 16, Fleet-street, in the City of Dublin, the Solicitor of the defendants, the Executors of the deceased, their Christian and surnames, addresses, and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor holding any security is to produce the same before the Right Honourable the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 22nd day of DECEMBER, 1874, at Twelve of the Clock noon, being the time appointed for adjudicating on the claims.

Dated this 11th day of November, 1874.
A. T. CHATTERTON, Chief Clerk.
MURDOCK GREEN & CO., Solicitors for the Plaintiff,
602 No. 52 Lower Sackville-street, Dublin.

In the LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE TO CLAIMANTS AND INCUMBRANCERS.

In the Matter of the Estate of John Patten and Esther Elliott, Owners; David Parke, Petitioner. Continued in the name of John Patten, Owner; David Parke, Petitioner.

TAKE NOTICE, that the Schedule of Incumbrances affecting Part of the Lands of Creeve Glebe and Harkins Park, containing 4 acres 2 roods, situate in the Barony of Raphoe and County of Donegal, held under fee-farm grant of 14th day of September, 1860, formerly the Estate of John Patten and Esther Elliott, is lodged with the Clerk of the Records of this Court, and any person having any claim not therein inserted, or objecting thereto, either on account of the amount or the priority of any charge therein reported to him or any other person, or for any other reason, is required to lodge an objection thereto, stating the particulars of his demand and duly verified, with the said Clerk, on or before the 8th day of JANUARY, 1875, and to appear on the following Tuesday, at Eleven o'clock, before the Honourable JUDGE FLANAGAN, at his Court, in Dublin, when instructions will be given for the final settlement of the schedule. And further take notice that any demand reported by such schedule is liable to be objected to within the time aforesaid

Dated this 18th day of November, 1874.
R. DENNY URLIN, for C. E. DOBBS, Examiner.
WILLIAM MARTIN, Solicitor having the carriage of
604 Proceedings, 43 Dame-street, Dublin; and Ramelton.

IN THE COURT OF BANKRUPTCY, IRELAND.

EDWARD JOHNSTONE QUINAN, of 26 Harcourt-street, in the City of Dublin, Medical Doctor, was on the 10th day of November, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 8th day of DECEMBER, 1874, and on TUESDAY, the 22nd day of DECEMBER, 1874, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.
JOHN TALLON, Solicitor for Petitioner, 106 Lower Gardiner-street, Dublin. 601

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, November* 21, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, NOVEMBER 28, 1874. No. 409.

THE VACANT CHANCELLORSHIP.

OUR contemporaries, of all shades of party and of politics, are calling public attention to the spectacle of the continued vacancy in the highest and most important seat of justice in that portion of the *United* Kingdom called Ireland. The legal profession alone remains silent. The Bar fret and fume, but do not, and never did, cry aloud in the streets, and the Solicitors shrug their shoulders, and exclaim with Bret Harte—

> Do we sleep? do we dream?
> Do we wander and doubt?
> Are things what they seem?
> Or is visions about?
> Is our civilization a failure?
> Or the *Chancellor's Office* played out?

In sober seriousness, this unprecedented state of things *is* remarkable. Is it intended to show that this high office can be safely dispensed with?—that this continued vacancy has produced no inconvenience?—that it is scarcely felt?—that things go on as smoothly with our distinguished Lords Justices as if they had all been rolled into one Chancellor, and that the country can easily dispense with an official who draws £8,000 a year from the public treasury, and can have the work done as well by unpaid volunteers? If this be the reasoning of the present Ministry, it is founded on a grievous misconception of the exigencies of the public service. In the first place, the Lords Justices may be willing to give their services for a short time gratuitously for the honour of the thing, but if their services were permanently required, what would be their indignant reply? In the next place, would they be likely to govern the country, in their political capacities, as satisfactorily as a single responsible Chancellor? Would they direct the magistracy, control the executive, and advise the Privy Council with the same effect as a single individual? We think not, and we know the public think and say so too. In the present abnormally tranquil condition of the country, when no excitement prevails, and when a strange and unusual lull pervades the political atmosphere, we might probably dispense with the Lords Justices, as well as the Lord Chancellor, without feeling the loss. But how long may this state of things last? And if a political commotion supervened, we might and would feel the loss of a steady hand at the helm—perhaps when the ship of the State would be on her beam ends. But it is not as a political official that the loss is most keenly felt. It is in the accustomed seat of the Chancellorship, in the time-honoured presidency of the Courts, in the important office of chief of the Appeal Court, that the public see and feel the loss. It is not too much to say that this year's Equity reports in Ireland may be consigned to the oblivion which the last three or four years are likely to meet with. The decisions of a Chancellor derive efficacy as precedents from the personal distinction of the judge, and future generations of judges and lawyers are guided and controlled by the precepts of those whose distinguished characters as men and jurists enforce respect and acquiescence. The decisions of a Hardwicke, a Cottenham, a Sugden, or a Truro, descend to posterity with the weight of their individual characters; but the compound essences distilled from the lips of the Lords Justices generally neutralise each other by the contrariety of the reasoning by which they attain or diverge from the point for final determination. Perhaps the Court of Appeal is kept in its present anomalous condition in order to gratify the desires of its permanent member. Our readers cannot as yet have forgotten *the* Pamphlet. The present state of things may be the "outcome" of that remarkable production. It is possible that the Attorney-General, who is supposed to be most unjustly deprived of the great position which his talents and services deserve, may be reluctant to accept the humiliating dignity of a political Lord Chancellor. Great characters are sometimes peculiarly sensitive, especially when they combine marked traits of cheerful kindliness and romantic good nature. To them anything approaching sarcasm is peculiarly distasteful. It is probable that if the old state of things were revived, and the present ponderous-looking tribunal of four judges superseded by one like its predecessor, consisting of two only, the former state of things might be revived, and discussion and discontent prevail once more, for which even £2,000 a year additional income would be but a poor recompense. Whatever the real cause may be, we cannot shut our eyes to the great inconvenience and injury which the public sustain, or our ears to the complaints which reach us on all sides. We do not wish to repeat the observations made on the constitution of the present tribunal, or the manifest influence which guides the majority, and makes their decisions in reality those of one only. The ruling mind is evident from the opening of a case to its conclusion. One perhaps does not hear the arguments distinctly; another may be too much engaged in repeating them to him; a third may observe the direction to which the judgment of the fourth is tending, in order to relieve his own mind from the painful strain which the many cares devolving on him must necessarily produce if this further weight were superimposed on his already overburdened brain; and when the case has concluded, and judgment is being delivered, the general assent is occasionally capped by a little exposition of principles which "add to but do not alter" the harmonious effect of the whole. This may be very agreeable to the occupants of the Bench, but it is not satisfactory to the advocates who strain zealously before them for decisions in accordance with the distinctions which ever-varying facts suggest, or contradictory authorities are productive of.

THE AFTER-SITTINGS.

WHOEVER thinks that the legal business of our Courts is diminishing, will do well to study the lists of records to be tried at the After-sittings. He will there find that there are about 150, giving an average of 50 to each Court, or, as there are five Judges sitting, an average of 30 to each Judge. Many of these cases are special jury ones, and the Courts are to be congratulated if they can manage to get through the lists before the 24th December. It is considered that there is an increase of 50 per cent. in the business of the Term over the average of the Michaelmas lists, and far more than has ever appeared since 1853, when the first Common Law Procedure Act was passed. In the face of these facts, it will be hardly possible for any Government to reduce the number of our Common

Digitized by Google

Law Judges; and as for the officers of the Court, they should be increased in number, or, if their present number is to be retained, their emoluments should be increased in proportion to the greater exertions required of them. Counsel, too, may consider that the prospects of the profession are not so gloomy as they appeared but lately. It is comforting to think that if the proposed Judicature Bill is to render their signature unnecessary to pleadings, at least the number of cases coming before the Court is increasing; and thus their services will still be in increasing demand.

THE INCORPORATED LAW SOCIETY.

The members of the Incorporated Law Society held their meeting on Thursday last, and, as will be seen from our report of their proceedings, they discussed several matters of interest to the profession. It is to be regretted that the efforts to repeal the duty upon the profession have not been successful, but we believe this has been due to the defection of the English Society from the movement for its repeal.

The question of legal education, of course, was mooted, and the respected President of the Society stated that a great number of the young gentlemen who presented themselves for admission of apprentices were not up to the standard of education that the Society had laid down. At the last preliminary examination for admission to apprenticeship, twenty-nine young men applied, of whom fourteen were allowed to be bound, and fifteen were postponed to a future occasion. It seemed extraordinary to him that so many young men of sixteen years of age and upwards should not have been equal to the simple examination which they were required to pass, which was not anything like so difficult as the examination for entrance into Trinity College. One great defect which had struck him in the education of some of them was their utter ignorance of the principles of the Latin language. The reason probably of this is, that the examiners, at the preliminary examination, require a thorough knowledge of the subjects, elementary as they are, while the College examiners are satisfied with a superficial knowledge, which, in the subsequent four years of the College course, can be finally established. This is a very serious matter, because the future position of the apprentices undoubtedly depends on their general knowledge of these subjects, and every effort ought to be directed in the future, as formerly, to keep the standard of the examination up to a respectable qualification. We have before had occasion to remark that the English legal press, equally with ourselves, acknowledge the success of the efforts in this direction of the Incorporated Law Society of Ireland, and insist on the necessity for strictness. In its last issue, the *Law Times* remarks upon this subject:—"We are afraid that the examiners in England are too lax in their requirements, judging by the few who are annually rejected. We ought to add that in Ireland the names of successful candidates are arranged in order of merit, and that other inducements are held out to them to indulge in vigorous study. Some such course might well be adopted by the English examiners."

The President then went through the other matters, which are treated of at length in the official report and statement, the principal parts of which we hope to be enabled to lay before our readers next week.

INVALID ADJUDICATIONS IN BANKRUPTCY.

Two cases have come before Sir James Bacon during the past week, which show that some of the County Courts are making bad work of their bankruptcy jurisdiction. It is a startling circumstance that two adjudications by County Courts should have been discharged—in the one case on the ground of the registrar, although he had notice of the debtor's intention to dispute the petitioning creditor's debt, and was informed by telegram that his solicitor and counsel were on their way to the court, had, nevertheless, made the adjudication in their absence; and in the other case, on the ground that, although the debtor had made a general affidavit verifying the petition, no evidence had been given at the hearing of the debt, the trading, and the act of bankruptcy. There was positively no proof of any of these requisites, although by his petition the creditor pledged himself to prove them. Nevertheless an adjudication was made.

The first case here referred to was that of *Ex parte Phillips, re Phillips*, the proceedings having been taken in the Croydon County Court. The petition for adjudication was appointed to be heard at twelve o'clock, at the Registrar's Office, Croydon, and notice was given by the debtor disputing the petitioning creditor's debt. The debtor's counsel and solicitor had intended to travel from London by a train supposed to leave at ten minutes before twelve, and reaching Croydon at about ten minutes past that hour, but upon their arrival at the terminus it was discovered that the train in question had been discontinued. They immediately despatched a telegram to the Registrar, stating that they were upon the way, and requesting that the case might stand over for a few minutes until the arrival of counsel. The Registrar waited until about 12.20, when he proceeded to hear the petition, and being satisfied that the requisites were duly proved, made an adjudication. At thirty-two minutes past the hour appointed for the hearing, the debtor's counsel and solicitor reached the office, and, finding what had occurred, asked that the matter might be reheard, but the Registrar declined, unless by consent of the petitioning creditor.

It is really astounding that there should have been an adjudication under such circumstances, and the remarks of the Chief Judge would, one must imagine, have suggested themselves to anyone not carried away by extraneous and foreign circumstances. His Lordship said: "Nothing could be more plain than that there was a sincere intention on the part of the debtor to dispute the adjudication. That fact was communicated by telegram to the Registrar, who had reason to believe that the parties were on the way for the purpose. It would be contrary to reason and justice that a debtor should be excluded from that right which the statute gave him of disputing an adjudication. On the receipt of the telegram the Registrar was apprised of the intention to dispute, and, notwithstanding, he pursued an almost unprecedented course."

The second case (*Ex parte Lindsay, re Lindsay*), came from the Newcastle-upon-Tyne County Court, and the facts were these: On the 18th August last a meeting was held of the creditors of the appellant, a shipbuilder at Newcastle, when a composition of 9s. in the pound was offered, and further proceedings were adjourned. Two days afterwards Mr. R S. Procter, a creditor for £1,800, presented a petition for adjudication of bankruptcy against the appellant, containing allegations of the petitioning creditor's debt, the trading, and a general allegation that, "being a trader, he had made a fraudulent conveyance, gift, delivery, or transfer of his property, or of part thereof." Annexed to the petition was the usual formal affidavit, verifying the statements contained in it. It appeared that the petition was served upon the appellant, and a receiver appointed. The appellant handed the petition to his solicitors, who attended the original hearing, appointed for the 31st August, when, according to their statements, it was arranged, at the request of the petitioning creditor, that the petition should not be proceeded with that day, and the appellant, by his solicitors, consented to an adjournment, subject to their being informed of the adjourned hearing before anything further should be done. The debtor's solicitors alleged that they heard nothing more of the matter until after the 7th September, when it was ascertained that an adjudication had been made by the Deputy-Registrar in the absence of the appellant and his solicitors, and without any evidence being adduced in support of the allegations contained in the petition. On appeal, the order of adjudication was discharged, the proceedings being characterised by the Chief Judge as altogether

Digitized by Google

irregular. It is much to be regretted that country Registrars should thus blunder over the A B C of bankruptcy. In *Lindsay's* case, indeed, the Judge seems to have delegated his powers to the Deputy-Registrar. If Judges will do this, miscarriages are matters of certainty. More care must be manifested in County Courts in future, if they are to retain the little confidence which they now possess.—*Law Times.*

INCORPORATED SOCIETY OF ATTORNEYS AND SOLICITORS OF IRELAND.

The general half-yearly meeting of the Society of the Attorneys and Solicitors of Ireland was held yesterday in the Solicitors' Hall, at 2 o'clock, for the purpose of receiving the report of the council, the report of the scrutineers of the ballot, and of transacting other business.

Amongst those present were—Messrs. Matthew Anderson, George Arbuckle, George Beamish, James R. Byrne, Graves C. Colles, William J. Cooper, William A. Cosgrave, William D'Alton, Vesey Daly, Henry T. Dix, William Findlater, David Fitzgerald, William Fry, John Galloway, Joseph Galloway, John F. Goodman, David Galbraith, John T. Hamerton, Frederick Hamilton, Thomas Jameson, William Milward Jones, Michael Larkin, Henry A. Lee, Robert C. Lee, Robert O. Longfield, John R. Lloyd, Robert J. Turnly Macrory, John Maunsell, Patrick Maxwell, Arthur Molloy, Edward M'Gauran, John H. Nunn, Ambrose Plunkett, William Read, Edward Reeves, George Riddick, William Roche, John Roe, George W. Shannon, Robert Shiel, Charles G. Stanuell, Edward T. Stapleton, William Sterne, Shapland M. Tandy, Archibald Tisdall, John Weldon, and Henry J. P. West.

The chair was taken by SIR RICHARD J. T. ORPEN, President.

Mr. JOHN H. GODDARD, Secretary, read the report of the scrutineers of the ballot for the election of a council for the year ending 26th November, 1875. The following gentlemen were elected members of the council:—

Sir R. J. T. Orpen, William Findlater, Henry Thomas Dix, William Roche, Edward Reeves, John Fox Goodman, Michael Larkin, Matthew Anderson, Vesey Daly, William Read, John Galloway, John Henry Nunn, William D'Alton, Charles G. Stanuell, Shapland M. Tandy, Robert John T. Macrory, John T. Hammerton, David Fitzgerald, Henry James P. West, Edward T. Stapleton, Archibald Tisdall, George Beamish, William Jos. Cooper, Thomas Jameson, Henry L. Keily, Henry S. Mecredy, William Fry, Robert O. Longfield, B. W. Rooke, Arthur Molloy, Patrick Maxwell.

The following were chosen for the supplemental list to fill vacancies:—

Henry A. Dillon, Francis R. M. Crozier, Jeremiah Perry, Sydenham Davis, George M. M'Gusty, Arthur Ellis, Henry Mills, John M'Sheehy, Keith H. Hallowes, Jehu Mathews.

The CHAIRMAN said that in pursuance of a resolution passed at the meeting of the society held twelve months ago, the report and statement of accounts now submitted for adoption had been lying on the table for the last week, in order that every member might have had a full opportunity of considering them. It was his duty now to move the adoption of the report and accounts. The reference to the subject of the certificate duty contained in the report was not of a satisfactory character. The council had endeavoured to induce the English Law Law Society to concur with them in bringing the matter before the proper authorities in order to get the duty remitted; but they had found it impossible to do so. The opinion of the English Society was that there were several other matters of more importance to solicitors than the abrogation of that duty; and the council had thought that it would be useless for them to attempt to go forward without the assistance of the English Society. A very satisfactory arrangement was made with the Benchers, by which they had given the society a very considerable extent of buildings and rooms; and the Benchers were arranging them at considerable expense for the use of the society. The question of the education of apprentices was, in his mind, in not at all a satisfactory state. A great number at least of the young men who presented themselves for admission as apprentices were not up to the standard of education that the society had laid down. At the last preliminary examination for admission to apprenticeship 29 young men applied, of whom 14 were allowed to be bound, and 15 were postponed to a future occasion. It seemed extraordinary that so many young men of 16 years of age and upwards should not have been equal to the simple examination which they were required to pass, which was not anything like so difficult as the examination for entrance into Trinity College. One great defect which had struck him in the education of some of them was their utter ignorance of the principles of the Latin language. He was unable to account for it, except by supposing that they had trusted to translations, or to grinders, or to incompetent schoolmasters—he was sure he did not know which. It seemed extraordinary to him that young men so badly prepared as some of them were should have attempted to come up for examination. He hoped that on future occasions such lamentable deficiencies would not occur. With respect to the question of the schedule of fees, which was given in charge of the council at the last meeting, they did everything they could about it during last year. They furnished to the judges an amended schedule of fees, which they proposed; and in order to expedite the matter, he was requested to wait on the Lord Chief Justice, and did so. His lordship received him very courteously; and after a short time they received a letter from Baron Dowse, stating that the matter had been put into his hands, and that it was the opinion of the judges that as such great alterations as to both law and practice were pending, it was desirable to postpone any decision on the question of fees until Parliament should have settled what was to be the law, and what was to be the future judicial staff of this country. The bills which were before Parliament at the time had since been withdrawn; but he supposed they would be brought forward again next year. That any schedule of fees should be settled in the mean time was, he feared, very unlikely.

Mr. EDWARD REEVES, Vice-President, seconded the motion.

Mr. SHANNON said that last year the members of their profession thought it necessary to criticise the details of the Judicature Bill, which was then presented to Parliament. They found it to be faulty in the extreme, and made a special report upon the infirmities of the Bill; and it was afterwards withdrawn on account of faults which they had managed to hit off with tolerable precision, supported, as they afterwards were, by the Irish Bar in the manner which that body thought well of. He should not dwell on the manner in which they took action on the Bill. It was not for one profession to make reference to the other; but he believed the Bill was withdrawn chiefly on account of the criticism that it received in that hall, emanating from the profession of the solicitors of Ireland, Now, that society would not meet again until next May, he believed that one of the earliest measures of next session would be an amended Judicature Bill, and, therefore, he suggested that the council should summon a general meeting of the society for the discussion of any new Bill the moment it should be printed. Another point to which he desired to call attention was the very pressing necessity which existed for the appointment of a second judge of the Landed Estates Court. The fact that what were called motions of course were referred to the Registrar of that Court only aggravated the difficulty. It was probable that the new Judicature Bill would invest the judge of the Landed Estates Court with the power of appointing receivers. In that case, what would happen? No man ever allowed a receiver to be appointed over his estate without fighting the application tooth and nail, so that, as a general rule, the hearing of a receiver motion, which was commonly classed with "motions of course," really involved the hearing of a whole cause. But if that class of business should be cast on the present judge of the Court in question in addition to what he had to do, it would, he believed, be impossible for human intelligence and industry to grapple with the difficulty.

Mr. Reeves said the Council had memorialed Government not a month ago to appoint a new judge, and they had every reason from what they had heard to believe that one would be appointed.

The report was then adopted.

Mr. Reeves was then called to the second chair, and on the motion of Mr. Roche, seconded by Mr. Macrory, a cordial vote of thanks was passed to Sir Richard Orpen for the attention he bestowed upon everything relating to the interest of the profession.

Digitized by Google

ALTERATION OF SUMS PAYABLE IN CHEQUES.

There have been of late before the public some cases in which frauds have been committed by the simple device of altering or adding to the words and figures representing money in cheques drawn on bankers. Thus, if a person draws a cheque for 'eight,' 'seven,' or 'six' pounds, a dishonest holder may add the letters 'ty' to the words, and add '0' to the figure at the foot of the cheque, and easily deceive the bank cashier. By a somewhat similar artifice, 'six,' 'seven,' and 'eight' pounds may be converted by a more modest forger into 'sixteen,' 'seventeen,' and 'eighteen' pounds. Cautious persons defeat such knavish tricks by drawing a good wide black line after the word and figure in the check, and by beginning both word and figure close to the left margin of the paper. But as there are careless people in the world, and as, unfortunately, there are also even people who are dishonest enough to leave open the stable door, though not audacious enough to steal the horse, the Courts of Law are frequently threatened with the necessity of deciding disputes arising out of such frauds as these; and at this present moment we believe that there is pending before the Court of Exchequer a case of this kind, connected with certain orders addressed on behalf of guardians of the poor to the treasurer, which underwent fraudulent alteration in the manner already explained.

Singularly enough, the reports in our English Courts are rather barren of authority in these matters. The case of *Young* v. *Grote*, 4 Bing. 253, 5 Law J. Rep. (N.S.) C.P. 165, instantly rises to the memory; but that case carries us only about half-way on our road. There, a customer of a banker on leaving home entrusted to his wife several blank forms of cheques signed by himself, and desired her to fill them up according to the exigency of his business. She filled up one with the words *fifty pounds two shillings*, beginning the word 'fifty' with a small letter in the middle of a line. The figures '52 : 2' were also placed at a considerable distance to the right of the printed '£.' She gave the cheque thus filled up to her husband's clerk to get the money. He, before presenting it, inserted the words '*three hundred*' before the word *fifty*, and the figure '3' between the printed '£' and the figures '52 : 2.' It was presented and the bankers paid it. The Court held that the loss fell on the customer and not on the banker.

This case has been treated as deciding broadly that where any act of the drawer has facilitated or given occasion to the forgery, he must bear the loss himself. In *Swan* v. *The North British Australasian Company*, 32 Law J. Rep. (N.S.) Exch. 272, the Lord Chief Justice Cockburn was disposed to think that, technically looked at, the matter stood thus:—'The customer,' said his lordship, 'would be entitled to recover from the banker the amount paid on the cheque, the banker having no voucher to justify the payment. The banker, on the other hand, would be entitled to recover against the customer for the loss sustained through the negligence of the latter. Possibly, to prevent circuity of action, the right of the banker to immunity in respect of the loss so brought about, would afford him a defence in an action by the customer to recover the amount.' But it seems to us that too wide a scope has been thus given to the case of *Young* v. *Grote*. It is to be particularly noted that it was *the clerk*, *the agent* of the plaintiff, not a mere stranger, who committed the fraud. Thus Lord Chief Justice Erle said, in *Ex parte Swan*, 30 Law J. Rep. (N.S.) C.P. 117, 'It was his negligence, *by his agent*, that enabled the fraudulent holder to cheat the banker.' The authority of this case cannot, therefore, be depended upon as conclusive of any case in which the drawer of the cheque has, by leaving an open space before or after word and figure, facilitated a forgery, and where the fraud has been accomplished by a stranger. Nor does the old case of *Hall* v. *Fuller*, 6 B. & C. 750, afford much help, for there the drawer was guilty of no negligence at all, and the forger had expunged both words and figures by some chemical process, and substituted other words and figures in their place.

Our Courts have often been glad to turn for assistance to the American Courts, especially in such matters as the law affecting mercantile instruments, not only because the American Courts have, as a rule, displayed much acuteness therein, but also because there is a well-grounded aversion to anything like a divergence of law concerning documents which are regarded as constituting international currency. But the American Courts offer more embarrassment than assistance. They have often considered the point, but the conclusions reached are of a contradictory character.

The case of *Worrall* v. *Gheen*, 39 Penn. 388, was a case of a printed form of a promissory note, filled up by the maker, and then endorsed for his accommodation by the defendant, and then altered by the maker to a larger sum by taking advantage of some vacant space left in the form. The fraud was so well executed that the appearance of the note was not such as to excite the suspicion of a man in ordinary business, except, on inspection, a difference in the colour of the ink might be perceived. The Court said: 'If the sum had been left entirely blank, the inference would have been that the parties authorised the holder to act as their agent in filling it in, and they would have been bound accordingly. But where a sum is actually written, we can make no such inference from the fact that there is room to write more. This fact shows carelessness; but it was not the carelessness of the endorser, but the forgery of the maker, that was the proximate cause that misled the holder. And we know not how we can say that a man can be chargeable with a contract because he did not use proper precautions in guarding against forgery in any of the thousand forms it may take. We know of no saving purchasers of negotiable paper from the necessity and the consequences of relying on the character of the man they buy it from, if they do not take the trouble of inquiring of the original parties.'

In *Wade* v. *Withington*, 1 Allen, 561, the note had been fraudulently altered, after it was signed and delivered, by the addition of the words 'and fifty,' so as to make it appear to be a note for 150, instead of for 100 dollars. The plaintiff's counsel contended that, if the alteration in the note was such that it could not be detected on a careful scrutiny, it would not be a defence in the hands of the plaintiff, who was an endorser for a valuable consideration. The Court said: 'We do not understand such to be the rule of law. On the contrary, the well-settled doctrine is, that a material alteration in a bill or note, after its execution and delivery to the payee, or after its endorsement, vitiates the instrument except as against parties consenting to the alteration. This doctrine rests on the principle that parties can be held liable only on their contracts as originally made and entered into by them. The identity of the instrument with that which was executed by the defendant is an essential element in every action upon a written contract, from which his assent to its terms may be fairly presumed. If this is changed by a material alteration without the privity of the party liable upon it, it ceases to be his contract. . . . . The law, in giving peculiar sanction to negotiable paper in order to procure its free circulation and to protect *bona-fide* holders for value who receive it before its maturity, does not go to the extent of holding a party liable on a contract into which he never entered, and to which he has not given his assent.' After citing *Young* v. *Grote*, and *Putnam* v. *Sullivan*, 4 Mass. 45, as being cases where parties have been held liable on a negotiable cheque and note fraudulently filled up and put in circulation by their agents, to whom they were entrusted with the signatures in blank, the Court said: 'But they rest on a very different principle from that applicable to notes and bills which have been fraudulently altered, and in material particulars, by third persons, holding no relation of agency to the parties, and after they have been executed and delivered as binding contracts. In such cases, the parties to the note have a right to say that it was not the contract into which they entered.'

In the case of *Holmes* v. *Trumper*, 22 Mich. 431, 7 Am. Rep. 661, the payee of a note inserted 'ten per cent.' in a blank space after the words 'with interest at.' The plaintiff was a *bona-fide* holder for value. The Court said: 'Upon principle and the weight of authority, we think the liability of the maker upon the note, as altered, cannot be maintained. The general principle that "where one or two innocent parties must suffer," &c., is mainly confined to cases where the third person, whose act or default has occasioned the loss, has been in some sense or to some extent the agent of the party who is made to sustain the loss, or, when the latter, by his acts or negligence, has

Digitized by Google

authorised the other party to consider him as such. . . . The note in this case being a complete legal instrument when issued, to hold him bound by the contract, as altered by the forgery, involves the idea that the person committing the forgery was his agent in committing it (a ludicrous absurdity), or at least that he had authorised innocent third parties so to treat him. . . . By the maker's awkwardness or negligence his note was issued by him in a shape which rendered it somewhat easier for another person to commit a crime. . . . But how such a crime, whether committed in this or in any other way, could create a contract on the part of the maker, we confess ourselves unable to comprehend.' Other cases, such as *Wait* v. *Pomeroy*, 20 Mich. 429, 4 Am. Rep. 395, and *Goodman* v. *Eastman*, 4 N. H. 455, seem to bear out the same doctrines. All these American cases are cited and explained in the *Albany Law Journal* of October 24 in a letter commenting on a recent decision of the Supreme Court of Pennsylvania, which seems to set them all at defiance. This case is *Garrard* v. *Hadden*, decided in 1870, and reported in 67 Penn. 82 (S.C., 5 Am. Rep. 412). There the defendant signed a printed note, leaving a blank space between the written words 'one hundred' and the printed word 'dollars,' and delivered it to the payee, who, taking advantage of the vacant space, inserted the words 'and fifty,' and then sold the note to the plaintiff, a *bona-fide* holder. By inspection of the note the most skilled expert would have failed to detect any alteration in its make. There was no difference in the handwriting between the words added and those which preceded them, no difference in the ink, and no crowding of words, to put the most careful man on inquiry, or to raise a suspicion that all was not right. The Court said that this was one of the cases in which it is a maxim 'that, where one of two innocent persons must suffer, he shall suffer who, by his own acts, occasioned the confidence and the loss.' 'If one, by acts, as silence or negligence, misleads another, or in any manner affects a transaction whereby an innocent person suffers a loss, the blameable party must bear it.' The Court also cited *Young* v. *Grote*, and 'Byles on Bills,' and gave judgment for the plaintiff. It appears, therefore, that in the United States the question is as much *in nubibus* as it is in England.—*Law Journal.*

RECENT DECISIONS.

COURT OF NISI PRIUS, WESTMINSTER.

(Before Mr. Justice Mellor and a Common Jury.)

Gentlemen Riders.

Burton *v.* Walker.

Friday, 20th November.—This case raised the question what, in sporting phraseology, is meant by a "gentleman rider."

Mr. Lord appeared for the plaintiff; Mr. Wrenfordsley for the defendant.

It was an interpleader issue directed to try the right to the Welter Stakes, which were raced for at the last Wye races. It had been arranged that these races were to be subject to the Newmarket rules as regarded "flat races," and to the Grand National rules in the case of hurdle races or steeple-chases. The race in question was a flat race. By the Newmarket rules, a horse which has already won a race shall, if entered in a subsequent race, carry seven additional pounds. Another rule provides that a professional rider shall carry 5 lb. more than a gentleman rider; but the rules are silent as to what qualifications are necessary to constitute a "gentleman rider." Mr. Burton, an owner of racehorses, owned a horse named Par Excellence, which came in first in the race for the Welter Stakes at Wye, in Kent, last Easter. Mr. Walker's horse, named Industrious, came in second. Mr. Walker, however, contended that he was entitled to the stakes on the ground that the rider of Par Excellence was a professional rider, and did not carry the additional 5 lb. The question, therefore, to be determined was whether Mr. Bambridge, who rode Par Excellence, was a "gentleman rider." Mr. Burton and Mr. Mumford (who is a trainer of racehorses) were called, and they stated that it was well understood in the racing world that a "gentleman rider" meant a rider who rode without pay. Mr. Bambridge, who is the son of a large farmer of Harlow, in Essex, and who assists his father in the management of the farm, was called. Mr Bambridge, whose demeanour and appearance were unimpeachable, said that he was not paid for riding on the occasion in question, and, indeed, never was paid for riding. At the close of the plaintiff's case,

Mr. Wrenfordsley said that, after the evidence which had been given, he could not contend that Mr. Bambridge was not a "gentleman rider."

Verdict for the plaintiff.

COMMON LAW.

(From the *Solicitors' Journal.*)

Lease—Covenant—Subletting.

Treloar *v.* Bigge, Ex. 22 W. R. 842, L. R. 9 Ex. 151.

In a lease by the defendant to the plaintiff, the plaintiff covenanted not to assign without the defendant's consent in writing, "such consent not being arbitrarily withheld." So far there could hardly be a doubt that the words as to the withholding of consent were merely a qualification on the preceding words; the lessee would not assign without consent, *provided* the refusal of consent were not arbitrary; if consent were arbitrarily refused, and he assigned, he would have committed no breach of the covenant. But neither the form of the words, nor the context, favoured the construction of them as a covenant by the lessor not to withhold consent arbitrarily. But in the power of re entry the form of expression was changed; the power was to re enter on the lessee's assigning without the lessor's consent; "but such consent is not to be arbitrarily withheld." It must always remain doubtful what the parties meant to express by these words. Their form favours one view, their position and context another. It is enough to say that, though they are sufficient to limit the power of re entry, they are, at any rate, not sufficiently clear to create a covenant, and in an action by the lessee against the lessor, for arbitrarily withholding his assent, the Court arrived at that conclusion. Amphlett, B., seems to have thought that the words could not by possibility have a double function, that of a proviso, and also that of a covenant; but it is not clear that there is any such impossibility; cases may be easily conceived in which similar words would probably be so interpreted. The maxim *in dubiis minimum* seems to us a better ground of decision. But it is important also to know what construction will, in such a connection, be put upon the words "arbitrarily withholding consent;" and although Amphlett, B., expresses doubt, Kelly, C.B., and Pollock, B., appear to have satisfied themselves upon it. "Arbitrary" signifies "wilful;" it is, therefore, opposed to "reasonable," and signifies groundless, or, at least, without such grounds as a reasonable man would act upon; but there is nothing in the context to restrict the grounds to any particular class or description—nothing certainly to exclude consideration of the lessor's own general pecuniary interest (which was the case here), nor anything to exclude grounds which (as was, perhaps, also the case here) would, under the circumstances, prevent him from giving his consent to any assignment.

ADMISSION OF ATTORNEY.

Mr. James Moriarty, of Mallow, has this week been admitted an Attorney and Solicitor of Her Majesty's Courts of Law and Equity in Ireland. Mr. Moriarty is son of John Moriarty, Esq., Solicitor, of Mallow, and obtained a high place, on distinguished answering, at the late Final Examination.

REVIEWS.

Principles of Conveyancing: an Elementary Work for the use of Students. By Henry C. Deane, of Lincoln's Inn, Barrister-at-Law. London: Stevens and Haynes, Law Publishers, Bell Yard, Temple-bar. 1874.

There are several elementary books on Conveyancing for the use of beginners in the subject. "Stephens' Black-

Digitized by Google

stone," and the treatise of Mr. Joshua Williams, of course, are of necessity; but, even after reading them, the student is obliged to go to some other work for that *practical* knowledge without which his scientific and historical knowledge is useless; while many persons in practice find it necessary to refer to elementary works for practical knowledge, who have a Philistine's disregard for mere historical learning. To these we can confidently recommend Mr. Deane's work on the "Principles of Conveyancing." It is not exhaustive, and does not pretend to go fully into the laws of trusts, powers, or remainders, but it fully explains the several different legal and equitable estates in land and the tenure of land, and the modes of alienation used in conveyances *inter vivos* and by will. It also fully explains the meaning and value of the several parts of the conveyances, the covenants, conditions, provisoes, exceptions, and reservations, habendums, and the proper form of recitals, &c., &c.—a point frequently neglected in other and more pretentious treatises.

It contains excellent chapters on purchase deeds, leases, mortgages, settlements, and wills; and, in addition, Mr. Deane treats of conditions of sale most fully and clearly. This latter is a matter for which the conveyancer had hitherto to refer to Davidson or Prideaux, as the elementary books usually ignore them. The later cases and the statutes of the last session have, of course, been noticed, and their effects explained; but we take the liberty of disputing the statements of Mr. Deane as the effect of the Vendor and Purchasers' Act, 1874, as to the right of tacking and consolidating securities (pp. 270-271), and he does not seem to have considered the question as to the person in whom the legal estate remains under the Act of last session, enabling personal representatives of a mortgagee to reconvey, instead of the heir as formerly. The provisions of the Married Womens' Property Acts, are, however, well explained.

The book is not so complete, from a scientific point of view, as Burton's Compendium, or so full, historically, as Blackstone's volume on Real Property, but is more practically useful; and, from the explanation given of the statutory enactments of late years, and the readings on the *forms* of the various parts of wills, deeds, &c., it seems essentially the book for young conveyancers, and will, probably, in many cases, supplant Williams. It is, in fact, a modern adaptation of Mr. Watkin's book on conveyancing, and is fully equal to its prototype.

A Practical Treatise on Solicitors' Book-keeping by Double Entry; with Descriptions and Forms of the Several Books and Examples of their Working, with full Instructions for Posting, Balancing, &c. By ROBERT HENRY RICHARDSON, Associate of the Society of Accountants in England, Law Accountant and Auditor. London: Published and Sold by the Author, Ravenscourt Park, Hammersmith; Reeves and Turner, 100, Chancery-lane, W.C. 1874.

SOLICITORS are generally understood to be poor accountants, and this circumstance has caused the necessity for the introduction of professional accountants in Bankruptcy and other legal matters—a fact which has caused considerable annoyance and jealousy among the members of the profession in England. But when an accountant comes forward to assist solicitors in the management of their own account-books, his services deserve acknowledgment. In the pressing nature of his business and attention to his clients' affairs, the solicitor often neglects that important part of his own interests which concerns the proper keeping the account of his own outlays and rendering of his bills of costs. From this neglect solicitors often lose much money, and are, at all events, kept out of their lawful rewards much longer than is necessary. To remedy this state of affairs, Mr. Richardson has compiled his practical treatise on Solicitors' Book-keeping; and it presents, in a concise form, all necessary instructions and forms for keeping the usual solicitors' accounts. Mr. Richardson recommends the system of double entry, and has adapted his book to it, giving instructions for the use of the various books necessary, such as entry book, attendance book, disbursement leger, draft bill book, and costs account, and for balancing and closing the same, and for preparing profit and loss account, and a balance sheet. Mr. Richardson's forms are perfectly full and clear, and his method, while sufficiently expansive to meet the requirements of any office, is less complicated than that of Mr. Kain.

BOOKS RECEIVED.

We have received the following books for review:—

The Jurisdiction and Practice of the Supreme Court of Judicature and of the Divisional Courts, under the Supreme Court of Judicature Act; with an Appendix of Forms, Rules, and Regulations. By HUBERT AYCKBOURN, Solicitor. London: Wildy and Sons, Lincoln's Inn Archway. 1874.

A Concise Treatise on Powers. By GEORGE FARWELL, B.A., of Lincoln's Inn, Barrister-at-Law. London: Stevens and Sons, 119, Chancery-lane. 1874.

A New Law Dictionary and Institute of the Whole Law, for the use of Students, the Legal Profession, and the Public. By ARCHIBALD BROWN, of the Middle Temple, Barrister-at-Law, M.A. Edin. and Oxon., and B.C.L. Oxon.; Author of "The Rule of the Law of Fixtures," and "An Epitome and Analysis of Savigny's Treatise on Obligations in Roman Law." London: Stevens and Haynes, Law Publishers, Bell-yard, Temple-bar. 1874.

A Magisterial and Police Guide: being the Statute Law, with Notes and References to the most Recently Decided Cases, relating to the Procedure, Jurisdiction, and Duties of Magistrates and Police Authorities; with an Introduction showing the General Procedure before Magistrates both in Indictable and Summary Matters, and a Copious Index. By HENRY C. GREENWOOD, Stipendiary Magistrate for the District of the Staffordshire Potteries, and TEMPLE C. MARTIN, of the Southwark Police Court. London: Stevens and Haynes, Law Publishers, Bell-yard, Temple-bar. 1874.

Cassell's Family Magazine for December, 1874. London: Cassell Petter and Galpin.

Cassell's Illustrated History of the United States of America. London: Cassell Petter and Galpin.

PENS.—We have received sundry specimens of pens manufactured by Messrs. Macniven and Cameron, and we confess, that although, like most persons obliged to write much and write fast, we generally use quill pens, the steel pens sent us by these gentlemen are the best we have seen. The "Hindoo" pen has a broad flat point, and is suitable for engrossing, while the "Owl" pen has all the facility of the quill, with the cheapness, cleanliness, and endurance of the steel. Our readers can obtain an assorted box, and thus please themselves.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, *58, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

A DISCREPANCY.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Permit me to draw your attention to an apparent discrepancy in the statutes of last session.

By the Friendly Societies Act (37 & 38 Vic., cap. 42), it is provided that disputes thereunder may be heard and determined by the Court (*i. e.*, the Civil Bill Court), by the Registrar, or by arbitration. By the 36th section such

Digitized by Google

determination shall be final—"Provided always that the arbitrators, or the Registrar, or the Court, as the case may be, may at the request of either party state a case for the opinion of *the Supreme Court of Judicature* on any question of law, &c."

As there is no Court of Judicature for Ireland, and the operation of the Act establishing such a tribunal for England has been postponed till November, 1875, it would appear that this section must remain nugatory.

Yours respectfully,
HORACE WILSON.

BALLYMONEY, *23rd November, 1874.*

[Mr. Wilson points out a very important blot in the statute to which he refers. Should any case arise under it, no doubt the profession will attempt to raise the question by appeal to the usual Court of Appeal for Civil Bills, viz., the Assize Court; but it would seem from the wording of the 36th section that there can be no appeal until a court answering to the Court of Appeal therein appointed, *i. e.*, the Supreme Court of Judicature, shall be established in Ireland. This may or may not be next year, but its operation in any case would be probably postponed until January, 1875, or perhaps November, 1875.—ED. I. L. T. & S. J.]

COURT PAPERS.

SUPERIOR COURTS OF COMMON LAW.

List of Days to Plead, and Mark Judgment.

DECEMBER, 1874.

Plaint Served on	Filed not later than	Last Day to Plead	Entitled to Judgment
Tuesday, .. 1 Dec.	10 Dec.	15 Dec.	16 Dec.
Wednesday, .. 2 "	11 "	16 "	17 "
Thursday, .. 3 "	12 "	17 "	18 "
Friday, .. 4 "	14 "	18 "	19 "
Saturday, .. 5 "	15 "	19 "	21 "
Monday, .. 7 "	16 "	21 "	22 "
Tuesday, .. 8 "	17 "	22 "	23 "
Wednesday, .. 9 "	18 "	23 "	24 "
Thursday, .. 10 "	19 "	24 "	4 Jan.'75
Friday. .. 11 "	21 "	4 Jan.'75	5 "
Saturday, .. 12 "	22 "	5 "	6 "
Monday, .. 14 "	23 "	6 "	7 "
Tuesday, .. 15 "	24 "	7 "	8 "
Wednesday, .. 16 "	4 Jan.'75	8 "	9 "
Thursday, .. 17 "	5 "	9 "	11 "
Friday, .. 18 "	6 "	11 "	12 "
Saturday, .. 19 "	7 "	12 "	13 "
Monday, .. 21 "	8 "	13 "	14 "
Tuesday, .. 22 "	9 "	14 "	15 "
Wednesday, .. 23 "	11 "	15 "	16 "
Thursday, .. 24 "	12 "	16 "	18 "
*Friday, .. 25 "			
*Saturday, .. 26 "			
*Monday, .. 28 "	12 "	16 "	18 "
*Tuesday, .. 29 "			
*Wednesday, 30 "			
*Thursday, .. 31 "			

☞ Days marked (*) are Holidays pursuant to the Statute.

MICHAELMAS VACATION—CHAMBER SITTINGS.

The following is the list of chamber sittings as arranged:—

Friday, 27th November (this day) and Tuesday, 1st December—Judge O'Brien.

Friday, 4th December, and Tuesday, 8th—Judge Keogh.

Friday, 11th, and Tuesday, 15th December—Baron Fitzgerald.

Friday, 18th, and Tuesday, 22nd December—Judge Fitzgerald.

Tuesday, 5th, and Friday, 8th January, 1875—Judge Morris

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—J. L. Beasley, allocation.—W. Cox and others, do.—J. A. Gandon, payment.

IN COURT.—J. O. Evans, judgment.—G. E. Hamilton, do.—St. George, do.—A. Brennan, do.—T. Bell, from 17th.—M. W. Knox, objection.—W. O'Brien, from 23rd.—Administratrix Quinn, from 25th.

Before EXAMINER (Mr. Dobbs).

C. P. Archer, rental

TUESDAY.

IN CHAMBER.—C. T. Campion, amend order.—W. J. Graham, for carriage.—Right Hon. F. French, proposal.—C. Niddrie, allocation.—Trustees M'Donnell, do.—Executrix Rae, ditto.

IN COURT.—N. E. Abbott, schedule.—M. Mullackey, for carriage.—C. J. Henry, disallow cause.—W. Blair, objection.

WEDNESDAY.

IN CHAMBER.—J. H. E. Ridley, payment.

IN COURT.—S. Butcher and others, final schedule.—James M'Nally, do.—Rev. W. Gorman, do.—F. Beatty, ditto.

Before EXAMINER (Mr. M'Donnell).

A. D. M'Gusty, for deeds.—E. Purdon and others, rental.—Trustee Jones, from 23rd.—J. M'Carthy, rental.

THURSDAY.

IN CHAMBER.—Trustee O'Brien, objections.

IN COURT.—C. Blake, re-entered notice.

FRIDAY.

SALES AT 12 O'CLOCK.

TRUSTEES CAMPBELL.—1 lot.
H. V. SAMPEY.—1 lot.
L. PIM.—1 lot.
J. A. GANDON.—4 lots.
C. WILSON.—11 lots.

Before EXAMINER (Mr. M'Donnell).

Administratrix Fitzsimon, rental.

LANDED ESTATES COURT.

SALES

Nov. 13th.—Before the Hon. JUDGE FLANAGAN.

COUNTY OF MAYO.—Estate of John Nolan Ferrall, owner and petitioner.

Lot 1.—Part of the lands of Ballymangan, containing 179a. 2r. 32p., statute measure, held in fee; net annual rental £175 15s. Sale adjourned.

Lot 2.- Part of the same lands, containing 52a. 2r. 19p., held in fee; net yearly rental £48 1s. 2d. Sale adjourned.

Lot 3.—The sale was also adjourned, there being no bid.

Lot 4.—Fee-farm rent of £63 3s., created by deed issuing out of the lands of Tawneclough, containing 212a. 0r. 11p., held in fee. Sold in trust for G. T. Robinson for £1,220.

Lot 5.—Fee farm rent of £54 10s. 4½d., secured by deed on the lands of Knocknagarron, containing 133a. 2r. 9p., held in fee. Sold in trust for Mary C. C. S. Lindesay for £1,120. Solicitor, *John R. Colfer.*

Digitized by Google

LANDED ESTATES' COURT.

PETITIONS FILED *in the month of October*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Oct. 2	Elizabeth Lucy Smith, owner and petitioner	Sale	King's Co.	168 15 0 Ordnance valuation	*Charles Williamson*
" "	Marcus M. C. Gage, owner; *C. B. Eustace and others, petitioners*	Sale	Antrim	1,388 9 3	*Meade & Colles*
" "	Samuel Conolly, owner; *John Agnew, petitioner*	Sale	Antrim	158 0 0 estimated	*John Rea*
" 6	Richard M'Dermott and others, owners; *Frederick C. Cross, petitioner*	Sale	—	28 0 0	*Webb, Scott, & Seymour*
" "	Trustee of Thomas Austen and others, owners; *George M. White, petitioner*	Sale	Cork	85 16 2	*W. W. Babbington.*
" "	Edward Tipping, owner; *Scottish Union Insurance Co., petitioners*	Sale	Louth	1,552 0 0	*A. H. Goddard*
" "	Thomas Conolly, owner; *Trustee John Bell, petitioner*	Sale	Kildare	500 0 0 estimated	*T. T. Mecredy*
" "	Hubert Treston, owner; *Thomas Walsh, petitioner*	Sale	Mayo	Not stated	*T. & W. V. Lawler*
" 9	Assignees of Wm. H. Thornton, owners; *L. B. Lazarus, petitioner*	Sale	King's Co.	Not stated	*Edward Leahy*
" 16	Susan H. M. Fox and others, owners and petitioners	For partition	—	—	*T. W. Hardman*
" 19	Trustees of Lord Fermoy, owners; *John George MacCartney, petitioner*	Sale	—	4,788 2 5	*MacCarthy & Hanrahan*
" 20	Joseph W. Pim, owner; *William Galgey, petitioner*	Sale	Cork	In owner's possession	*R. T. Harvey*
" "	Bernard Maguire, owner; *National Bank, petitioners*	Sale	Wexford	In owner's possession	*Michael Larkin*
" 22	James M'C. Johnstone, owner; *Rev. Alexander Bullick, petitioner*	Sale	Down	In owner's possession	*H. & W. Seeds*
" 23	William Irwin and another, owners and petitioners	Sale	Mayo	59 0 0	*R. P. Burke*
" 24	Hubert H. Kelly, owner and petitioner	Sale	Roscommon	146 5 0	*J. B. Concannon*
" "	Edward B. Reeves, owner; *W. Galgey, petitioner*	Sale	Cork	152 12 9	*R. T. Harvey*
" 26	R. P. Redmond, commonly called The Count De Raymond, owner and petitioner	Sale	Wicklow	477 18 0	*W. R. Meredith*
" 27	Thomas F. Spring, owner; *Michael Leahy, petitioner*	Sale	Cork	85 0 0	*E. F. Downing*
" 29	Samuel Delacherois and others, owners and petitioners	—	—	297 18 4	*Crawford & Lockhart*
" 30	Andrew Thomas Stuart, owner and petitioner	Sale	Tyrone	491 15 10	*Longfield, Davidson, & Kelly*
" 31	Francis Phelan, owner and petitioner	Sale	Tipperary	705 17 0	*William Roche & Son*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Michael O'Sullivan	Prove debts and vouch	*Larkin & Co.*
Walton & Nolan	do	*Larkin & Co.*
Thomas M'Connell	do	*Larkin & Co.*
Richard Kerr	do	*Larkin & Co.*
Hazelton and Sheppard	do	*Neilson*
Wallace & Magill	do	*Neilson*
John Farrell	do	*M'Govern*
Richard Boyle	Vouch account	*Casey & Clay*
R. H. Collister	Costs	*Mathews*
Joseph Creswell	do	*Lane*

TUESDAY.

Before the Court, at 11 o'clock.

Philip Whitney	1st public sitting	*Hamilton & Craig*
James Hamilton	do	*Colman*
Ellen Whitford	do	*Gerrard*
Laurence M. Malet	do	*Lawless*
T. H. M'Cutcheon	1st composition sitting	*Casey & Clay*
Same matter	Final examination	*Tincler & Son*
William Purcell	do	*Goff*
S. W. Tomlinson	do	*Scallan*
Samuel Gardner	do	*Oldham & Eaton*
Thomas Shevlin, sen. and jun.	do	*Oldham & Eaton*
Benjamin Norman	do	*Neilson*
Joseph Creswell	Motion	*M'Cay*
James Hegarty	do	*M'Cully*
Mary Smith	do	*Leachman*
Daniel Cullen, jun.	do	*Boyd*
E. D. Maccand	Prove charge	*Scallan*
Robert Baird	Examine witnesses	*Larkin & Co.*
Samuel Gardner	do	*Oldham & Eaton*
John Marsden	Audit and dividend	*Tatlow*
William Holmes	do	*Mathews*
R. H. Collister	do	*Mathews*
B. M'Lenegan	do	*Mathews*

Digitized by Google

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Wm. H, Thornton	Prove debts and vouch	*Whelan & Son*
John Keane	do	*Casey & Clay*
John Nolan	do	*Larkin & Co.*
Thomas Scott	do	*Larkin & Co.*
Nathaniel Evans	do	*Oldham & Eaton*
William H. Harris	do	*Oldham & Eaton*
Wm. H. Hillsworth	do	*Findlater & Co.*
Mason and Looby	do	*Casey & Clay*
Charles Owens	Vouch account	*Bradley & Son*

WEDNESDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

James Harbison	Prove debts	*M'Cully*
William Holmes	Vouch account	*Mathews*
William Moreland	Costs	*Lynch*
Daniel Kilbride	do	*Beauchamp*
Nash and Harty	do	*Larkin & Co.*
James Murray	do	*Larkin & Co.*

THURSDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Patrick Clarke	Prove debts	*Jones*
John Barrett	Reference	*Perry & Co.*
Martin Mahony	Prove debts and vouch	*Bradley & Son*
Potter & Gillman	do	*Larkin & Co.*
Robert Courtney	do	*Fitzgerald*
Ludlow Berkeley	do	*Casey & Clay*
O'Reardon and Murphy	Vouch account	*Larkin & Co.*

FRIDAY.

Before the Court, at 11 o'clock.

James Hamilton	1st composition sitting	*Colman*
Philip Whitney	do	*Wilson*
Daniel Coffey	1st public sitting	*Mara & Cullen*
Francis Flannery	do	*Findlater & Co.*
E. S. O'Beirne	do	*Findlater & Co.*
Edmund O'Beirne	do	*Larkin & Co.*
Owen Lynch	do	*Hamilton & Craig*
John D. Seale	do	*Hamilton & Craig*
William Sheehan	Final examination	*Scallan*
Daniel Kilbride	do	*Beauchamp*
Hazelton and Sheppard	do	*Neilson*
West and Tisdall	do	*Mathews*
Richard Bell	Prove charge	*Kavanagh*
John Young	Motion	*Larkin & Co.*
Richard Boyle	Audit and dividend	*Casey & Clay*
G. & R. Ferguson	do	*Larkin & Co.*
George Marshall	do	*Redington*
William Foxall	do	*Oldham & Eaton*
John Hogan	do	*M'Govern*
Henry Abbott	do	*Larkin & Co.*
Mary Leahy	do	*Larkin & Co.*
Alex. D. Stewart	do	*M'Govern*
James W. Dillon	do	*Toomey*

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Anthony M'Nulty	Prove debts and vouch	*Hamilton & Craig*

ADJUDICATIONS IN BANKRUPTCY.

Ellis, Edward, 61, South Great George's-street, Dublin, boot and shoe manufacturer. Sittings, *Friday, December* 18, and *Tuesday, January* 5. *Casey and Clay*, solrs.

M'Donald, John, Athy, Kildare, auctioneer and shopkeeper. Sittings, *Tuesday, December* 15, and *Tuesday, December* 29. *Neilson*, solr.

Reilly, Patrick, Ballinamuck, Longford, shopkeeper and dealer in flour. Sittings, *Tuesday, December* 15, and *Tuesday, December* 29. *Hamilton and Craig*, solrs.

Scott, Robert Dickson, Phœnix Hill House, Island-bridge, Dublin, merchant. Sittings, *Tuesday, December* 15, and *Tuesday, December* 29. *Casey and Clay*, solrs.

DIVIDENDS IN BANKRUPTCY.

Brown, Philip, Waterford, corn, seed, and tallow merchant, and commission agent. 1st dividend, 2s. 5d. in the £. L. H. Deering, official assignee. *Forsythe*, solr.

Kappock, Michael, Navan, Meath, general merchant and shopkeeper. 1st dividend 9s. 9d. in the £. C. H. James, official assignee. *Jones*, solr.

Lynam, James, Timona, Tulsk, Roscommon, grazier. 1st dividend 8s. 6d. in the £. L. H. Deering, official assignee. *Maxwell and Weldon*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	NOVEMBER Fri. 20	Sat. 21	Mon. 23	Tues. 24	Wed. 25	Thur 26
	Government.						
—	3 p c Consols	92¼	92¼	92	92-⅛	—	—
—	New 3 p c Stock ..	91⅛¼	91⅛	91-⅛	91-⅛	91-⅛	91-⅛
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	109	—	109
—	4 p c Oct. '88 } Bk. of Irel.	—	—	—	—	—	—
	Banks.						
100	Bank of Ireland ..	312	—	311½	—	312-⅛	—
25	*Hibernian Banking Co.* ..	—	59⅞	—	—	59⅞	—
15	*London Joint Stock* ..	—	—	53¼	—	53⅛	53⅝
20	*London and Westminster* ..	—	78⅝	78⅝	—	—	—
3½	*Munster Bank (Limited)*	—	—	—	9⅛¼	—	9⅛¼
30	*National Bank*	—	67⅛¼	67⅝	67⅝	67⅛¼	67⅝
15	*National of Liverp'l (Ltd)*	—	—	15⅜	—	—	—
25	*Provincial Bank* ..	—	90⅛¼	90⅛	90⅛⅜	90⅛	—
10	Do. New ..	—	36⅝	—	—	—	—
10	*Royal Bank*	30⅝¼	—	30⅛⅝	30⅛	30⅛⅝	—
15	*Union of London* ..	49	—	49½	—	49⅝	—
	Steam.						
100	City of Dublin	107½	107½	107	—	—	107
50	Dublin & Liverpool Steam Ship Building. Co.	—	—	—	—	—	55⅛
10	Dundalk (Limited) ..	6¾	—	—	—	—	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	—	—	—	-/9
7	*Mining Co. of Ireland (lit'd)*	—	—	—	7⅝	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	—	10⅝	10⅝⅞
10	Dublin Tramways ..	—	—	6⅛¼	—	—	6
25	Ir. C. S. & Gl. Building Co.	—	—	30⅛	30⅛	30⅛	—
9-4-7	*Patriotic Assurance* ..	—	—	10⅛⅝	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	70	70	69⅞70	—	—
100	Dublin and Belfast Junct.	90⅝	—	90⅝	—	—	91-⅛
100	Dublin and Drogheda ..	—	—	114	—	114	—
100	Dublin and Kingstown ..	—	—	—	—	—	210
100	Gt. Southern and Western	109	109	—	—	109½	109½
100	Midland Gt. Western ..	—	82	—	—	82⅛¼	82½
50	Ulster	—	—	—	—	69⅝	—
50	Waterford and Limerick ..	32-⅛	—	—	—	—	30⅞ 31
	Railway Preference.						
100	Belfast & Nth'n Cos, 4 p c	—	—	—	—	—	—
6½	Cork & Bandon, 5½ p c ..	—	—	—	—	—	—
100	D. & D., 4 p c Guarant'd S'k	—	—	—	97	—	—
100	Dublin & Meath—1st, 5 p c	—	—	—	52	—	—
100	D., W., & W., 6 per cent ..	—	—	—	—	—	132½
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1865)	—	—	—	—	55	—
100	Gt. South'n & West'n 4 p c	99½	—	99	99	—	—
10	Irish North Western A 5 p c	—	—	—	—	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1860-72, 5 p c	—	—	—	50⅛	—	—
50	Do., new red, 1878, 5 p c ..	—	—	50⅛	50⅛	—	—
	Railway Debentures.						
—	Cork and Bandon, 4½ p c	—	—	100	—	—	—
—	Dublin & Meath 4 p c ..	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	D., W., & W., 4½ p c ..	—	—	100½	—	100½	100½
—	Gt. South'n & West'n, 4 p c	—	—	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	100
—	Waterford & Central 5 p c	100	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	98	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	102½	—

* Shares not fully paid up are given in *Italics.*

Bank Rate—Of Discount—5 per cent., 17th November, 1874.
Of Deposit—3 per cent., 17th November, 1874.

Name Days—November 28th, and December 15th, 1874.

Account Days—November 30th, and December 16th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

CRAIG—November 21, at 12 Kenilworth-square, the wife of Thomas Craig, Esq., solicitor, of a son.

FOTTRELL—November 24, at Mountview, Glenageary, the wife of George Fottrell, junr., Esq., solicitor, of a daughter.

KENNEDY—November 24, at 86 Lower Leeson-street, the wife of George O'Brien Kennedy, Esq., of a son.

Digitized by Google

MONEY:

MORTGAGES ON ESTATES, LIFE INTERESTS, AND REVERSIONS.

Messrs. SALTER & CO., have large Funds available for Loans upon the above Securities, to which they desire to direct the attention of Landed Proprietors, Solicitors, and others requiring Money on Mortgage.
They also invite applications for Securities from Capitalists, Trustees, and others, desirous of Investing Money either in Large or Small Amounts.

41, Lower Sackville-street, Dublin; and
11, Pancras-lane, London, E.C. 520

BILLS of £20 to £500, Discounted with despatch, and Cash Advanced on Farmers' Leases, Goods in Bond, Reversions, or any *bonâ fide* Security, on moderate and strictly confidential terms, and MORTGAGES to any amount negotiated on best terms consistent with security, by

MR. FITZSIMONS,
474 18, Fleet-street, Dublin.

£300,000 at 4½ per Cent., upon Irish Landed Estates. Address—S. PETER BROAD, Esq.,
606 37, Bedford-row, London, W.C.

TO SOLICITORS and OTHERS—Mr. MONTAGU BRAHAM is prepared to make Temporary Advances on Personal or other Securities pending negociations for Loans, Sales in Landed Estates' Court, Bills of Costs, &c. Applications strictly confidential.

Mr. MONTAGU BRAHAM,
611 37, South Frederick-street, Dublin.

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—

WM. MORTIMER, M.A., LL.D.,
600½ 26, York-street, Dublin.

ACCOUNTANTS:

N. PETERSON & SON,
PUBLIC ACCOUNTANTS, AUDITORS, AND EXPERTS,
ULSTER CHAMBERS,
18, FLEET-STREET, DUBLIN.

WANTS:

WANTED, by a Solicitor of considerable and varied experience, an ASSISTANCY or PARTNERSHIP on reciprocal terms. Advertiser is of active business habits. References exchanged, Address—"Assistancy," 39, Stephen's-green, East. 610

DUBLIN AGENCY.

TO COUNTRY SOLICITORS.—A Solicitor of large experience as Dublin Agent, having his Offices centrally situate, is open to an equitable engagement with a respectable Country Solicitor, for the transaction of Dublin Business. Address—"Agency," 39, Stephen's-green, East. 609

MISCELLANEOUS:

JEREMIAH D'ARCY,
SCRIVENER, LAW STATIONER, AND PRINTER.

OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

JOHN O'MALLEY,
4, SAINT ANDREW-STREET, DUBLIN,
LAW AND GENERAL STATIONER,
SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.
Licensed to Sell Law and General Stamps. 310

T. KILMARTIN and SON,
SCRIVENERS AND LAW STATIONERS,
ESTABLISHED 1867,
21, KING-STREET, BELFAST.

IRISH CIVIL SERVICE
AND
GENERAL BUILDING SOCIETY.

OFFICE—8, COLLEGE-STREET, DUBLIN.

PRESIDENT—ALEXANDER PARKER, ESQ., J.P.

Purchasers in the Landed Estates' and other Courts can obtain, without delay, from One-half to Three-fourths of the Purchase Money from the Irish Civil Service and General Building Society, repayable by easy Instalments.
Loans are also advanced for the following purposes, viz.:—
To Build or Improve Houses,
To Redeem Mortgages,
To Pay off Incumbrances,
To Complete the Purchase Money of Property Sold by Private Hand.
The Legal Expenses do not amount to one-third of the sum usually charged in such cases.
All transactions not exceeding £500 are exempt from Stamp Duty.
The Society has already advanced over THREE HUNDRED THOUSAND POUNDS on Mortgage.

DEPOSIT DEPARTMENT.
Sums from £10 upwards are received on Deposit.
Rate of Interest, from 1st February until further Notice, FOUR POUNDS per Cent.
To the Depositor the following Guarantees are given:—
The Paid-up *Share* Capital exceeds £120,000.
The Business of the Society is restricted by Act of Parliament to making Advances on Mortgages of Freehold or Leasehold Properties.
The entire amount received on Deposit cannot, under the Rules, exceed one-third of the value of the balance outstanding on Mortgage.
The Prospectus and every information may be had, free of expense, on application to
307 ALFRED H. MERCER, Secretary.

"The source of many a writer's woe has been discovered."
PENS! PENS!! PENS!!!
"They come as a boon and a blessing to men,
The Pickwick, the Owl, and the Waverley Pen."
"The misery of a bad Pen is now a voluntary infliction."
Another Blessing to men! The Hindoo Pen.
1,200 Newspapers recommend them.—See *Graphic*, 17th May, 1873.
Sold by every respectable Stationer. Post, 1s. 1d.
Patentees—MACNIVEN & CAMERON, 23 to 33, Blair-street, Edinburgh.
600

GRATEFUL—COMFORTING.
EPPS'S COCOA.
BREAKFAST.
"By a thorough knowledge of the natural laws which govern the operation of digestion and nutrition, and by a careful application of the fine properties of well-selected cocoa, Mr. Epps has provided our breakfast-tables with a delicately-flavoured beverage which may save us many heavy doctors' bills."—*Civil Service Gazette.*
MANUFACTURE OF COCOA.—"We will now give an account of the process adopted by Messrs. James Epps and Co., manufacturers of dietetic articles, at their works in the Euston-road, London."—See Article in *Cassell's Household Guide.*
Made simply with boiling water or milk.

Sold only in packets, labelled thus:—
JAMES EPPS & CO., HOMŒOPATHIC CHEMISTS,
48, Threadneedle-street, and 170, Piccadilly;
Works—Diana-place, Euston-road, London. 557½

A WELL RECOGNISED AND FREQUENT SOURCE OF
DISEASES of the MOUTH, TONGUE, and GUMS,
Is contact with the Cement of Envelopes over the preparation of which proper cleanly supervision is rarely exercised. We pay strict attention to this department: but to obviate all danger—at the same time combining safety to the contents—Mr. HELY, of this firm, invented and perfected
THE EUREKA ENVELOPE,
For which Her Majesty granted Letters Patent, No. 524, under the Great Seal. The adhesive matter being placed on the under flap, the great advantage is obtained that the Mouth and Tongue are applied to
FRESH CLEAN PAPER,
Not more expensive than ordinary Envelopes of similar qualities.
☞ *Order from your Stationers. We Supply the Trade only.*
HELY, HARRIS, & CO.,
ALEXANDRA ENVELOPE WORKS,
9 to 11, DENMARK-STREET, DUBLIN.
Upwards of three hundred hands employed in the production of Envelopes. 371

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, November* 28, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, DECEMBER 5, 1874. No. 410.

THE RIGHT OF APPEAL AS AFFECTED BY TOBIN *v.* CLEARY.

A DECISION of the Court of Exchequer Chamber in this country has settled, finally, we may suppose, a question which is of considerable importance to both the profession and the public. The judgment, however, was that of the bare majority of the Court, and however much we may respect the authority of the learned Judges forming that majority—at the same time the minority consisting of Judges of such high eminence in legal science as the Chief Baron and Barons Fitzgerald and Dowse, and arguments having been advanced by them of such weight and learning as will be found in the judgments of the learned Barons—it is certainly allowable to entertain very grave doubts as to the soundness of the grounds on which the judgment of the majority is rested. The case, involving, as it does, questions of the most serious nature with regard to the spirit in which our statutes are to be interpreted, was, in itself, of a very simple nature. The facts of the case—the final decision on which will be found reported in Ir. R. 8 C. L. 366—were as follows:—The action was one of ejectment on the title, which was tried before Baron Deasy. The summons and plaint was in the usual statutory form, and the result of trial was a verdict for the plaintiff. The defendant obtained a conditional order to set aside this verdict for misdirection; but the Court of Common Pleas, being of opinion that the plaintiff's title had been determined after the commencement of the action and defence filed, and before trial, made an order that the conditional order should be discharged and the verdict stand, and that the plaintiff should be at liberty to enter judgment thereon for his costs, but that no *habere* should issue, and that the plaintiff should be at liberty to appeal. The plaintiff availed himself of the leave so given by bringing the case before the Exchequer Chamber. A contention was raised on behalf of the defendant that, under section 41 of the Common Law Procedure Act of 1856, the plaintiff was not entitled to an appeal. The words of the section are:—"In all cases of motions for a new trial on the ground that the Judge has not ruled according to law, if the rule to show cause be refused, or, if granted, be then discharged or made absolute, the party decided against may appeal, provided any one of the Judges dissent, or provided the Court, in its discretion, think fit that an appeal should be allowed.

On this section the defendant contended a strict construction must be placed, and that the appeal is precluded in all cases except where there is an actual point blank decision against the appellant. The principal authoritity relied on by the defendant, and adopted to a great extent by the majority of the Court as the foundation for their judgment, was the case of *Abbott* v. *Feary* (6 H. & N. 113). In that case there was a verdict for the plaintiff; but leave was reserved to the defendant to move to have it changed into a verdict for him, in case the Court should be of opinion that there was no evidence warranting the verdict. The defendant having obtained a rule to enter a verdict for him accordingly or for a new trial, the Court granted him a new trial. From this order the defendant appealed, but the majority of the Court held that, upon the right construction of the 34th section of the English Common Law Procedure Act, which is similar to the 41st section of the Irish Act, no appeal lay, because the rule was not made absolute or discharged, but a middle course was taken. Baron Deasy considered that this was even a stronger case in favour of an appeal than the present case, for there the defendant, who appealed, might be considered as "decided against," by the refusal of the Court to enter a verdict for him. But the learned Baron considered the present new trial motion as decided entirely in favour of the plaintiff.

With great respect for the high authority of Baron Deasy, we think this proposition unsustainable; the order itself, as pointed out by one of the majority, is of a composite nature, and on one of the most important of the branches which form this composite order the plaintiff sustained a total defeat. It is idle to contend that the object which is before the mind of every plaintiff in commencing an action for ejectment is not to obtain an *habere* which he can execute; and here we have, in the plainest terms, an order depriving the plaintiff of this advantage, for the sake of gaining which he plunged into the troubled sea of litigation; and yet we are told that he was not the person decided against by the order. Surely, in a question of this nature, the Court might consider itself at liberty to place an interpretation on the order in a spirit somewhat more liberal than that in which the Courts in former days used to decide special demurrers. The observation of Baron Dowse was peculiarly felicitous, that "if a man who succeeds in a litigation of this kind is to be called the victorious party, he may, in future, pray to be a sharer in the ill-luck that has befallen his opponent." We think the conclusion arrived at by the learned Baron is correct, that it is the merest mockery to call such a Pyrrhic victory as this anything else than defeat. However, whatever arguments can be advanced against the law as laid down in the case, it stands as a decided authority by what will, we may suppose, soon be the Court of Final Appeal in Ireland, and as such it is well worthy the careful attention of the profession.

PRELIMINARY EXAMINATIONS.

IN our last issue we published the remarks of Sir R. T. Orpen at the Half-yearly Meeting of the Incorporated Law Society, and we publish in this issue the substance of the Report, which will be found of interest. The subject of these examinations—Preliminary, Sessional, and Final—of course attracted attention, and there has been some correspondence going on in our contemporaries relative to the manner and matter of the Preliminary Examination, and the statements of the President of the Society, who is reported to have said:—

> "A great number at least of the young men who presented themselves for admission as apprentices were not up to the standard of education that the Society had laid down. At the last preliminary examination for admission to apprenticeship 29 young men applied, of whom 14 were allowed to be bound, and 15 were postponed to a future occasion. It seemed extraordinary that so many young men of 16 years of age and upwards should not have been equal to the simple examination which they were required to pass, which was not anything like so difficult as the examination for entrance into Trinity College. . . He hoped that on future occasions such lamentable deficiencies would not occur."

Digitized by Google

Now in all this we heartily concur, and we feel that the interests of the profession and the public are best protected by guarding against the admission of uneducated practitioners, and in these matters we know that the authorities are very well able to take care of themselves. We made reference to this matter last week, and quoted the appreciative remarks of our English contemporary, who complains that, in England, they are afraid that the examiners "are too lax in their requirements;" but in our position, as the only legal journal of this country, we feel bound to take notice of some of the objections which have been made against the preliminary examinations of solicitors. One gentleman, who signs himself "A Student," perhaps on the *lucus a non lucendo* principle, objects to Sir Richard calling the examination "simple," and proceeds to compare it with the entrance examination for Trinity College, to which Sir Richard had compared it. "A Student" thereupon sets out the "Latin" course for entrance only, and, by simply omitting the Greek books necessary, strives to make the uninitiated reader believe that the entrance course of the University is really the easier. "A Student" proceeds further to remark:—

"Having regard to the fact that it requires an apprenticeship of five years before admission to the attorney profession, the preliminary examination ought to be such as very young men would pass. It is, however, the opinion of every one outside the Law Society that the standard of their preliminary examination is far beyond the capacity of such persons."

If he had even looked at the preliminary papers, and is a student in reality, as well as by *nom de plume*, he would not have assumed that the course is too severe for young gentlemen of sixteen, educated at any of the ordinary school establishments in Ireland. We venture to say that every person competent to judge, is of opinion that the standard is not too high, and we know that it is much easier than that of the local middle-class examination, now held in connexion with almost every school in England. The fact appeaas to be, as to its relative severity, that while the course is short and simple in the extreme, the Council require that candidates shall have a tolerably accurate knowledge of elementary English History, Geography, Arithmetic, and Book-keeping, and a *translating* knowledge of the Latin authors above mentioned, there being no papers set in Latin Grammar, Composition, or Antiquities.

It is to be remembered also that the College has a direct interest in increasing the number of its students, and that the laxity of its entrance test is corrected by the stringency of its Little-Go and Degree Examinations. The concluding lines quoted from "A Student," ought to show him that the very fact of a student quitting literary studies for ever, we may say, upon commencing his apprenticeship, is a good reason why he ought to have a sound knowledge of at least the elements of the subjects.

There are two other letters on this subject to which we desire to refer but briefly, and only for the sake of denying and repudiating the facts and insinuations therein alleged. Some one, who signs himself "Trin. Coll.," says:—

"I have reason to believe that one gentleman, whose answering at the last term preliminary examination for attorneys' apprentices was in every way satisfactory, was postponed for no other reason than that in his written essay he gave expression to sentiments which were not in accord with those of the examining Council, or some of them."

This is perfectly incomprehensible and impossible, unless it means that the sentiments of the Council were all in favour of correct spelling, good grammar, and neat writing. If it were true, it would follow that all the attorneys admitted since the examinations commenced were of the sentiments, &c., &c., as indeed they probably are, in the sense we put on the word, if they are sensible, but in no other sense. This remark, too, is inconsistent with what the same person calls another ground of complaint.

"That neither successful nor unsuccessful candidates can procure their marks, so that the latter cannot ascertain in what branch they have failed to pass."

How then could it be found out in what subject the candidate was deemed deficient. This latter charge is a mistake, however, we believe, for it is understood that full information as to their answering is given to those who ask for it—to publish them would, indeed, cause bitterness of heart to the dissapointed. Another gentleman who signs himself an A.B. of T.C.D., asks:—

"Has any standard really been laid down for each and all of the subjects as the minimum entitling a candidate to be allowed the examination, and, if so, what is this minimum standard, as the knowledge of it would be of vital importance, not only to candidates, but to those responsible for their preparation? At present there seems to be no criterion by which to judge of the proficiency in the prescribed subjects likely to secure success. If no standard exists except in the mind of a single examiner this is a state of things without a parallel. In T. C. D. not 5 per cent. of the candidates for entrance are rejected, while more than 50 per cent. of the candidates at the last examination for law appmetices were rejected. The average minimum of marks in each subject for entrance to T.C.D. is 33 per cent."

This gentleman, from internal evidence, we would probably take to be one of that class to whom Sir Richard attributed the failure of the candidates. Probably, if he asks half-a-dozen junior attorneys, they will tell him that the standard is just to show a reasonable knowledge, and answer, say, fifty per cent. of the questions, great regard being had to correctness of spelling and neatness of handwriting. However, this gentleman shows that he, at least, is not familiar with *ratio decidendi*, as he appears to suggest that one examiner regulates the standard and controls the admission. Those who have been through the examination know that such is not the case, and we believe that the examining committee of the Council take an active part in looking over the papers. In conclusion, we may say, that, although we have known some lads very intelligent and well educated (in classics) fail to pass, we never knew one to fail who was properly prepared in all the branches, and the idea of want of harmony with the sentiments of the Council appears simple nonsense to those who know the strict impartiality shown at their examinations.

THE INCORPORATED LAW SOCIETY.

At the General Half-yearly Meeting of the Society of the Attorneys and Solicitors (incorporated by Royal Charter), held at the Solicitors' Hall, on Thursday, 26th November, 1874.

Sir RICHARD JOHN T. ORPEN, President, in the Chair.

The following is the substance of the Report of the Council which was adopted by the Meeting:—

ATTORNEYS' CERTIFICATE DUTY.

In January last, previously to the (then) approaching General Election, your Council wrote to the Council of the Incorporated Law Society, London, drawing their attention to a speech (then) recently made by Mr. Gladstone at Blackheath, and also to a previously published letter from him to the Electors of Greenwich, in which he stated that there would be a surplus revenue of some millions, and appeared to be fully impressed with the necessity for reducing the burden of taxation in many respects. And your Council urged upon their English brethren that a good opportunity had then arisen for again pressing upon the attention of Government the subject of abolishing the Duty

Digitized by Google

on Attorneys' Certificates, and requested to know what course their Council might think it best to adopt in the matter. Your Council subsequently received an answer from the Secretary of that Society, dated 11th February, 1874, saying that their Council still thought it inexpedient to move in the matter—that there were matters of paramount importance to which Attorneys and Solicitors would shortly have to give their attention, particularly those with reference to a proposed alteration in the existing system of transferring Land and the suggested establishment of a School of Law; and that their Council felt assured that the Solicitors of England, whom they represented, would consider that the strength of their Society could be more usefully employed than in endeavouring to procure the abolition of the Certificate Duty. Copies of the correspondence just detailed were at once forwarded to the Provincial Law Societies at Belfast, Cork, and Waterford, who did not seem to consider that any further unsupported efforts of this Society would be attended with success.

ADDRESS TO THE RIGHT HONOURABLE LORD O'HAGAN, EX-LORD CHANCELLOR.

Upon the occasion of the retirement of Lord O'Hagan from the office of Lord High Chancellor of Ireland, in February last, consequent upon a previous change in the Ministry, your Council, feeling that the Profession were much indebted to him for the support which he had at all times given them in their efforts to maintain its respectability, and also for the great practical interest which he had likewise evinced in the Solicitors' Benevolent Association, presented him with an Address.

SOLICITORS' BUILDINGS.

Royal Commission of Inquiry—Kings' Inns.

In the Report of the Council for 1873, upon this matter, the Members of your Society were informed that a letter had been received from the Benchers since the last Meeting of the (then) outgoing Council, who, not having had any opportunity of considering said letter, recommended it to the consideratien of their successors in office. The purport of that letter was, that the Committee of the Benchers had considered the set of plans prepared by Mr. M'Curdy at the instance of the Council of your Society, and were ready to recommend the Benchers to assent to their being adopted, and that although on communicating with Mr. M'Curdy they had ascertained that the cost would largely exceed the sum originally estimated, the Committtee would advise their being carried out in their integrity. That it would be necessary, before any further steps were taken in the matter, that the form of lease from the Benchers to this Society should be agreed on, and that a draft lease, according to the terms mentioned in the Benchers' letter of 18th June, 1873, would be prepared by their Solicitor and transmitted for approval of your Council. A draft lease was, accordingly, received on the 18th of June last, and same having been settled by Counsel on behalf of your Society, was returned to the Benchers' Solicitor, approved of as amended; and the alterations having been agreed to by the Benchers, the lease was subsequently executed. By this lease, which contains the covenants in such cases usual, the Society of Kings' Inns have demised to your Society, for the term of 999 years, all those portions of the premises called the Solicitors' Buildings, hitherto in the occupation of your Society, and also the additional premises about to be handed over, at the nominal rent of one shilling per annum if demanded. The premises to be handed over to your Society will comprise a Library, Lecture Hall, Council Chamber, Lavatories, &c., &c., and your Council have to congratulate your Society upon the benefit which will be derived from the increased accommodation and the advantages which will thus be afforded to its Members.

COMMON LAW SCHEDULE OF FEES.

In the Report of the Council for 1873 it was stated that they had prepared a revised Schedule of Fees and Charges applicable to Common Law business, and had sent copies thereof, in the month of June of that year, to all the Common Law Judges, with letters requesting their Lordships' attention to the matter, as early as possible; also, that this matter had been again brought before the Lord Chief Justice of Ireland previously to the commencement of the Michaelmas Term of same year, but that no reply had been received before the Council for that year went out of office. Your Council subsequently brought the matter again before his Lordship by letter, previously to last Hilary Term; and, with the view of obtaining an early consideration of the matter, your President was requested to call upon the Lord Chief Justice previously to Easter Term last, which he kindly consented to do; and, having had an interview accordingly, was requested by his Lordship to furnish him with copies of the correspondence and of the proposed Schedule, which having been done, your Council subsequently received a letter from the Honourable Baron Dowse, saying that the Judges had requested him to inform your Council that, pending Legislation on the subject of Judicature in Ireland, they were of opinion that they should not go into the question of the revision of Fees, as coming Legislation might render a new Schedule of Fees necessary; that they hoped the question would be settled in the (then) Session, when they would take up the revision with pleasure, and would ask the assistance of your Society if any point arose on which help might be required. Feeling the reasonableness of this reply, your Council came to the conclusion that they could not press the matter further.

REMUNERATION OF SOLICITORS, SCALE OF FEES, &C.

It having been suggested to your Council that they should frame a Scale of Fees, similar to that issued by the Law Society of England, your Council prepared such a Scale, applicable to Loans and Sales, which has been distributed largely amongst the Profession. Before issuing such Scale, however, your Council sent Drafts thereof, showing the nature of the proposition, to the several Provincial Law Societies, and invited an expression of their opinion—also any suggestions which they might desire to offer. The Committee of the Northern Law Club, Belfast, adopted a resolution in reference to the proposed Scale, in the following terms:—

"That, while concurring in the recognition that fixed rates of remuneration would not be applicable in every case, and circumstances must in each case determine its adoption, this Committee approve of the Scale of Commission on Loans and Sales, prepared by the Council of the Incorporated Society, and proposed to be recommended to the Profession in Ireland, in lieu of the detailed items allowed under the Schedule of Fees."

The Council of the Cork Law Society also informed your Council "that they highly approved of the adoption of such a tariff, but that they believed it ought to apply to transactions commencing with £500; also, that they believed it would be most beneficial, as beginning a system of contract price for Professional work, the difficulty in doing which had proved most prejudicial to this Profession. Encouraged by the foregoing testimony in favour of the proposed Scale of Commission, your Council have had copies of it distributed amongst the Members of your Society and the Profession generally; but though they do not desire to render the Scale obligatory on the Profession, yet they consider that its adoption by them, so far as practicable, would, in the great majority of instances tend materially to simplify the carrying out of all transactions to which it may be found applicable.

BANQUET TO THE JUDGES AT THE MANSION HOUSE.

On Tuesday evening the Right Hon. the Lord Mayor, M.P., entertained Her Majesty's Judges at a banquet in the Mansion House. There were about one hundred and fifty guests present.

The cloth having been removed,

The LORD MAYOR proposed the toast of "Our Gracious Majesty the Queen."

The next toast was that of "The Lord Lieutenant, and Prosperity to Ireland." The Lord Mayor, in proposing it, said the Lord Lieutenancy was a national institution of which they were proud, and he believed that the name of the Viceroyalty would not be hailed with less enthusiasm because the position was at present occupied by a noble duke who,

Digitized by Google

in addition to the popularity of his personal character, possessed the recommendation of holding large estates in the country. Having regard to the official position of Sir Michael Hicks Beach, the Chief Secretary for Ireland, he would ask him to respond to the toast.

Sir Michael Hicks Beach, who was received with loud and prolonged applause, said :—My Lord Mayor, my lords, and, gentlemen—I can assure you that it is with no little gratification that I respond to the compliment which has been paid to me; and perhaps I do so with the more gratification because I feel that that compliment is not of a political character. I know that there are many present who would differ from my views upon political affairs, and who might not agree with the advice which I might feel it my duty to give to Her Majesty's Government with respect to Irish legislation. But I believe, from one and all of you, whatever your political opinions, I shall, in my personal character as Chief Secretary for Ireland, receive a generous kindness and welcome; and, relying upon that kindness, I thank you, my Lord Mayor, for coupling my name with this toast. On the toast itself I would say but a few words. The nobleman who so worthily fills the position of Her Majesty's representative in this country is known to all of you. There are, perhaps, fewer who have a greater stake in the prosperity of the country than the Duke of Abercorn. I believe there is no one who in the public service has more freely, not to say lavishly, spent his private time and means —I believe among the long list of Viceroys of Ireland, there is none who has better maintained the dignity of his position and the honour of his Queen; and I believe beyond this his Grace has shown the intelligent and statesmanlike interest with which he looks upon the fortunes of the country committed to his charge, in the speech which he made last autumn to an agricultural meeting in Wexford, wherein I think he proved most conclusively that even the dry science of statistics did not terrify him in its investigation. I do not wish now to dwell upon the facts adduced in that speech. It may be that differences of opinion may exist as to the actual or comparative prosperity of Ireland—it may be also, no doubt it is the case—that great differences of opinion exist as to how far that prosperity has been caused or has not been caused by efforts of the Parliament of the United Kingdom or of the Government. For my own part I prefer to say that the prosperity which Ireland now enjoys is due to the individual efforts of Irishmen—that without those individual efforts no country in the world ever yet prospered—that the utmost that Government or Parliament can do is to remove impediments to prosperity—and that it rests with the nation itself, after all, how far it shall be happy, contented, and prosperous. Well, then, my Lord Mayor and gentlemen, so far as we have yet gone, we see, I think, Ireland in, at any rate, a fair state of prosperity; but for all that, who is there who would not wish that that prosperity should be increased? I pity the nation that would sit with folded arms, and say, "We are prosperous enough"—the day of the decline of that nation would have come. I wish Ireland to look around, each man for himself, who compose the Irish nation, and to determine, as our Lord Mayor has advised so well this evening, that to his own individual efforts and energy it shall be that the prosperity of Ireland shall be due. And, my Lord Mayor and gentlemen, I venture to add that in the gathering here this evening, though it may be a small matter, your lordship has done no little thing towards promoting the prosperity of Ireland. I come from the other side of the Channel, where differences of politics and religion exist (as they do in this country), but where, owing to the frequency of these social meetings, politics and religion are, for a time, ignored—we learn to respect one another's opinions—we learn to look with leniency upon differences, and to believe that we are not infallibly right, nor our opponents infallibly wrong. I think it would be well for Ireland if the example which the Lord Mayor has set this evening of entertaining a party of friends, irrespective of politics and religion, were more frequent. I believe that by rubbing against one another in this way we would smooth mutual asperities; I believe we should recognise good qualities in one another which, perhaps, have not always been hitherto apparent; I believe we should learn to excuse failings which we have hitherto too greatly magnified; and if there is an occasion where perhaps an assemblage of this sort is really valuable, it is on such an occasion as that which we have met to celebrate this evening. The banquet this evening is given to her Majesty's judges, and I would reluctantly trespass on the ground which I am sure the Lord Mayor will very soon fully occupy, but I venture to prophesy that the Lord Mayor will feel it his duty to tell you that in his opinion the judicial Bench is above politics or religion; that the judical ermine should never be stained by the dust of the political arena; that Her Majesty's judges should be appointed not for their political qualities, but for their knowledge and experience of law; and in saying this I speak without a moment's disrespect to the gentlemen whom I see around me who have excelled both in politics and in law. My Lord Mayor, if such be the opinions that you would express for yourself, I can only say they fully agree with those I myself entertain. I believe that there is nothing which can more properly occupy the attention of Government or the Legislature than to see, in every way in which it is possible, that the judicial Bench of the country shall contain the best and the ablest men that that country can produce. I believe that the judicial Bench of Ireland at the present moment bears favourable comparison with that of England or any other country in the world; and I think it is the duty of Government and of Parliament to see that it retains that high character. I think that Government and Parliament, too, should be careful how they impose on her Majesty's judges duties foreign to their judicial character. I think they should be specially careful how they impose upon them duties which may drag them in one way or another into the contested domain of political or religious differences. It is difficult when you have a judicial Bench containing the best men in the country to avoid imposing on those who sit upon it other duties beyond those which properly appertain to their position; but if it be decided by Parliament in future that a less number of judges might properly perform the so-called judicial work of the Irish Bench in future—I am expressing no opinion—I am simply saying if it be decided by Parliament in future that a less number of judges can properly perform the judicial work of the Irish Bench—I don't think the country will lose in the end by the whole time of these judges being devoted to that purpose. I have spoken freely—perhaps too freely—in the presence of those so much senior to myself—but I venture to believe that I have spoken not only my own opinions, but the opinions which are entertained by men of far riper experience than mine, and I will only conclude with this theory—I am confident that of all the prosperity of a country there is none that can compare to the position of the judicial Bench, uncorrupted, undoubted in its character, and containing the ablest and most independent men the country can produce.

The Lord Mayor proposed "The Bench of Ireland." He said—I have said that these toasts have a great principle in common, for the prosperity of this land, and the honour and stability of Her Majesty's Government therein, largely depend on the honest, learned, and grave administration of the laws of this free and mighty realm. Nor can either interest suffer in the hands of our Irish Bench. With pride we may affirm that all the conditions of an enlightened judicature are nobly fulfilled by the honourable and learned gentlemen who have honoured me with their presence this evening. They are worthy maintainers of splended traditions—learned and just dispensers of that majestic law of England, which, "widening on from precedent to precedent," has represented in its development the gradual but sure advance of the great races which own her Majesty's allegiance to higher and yet higher levels of personal and national freedom. We may well be proud of our Irish bench. We have upon it men who, amongst the foremost in the House of Commons, gained high names as practical politicians and masters of that eloquence for which this land is famed. We have upon it men who, in profound legal research and sagacity, may well hold their places amongst the greatest jurists whose names are preserved in the annals of British law. It was said by one, long ago, that "the Irish were great lovers of free and impartial justice." They are no less lovers of it now, when they possess in the men who adorn our Bench a pledge that the judges of the land will preserve their sacred ermine from all

Digitized by Google

soil, and keep unsullied "the unstained sword which they have used to bear."

The LORD CHIEF JUSTICE, who, on rising to respond, was received with loud applause, said, on behalf of the Bench, and on his own behalf, he returned thanks to the Lord Mayor for his courtesy to the body to which he belonged and for his splendid hospitality that evening. He was sure that there was a higher purpose than merely giving to them the entertainment which he had afforded in his following the graceful precedent set by the Lord Mayor of London. From what he had said, he (the Lord Chief Justice) felt convinced that he desired to express that justice was the foundation of all good Government in a State, and his conviction that justice was daily honestly and impartially administered amongst them. The Lord Mayor belonged to the judicial Bench himself. By virtue of his high office he sat with them at the chief criminal court of this city, and he (the Lord Chief Justice) could not help thinking that in olden times they knew what was due to the administration of justice by adding to the dignity of his office the authority that belonged to the judicial character. They were aware that he spoke for the 12 judges—he had nothing to say to that headless institution, the Court of Chancery. If anything could be said for it, he trusted they would give an impartial hearing to the speaker who would address them on that subject. They said that in contrast to them of the Common Law, Chancery was always open—a questionable distinction. It may be easy to enter, but the exit may not be so speedy. It was their happiness to shut up the establishment in the month of August, and then they might address their Sovereign as they did in ancient times, reminding her that the Temple of Janus was shut and the Forum empty. They were twelve, as all present knew, and divided into three courts—one, the Exchequer, which he said had always been full, and which, looking after the finances of the country, always took care that their income-tax was duly paid; another, the Common Pleas, one of the most ancient Courts in the realm, and the judges of which, he took leave to say, discharged their duties with exemplary courage and ability; and the third (that to which he belonged), the Court of Queen's Bench. But if he was to lose the gentleman who sat at one side of him, he should lose his right arm; and if he lost the gentleman on the other side of him, he should lose his left arm; and in that amputated and crippled condition he appealed to their humanity so say could he ever squeeze through the duties which he had to perform; therefore, he trusted that the ancient twelve would still continue to administer the justice which, he believed and hoped, they had conscientiously done. The judges were forbidden to seek for popularity, because they were independent alike of the Crown and the people, and it was the noblest speech that ever was made on the part of a monarch to say that he desired his judges should be independent, because it tended to the honour of the Crown and to the preservation of the liberties of the people. If they looked back upon the pictured page of English history, they found that her people looked from the very beginning to the attainment of justice—for that they struggled, for that they fought, and finally accomplished the rule of the law. If they searched back some centuries, and sought to place before their eyes the English gentry—called the Barons of England—on the plains of Runnymede, with their harness on their backs, they would read of men who had no nonsense in their nature, but who looked to the attainment of what was substantially right, without imposture, affectation, or vanity. When they put into the mouth of the Sovereign the thing which they wanted, they showed that they understood the matter—"To none will we sell, to none will we deny, to none will we delay justice." That went to the point, and if they were to ransack the books, and search out for principles and precedents, they would find none more perfect than that. In that one passage they had the essence of freedom—personal freedom—that which was secured, or ought to be secured, in every free country under the administration of justice, and that was the whole foundation upon which the Constitution of this country rested. Politicians might have their plans and their schemes of improvement, but in the main the happiness and prosperity, the liberty and the safety of every individual in the kingdom depended upon the administration of justice. Their countryman Goldsmith had written prose essays as instructive and delightful as his verse, and he had explained his opinion of justice. He says—"It is generally misunderstood, it is not sufficiently felt that it is the foundation of all the virtues, because it compels us to give to every man that which is his due." He agreed with the poet and moralist, and he could not help thinking that if justice was rendered throughout the world, it would be in a very different condition in many States from the way in which it now was. Lord Coke had written that no nation under heaven—it was a strong expression—loved justice better than Ireland; and who put that into his head? for he was never in Ireland. Sir John Davies, who was to have been his successor, a most learned and accomplished man, and the most eloquent of scholars, lawyers, orators, and statesmen who appeared in this country. What a compliment to the nation! Yes, whatever liberties they had in England they had here; whatever rights were possessed there were their inheritance here; whatever they had acquired by a long course of action and patriotism was their inheritance in Ireland; and, surely, looking around the world, they could not find, upon a close investigation, any country that possesses a national freedom in the same perfection that they felt and knew as they sat there they possessed that night. It was said of the judges of the present day that they slavishly followed in the steps of their predecessors; and why not? Were they to reject the accumulated treasures reserved for them in the judgments of the great men who had lived before them? Were they to reject the matchless expositions of the law by Mansfield? Were they to neglect the bright example of Holt, or the deep learning of Hay? No, it should be their pride in humility to study, to understand, to apply, the everlasting principles of justice which these great judges taught. It was said by some that the images of men's wits were preserved in books, and so were capable of perpetual renovation. Others said, and truly said, that while the piece dropped and the picture faded, the ideas of the great and good were indestructible, and should more properly be compared to seeds which, cast in the minds of other men, perfect infinite thought and action through succeeding ages. They had the ideas of the great and good of all time before them; they had it in the long and illustrious line of the magistrates who had preceded them in the administration of justice. It was not caprice, it was not fancy or folly, it was their duty to preserve, maintain, and consolidate the maxims of justice, equity, and knowledge which they in their illustrious careers practised and enforced. Look back through the history of the world! Is there any country in which there was civilization and freedom where the profession of the law had not been honoured? and of the English nation they found that in all ages it has been upheld, honoured and respected, and, as Lord Coke said, it had founded a greater number of noble families than any other profession in the land; and why? Because as a nation they loved justice. He thanked the Lord Mayor on the part of the judges—the twelve sentinels of the land. Although he could not say that *cap-a-pie* they watched over their interests, yet in their appropriate armour, fortified by precedence and law, they watched over with scrupulous vigilance the property, the character, the lives, and the liberties of all classes of Her Majesty's subjects in Ireland.

The LORD MAYOR proposed "The Bar of Ireland." He said the Bar had ever been distinguished for its ability, its eloquence, and its integrity, whilst it also enjoyed the reputation of being both "witty and wise." Having spoken of the prolonged intellectual efforts and the store of knowledge of the Bar, he said it was unnecessary to refer to the long array of distinguished men who had made the Bar of Ireland illustrious, and who of that brilliant profession have emblazoned their names upon the bead-roll of fame.

The SOLICITOR-GENERAL returned thanks. He said the Bar of Ireland, as his lordship was aware, had shown in a most particular manner year after year that they appreciated the hospitality of the Mansion House. But he might say that he and his brethren had special gratification in being present at a banquet to Her Majesty's Judges, because so cordial were the relations between the Bench and the Bar that he believed he spoke the sentiments of his profession when he said that they rejoiced in the honour conferred upon the Bench as if shared by themselves; and

Digitized by Google

this reciprocity—and he believed there was thorough reciprocity between them—was not merely a social or convivial one, but that it had a great deal to do with the due administration of justice in this country, as well as with the welfare of the community. He ventured to congratulate the Lord Mayor on having introduced at home the time-honoured and approved institution of the sister country. He believed it was, indeed, a happy thought on his lordship's part to invite those whom he specially honoured to that splendid entertainment, with its music, melody, and numerous attractions. He had lately seen it stated in a work of considerable merit, as a difference between long speeches and short speeches after dinner, that the former were great bores and the latter were little bores. They had heard that evening speeches which they would have wished to be longer. He would on his part, however, be brief, and conclude by expressing his acknowledgment of the compliment which had been paid to the Irish Bar.

The LORD CHIEF JUSTICE said he would ask their permission to give a toast. He would propose "The health of the Lord Mayor." The office of Lord Mayor was an ancient and time-honoured institution. He himself belonged to an institution which was also of some antiquity. Before he came to that banquet he had looked into an old book, which stated that there was a person wearing the high honour of the title which he had the privilege of holding in the year 1300—that was a proof of its being an old title. He believed the Lord Mayor's was an office which dated back at least to the time of Henry II., when a charter was granted to a man holding the position, and who appeared to have come from Bristol. Whether their distinguished Lord Mayor came from Bristol or not was immaterial to inquire. He believed he was a man of justice and fair thinking—a man of genial temper and tolerant nature, and he (the Lord Chief Justice) thanked him most sincerely for the courtesy he had that evening extended towards his guests, and would now ask them to drink the health of the Lord Mayor with alacrity—he might indeed say with enthusiasm.

DR. KENEALY.

As will be seen, Dr. Kenealy is no longer a member of the English Bar. The Benchers of the Honourable Society of Gray's-Inn, with which he had been affiliated for upwards of a quarter of a century, on 2nd inst., resumed the consideration of the charges preferred against him as the reputed editor of the *Englishman;* and the result is, that his call to the Bar, which dated from May, 1847—twenty-seven years ago—has been vacated, he himself expelled from the Society, and his name erased from the roll of its members. Neither then nor at the preceding meeting of the Benchers, about a week ago, convened to deliberate on his conduct, was Dr. Kenealy present, nor was he represented by any one, although the Benchers had caused formal notice to be given him to appear and show cause why he should not be disbarred for, as was alleged in substance, writing and publishing articles reflecting upon the dignity of the Bench, the honour of the Judges, and casting aspersions of an odious character upon Benchers of Gray's-inn individually, and other persons in authority. It is but right to say that illness has been assigned as the cause of his absence from the investigation instituted by the governing body of the Inn.

The meeting of Benchers on 2nd inst. was resumed at 4 o'clock, and lasted nearly two hours. The deliberations were strictly private, in the sense of being confined to themselves; but there was no secrecy on their part as to the result at which they eventually arrived. The privacy observed on the occasion had nothing exceptional in it. On the contary, it was quite in accordance with the traditions and customs of the Inn, and not in any way meant to defeat the reasonable curiosity on the part of the public. The Benchers present on the occasion were—Mr. John Archibald Russell, Q.C., treasurer of the Inn, who presided over the deliberations; the Solicitor-General, Mr. Wilde, Mr. Manisty, Q.C., Mr. Stephens, Q.C., Mr. Southgate, Q.C., Mr. Parker, Mr. Wigg, Er. Whishaw, Mr. Blount, Mr. Tatham, Mr. Fooks, Q.C., Mr. Joyce, Q.C., Mr. Henniker, Q.C., and Mr. Edwards, Q.C.

Subjoined is the result at which the Benchers eventually arrived, and which has been courteously furnished to us by their directions :—

Moved by Master Manisty, seconded by Master Holker, Solicitor-General, and carried unanimously :—

"That, in the opinion of this Bench, Dr. Kenealy, being the editor of the newspaper called the *Englishman*, replete as it still is with libels of the grossest character, is unfit to be a member of this honourable Society or of the English Bar."

Moved by Master Manisty, seconded by Master Holker, and carried unanimously :—

"That Dr. Kenealy's call to the Bar be, and the same is, hereby vacated ; that he be expelled from this Society, and his name erased from the roll of the members thereof."

With that the proceedings terminated, and the Benchers separated. Dr. Kenealy, as may be remembered, became a Queen's Counsel in 1868, and was not long afterwards made a Bencher.

A correspondent sends the following account of that part of the proceedings at Gray's-inn, on 2nd inst., not referred to in the preceding report :—

After the minutes of the previous meeting were read, the Benchers proceeded *seriatim* to the consideration of the several articles written in the *Englishman* on which they founded their impeachment of Dr. Kenealy. The one most seriously reflecting upon them was the following, which they denounced as infamous, and calculated to bring reproach upon their body. After furnishing a list of the names of the Benchers taking part in the present proceedings, the article says of them :—

"We believe that wherever the English language is spoken, and this paper is read, they will be spat upon by every lover of truth and justice. If the learned professions in England were weeded out, probably the equals of these men in ignorance, meanness, and vulgarity could not be found. They were so hopelessly and helplessly illiterate that when the Prince of Wales recovered from his fever the Benchers could not produce an address of congratulation that would pass muster; and it was finally handed over to Dr. Kenealy to polish their ungrammatical and barbarous composition into something like decent shape, and as he wrote it so it went to the Prince. . . . At the part which Manisty has played in this travestie of justice we are in no way surprised. This ex-attorney has always been the foe of Dr. Kenealy; he was the only man who violently opposed his admission to the Bench when Dr. Kenealy was appointed Queen's Counsel. He has since exhibited the most rancorous spirit. Nothing, however, could operate on that mean and paltry little mind which showed its minute pettiness by boasting that on such a day its owner dined with Mellor, Cockburn, and Lush, who ought to be as gods in justice, but who are too often the slaves of passion, of prejudice, of revengeful pride, if they are not allowed to do as they think fit. How often has he dined with those three judges, and in order to curry favour with such persons he was an accomplice in a conspiracy which has for its object the destruction of Dr. Kenealy."

At the last meeting of the Benchers, Mr. Manisty, it will be remembered, moved Dr. Kenealy's disbenchment, which was seconded by Mr. Solicitor General Holker, and carried unanimously. The article then turns to the Solicitor-General, and says :—

"Mr. Disraeli has permitted his paid agent to attack Dr. Kenealy, which he would not have done without his master's leave or desire. And the Prime Minister is insane enough to attack the man most popular in England at the present moment. The mass of the people know and feel that Dr. Kenealy has done no wrong. He is simply the victim of a powerful cabal of aristocrats."

The paper then alluded to the Benchers as "these eleven lacqueys," and proceeds,—

"We cannot think that a mere puppet like Holker would dare to act as he has done if he had not orders."

The article winds up as follows :—

Digitized by Google

"It is whispered that the whole of this plot was finally arranged at the Lord Chancellor's breakfast on Monday, when Cockburn, Mellor, Lush, Holker, Manisty, and Fooks (the aspirant for Dr. Kenealy's chambers) were present, and devised what was to take place the next day but one. We acquit Lord Cairns of any participation in, or even suspecting, such a deed, but the others are capable of any act of shame."

Then the article alludes to the Benchers present, and, speaking of those absent, says :—

"They would never have joined this infamous cabal. Scaramouch Huddleston was not there, but he has already sunk so deep in the mire by his abject compliance with Lord Forgery's manœuvers on the Oxford Circuit against Dr. Kenealy and his absence or presence signifies nothing."

Then the article, alluding to the Bar, says :—

"But the Bar is so degraded and cowardly that it has not spoken out as it should have done for one of its members. . . . We are curious to see whether the Judges will endorse this deed of transcendant villainy—ten obscure and wicked men conspiring together against the life of Dr. Kenealy for editing a paper which no human being has complained of except Sarah Pittendreigh. These ten will go down to posterity with her, while the curse of God will fall upon each of them and their posterity for having plotted the destruction of Dr. Kenealy and his innocent children." Alluding to a petition which is being got up in Leeds for the abolition of Gray's-inn, it says :—

"Every name is ten times more respectable than that of the ten conspirators whom we have enumerated."

It would be impossible here to give the several articles published in the *Englishman* reflecting upon the Bench, the Bar, and the Benchers generally, which were considered on 2nd inst. at Gray's-inn. Many of them are of a character involving the reputations of several eminent personages, scurrilous caricatures of the several members of the Bench of Gray's-inn, invidious attacks upon the reputation of the three Judges who presided at the Tichborne Trial, imputations upon the *bona fides* of members of the Bar, who are charged with truckling to the Bench for purposes of promotion, and a variety of other accusations—all, however, so monstrous and absurd as to make it to be regretted that they were ever penned. These and several other matters were duly considered on 2nd inst., and temperately discussed by the Benchers for about two hours, after which Mr. Banks, the Steward, came forward and read the resolutions expelling Dr. Kenealy from the Society of Gray's-inn and vacating his call to the Bar.

The Lord Chancellor, acting upon the threat contained in a letter of the 20th ult., has removed Dr. Kenealy's name from the list of Queen's Counsel. Among the reasons given are systematic charges of bias, venality, and corruption brought by him against the persons connected, whether as Judges, jury, counsel, or otherwise, with the prosecution of "The Queen *v.* Castro," intended to lower the dignity of the Bench, and to degrade and discredit the administration of Justice.—*The Times.*

SERIOUS ACCIDENT TO MR. SERJEANT ARMSTRONG.

We regret to state that Serjeant Armstrong met with a serious accident on Thursday morning. As leading counsel for the defendants in the case of *Jordan* v. *Messrs. Dust and West*, proprietors of the Grafton Theatre of Varieties, and which was at hearing on the previous day in the Court of Common Pleas, he was anxious to view the premises in South Anne-street, respecting which the litigation arose. He proceeded there in the morning, and, when descending by a stairs to the stage, he missed his footing, fell down some distance, and was seriously injured. It is stated that he was cut on the back of the head and face, and that one of his arms and back were also injured. Owing to this accident to the leading counsel in the case, the further hearing of *Jordan* v. *West and Dust* was, on application, adjourned till yesterday morning.

DEATH OF MR. NAPIER.

We deeply regret to announce the death of Mr. Napier, B.L., son of the Right Hon. Sir Joseph Napier, Bart., one of the Commissioners of the Great Seal in Ireland, which sad event took place on Thursday morning about four o'clock, at the residence of his father, after a short illness, occasioned by gangrene proceeding from erysipelas, brought on from spinal affection by an excessive wetting he received while proceeding from the courts to his residence nine days ago. Mr. Napier some years since was called to the Bar, and gave early promise of a distinguished career. He was greatly esteemed for his unassuming and courteous demeanour. He rendered good service as one of the Hon. Secs. of the Citizens' Sanitary Association; and whenever he was brought into contact with his fellow-citizens, Mr. Napier won golden opinions. Few young men, even of the present day, had brighter prospects before them ; and the death of this young gentleman at so early an age will cause the utmost grief to his immediate friends and the citizens generally.

LAW STUDENTS' JOURNAL.

LEGAL AND LITERARY DEBATING SOCIETY.

The Inaugural Meeting of this Society for the session 1874-75, will be held in the Antient Concert Rooms, Great Brunswick-street, on Thursday evening the 10th December, 1874.

Mr. John Trevor Fox, M.A., Solicitor, will deliver the Inaugural Address.

The Society's Medals will be presented to the successful candidates.

The chair will be taken at 7 45 p.m. by the Right Honourable Judge Morris.

Tickets of admission may be had on application to the Secretary or Members of the Committee, at the Solicitors' Buildings, Four Courts.

SESSIONAL EXAMINATION OF NOVEMBER.

Although the list of students is not yet officially published, we believe that all the candidates, with one exception, passed, and that a *graduated* list will be out in a few days.

THE GREAT SEAL.—A large amount of work seems to be got out of the Great Seal. The "Porter to the Great Seal" informs the Legal Departments Commissioners that the quantity of wax used is about 4 cwt. per month. The Porter says he has charge of the Great Seal during the day, and delivers it up to the Lord Chancellor the last thing at night. The Porter is in attendance for nine hours a day, and longer at times in the Parliamentary Session, as he has to remain at the House of Lords until that House is up, and then to go to the Lord Chancellor's house after him with the Great Seal. The Porter adds that he never had more than a week's holiday in a year.

SPARKLING WINES FROM SAUMUR. — An interesting article has just appeared in the *Medical Times and Gazette* on Sparkling Wines. In consequence of the recent rise in the price of Champagnes it appears that attention has been directed to the district of Saumur, in the north-western portion of France. Dr. Druitt, the author of the article in question, remarks :—"Both in society and in medical practice the use of Sparkling Wine is largely on the increase. Nothing is so exhilarating with so small a quantity of alcohol in it," and adds that the wines of Saumur, "although perfectly familiar in London, have hitherto been decorated with other names than their own," and that "every year 4,000,000 bottles of wine from Saumur are sent to this country, where it has been ticketed with any name the purchaser chooses to give it." He concludes his article with the following advice :—"It surely is foolish to give 4s. or 5s. for a second-rate Champagne, when a wine which is either the same identically, or rather one better than the second-rate brands of Champagne, may be had for less money." One firm, the Messrs. W. & A. Gilbey, of London, are introducing these wines through the medium of their Agents in every town, under what Dr. Druitt calls "the modest and true appellation of Sparkling Wines of Saumur."—[*Morning Post, December 2nd, 1874.*]

Digitized by Google

REVIEWS.

The J. P.'s Pocket Guide. By SUB-INSPECTOR HUTCHINSON, Royal Irish Constabulary. Dublin: J. Ireland & Son; can be had of Messrs. Hodges & Foster, and of Mr. Ponsonby, Grafton-street.

THIS Pocket Guide contains a succinct epitome of the summary jurisdiction of Magistrates when acting *out* of Petty Sessions, with the Riot Act and Form of Order to close public houses, also extracts from the best authorities on the suppression of riots, &c., neatly got up so as to be carried in the waistcoat pocket or note book, like a season-ticket or small pocket-book; it shows a practical knowledge of what it professes to teach, and from its portability will be of use to gentlemen who are not fond of books, and who hate big books.

BOOKS RECEIVED.

We have received the following book for review:—

Equity under the Judicature Act, or the Relation of Equity to Common Law: with an Appendix, containing the High Court of Judicature Act, 1873, and the Schedule of Rules. By CHALONER W. CHUTE, Barrister-at-Law. London: Butterworths, 7, Fleet-street. 1874.

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—E. R. Mahony, from 3rd.—W. Fitzsimon, as to costs.—J. Riddick, allocation.

IN COURT.—J. M'Creight, from 23rd ult.—H. Greer, payment.—A. H. Griffith, tenant's objection.—J. Lendrum, to dismiss petition.—G. Fossitt and others, to stay proceedings.

Before EXAMINER (Mr. Dobbs).

Assignees M'Nulty, to take account.

TUESDAY.

IN CHAMBER.—C. T. Campion, allocation.

IN COURT.—Reverend J. Darcy, for carriage.—W. Blair objections.

Before EXAMINER (Mr. Dobbs).

J. Hazleton, rental.

WEDNESDAY.

IN COURT.—Presbyterian Widows' Fund, from 2nd.—S. Clarke, ditto.

Before EXAMINER (Mr. M'Donnell).

Anne Bull, for deeds.—J. O. Evans, vouch.—N. J. M'Namara, rental.—E. M. Davies, do.—Trustees Power, do.—Rev. T. Townsend, do.—Fitzsimons, do.—J. M'Carthy, ditto.

FRIDAY.

SALE AT 12 O'CLOCK.

M. CARROLL AND OTHERS.—2 lots.

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
———	Examine witnesses	*Larkin & Co.*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Hugh C. Walsh	Prove debts and vouch	*Beauchamp*
James Brennan	do	*Humfrey*
E. D. Maccand	do	*Perry & Co.*
James O'Beirne	do	*Perry & Co.*
Michael O'Sullivan	do	*Larkin & Co.*
Walton & Nolan	do	*Larkin & Co.*
John Woods	do	*Oldham & Eaton*
B. M'Lenegan	do	*Benner*
Michael Reilly	do	*Mathews*
De Savigney Ashe and Co.	Costs	*Robinson*
John Barrett	Reference	*Perry & Co.*

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Edward J. Quinan	1st public sitting	*Tatlow*
T. M'Cutcheon	2nd composition sitting	*Casey & Clay*
Same matter	Final examination	*Tincler & Son*
John Lynch	do	*Casey & Clay*
Robert Lawler	do	*Lett*
John Callinan	do	*Mathews*
Matthew Holland	do	*Atkinson & Froste*
Mary Smith	do	*Oldham & Eaton*
Same matter	Motion	*Cronhelm & Co.*
Michael Stanley	Final examination	*Neilson*
Thomas Laffan	do	*O'Reardon*
Denis Curran	do	*Lett*
William Campbell	do	*Neilson*
J. W. & R. Rowan	do	*Oldham & Eaton*
David F. Jones	do	*Mathews*
Thomas M'Connell	do	*Larkin & Co.*
John Woods	Motion	*Smith*
Daniel Cullen, jun.	do	*Boyd*
Thomas F. O'Neill	Audit mortgagee's act.	*Larkin & Co.*
James Murray	do	*Larkin & Co.*
Anthony Connor	do	*Larkin & Co.*
Nash, Harty & Co.	Audit and dividend	*Larkin & Co.*
William Cannon	do	*Goff*
Daniel Shea	do	*Perry & Co.*
Patrick Moylan	do	*Perry & Co.*
G. R. Donovan	do	*Perry & Co.*
L. De Savigney Ashe & Co.	do	*Robinson*
B. M'Lenegan	do	*Mathews*
John Marsden	do	*Tatlow*
Hugh S. Guiney	Prove charge	*Wallace & Co.*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Robert Courtney	Prove debts and vouch	*Fitzgerald*
William J. Lister	Inquiry under 138th General Order	*Leachman*
———	Reference under order of 24th Nov., 1874	*Ramsay*
Geoffrey Davies	Reference under order of 17th Nov., 1874	*Casey & Clay*

WEDNESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Banbridge Extension Railway Co.	Motion	*Murland*

Digitized by Google

Before Chief Registrar or Chief Clerk, at 12 o'clock.

William Holmes	Prove debts and vouch	*Mathews*
P. Gordon	Settle account	*Larkin & Co.*
M. Gordon	do	*Larkin & Co.*
J. J. Hennessy	Costs	*Thompson*
James Fortune	do	*Thompson*
Daniel Kilbride	do	*Beauchamp*
John Devar	do	*Casey & Clay*

THURSDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Philip M'Cusker	Prove debts and vouch	*Perry & Co.*
Charles M'Entee	do	*Campbell*
Nathaniel Evans	do	*Oldham & Eaton*
Ludlow Berkeley	do	*Casey & Clay*

FRIDAY.

Before the Court, at 11 o'clock.

Eugene O'Sullivan	1st composition sitting	*Jones*
Same matter	1st public sitting	*Larkin & Co.*
Michael Norris	1st composition sitting	*Scallan*
Same matter	1st public sitting	*Lett*
Robert Silk	do	*Byrne*
Same matter	1st composition sitting	*Mathews*
John M. Greer	do	*Jones*
Same matter	1st public sitting	*Jones*
James Kealy	do	*Casey & Clay*
Henry M'Carthy	do	*Lett*
Luke Connor	1st composition sitting	*Oldham & Eaton*
John Parsons	Final examination	*Larkin & Co.*
Thos. R. Crawford	do	*Neilson*
James Garroway	do	*Thompson*
Michael Grant	do	*Forsythe*
John Walsh	do	*Larkin & Co.*
William Stapleton	do	*Hamilton & Craig*
James Ryan	do	*Hamilton & Craig*
George M'Donnell	do	*O'Reardon*
Ebenezer E. Brown	do	*Casey & Clay*
J. J. Hennessy	Motion	*White*
Ludlow Berkeley	do	*Fottrell & Son*
John Devar	Audit assignee's acct.	*Casey & Clay*
Patrick Hennessy	Audit mortgagee's act.	*Dix*
Patrick Dee	do	*Dix*
Francis Keegan	do	*Rosenthal*
Mary Williams	Audit and dividend	*Oldham & Eaton*
William Holmes	do	*Mathews*
J. J. Hennessy	do	*Thompson*
James Fortune	do	*Thompson*
John Gleeson	do	*Casey & Clay*
George and Edward Harley Kough	do	*Perry & Co.*

Before Chief Registrar or Chief Clerk, at 12 o'clock.

Michael Stanley	Prove debts and vouch	*Neilson*
Anthony Connor	do	*Macnamara*

ADJUDICATIONS IN BANKRUPTCY.

Garland, Patrick, Carrickmacross, county Monaghan, grocer. Sittings, *Tuesday, December* 22, and *Friday, January* 8. *Hamilton and Craig*, solrs.

Hamilton, Henry, Kilrea, Londonderry, grocer. Sittings, *Tuesday, December* 15, and *Friday, January* 8. *Benner*, solr.

Lofthouse, John S., 126, Capel-street, Dublin, vintner. Sittings, *Tuesday, December* 29, and *Friday, January* 12. *Oldham and Eaton*, solrs.

M'Carthy, Henry, Ballinahinch, county Down, grocer. Sittings, *Friday, December* 11, and *Tuesday, December* 29. *Lett*, solr.

M'Kerihan, Hamilton, Dromore, Tyrone, draper and grocer. Sittings, *Friday, December* 18, and *Tuesday January* 5. *Rynd*, solr.

Scott, William J., Castle-place, late 5, Tomb-street, Belfast, commission agent. Sittings, *Tuesday, December* 22, and *Friday, January* 8. *O'Dowda*, solr.

Smith, Matthew, Corrahoe, Stradone, Cavan, farmer. Sittings, *Friday, December* 18, and *Tuesday, January* 5. *Rynd*, solr.

DIVIDENDS IN BANKRUPTCY.

Murphy, John R., South Main-street, Cork, grocer and spirit merchant. 2nd and final dividend 2¾d. in the £, making, with first dividend, 3s. 10¾d. in the £. L. H. Deering, official assignee. *Oldham and Eaton*, solrs.

O'Donnell, Walter, Waterford, draper. 1st dividend, 5s. in the £. L. H. Deering, official assignee. *Oldham and Eaton*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	Description of Stock	Nov. Fri 27	Nov. Sat. 28	Nov. Mon. 30	Dec. Tues. 1	Dec. Wed. 2	Dec. Thur 3
	Government.						
—	3 p c Consols	91⅝¾	91⅝¾	—	91⅝¾	91⅝¾	—
—	New 3 p c Stock ..	91	91	90⅝¾⅞	90⅝¾⅞	90⅝¾	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	—	—	109
—	4 p c Oct. '88 } Bk. of Irel.	—	—	103¼	—	—	102⅞
	Banks.						
100	Bank of Ireland ..	—	312⅝	—	—	312⅝	313
25	*Hibernian Banking Co.* ..	59¾	59⅝	59⅝½	59½60	59½	59⅝
15	*London Joint Stock* ..	—	53¾	—	—	—	53
20	*London and Westminster* ..	77⅛	—	77⅛	—	77⅛	77⅛
3½	*Munster Bank (Limited)*	—	9½	—	—	9⅜½	9½
30	*National Bank*	68–⅛	—	68⅛¼⅜	—	69⅛	69⅛
15	*National of Liverp'l (Ltd)*	—	15¾	15⅝	—	15⅝	—
25	*Provincial Bank* ..	90½	—	—	—	—	—
10	Do. New ..	—	—	—	—	—	—
10	*Royal Bank*	30⅝⅞	—	30½	30½	30½	30⅝⅞
2½	*Ulster Banking Co.* ..	—	—	10⅝⅞	—	—	—
25	Union of Australia ..	—	—	53⅜	—	—	—
15	*Union of London* ..	49⅝	—	—	—	—	—
	Steam.						
100	City of Dublin	—	106⅛	—	—	106⅝	106⅞–7
	Mines.						
3½	*Berehaven (Limited)*	—	—	1/-	—	—	—
7	*Cape Copper M. Co. (lit'd)*	—	—	—	30⅝⅞	—	—
1	Killaloe Slate Co. (lit'd) ..	—	—	17/3	—	—	—
7	*Mining Co. of Ireland (lit'd)*	—	—	—	—	7⅝	7⅝
2½	Wicklow Copper	—	—	2⅞ 3	—	2⅞ 3	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	10⅞	—	—
10	Dublin Tramways ..	6–⅛	6	—	6–⅛	—	6⅛
100	Grand Canal ..	—	—	—	—	—	54¾
25	Ir. C. S. & Gl Building Co.	—	—	30½	30½	—	—
7½	*M'Swiney & Co., limited*	7¾	7⅝¾	—	7¾	—	—
25	*National Assurance* ..	47½	—	—	47½	—	—
5	*National Discount (Limited)*	—	—	—	—	—	—
9-4-7	*Patriotic Assurance* ..	—	—	10½	—	10⅝⅞	10⅝
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	—
20	Cork, Blackrock & Passage	—	—	—	x d	—	—
100	Dublin and Belfast Junct.	—	91½	—	—	92	—
100	Dublin and Drogheda ..	—	114⅝	—	114⅞	—	—
100	Dublin, W'klow, & W'ford	76⅛¼	75⅛	75⅛	75¼	—	—
100	Gt. Southern and Western	—	109	109	109	109	108⅞
30	Irish North Western ..	—	—	—	—	—	3
100	Midland Gt. Western ..	—	82¼	82⅛	—	—	82–⅛
50	Ulster	69⅛	—	69¼	69¼	—	—
50	Waterford and Limerick ..	31	—	30⅝	—	—	30⅛¼⅜½
	Railway Preference.						
6½	Cork & Bandon, 5½ p c ..	—	—	—	—	6⅞	—
100	D., W., & W., 6 per cent ..	—	—	—	132⅛	—	—
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1865)	—	—	—	—	—	55
100	Gt. South'n & West'n 4 p c	99½	—	—	99½	—	—
100	Mid. Great Western, 5 p c	—	—	111⅝	—	—	—
50	Watfd. & Limerick, 5 p c rd	50⅝	—	—	—	—	—
100	Do., 4½ p c .. .	—	—	98⅛	98½	—	—
50	Do., new red, 1860–72, 5 p c	—	—	—	—	50⅛	—
50	Do., new red, 1873, 5 p c ..	—	—	—	—	50⅛	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	97¼	97¼	97¼	97¼	97¼
—	D., W., & W., 4½ p c ..	100½	—	—	—	—	100½
—	Gt. North'n & West'n 4½ p c	—	—	—	—	—	100
—	Gt. South'n & West'n, 4 p c	99½	—	—	99½	—	—
—	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—6 per cent., 1st December, 1874.
Of Deposit—3½ per cent., 1st December, 1874.

Name Days—December 15th and 29th, 1874.
Account Days—December 16th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

Digitized by Google

MONEY:

MORTGAGES ON ESTATES, LIFE INTERESTS, AND REVERSIONS.

Messrs. SALTER & CO., have large Funds available for Loans upon the above Securities, to which they desire to direct the attention of Landed Proprietors, Solicitors, and others requiring Money on Mortgage.

They also invite applications for Securities from Capitalists, Trustees, and others, desirous of Investing Money either in Large or Small Amounts.

41, Lower Sackville-street, Dublin; and
11, Pancras-lane, London, E.C. 520

BILLS of £20 to £500, Discounted with despatch, and Cash Advanced on Farmers' Leases, Goods in Bond, Reversions, or any *bonâ fide* Security, on moderate and strictly confidential terms, and MORTGAGES to any amount negotiated on best terms consistent with security, by

MR. FITZSIMONS,
474 18, Fleet-street, Dublin.

TO SOLICITORS and OTHERS—Mr. MONTAGU BRAHAM is prepared to make Temporary Advances on Personal or other Securities pending negociations for Loans, Sales in Landed Estates' Court, Bills of Costs, &c. Applications strictly confidential.

Mr. MONTAGU BRAHAM,
611 37, South Frederick-street, Dublin.

CRAIG, GARDNER, & CO., ACCOUNTANTS, TRINITY CHAMBERS, 40 AND 41, DAME-STREET, DUBLIN. 308

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—

WM. MORTIMER, M.A., LL.D.,
600½ 26, York-street, Dublin.

MR. JAMES CURRAN, Ex-Scholar, Trinity College, Dublin: First Classical Sizar and Honorman; First University Prizeman in Civil Law, Second in Modern History, and Fourth in English Literature;

36, HARDWICKE-STREET,

Prepares Gentlemen for the Entrance and Term Examinations in the Universities, Civil Law Examinations, Royal College of Physicians and Surgeons, Arts Examination of Apothecaries' Hall, Preliminary Examination of Attorneys' Apprentices, &c. 617

INSURANCES:

THE GUARANTEE SOCIETY OF LONDON (Empowered by Special Act of Parliament—Session 1842), 19, BIRCHIN-LANE, LONDON.

This Society was the first Public Company established in Great Britain to obviate the inconvenience and defects of Suretyship by Private Bondsmen; and its security is adopted by Her Majesty's Government, Banks of England and Ireland, Corporations of London and Dublin, and nearly all the principal Bankers, Railway Companies, and Commercial Firms in the United Kingdom.

Agents for Ireland:
WILLIAM G. DU BEDAT & SONS,
Government Stock and Share Brokers,
Fire and Life Offices,
1 and 2, FOSTER-PLACE, DUBLIN. 574

WANTS:

TO SOLICITORS.—The Parent of a Young Gentleman is anxious to correspond with some Solicitor, to whom he could be bound, if successful at the January Examination. A large fee will be given, provided he meets with a suitable Gentleman. Those desirous of coming to an arrangement will please send particulars at once to MRS. EVANS, 10, Upper Buckingham-street, Dublin. 613

MISCELLANEOUS:

JEREMIAH D'ARCY, SCRIVENER, LAW STATIONER, AND PRINTER, OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

JOHN O'MALLEY, 4, SAINT ANDREW-STREET, DUBLIN, *LAW AND GENERAL STATIONER,* SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.

Licensed to Sell Law and General Stamps. 310

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

DECLARATION OF TITLE.

FIRST NOTICE.

In the Matter of the Estate of William Barry Ritchie, an Owner of an Estate, in Fee-simple, in Land.

THIS IS TO GIVE NOTICE TO ALL WHOM IT MAY CONCERN, that William Barry Ritchie, of The Grove, Belfast, in the County of Antrim, on the 20th day of November, 1874, presented his Petition to the Landed Estates Court, Ireland, praying that the Title to all that Piece or Parcel of Slob or waste Land lying between the Northern Counties Railway and the property of the Belfast Harbour Commissioners, being part of the Townland of Skegoneill, bounded by the Northern Counties Railway on the West, the property of the Belfast Harbour Commissioners on the East, the Slob Land of the Petitioner and of the said Harbour Commissioners on the South; and the Slob Land belonging to Boomer's Representatives on the North, containing about 260 acres, statute measure, situate in the Barony of Upper Belfast and County of Antrim, might be investigated, and a judicial declaration made thereon by the Court, that he, the said William Barry Ritchie, has a good and sufficient Title in Fee to the said Lands and Premises, and subject to the Leases and Tenancies, Rights, Easements, and Incumbrances specified in the said Petition.

Now, the Court will, after Twenty-one Days from the date hereof, proceed to investigate the Title to the said Lands, and if such investigation prove satisfactory, will make a Declaration of Title pursuant to the prayer of said Petition; and all persons objecting to such Declaration of Title being made, are hereby required to enter an appearance in the Matter of the said Estate within the time aforesaid, and to show such cause as they may be advised against such Declaration of Title as aforesaid being made.

Dated this 30th day of November, 1874.

JAMES M'DONNELL, Examiner.

CRAWFORD & LOCKHART, Solicitors having carriage of Order, 41 Upper Sackville-street, Dublin. 614

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

SALE,
On FRIDAY, the 15th JANUARY, 1875.

In the Matter of the Estate of Thomas Hennesy Crofts and Ellen Teresa Moriarty, Owners and Petitioners.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, In the City of Dublin,

On FRIDAY, the 15th day of JANUARY, 1875.

In One Lot,

The Plot of Ground, with the Houses and Premises thereon, known as 37, 38, and 39 Westland row, and Strip of Ground adjoining, situate in the Parish of St. Mark and City of Dublin, held for the residue of the term of 999 years, computed from the 1st May, 1842, subject to the yearly rent of £50, and producing the net annual profit rent of £97 13s 10d.

Dated this 12th day of November, 1874.

C. E. DOBBS, Examiner.

This property offers a valuable investment to a purchaser. The profit rent of £97 13s 10d, is well secured, the premises being let on leases under the tenement valuation, and each tenant having a valuable interest in his holding.

Proposals for the purchase of the premises by private offer will be received by Mr. Thomas Henry Kane, solicitor, up to the 6th day of January, 1875, and if considered sufficient, will be submitted to the Judge for his approval, without further notice.

For Rentals and particulars apply at the Registrar's Office, Landed Estates' Court; to

THOMAS HENRY KANE, Solicitor having the carriage of the Sale, 89 Talbot-street; or to
ROBERT JAMES JONES, Solicitor for the Owner, 17 Eustace-street, Dublin. 616

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, December 5,* 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, DECEMBER 12, 1874. No. 411.

NOTICE TO QUIT UNDER THE LAND ACT, 1870.

WE propose to consider in this article, as carefully as we can, what is the legal effect of section 58 of the Land Act, 1870, upon notices to quit served upon tenants from year to year—firstly, when the notice to quit is in the simple form—and, secondly, when it is in an alternative form.

The language of that part of section 58 which bears upon the present question is as follows:—"A notice to quit shall not, in the case of a tenant from year to year, take effect until after the expiration of a period of not less than six calendar months, from the date of the service of the notice, such period of six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year."

We think it better for the sake of clearness, which is all important, to state in the first instance the conclusions at which we have arrived, and then to explain and defend those conclusions and examine the very few apposite authorities.

1st. Section 58 of the Land Act, 1870, does not abridge but enlarges the common law right of the tenant from year to year to notice to quit. For instance, if the yearly tenancy should commence in March, and that 29th September were "the last gale day of the calendar year," then a six months' notice to quit on 29th September would be bad, because the year of the tenancy does not end until March. When the tenancy commenced in March, 1871, and "the last gale day of the calendar year" is 29th September, then, in order to determine the tenancy in March, 1872, the notice must be served six calendar months before 29th September, 1871, to quit in March, 1872. In other words, whenever the tenancy commences in March, or on a gale day that is not "the last gale day of the calendar year," then, in the absence of *express* agreement to the contrary, the tenant is entitled to twelve calendar months' notice to quit. But if the tenancy commences in September, then, of course, a six months' notice to quit in September is enough.

2nd. The words in the 58th section "in the absence of agreement to the contrary," mean in the absence of *express* agreement to the contrary.

3rd. It seems to us that an alternative notice to quit is good, notwithstanding section 58 of the Land Act. For instance, where the tenancy commenced in March, 1871, a notice served six calendar months previously to quit on the 25th of March next, provided your tenancy originally commenced on the 25th of March, or otherwise that you quit and deliver up possession of the said premises at the end of the year of your tenancy, which shall expire next after the end of half a-year from the date hereof—such a notice would be good to determine the tenancy on 29th September, 1872.

Now, with regard to the first of our conclusions, it appears to us that a remedial statute purporting, by its short preamble, "to amend the law relating to the occupation and ownership of land in Ireland," cannot be held to stunt and dock the ancient common-law right of the yearly tenant. For when there is ambiguity in the construction of a statute, one of the cardinal rules of guidance is to consider what was the mischief which the statute was passed to suppress? Even a superficial consideration of the various sections of the statute is enough to show that capricious curtailment of the tenant's tenure was the leading evil or mischief which the Legislature undertook to combat. Witness section 69 of the Act, which practically annihilates tenancies at will. It can, consequently, be scarcely asserted that a statute, so intrepidly coping with the evils of the old feudal law, had for its design the curtailment of the tenant's common law right.

Passing from this general argument, we find ourselves still more strongly fortified in our conclusion by considering what was the object aimed at by section 58 of the Land Act, reading that section, first, by the light of the common law, and then of the Landlord and Tenant Act, 1860. At common law the *onus* of proving the commencement of the tenancy lay upon the landlord, and it needs no explanation to show that section 6 of the Act of 1860 was passed to relieve the landlord from this unfair *onus* of proof. Well, section 58 of the Land Act, after declaring that no notice to quit should take effect until after six calendar months from the service thereof—that is, after declaring that tenants should have for the future what they had enjoyed already—then proceeds to enact that, where the landlord and tenant have made no agreement (agreement, here, must mean *express* agreement) to the contrary, this period of six months shall terminate on the last gale day of the calendar year. If the section were segregated from the rest of the Land Act, a person devoid of what may be termed the culture of criticism—that culture of criticism of viewing every subject-matter as a whole, as Gœthe and the German school first viewed the metaphysical creations of Shakespeare—a person, we say, devoid of this spirit would take up the segregated section, and, so taking it up, would be then forced logically to admit that the plain meaning was that, unless the landlord and tenant think fit to settle, by express agreement, that the six months' notice shall take effect at the end of the year of the tenancy, such notice shall terminate the tenancy at the end of the calendar year, although the year of the tenancy does not then end. That construction would flow from the express defining of a notice to quit—what we all knew before—and from the declaration that this notice should *take effect in a certain way*, unless the landlord and tenant agreed to the contrary expressly. But, we have shown cogent reasons why the common-law rights of the tenant should not be abridged. That being so, we think it sufficient to observe that the construction favourable to the tenant must prevail over what would be the ordinary construction of the language of the section, if segregated from the rest of the Act.

As to our conclusion, that the agreement mentioned in section 58 means an *express* agreement, we think that a self-evident proposition needing no comment.

In support of our conclusion, that an alternative notice to quit is good in the form suggested, notwithstanding section 58 of the Land Act, we must look at the cases. It is as well to observe, that the case of *Ferguson* v. *Daly* (8 Ir. L. T. 501, Ir. R. 8 C. L. 216) is really decisive of nothing important. For there the notice was to quit in September, *if the tenancy commenced then*, which it did not (being a March tenancy); or, otherwise, at the end of the year of the tenancy which should expire next, at the end of six calendar months from the date of the notice, and then the ejectment was

Digitized by Google

brought *before the end of the year of the tenancy*, so that the plaintiff was defeated really on the terms of his own notice. The only value, therefore, of this case is the law contained in the *dicta* of Fitzgerald, B., which, like everything emanating from that great judge, should be read and pondered over.

The only case completely *ad rem* is that of *Ashtown* v. *Larke* (6 Ir. L. T. R. 140), where the majority of the Court (Morris and Lawson, JJ.,) held that an alternative notice to quit was good. We think the learned judgment of Lawson, J., perfectly conclusive. The test laid down by Lord Denman in *Doe* d. *Williams* v. *Smith* (5 A. & E. 350)—is there danger of the tenant being misled? and, if not, the landlord is not to be bound at his peril to run the risk of the doubt—was, we think, wisely adopted by Lawson, J. Now, it must be fairly conceded that an alternative notice cannot mislead any tenant. That being so, we submit, with very great respect, that the reasoning of Monahan, C.J., in the above case, is not conclusive in this, that the learned Chief Justice relies on the well-known rule that the notice must be to quit on a day certain, and, from that rule, argues that as an alternative notice to quit leaves the day in uncertainty, it is a bad notice in law. But the cases of *Doe* v. *Lea* (11 East, 312); *Doe* v. *Morphett* (7 Q. B. 577); and *Page* v. *Moore* (15 Q. B. 684), are ably relied on by Lawson, J., to show that the real meaning of the rule is, that if in the alternative notice there be two days mentioned, one of which is the right day, that is enough. It may be as well to observe that, in our opinion, the form given in the appendix to De Moleyn's "Land Owner's Guide" is erroneous (*vide* p. 518, last edition), proceeding, as it does, on the hypothesis that the 58th section curtails the common-law right. The form, the substance of which will be found in this article, may be considered correct as given in *Ferguson* v. *Daly*.

THE IRISH BENCH.

THE hospitality of the city extended to the dignitaries of the Irish Bench by our worthy Chief Magistrate, at the recent banquet, was hailed by the citizens of Dublin and the nation generally as a mark of the approbation universally felt for the services rendered, by the present occupants of the seats of justice in Ireland, to the cause of liberty and order throughout the land. The expressions of confidence and admiration which fell from the lips of the several speakers contrasted strangely with the ominous forebodings uttered by the Chief Secretary as to the intended diminution of the number of our Judges. These forebodings were received with disapproval and dissent by the assemblage, who may be fairly considered as representing all classes of society in Ireland; and the expression thus given of the public opinion will, we hope, be productive of some good effects among those who have the order and dispensation of the public interests entrusted to them. We cannot deny that, in times not very remote, the puisne Judges, once the Term was over, considered themselves released from the cares of their judicial office, and that suitors might wait and the public business be postponed until the Chiefs, presiding alone at Nisi Prius, should have leisure for hearing their cases, or until postponement and delay should exhaust their patience, and drive the expectant litigants into settlement or submission. But now all that is changed. The puisne Judges sit contemporaneously with the Chiefs, and in Consolidated Nisi Prius, during Term time, they accelerate the disposal of the lists, and reduce considerably the number of cases to be disposed of in each of the three Law Courts after Term. The undue haste with which, almost of necessity, complicated cases used to be heard or disposed of is now seldom observable. Counsel are patiently heard, witnesses examined, and every inclination displayed to consult the reasonable convenience of the Profession or the suitors. And yet, the time of all the Judges is fully occupied up to the last moments of the Sittings, which are invariably protracted up to the period for the Circuits to go out, or the vacations to commence.

In the face of all these facts, dark insinuations are hazarded by an authorized member of the Government, that these hard-worked officials are to be reduced in number, and that toil thus diffused over twelve is to be concentrated on nine judges. This rash and unpopular experiment has been advocated by the leading journal, and by one Irishman whose ability and avowed patriotism entitle him to every respect and consideration. But we venture to assert that if he had been a daily observer of the amount of work accomplished by the several members of the Bench, and the manner in which it is performed, he would soon be converted from the "error of his ways." And it is easy to detect an obvious political motive between the lines of his letter. The Irish public, who are seldom unanimous except when in the right, have but one opinion on the subject, and that is unqualified condemnation of the proposed reduction. In the teeth of the opinion thus entertained, we cannot believe the Government will have the temerity to carry out their plan. If, however, they persevere, we predict confidently some other means must be devised for supplying the want of judicial strength which such a diminution will certainly produce. Statistics are relied on as showing the disproportion of legal business transacted when compared with the number of those employed in its dispensation, and comparisons are instituted between the number of cases heard and determined by fifteen highly paid judges in England and their twelve more moderately paid brethren in Ireland. But, we need only refer to the refutation of the test thus applied as expressed by some of the Judges themselves, and especially by Mr. Justice Morris, whose calm and manly defence of himself and his judicial brethren from the charge of idleness, appears in the report of his speech at the Legal and Literary Debating Society's Meeting, a report of which appears in another column of our present issue. We could confidently refer to the experience of most of our intelligent readers, of the fallacious conclusions oftentimes drawn from statistical calculations; in no department of the public service are statistics less reliable than in the judicial, and this is amply proved by the time occupied and the attention devoted to judicial labour in Ireland when compared with England. Our Courts sit as long—and if the number of cases be not as great, they are as fully occupied with those they have to determine—as the courts at Westminster. It is true that a considerable portion of our Equity business was swept away by the Incumbered Estates Court, but no further judicial diminution is threatened on the Equity side of the hall. The only unpopular retrenchment suggested was the abolition of the second Judgeship in the Landed Estates Court; but we have now every reason to anticipate that, in obedience to the outspoken remonstrances of both branches of the Profession and the public, the Government intend to promote the present Solicitor-General to the Attorney-Generalship, and ultimately to the vacant Judgeship—an office for which his great equity experience, his knowledge of real-property law, his equanimity of temper, and his patient endurance of labour, pre-eminently befit him. No one, in or out of the profession, can say that such an appointment would be unacceptable or undeserved, and we believe that we truly express the opinion of

Digitized by Google

all when we say that the Bar, the Solicitors, and the public, would cordially and unanimously approve the appointment.

It is some satisfaction to us to be able to calculate with something like confidence on this rumour, notwithstanding that "conflicting interests" and "reasons of State" may still, for a time, delay the appointment of a successor to the present Solicitor-General. We believe that the Lord Chancellor is virtually appointed, and that the High Court of Chancery in Ireland is no longer the "headless institution" so graphically described by the Lord Chief Justice on the occasion of the civic banquet, but is at length perfected and complete by the appointment of one whose name has been on every one's lip as the man who, of all our living jurists, is best calculated to revive the character imparted to that high office by such men as Manners, Harte, Plunket, and Sugden. We hope that the *eclat* which the judicial office will derive from his presidency will save the Irish Bench from the torment of being perpetually nibbled at, and degraded in public estimation, and of being perpetually subjected to the sneers and criticisms of popularity-hunting economists; and we trust that the rumours are not true which are currently circulated, that a certain high judicial personage in the sister country, of Irish extraction, looks with especial disfavour on the Profession in Ireland, and is eagerly desirous of gratifying his antipathy by curtailing its members and diminishing its influence.

CARRYING A GUN WITHOUT A *TEN-SHILLING* LICENCE.

(*33 & 34 Vic., c. 57.*)

A STRANGE case has come under our observation in connexion with the right to carry arms in a proclaimed district. A gentleman farmer, a resident of the county of Dublin, who is not a sportsman, keeping a gun for the defence of his dwelling—and occasionally shooting crows, jackdaws, magpies, and other vermin on his lands—required, a few days ago, to get the implement repaired, and having separated the barrel from the stock, for the purpose of convenience in carriage, brought it to Dublin to a gunsmith, and, having got the necessary repairs effected, was bringing it home again, when, to his surprise, as he left the railway station, he was accosted by an officer of the Inland Revenue, who demanded his licence. The gentleman told him if he came to his residence he would show him a magistrate's licence to carry arms, when his inquisitor asked him if it was a ten-shilling one? the other replying in the negative, he was told by the Inspector that he should be obliged to report him. In a few days the gentleman received a summons before the magistrates for carrying a gun elsewhere than in a dwelling-house, or the curtilage thereof, without having in force a licence duly granted to him under the Act 33 & 34 Vic., c. 57, for which he was to forfeit the sum of *Ten Pounds*. On referring to the Act in question, it appears that the Justices have no discretion, and, on the case being proved as above stated, they are bound to inflict the penalty, as the case does not come within any of the exceptions, viz.:—

1st.—A person in the naval, military, or volunteer service, carrying a gun in performance of his duty.

2nd.—A person having a licence to kill game.

3rd.—A person in the employment, or under the order of another having such a licence or certificate to kill game, and giving his name and address when asked.

4th.—A person using the gun on his own lands, for the purpose of scaring birds or killing vermin, or on the lands of a person having a licence or certificate, and by his order.

5th.—A gunsmith, or his servant, carrying a gun in the ordinary course of his trade, &c.

6th.—Any person carrying a gun in the ordinary course of his trade or business as a common carrier.

As the case does not come within any of these exceptions, the magistrates seem to have no alternative but to fine the accused in the full penalty, which is not capable of mitigation under the terms of the Act. If the owner of the gun had directed the gunsmith, or a porter of the railway company, to bring it home, he might have avoided the unpleasant consequence of a fine, but, as the case stands, he appears to have no remedy save an appeal to the Commissioners of Inland Revenue. This seems to be a *casus omissus* in the list of exceptions, as it is manifest the Legislature could not have intended to impose a fine on an innocent owner harmlessly carrying home his own gun.

LEGAL AND LITERARY DEBATING SOCIETY.

The Opening Meeting of the above Society for the Session 1874–75, was held on Thursday evening, 10th inst., at the Antient Concert Rooms, Great Brunswick-street.

The Chair was taken at 8 o'clock by the Right Hon. Judge MORRIS.

A large audience attended, amongst whom were Mr. R. W. Gamble, Q.C., Mr. A. S. Jackson, Q.C., Mr. William M. Johnson, Q.C., Mr. John Frazer, Mr. Phillips, Mr. J. Fox Goodman, Mr. William Fry, Mr. Dix, Mr. H. T. Graham, Mr. J. Shannon, Mr. N. Goddard, Ex-President, Mr. T. Overend, Ex-President, Mir Aulad Ali, Mr. Fry, jun., and a considerable number of ladies and gentlemen.

The address was delivered by Mr. J. T. Fox, the President, on the subject of the "Philosophy of Labour," which he treated in a very able and eloquent manner, directing the attention of his audience to the remote and divine origin of labour, stretching back over the long centuries during which humanity has laboured on, working towards the supreme end appointed by the Omnipotent Creator. He dwelt, in fine, spirited language, on the symmetrical unanimity of labour exemplified in the mighty God-made machine of Nature, and pointed out that it is only by unanimity and perseverance in labour that great ends can be achieved.

The President having resumed his seat amidst loud applause,

Mr. Gamble moved and Mr. J. Frazer, in a most amusing and eloquent speech, seconded the first resolution, "That the thanks of the meeting be given to the President for his able address."

This having been carried by acclamation,

Mr. Johnson proposed and Mr. Phillips seconded, and it was resolved, "That the address be printed and circulated at the expense of the Society."

Mr. Dix then, in a speech in which he directed the attention of the Profession to the fact that the Society was performing a considerable service to the younger members of the Profession, proposed "That the Society is worthy of the support of the Profession."

Mr. Jackson, Q.C., in an eloquent though short speech, seconded this resolution, which was passed with acclamation.

The Right Hon. the Chairman then distributed the prizes of the past session as follows:—Oratory, first prize, silver medal, Mr. Norris Goddard, ex-President; second prize, certificate, Mr. W. J. Nolan; Legal essay, silver medal, Mr. C. M'Mahon; Literary essay, silver medal, Mr. A. Gartlan, Hon. Sec.; poetry, silver medal, Mr. F. R. Pim.

On the motion of Mr. Trevor Overend, seconded by Mr. Barlee, Mr. H. T. Graham took the second chair, when a vote of thanks was passed, amid loud and sustained applause, to the Right Hon. Judge Morris.

Mr. Justice Morris, in expressing his acknowledgments, said he only discharged a duty which he felt one in his

Digitized by Google

position should discharge, when called upon to attend on occasions of this kind. He therefore willingly complied with the request of the Committee, and he was compensated by the pleasure which he felt in hearing the President's address, and the speeches made in praise of it. Reference had been made to the work of labour. He thought he himself might be looked upon as an idler. It was the fashion to say that persons occupying the position which he held spent their whole time in idleness, and that, in fact, they had nothing to do. That was said on the other side of the channel, and he regretted to say that it was somewhat re-echoed on this side. For himself he could say that he had a sufficient quantity of work to do to make himself feel that he was not quite an idler, and he was happy to add to his other duties the pleasure of attending there that evening. (Applause.)

SECURITY FOR COSTS BY ENGLISH AND SCOTCH PLAINTIFFS.

The Irish Courts are indulging in a conflict of judicial opinion which is simply absurd, and illustrates most forcibly the essential importance of a single High Court sitting in divisions instead of several and distinct Courts sitting separately, and considering themselves at liberty to differ from one another to any extent. On the 9th December the Irish Court of Queen's Bench decided that: "In consequence of the Judgments Extension Act, 1868, a plaintiff resident in England will not be required, by this Court, to give security for costs, unless special circumstances be shown to induce the Court, in its discretion, to order otherwise" (*York* v. *McLoughlin*, 8 Ir. L. T. R. 201). On the 6th the Court of Common Pleas had decided that: "A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff living in England, until security for costs has been given, where a satisfactory affidavit is made that the defendant has a defence upon the merits" (*Cheeseman* v. *Campbell*, ib. 203). And the Court of Exchequer, on the 7th, also determined "that a defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff resident in Wales, until security for costs has been given where a satisfactory affidavit is made, disclosing that the defendant has a defence upon the merits" (*Hunt* v. *Smith*, ib. 203). Two of these decisions are in conflict with the third, and also with a decision of the English Court of Queen's Bench. The Irish Judges would do well to follow the example recently set them by the English Bench, and consult when they find the Courts in conflict, so as to bring about uniformity of practice.—*The Law Times.*

BARRISTERS AND ATTORNEYS.

A Barrister's View of the Position.

The common sense and common justice of the matter is this: If any country solicitor (for the most extravagant demands come from such), conscious of possessing, or believing that he possesses, the qualifications of a successful advocate, disdains what he deems the "mute inglorious," though generally lucrative, pursuits of the profession into which, perhaps, a rash early choice had caused him to enter, and longs by his logic and eloquence to convince and charm the higher tribunals of the country, now swayed only by members of the Bar, let him give up the one profession and take to the other; let him not usurp the rights belonging to a different profession, and which constitute almost its only sources of emolument, whilst preserving intact the many sources of emolument peculiar to his own. The right of sole audience before certain of the higher tribunals is now, and has long been, the leading and distinguishing characteristic of the Bar, and the profits thence arising its chief, almost entire source of income. The sister profession has its own peculiar sources of income, neither few nor inconsiderable, and backed up by the power of legal enforcement. If you transfer to the one part of the pecuniary privileges of the other, in common justice let something be given back by way of compensation. If there is to be a fusion of the two professions, let it be a fair one; do not let the fusion (to use a Hibernicism) be, as it has hitherto been, all on one side. The question is really a very practical one, to the junior members of the Bar at any rate—one not of dignity but of money—not of sentiment but of the means of living.

Attorneys and solicitors should not forget that the boundary which separates the practical action of the two branches of the legal profession is upheld by no stronger force than a mere sentiment of etiquette on the part of one of them; and that a resolution of this latter body is all that is required to do away with the distinction altogether. So long as there continues to exist a fair division of the legal field between the two branches, the distinction between them will last; but if one party persists in making encroachments on the province of the other, and not content with the large (as some think the lion's) share of the profits which it has hitherto enjoyed, seeks, whilst maintaining intact its own monopoly, to deprive the other party of a considerable portion of the means by which it has hitherto been able to maintain a separate existence, reprisals on the part of the latter body will become an absolute necessity. If the boundary is overleaped on one side, it inevitably will and must be on the other. Barristers must, in self-defence, resolve to do away with those rules of etiquette which render necessary the intervention of an attorney in all cases, and in those cases at least where an attorney is allowed to act as a barrister, the barrister must be allowed to act without an attorney. And when this comes to be the established practice, who will be the gainers? It is at least doubtful whether it will be the attorneys. Is it wise then, even from the point of view of their own professional interests, to carry on this incessant warfare with those who should be, and are, their natural allies, and with whom hostile rivalry ought to be an impossibility? This consideration is recommended to the solicitors who have joined in or sympathise with the recent agitation, and to the more junior members of their profession. Its experienced heads are far too wise to need the advice or the warning which it is the design of these remarks to furnish.—*Law Times.*

THE REGISTRATION OF MORTGAGE DEEDS AS BILLS OF SALE.

It is probable that next session a renewed attempt will be made to legislate on the subject of the registration of mortgage deeds as bills of sale. We have from time to time referred to the subject in connection with the cases which have recently brought some of its aspects into prominence, but it may be worth while to take a short general view of the present state of the law on this head, together with the alterations which have been proposed. Let us, first of all, inquire what mortgages which include fixtures are to be regarded as assurances of fixtures within the meaning of the Bills of Sale Act, so as to require registration.

It has been settled by a series of decisions, both at law and in equity, that where land is mortgaged in fee, what are commonly called trade or tenants' fixtures, whether attached to the land at the time of the mortgage or subsequently annexed by the freeholder, form part of the land, and pass to a mortgagee by a conveyance of the freehold (see *Cullwick* v. *Swindell*, 15 W. R. 216, L. R. 3 Eq. 249; *Climie* v. *Wood*, L. R. 3 Ex. 257, 4 Ex. 328); that although a tenant for years might, as against his landlord, remove such fixtures when erected by him, yet a mortgagor in fee has no such right as against the mortgagee, and that, as the fixtures would pass without any separate assignment, the Bills of Sale Act does not apply (*Mather* v. *Fraser*, 4 W. R. 387, 2 K. & J. 536; *Longbottom* v. *Berry*, L. R. 5 Q. B. 123; *Holland* v. *Hodgson*, 20 W. R. 990, L. R. 7 C. P. 328). Where there is a mortgage in fee, therefore, it is not necessary that the mortgage should be registered as a bill of sale in order to include tenants' fixtures in the security. This is also the case where the same limited interest in the land and in the fixtures is given by the mortgage deed to the mortgagee, so that the fixtures are enjoyed as part of the limited interest given in the land (*Ex parte Barclay, in re Joyce*, 22 W. R. 608, L. R. 9 Ch. 576).

Digitized by Google

If, however, the owner of a limited interest in land and an absolute interest in the fixtures conveys, by way of mortgage, not only his limited interest in the land and the right to enjoy the fixtures during the term, so long as they continue a part of the land, but also a right to sever the fixtures and dispose of them absolutely, then it is necessary that the mortgage deed should be registered as a bill of sale in order to include the fixtures in the security (*Hawtrey* v. *Butlin*, 21 W. R. 633, L. R. 8 Q. B. 290; *Begbie* v. *Fenwick*, 19 W. R. 402, L. R. 8 Ch. 1075; *Ex parte Daglish, in re Wilde*, 21 W. R. 893, L. R. 8 Ch. 1072). And this is, of course, the case in whatever form such disposition may be effected by the deed, and it is immaterial whether the deed contains one witnessing part or two (*Ex parte Daglish*).

The rule to be gathered from the foregoing cases appears to be, that if by the mortgage deed the mortgagee takes only such an interest in the fixtures as he would have taken in them by the assurance of the land, considering the fixtures as appurtenant thereto, there is no necessity for registration of the deed. If, however, the mortgagee takes a greater interest in the fixtures than in the land, then the mortgage deed should be registered as a bill of sale. The practical effect is that the owner in fee of a mill with fixed machinery may confer on his mortgagee an absolute interest in the trade fixtures without the registration of the mortgage deed as a bill of sale, while the lessee of such a mill, without the registration of the mortgage deed, can only confer on his mortgagee an interest in the trade fixtures corresponding to that he has in the mill.—*Solicitors' Journal.*

A PRISONER ATTACKING A JUDGE.

The *New Orleans Republican* tells how Judge Fontelieu was holding court in New Iberia when he was assailed by a prisoner, who slashed him with a bowie knife. "The judge, to defend himself, came down from the bench, but the would-be assassin was too quick, and severely cut his honour in the left arm. His honour thereupon struck from the right shoulder three powerful blows, which completely tamed the ferocious Bouligny, who mildly went to jail. Judge Fontelieu's wound, though very severe, did not prevent him from returning to his duties on the same day." This reminds us of the interesting story of the "Alabama Duel," fought by Judge Lynch and Silas Fixings, in which the Judge sustained the honour of the Court by smashing the insulter's head with a rifle-stock, to the edification of the assembled people:—

They hailed him with triumphant cheers—in him each loafer saw
The bearing bold that could uphold the majesty of law;
And raising him aloft, they bore him homewards at his ease—
That noble judge whose daring hand enforced his own decrees.

RECENT DECISIONS.

VICE-CHANCELLOR'S COURT, WESTMINSTER.

MYTTON *v.* MYTTON.

[From the *Law Journal.*]

Will—Legacy—Specific or demonstrative?

November 3.

(Before MALINS, V.C.)

Charlotte Mytton, spinster, by her will dated May 5, 1870, bequeathed as follows:—"I give and bequeath to R. C. Herbert, his executors and administrators, all my money which shall be out at interest, invested in the funds, or otherwise secured, at my decease, upon trust in the first place to pay thereout all my just debts and funeral and testamentary expenses, and in the next place to pay to my nephew, H. W. Mytton, the sum of £3,000, invested in Indian securities, my said nephew, H. W. Mytton, to enjoy the interest of the same during his lifetime, and at his death £2,000 to go to his eldest son, H. R. H. Mytton, and £1,000 to his daughter, F. H. Mytton, or in case of their death before the age of twenty-one the said sum of £2,000 or £1,000, to be equally divided 'between the surviving children.'".

The testatrix died on February 13, 1874. At the date of her will she was possessed of 5 per cent. debenture bonds of the East Indian Loan, of the nominal value of £3,000; but before her death the bonds were paid off or redeemed by the Government of India, and she had not at her death any money invested in Indian securities.

The son and daughter of H. W. Mytton (who was a bankrupt), filed this bill against the executor of the will, to obtain a declaration that the legacy of £3,000 was a demonstrative, and not a specific legacy. The question was argued on demurrer by the defendant executor.

Mr. Davey, in support of the demurrer, argued that the legacy was specific; and

Mr. Glasse and *Mr. W. C. Renshaw*, for the plaintiffs, that it was demonstrative.

MALINS, V.C., said the question was by no means free from difficulty. It was clearly the intention of the testatrix to give her nephew and his children £3,000, whether it was at her death invested in Indian securities or not, and he should, therefore, lay hold of any expressions in the will showing that she did not intend to give only those Indian securities in which the £3,000 was invested at the date of her will. In his opinion the legacy was demonstrative, and not specific, and there must, therefore, be a declaration accordingly.

COURT OF QUEEN'S BENCH, WESTMINSTER.

KENTS *v.* THE MIDLAND RAILWAY COMPANY.

November 2.

Railway Company—Loss of Passenger's Luggage—Condition that Company shall not be responsible for Loss arising off its Lines.

Action for loss of plaintiff's luggage.

It appeared that, in January, 1874, the plaintiff went to the defendants' station at Bath, and there took a through ticket to Chester. The ticket had on it the words, "This ticket is issued subject to the regulations and conditions stated in the Company's time-tables and bills;" and there were notices in the booking-office, and also on the Company's time-tables, to this effect: "The granting of tickets to passengers to places off the Company's lines is an arrangement made for the greater convenience of the public; but the Company does not hold itself responsible for any delay, detention, or other loss or injury whatsoever arising off its ines, or from the acts or defaults of other parties." The train arrived at Birmingham, from which point to Chester the journey is on the London and North-Western Company's line, the London and North-Western train departing from a different platform to that at which the Midland Company's train arrives. The station at Birmingham belongs to the London and North-Western Railway, and the porters there are employed and paid by that Company, the Midland Company having by agreement between them and the London and North-Western the right of using the station with its appliances for their trains. On the arrival of the train at Birmingham, a porter came to the plaintiff and took charge of his luggage out of the train, and said that he would meet him with the luggage at the train for Chester. When the plaintiff came to the train for Chester the porter was on the platform with the luggage. The plaintiff saw it labelled and addressed to Chester, but never saw it again. Upon these facts a verdict was taken for the plaintiff for £80, with leave for the defendants to move.

Herschell (*J. Edge* with him) now moved for a rule *nisi* to enter the verdict for the defendants, on the ground that the loss of the plaintiff's luggage must be taken to have been off the defendants' line.

The COURT (COCKBURN, C.J., BLACKBURN, J., QUAIN, J., and ARCHIBALD, J.) refused the rule. There was no evidence that the London and North-Western ever took the luggage into their custody, and the Court thought that upon the true construction of the condition the luggage could not be said to be off the defendant's line until it was out of their custody and in the custody of some person responsible for its loss. The Court expressed no opinion on the questions whether the plaintiff was bound by the condition though he had read the reference to it on the ticket, and whether the condition itself was so reasonable as to be binding upon him.

Rule refused.

Digitized by Google

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Tuesday and Wednesday, the 12th and 13th days of January, 1875, *at Eleven o'clock.*

N.B.—All Papers to be lodged on or before *21st December, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place, on Thursday and Friday, the 14th and 15th days of January, 1875, *at the same hour.*

By order of the Council,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Friday, the 22nd of January, 1875, at Three o'clock, p.m.

TH SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

EASTER TERM, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Hilary Term.*

By order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin.

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to THE EDITOR, 53, *Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

STAMPING OF FEE-FARM GRANTS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Through the medium of your useful Journal, I beg to call the attention of the Profession to a very important question under the Stamp Act.

Until very recently the officials in the Stamp Office, in assessing the duty upon a fee-farm grant, calculated it on the rent reserved at the rate of six shillings stamp duty on every five pounds sterling of the rent, and the solicitors throughout the country acted upon this assessment.

But it has now been ascertained that this mode of calculation was wrong, and that the duty should be assessed by calculating it at the rate of one-half per cent. upon a capitalized sum—of twenty years' purchase—of the rent reserved in fee-farm grants; thus, if the fee-farm rent were £100 per annum, the proper duty would be one-half per cent. on £2,000 (twenty years' purchase) namely, £10. Under the former mode of calculation it would have been £6.

The importance of this question may be estimated by the reflection that if a deed is not properly stamped there is a penalty of £10 incurred, and as there are a great many deeds throughout the country stamped according to the old mode of assessment, the payment of the penalties will be a serious question.

It will be in the interest of the members of the Profession to devise means for the purpose of inducing the Government not to insist upon the payment of the penalties incured in the case of deeds insufficiently stamped in the stamp office.

Yours truly,
P. MACAULAY.

REQUIRING SECURITY, PENDING TRIAL, UNDER DEBTOR'S SUMMONS.—The question under what circumstances the respondent to a debtor's summons ought to be required to give security for the debt claimed, when the proceedings on the summons are stayed pending the trial of the validity of the alleged debt, has been discussed in several recent cases. In *Ex parte Weir* (20 W. R. 457, L. R. 7 Ch. 319), Lord Justice Mellish said:—"In determining whether security should be given, the registrar ought not only to consider the solvency of the alleged debtor, but also what is the probability that the claimant will be able to establish a debt? If the probability is that there is a good defence, security ought not to be required." And in *Ex parte Lowenthal* (22 W. R. 459 L. R. 9 Ch. 324), the same learned judge said:—"If there is a question to be tried, the judge has a discretion, and if on the balance of evidence he thinks there is a probability that a good defence will be made out, usually no security is required; but if this is not made out to his satisfaction, it is right that he should require security." In *Ex parte Turner*, heard by Lord Justice James, on Thursday, a somewhat similar question arose, and his Lordship thought that the registrar had been wrong in requiring security to be given by a summoned debtor, on the ground that upon the evidence there was at least as much probability that the defence would be successful as that the claimant would establish his debt. This appears to carry the principle of the previous decisions somewhat further in favour of the respondent to a debtor's summons. In *Ex parte Watson*, another similar case heard on the same day, the Lord Justice decided that a summoned debtor must give security, inasmuch as the claimant had made out a very strong *primâ facie* case, while the respondent had not shown anything like a strong case against it. Under such circumstances, his Lordship said that, if security were not required, the provisions of the statute would be reduced to a dead letter.—*Solicitors' Journal.*

BLUNDERS IN ACTS OF PARLIAMENT.—Not the least frightful feature of modern legislation is the frequent discovery of blunders in Acts of Parliament, the effects of which cannot be neutralized without fresh legislation. The Building Societies Act of last session is an instance in point. Owing to a blunder which accidentally crept into this measure, instead of being, as intended, permissive in its operation, it has been made compulsory on all societies. Representations on the subject having been made from Liverpool to the Home Office, a letter has been received from that department stating that the Home Secretary is advised that by clause 8 of the Act every subsisting building society, whether it applies for a certificate of incorporation or not, is brought under the Act, and he cannot issue any rules except in accordance with the Act. At the same time, as the present form of clause 8 was "the result of an accident" which has changed the Act from a permissive into a compulsory one, Mr Secretary Cross will "gladly assist the passing of a bill at the commencement of the next session to correct the mistake." The Home Secretary's gladness, however, at rendering this assistance will not improbably be tinged with a shade of sadness when he reflects on the terrible consequences that may one of these days ensue if accidents of this nature are of frequent occurrence, and Acts intended to be permissive are found by experience to be compulsory in their operation. An Act of Parliament that works in a different direction from that intended by those who give it vitality is about as formidable an engine of mischief as can be conceived—*Pall Mall Gazette.*

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

Sittings for next Week so far as same are appointed.

Before the Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—G. Henry, confirm sale.—E. R. Mahony, from 7th.—Trustee M'Donnell, examine delay.—W. N. Comyn, allocation.—J. Riddan, do.—B. Kelly, payment.—R. G. Brinkley, proposal.

IN COURT.—J. M'Creight, judgment.—T. Bell, do.—Administratrix Quinn, do.—Mary Keogh, to be mentioned.—E. M. Edgeworth, payment.—R. Going, from 9th.—J. Mason, from 8th.—W. R. Burleigh, schedule.—M. Mullarky, re-entry motion.—Sir C. O'Loghlin, for deeds.

TUESDAY.

IN CHAMBER.—G. C. B. Stirling, confirm sale.—J. Smith and another, do.—F. Gallagher and others, do.—R. N. Parker, proposal.—R. Fosberry, payment.

IN COURT.—R. G. Brinkley, schedule.—J. N. Ferrall, do.—Monerea Marsh Company, from 10th.—C. O'Neil, do.—Devisees Donnellan, as to costs.

Before EXAMINER (Mr. Dobbs).

M. M'T. O'Connor, rental.—A. Moreland, do.—Earl Dartrey, proofs.—N. E Abbott, do.—M. M'Inerney, ditto.

WEDNESDAY.

IN CHAMBER.—E. Geraghty, allocation.—M. M'Inerney, ditto.

IN COURT.—B. W. Faulkner, for order to re-lodge.—Rev. C. Lawrence, to make order absolute.

Before EXAMINER (Mr. Dobbs).

E. H. Burke, rental.—A. G. Carr, ditto.

Before EXAMINER (Mr. M'Donnell).

Trustee O'Brien, vouch.—J. Devenish, do.—C. T. Campion, vouch from 11th.—W. Jones and others.—vouch from 2nd.—M. Corr, rental.—A. Savage, ditto.

THURSDAY.

IN CHAMBER.—H. Stevenson, payment.

IN COURT.—C. Blake, from 10th.

FRIDAY.

IN CHAMBER.—J. Lalor, examine delay.—M. Collins, ditto.

LANDED ESTATES COURT.

SALES

Nov. 30th.—Before the Hon. JUDGE FLANAGAN.

CITY OF DUBLIN.—The estate of Edward Morgan, owner; *ex-parte* Reverend Hugh Johnstone Powell and Edward Morgan, petitioners.

Lot 1.—No. 15, High-street; yearly rent, £36 15s. Sale adjourned.

Lot 2.—Houses in Rosemary-lane, known as Nos. 8 and 9, in the parish of St. Michael, containing 12p.; yearly rent, £15 10s. Sold to Mr. John Keogh, for £135.

Lot 3.—Sale adjourned. Solicitor, *William Johnstone.*

COUNTY OF LEITRIM.—In the matter of the estate of Robert Blackhall, owner and petitioner.

Lots 1 and 2.—Previously sold.

Lot 3.—Parts of the lands of Toomondlaur, in the barony of Mohill, containing 302a., held in fee-simple. Sale adjourned.

Lot 4.—Part of same lands, containing 248a. 2r. 5p., held in fee-simple. Sale adjourned.

Lot 5.—Part of the lands of Cloonlaughil, containing 555a. 3r. 34p. Sale adjourned.

Lot 6.—Lands of Gubadorris and part of Cloonlaughil, containing 451a. 3r. 38p.; yearly profit rent, £132 18s. 2d. Sold in trust for Mr. William N. Irwin, for £2,850. Solicitors, *H. and W. Stanley.*

COUNTY MAYO.—In the matter of the estate of Dominick D'Arcy and Joseph M'Donnell D'Arcy, Martin D'Arcy, and Eleanor D'Arcy, minors, by the said Dominick D'Arcy, their guardian *ad litem*, and of John Hughes, M.D., or some or one of them, owner; *ex-parte* the said John Hughes, petitioner.

Lots 1 and 2.—Adjourned.

Lot 3.—The lands of Coolgrave, Doomore, part of Cornagallagh, Tormore, and Oloth, containing 856a. 1r. 32p.; profit rent, £1,053 10s. 10d. Sold to Mr. John Hughes, for £8,000. Solicitor, *Lewis G. O'Neill.*

COUNTY MAYO.—In the matter of the estate of Thomas Patrick French, owner; *ex-parte* Walter Patrick Kirwin, petitioner. The lands of Carrowkillen, in the barony of Claremorris, held for a term of 998 years, from the 30th October, 1781, containing 129a. 3r. 11p.; net yearly rent, £55 17s. 6d. Sold to Mr. Patrick F. French, for £1,600. Solicitors, *Arthur Cullen and Co.*

COUNTY MAYO.—The estate of Sir David Baxter, Bart., and others, owners and petitioners.

Lot 1.—Town and lands of Carrowbeg, situated in the barony of Gallen, held in fee, containing 197a. 1r. 13p.; net rental, £91 9s. 10d. Sold to Mr. Griffin, for £1,770.

Lot 2.—Town and lands of Cloonlumney, situated in the barony of Gallen, held under lease dated 1701, for three lives renewable for ever, containing 324a. 1r. 5p.; net rental, £63 5s. 9½d. Sold to Mr. Patrick M'Nulty, for £1,400.

Lot 3.—Lands of Clooncanna, in the barony of Gallen, held under same indenture, containing 330a. 0r. 15p.; net rental, £141 7s. 9d. Sold to Mr. William Meade, for 2,880.

Lot 4.—Town and lands of Eskar, containing 149a. 3r. 8p.; net rental, £76 3s. 7d. Sold to Mr. J. Doherty, for £1,400.

Lot 5.—Lands of Tawnamullagh, containing 83a. 1r. 34p.; net rental, £68 2s. 10d. Sale adjourned.

Lot 6.—Town and lands of Ballydrum, containing 347a. 0r. 37p.; net rental, £114 2s. 10½d. Sold to Mr. Thomas Durkan, for £2,300.

Lot 7.—Town and lands of Shanvally, held in fee, containing 275a. 2r. 27p.; net rental, £100 7s. 4d. Sold to Mr. Thomas Leetch, for £1,940.

Lot 8.—Town and lands of Treenkeel, held in fee, containing 262a. 1r. 24p.; net rental, £106 15s. 3½d. Sold in trust for Mr. Thomas Leetch, for £2,160. Solicitors, *Neilson and Son.*

COUNTY OF TIPPERARY.—In the matter of the estate of Antonio Jane Belinda Burke, owner; Falkiner Harding, petitioner; and in the matter of the estate of Anna Mary Stuart, wife of Henry Barton Stuart, owner; Clare Evans petitioner. The lands of Cloneskin, otherwise Counterasatkine, situated in the barony of Lower Ormond, held in fee-simple, containing 350a. 3r.; net rental, £151 9s. 6d. Sold to Mr. Adam Mitchell, for £3,025. Solicitor, *John Ruckley.*

COUNTY OF WESTMEATH AND KING'S COUNTY.—The estate of Duke Crofton and others, trustees for sale under the will of William Jones, deceased, owners and petitioners, continued in the name of Charles William St. John, a new trustee; and in the matter of the estate of Maria St. John and another, owners and petitioners.

Lot 1.—Part of the lands of Joneslake, containing 50a. 0r. 23p; net annual rent, £57 6s. Sold in trust for Mr. Patrick R. Robins, for £1,710.

Lots 2 and 9.—Part of the lands of Parkwood and Burrow, containing 211a. 2r. 23p. and 93a. 3r. 13p.; net annual rent, £22 8s. 2d. and £62 19s. 6½d. Sold to Mr. James H. Shaw, for £1,700.

Lots 3 and 7.—Not sold.

Lot 10.—Part of the lands of Carbane and Faugavil, containing 102a. 2r. 11p.; net annual rent, £102 11s. 5d. Sold in trust for James O'Rorke, for £1,700.

Lots 4, 5, 6, 8, and 12.—Previously sold.

Lot 11.—Part of Coolvin, containing 209a. 0r. 6p.; net annual rent, £190 9s. 1d. Sale adjourned. Solicitor, *Joshua Brereton.*

Digitized by Google

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
James Brennan	Prove debts and vouch	*Humfrey*
A. M. Sheridan	Costs	*Findlater & Co.*
S. H. Walker	do	*Findlater & Co.*
Patrick O'Brien	do	*Findlater & Co.*
Mary Gibson	do	*Findlater & Co.*
Hazelton and Sheppard	Prove debts and vouch	*Neilson*
Wallace & Magill	do	*Neilson*
James Hegarty	Vouch mortgagee's act.	*M'Cully*
John Gleeson	Reference	*Casey & Clay*

TUESDAY.

Before the COURT, at 11 o'clock.

John M'Donald	1st public sitting	*Neilson*
Robert D. Scott	do	*Casey & Clay*
Patrick Reilly	do	*Hamilton & Craig*
William Rose	Final examination	*Scallan*
Martin Kelly	do	*Hamilton & Craig*
James Malcomson	do	*Rynd*
George Meares	do	*Perry & Co.*
Ellen Whitford	do	*Gerrard*
A. J. Cunningham	do	*Boughey*
William Campbell	do	*Neilson*
John Molloy	do	*M'Evoy*
G. A. Glendinning	Motion	*Dillon*
R. K. Thompson	do	*Sinnott*
Joseph W. Savage	do	Bankrupt in person
James Hegarty	Audit mortgagee's act.	*M'Cully*
Hugh Makenzie	do	*Rosenthal*
Samuel H. Walker	Audit and dividend	*Findlater & Co.*
A. M. Sheridan	do	*Findlater & Co.*
Patrick O'Brien	do	*Findlater & Co.*
Thomas F. O'Neill	do	*Maxwell & Weldon*
John Brooks	do	*Casey & Clay*
Francis Keegan	do	*Boughey*
Wm. H. Thornton	do	*Whelan & Son*
Elder and Adams	do	*Neilson*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Michael Dunne	Prove debts and vouch	*O'Dowda*
James Murray	do	*Hamilton & Craig*
Geoffrey Davies	Reference	*Casey & Clay*
Daniel Cullen, jun.	Vouch account	*Boyd*
John Godfrey	do	*Lett*
Thomas J. Curtis	Settle title, conditions of sale, and posting	*Jones*

WEDNESDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

P. M. Gordon	Settle account	*Larkin & Co.*
J. Leckey	Costs	*Smith*
Daniel Cullen, jun.	do	*Boyd*
John Keane	do	*Casey & Clay*
Patrick K. Reid	Reference under 130th General Order	*Goff*

THURSDAY.

Before the COURT, at 11 o'clock.

Hazelton and Sheppard	Motion	*Neilson*
Henry Anderson	Charge & discharge	*Crookshank, Bros.*, for charge; *Perry & Co.* for discharge

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Nathaniel Evans	Prove debts and vouch	*Oldham & Eaton*

FRIDAY.

Before the COURT, at 11 o'clock.

H. M'Kerrihan	1st composition sitting	*Ryan*
Same matter	1st public sitting	*Ryan*
Edward Ellis	do	*Casey & Clay*
Matthew Smith	do	*Rynd*
Philip Whitney	Final examination	*Hamilton & Craig*
James Hamilton	do	*Colman*
Same matter	2nd composition sitting	*Colman*
L. M. Walsh	Final examination	*Lawless*
Hazelton and Sheppard	do	*Neilson*
D. Gillman and P. E. Potter	Motion	*Larkin & Co.*
Robert Courtney	Audit mortgagee's act.	*D. & T. Fitzgerald*
Ludlow Berkeley	Audit and dividend	*Casey & Clay*
D. Gillman and P. E. Potter	do	*Larkin & Co.*
Martin Geraghty	do	*Larkin & Co.*
John Keane	do	*Casey & Clay*
William H. Harris	do	*Oldham & Eaton*
Hugh S. Guiney	do	*Beauchamp*
Martin Mahony	do	*Bradley & Son*
J. W. & R. Rowan	do	*Oldham & Eaton*
William Cresswell	do	*Mathews*
Joseph Cresswell	do	*Mathews*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Thomas Coppinger	Prove debts and vouch	*Hamilton & Craig*
Matthew Kilcullen	do	*Hamilton & Craig*
Peter Smith	do	*Hamilton & Craig*
Catherine Boland	do	*Hamilton & Craig*

ADJUDICATIONS IN BANKRUPTCY.

Armstrong, William, Hollywood, county Down, bill broker. Sittings, *Tuesday, December* 29, and *Tuesday, January* 12. *Oldham and Eaton*, solrs.

Byrne, Charles, Arbutus Lodge, Blackrock-road, Cork, provision dealer. Sittings, *Tuesday, January* 5, and *Tuesday, January* 19. *Perry and Co.*, solrs.

Hildebrand, Henry, Turlough, county Mayo, farmer. Sittings, *Tuesday, January* 5, and *Tuesday, January* 19. *O'Dowda*, solr.

Kehoe, John, 24, Hanover-lane, Dublin, provision merchant. Sittings, *Tuesday, January* 5, and *Tuesday, January* 19. *Casey and Clay*, solrs.

Logue, William, Ballyare, Ramelton, Donegal, grocer and spirit dealer. Sittings, *Tuesday, December* 29, and *Tuesday January* 12. *Lett*, solr.

Monaghan, Michael, Dromod, Cootehill, Cavan, farmer. Sittings, *Tuesday, December* 29, and *Tuesday, January* 12. *Rynd*, solr.

O'Shea, Thomas, Croom, county Limerick, farmer. Sittings, *Tuesday, January* 5, and *Tuesday, January* 19. *Mathew*, solr.

Quinn, Arthur, Tandragee, Armagh, spirit dealer, leather merchant, and farmer. Sittings, *Tuesday, January* 5, and *Tuesday, January* 19. *Stewart*, solr.

Shallow, James, Stokerstown, Wexford, farmer and miller. Sittings, *Tuesday, December* 29, and *Tuesday, January* 12. *Lett*, solr.

Tallon, Patrick, Graugeeth, Meath, farmer. Sittings, *Tuesday, December* 29, and *Tuesday, January*, 12. *Gerrard*, solr.

DIVIDENDS IN BANKRUPTCY.

Abbott, Henry, Railgard, Castlecomer. 1st dividend 1s. in the £. L. H. Deering, official assignee. *Larkin and Co.*, solrs.

Collister, Robert Henry, Clonmel, Tipperary, ironmonger. 1st dividend 7s. 6d. in the £. L. H. Deering, official assignee. *Mathews*, solr.

Dillon, James W., Wicklow. 1st dividend, 13s. 3d. in the £. C. H. James, official assignee. *J. and W. Toomey*, solrs.

Leahy, Mary, Ballinasloe, Galway, widow, grocer. 1st dividend 1s. 10½d. in the £. L. H. Deering, official assignee. *Larkin & Co.*, solrs.

Marshall, George, Salthill, Galway, gentleman. 1st and final dividend 20s. in the £. L. H. Deering, official assignee. *Redington*, solr.

Neill, John, Cherryville, Kildare, farmer and cattle dealer. 1st dividend 1s. 1½d. in the £. C. H. James, official assignee. *Perry & Co.*, solrs.

Stewart, Alexander Donald, Kingstown, Dublin, grocer. 1st dividend 2s. 6d. in the £. L. H. Deering, official assignee. *M'Govern*, solr.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	DECEMBER Fri. 4	Sat. 5	Mon. 7	Tues. 8	Wed. 9	Thur 10
	Government.						
—	3 p c Consols	91⅜	—	91⅝¾	91⅝	91⅜	—
—	New 3 p c Stock ..	90⅝¾	90⅝¾	90⅝¾	90⅝¾⅞	90⅞	90⅝¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	108¾	108¾	—	—	108½	—
—	4 p c Oct. '88 } Bk. of Irel.	—	—	103	—	102¾	—
	Banks.						
100	Bank of Ireland ..	313	—	312¾	—	312½	312
25	*Hibernian Banking Co.* ..	60-⅛¼	60⅞-1	60⅛	60¼	60¼	60
15	*London Joint Stock* ..	—	—	—	53	—	52¾⅞
20	*London and Westminster* ..	77⅝	—	—	77¾	—	77⅝
30	*National Bank*	69⅞ 70	69⅝	69⅝¾	—	69½	69⅛¼⅜⅝
15	*National of Liverp'l (Litd)*	—	—	—	—	—	16⅛
25	*Provincial Bank* ..	91	—	91	91⅛	91¼	91
10	Do. New ..	—	—	—	—	36½	36½
10	*Royal Bank*	—	30⅝½	30⅝	30⅝½	—	—
	Steam.						
50	British & Irish	51	—	51⅛	—	—	—
100	City of Dublin	—	—	107	107½	—	—
	Mines.						
1	Killaloe Slate Co. (lit'd) ..	17/3	—	—	—	—	17/3
7	*Mining Co. of Ireland (lit'd)*	—	7⅝	—	—	—	—
2½	Wicklow Copper	—	3	—	3	—	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10¾	—	—	10¾	10⅝¾	—
10	Dublin Tramways ..	6⅛	6¼	6⅛¼	—	6⅛⅜	6⅛⅜
25	Ir. C. S. & Gl Building Co.	—	—	31	—	—	31
7½	*M'Swiney & Co., limited*	—	—	7⅝	—	—	—
25	*National Assurance* ..	—	48	—	—	—	—
9-4-7	*Patriotic Assurance* ..	—	—	10⅝	—	—	10⅝
	Railways.						
50	Belfast and Northern Cos.	—	—	—	—	—	69⅝
100	Dublin and Belfast Junct.	93-½	95-6	—	—	94	94⅛⅜
100	Dublin and Drogheda	—	116	—	—	117	—
100	Dublin, W'klow, & W'ford	—	—	—	—	75⅛	—
20	*Do.—issued at £35* ..	37	—	37⅛	—	—	—
100	Gt. Northern and Western	—	—	—	98	—	—
100	Gt. Southern and Western	108¾	108¾	108½	—	108¾	108¾
30	Irish North Western ..	3	—	—	—	—	—
100	Midland Gt. Western ..	—	82⅛⅜	82⅛⅜	82⅛⅜	82½	—
25	Portdn. Dun. & Omh. Jun.	—	—	—	15⅛⅜	—	—
50	Waterford and Limerick ..	—	—	30¼	—	—	30⅛
	Railway Preference.						
100	D. & D., 4 p c Guarant'd S'k	—	—	—	—	97¾	97½
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1864)	—	—	54	54½	—	—
50	Do. do. (1865)	—	—	54	—	—	54½
10	Irish North Western A 5 p c	—	—	4⅛	4⅛	—	—
100	Mid. Great Western, 5 p c	—	—	—	111	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
50	Do., new red, 1873, 5 p c ..	—	50¼	—	—	50⅛	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	—	—	—	—	97½	—
—	Cork and Bandon, 4½ p c	—	—	—	—	—	100
—	Dublin & Meath 4 p c ..	—	—	—	—	—	80
—	D., W., & W., 4½ p c ..	100¾	—	—	100½	100¼	—
—	Gt. North'n & West'n 4½ p c	—	100	—	100⅛	—	—
—	Gt. South'n & West'n, 4 p c	99¾	—	—	—	99⅞	99⅞
—	Irish Nth Westn 1st C 5 p c	100¼	—	99⅞⅛	100	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	102½	—	—	—	102½	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—6 per cent., 1st December, 1874
Of Deposit—3½ per cent., 1st December, 1874.

Name Days—December 15th and 29th, 1874.

Account Days—December 16th and 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.

COLL—December 8, at Ardsufinas, Dalkey, of disease of the lungs, Mary, the beloved child of Patrick Coll, Esq., solicitor, aged six years.

WALKER—November 28, accidentally drowned at Birkenhead, John Philip Walker, Esq., of S.S. Adriatic, fourth son of Richard Alexander Walker, formerly of Grenville-street, Dublin, solicitor.

MISCELLANEOUS:

JEREMIAH D'ARCY,
SCRIVENER, LAW STATIONER, AND PRINTER.

OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

T. KILMARTIN and SON,
SCRIVENERS AND LAW STATIONERS,
ESTABLISHED 1867,
21, KING-STREET, BELFAST.

PUBLIC NOTICES:

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.
(*Incorporated by Royal Charter*).

NOTICE.

ATTORNEYS' AND SOLICITORS' ACT (IRELAND), 1866, *29th and 30th Vic., c. 84.*

1.—The Members of this Profession are requested to take notice, that all Certificates to practise, issued to them under the above Act, for the year 1874, will continue in force *until the Fifth day of January*, 1875, *inclusive*, and no longer. (*42nd sec.*)

2.—Forms of the Declaration to be filled up (in duplicate), and to be signed by each Attorney or Solicitor, or by his Partner, or in case such Attorney or Solicitor shall reside more than twenty miles from Dublin, then by his Dublin Agent, being an Attorney or Solicitor (*meaning a practising Solicitor*), on his behalf, are to be had at the Office of the Registrar of Attorneys and Solicitors (Secretary's Office), Solicitors' Buildings, Four Courts. (*34th sec.* *31st sec.* *The Chancery (Ireland) Act*, 1867, *30 & 31 Vic., cap. 44.*)

3.—The sum of Five Shillings is to be paid for every Certificate. (*29th & 30th Vic., cap. 84, sec. 84.*)

4.—Forms of Declarations will be issued on and after the 2nd of January, 1875, from Eleven o'clock a.m. to Three o'clock p.m., each day, and upon their being returned correctly filled and signed as hereinbefore mentioned, Certificates will be issued, between same hours, *to parties entitled to receive same*, to be taken by them to the Stamp Office to be stamped.

5.—Every Certificate stamped on and after 6th February, 1875, must be produced to the Registrar within a month after payment of the duty, to be entered by him, until which payment of duty and subsequent entry no Attorney or Solicitor is duly qualified to practise. (*37th, 41st, and 46th sections.*)

6.—Certificates must be entered as heretofore in the various Courts.

By Order,
JOHN H. GODDARD, Secretary.

Solicitors' Buildings, Four Courts, Dublin,
December, 1874.

N.B.—As a number of Gentlemen have *not* complied with Memorandum No. 5, as above, for the year 1874, and as the Registrar's Certificate does *not* operate as a License to practise until duly stamped, as required by Law, such Parties will be required to prove payment of Stamp Duty on their Certificates for 1874, before Certificates for 1875 can be issued to them. 621

JOHN O'MALLEY,
4, SAINT ANDREW-STREET, DUBLIN,
LAW AND GENERAL STATIONER,
SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.
Licensed to Sell Law and General Stamps. 310

MONEY:

MORTGAGES ON ESTATES, LIFE INTERESTS, AND REVERSIONS.

Messrs. SALTER & CO., have large Funds available for Loans upon the above Securities, to which they desire to direct the attention of Landed Proprietors, Solicitors, and others requiring Money on Mortgage.

They also invite applications for Securities from Capitalists, Trustees, and others, desirous of Investing Money either in Large or Small Amounts.

41, Lower Sackville-street, Dublin; and
11, Pancras-lane, London, E.C. 520

BILLS of £20 to £500, Discounted with despatch, and Cash Advanced on Farmers' Leases, Goods in Bond, Reversions, or any *bonâ fide* Security, on moderate and strictly confidential terms, and MORTGAGES to any amount negotiated on best terms consistent with security, by

MR. FITZSIMONS,
474 18, Fleet-street, Dublin.

TO SOLICITORS and OTHERS—Mr. MONTAGU BRAHAM is prepared to make Temporary Advances on Personal or other Securities pending negociations for Loans, Sales in Landed Estates' Court, Bills of Costs, &c. Applications strictly confidential.

MR. MONTAGU BRAHAM,
611 37, South Frederick-street, Dublin.

Digitized by Google

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—

WM. MORTIMER, M.A., LL.D.,
600½ 26, York-street, Dublin.

MR. JAMES CURRAN, Ex-Scholar, Trinity College, Dublin; First Classical Sizar and Honorman; First University Prizeman in Civil Law, Second in Modern History, and Fourth in English Literature;

36, HARDWICKE-STREET,

Prepares Gentlemen for the Entrance and Term Examinations in the Universities, Civil Law Examinations, Royal College of Physicians and Surgeons, Arts Examination of Apothecaries' Hall, Preliminary Examination of Attorneys' Apprentices, &c. 617

CRAIG, GARDNER, & CO., ACCOUNTANTS, TRINITY CHAMBERS, 40 AND 41, DAME-STREET, DUBLIN. 308

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

ADVERTISEMENT FOR CREDITORS.

Pursuant to a Decree of the High Court of Chancery, in Ireland, wherein Edward De Moleyns, Administrator of the Estate and Effects of Major Chidley Downes Coote, deceased, is plaintiff; and Theresa Coote, otherwise Reinbod, widow, and Sir Charles Henry Coote, Baronet, are defendants—the Creditors of the said

MAJOR CHIDLEY DOWNES COOTE, who died in or about the 6th day of March, 1872, at Antibes, in France—are, on or before the 12th day of January, 1875, to send by post, pre-paid, to B. W. ROOKE, of 22 Nassau-street, in the City of Dublin, in Ireland, the Solicitor of the said Edward H. De Moleyns, the Administrator of the said Major Chidley Downes Coote, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor of the said Major Chidley Downes Coote, holding any security is to produce the same before the Right Honourable the MASTER OF THE ROLLS, at his Chambers, at the Four Courts, Dublin, in Ireland, on the 2nd day of FEBRUARY, 1875, at Eleven of the clock in the forenoon, being the time appointed for adjudicating on the claims.

Dated this 28th day of November, 1874.

B. E. WHITESTONE, Chief Clerk.

B. W. ROOKE, Solicitor, 22 Nassau-street, Dublin, Ireland. 618

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause of James Spring, plaintiff; Anne Higgins, Laurence Higgins, Patrick Higgins, James Joseph Higgins and Mary Bridget Higgins, infants under the age of twenty-one years, and Henry Kavanagh, defendants—the Creditors of

PATRICK HIGGINS, late of North King-street, in the County of the City of Dublin, pawnbroker—who died in or about the month of January, 1865—are, on or before the 1st day of JANUARY, 1875, to send by post, pre-paid, to Mr. PATRICK ROONEY, of 58 Henry-street, Dublin, the Solicitor of the said Anne Higgins, who is Executrix of said Patrick Higgins, their Christian and surnames, addresses, and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; and all persons claiming to have incumbrances affecting the real estate of the said Patrick Higgins, are by their Solicitors to come in and prove their claims at the Chambers of the VICE-CHANCELLOR, Four Courts, City of Dublin, on or before the said 1st day of JANUARY, 1875, or in default thereof they will be peremptorily excluded from the benefit of said Decree.

Every Creditor or Claimant on real estate holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on TUESDAY, the 12th day of JANUARY, 1875, at Twelve o'clock noon, being the time appointed for hearing and adjudicating upon the claims.

Dated this 2nd day of December, 1874.

619 A. T. CHATTERTON, Chief Clerk.

HIGH COURT OF CHANCERY.

Pursuant to an Order of the High Court of Chancery, made in the Cause of Mary Anne Green, plaintiff; Julia Morgan, defendant—bearing date the 29th day of May, 1874—the Creditors of

PATRICK GREEN, late of Riverstown, in the County of Meath, Farmer—who died in or about the month of December, 1872—are, on or before the 23rd day of DECEMBER, 1874, to send by post, pre-paid, to Mr. JOHN THOMAS SIMPSON, of 25 Westmoreland-street, in the City of Dublin, the Solicitor of Mary Anne Green, the Executrix of the deceased, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or, in default thereof, they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor holding any security is to produce the same before the Right Honourable the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on the 13th day of JANUARY, 1875, at One of the clock, in the afternoon, being the time appointed for adjudicating on the claims.

Dated this 23rd day of November, 1874.

626 A. T. CHATTERTON, Chief Clerk.

IN THE COURT OF BANKRUPTCY, IRELAND.

MICHAEL MONAGHAN, of Dromod, Cootehill, in the County of Cavan, farmer, was on the 4th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 29th day of DECEMBER, 1874, and on TUESDAY, the 12th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

JAMES G. RYND, Solicitor, 1 Lower Ormond-quay, Dublin. 623

IN THE COURT OF BANKRUPTCY, IRELAND.

WILLIAM LOGUE, of Ballyare, Ramelton, in the County of Donegal, Grocer and Spirit Dealer, was on the 4th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 29th day of DECEMBER, 1874, and on TUESDAY, the 12th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

THOMAS FAGAN, Registrar.

624 GEORGE C. LETT, Solicitor, 43 Dame-street, Dublin.

IN THE COURT OF BANKRUPTCY, IRELAND.

JOHN KEHOE, of No. 24 Hanover-lane, in the City of Dublin, Provision Merchant, was on the 9th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 5th day of JANUARY, 1875, and on TUESDAY, the 19th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

CASEY & CLAY, Solicitors, 21 Saint Andrew-street, Dublin. 627

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, December 12, 1874.*

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

Vol. VIII. SATURDAY, DECEMBER 19, 1874. No. 412.

THE MEASURE OF DAMAGES FOR BREACH OF COVENANTS TO REPAIR.

A recently reported decision of the Court of Common Pleas, in England, illustrates a principle which must prove of considerable importance to the relations subsisting between landlords and tenants. It is desirable that the attention of the Profession should be called to this case, as at first sight it would seem incompatible with a reported case of considerable authority, the circumstances in the two cases being very similar and requiring careful attention, before the distinction between them can be seen. The former of the cases to which we refer, *Williams* v. *Williams*, will be found reported in L. R. 9 C. P. 659. Its facts were shortly as follows:—The plaintiffs were assignees of a lease of the premises in question; that lease contained a general covenant to repair, and also a covenant to repair after three calendar months' notice. The plaintiffs demised the premises to the defendant on similar covenants to those contained in the original lease, except that the notice stipulated for was a two, and not a three months' notice. In September, 1872, a notice to repair the premises was left by the superior landlord on the premises, calling on the plaintiffs to repair. This notice was left with the defendant, but he, being no party to the original lease, took no notice of the requisition. Notice was given to the plaintiffs on 17th January, 1873. The plaintiffs, thereupon, called on the defendant to repair in very general terms, and on 20th March, 1873, the defendant received a formal notice from the plaintiffs' attorney, requiring him to repair the premises "in accordance with the terms of his lease." The plaintiffs, being pressed by their superior landlord, in order to avoid a forfeiture, themselves did the necessary repairs, which were finished shortly before the present action was brought, which was to recover the amount so expended. At the trial it was held that the plaintiffs could not recover upon the breaches which charged an omission to repair the premises, not being out of repair at the time of bringing the action, and that the first notice served by the plaintiffs in January was not sufficient. On the plaintiffs appealing to the full Court, they strongly relied on *Colley* v. *Streeton* (2 B. & C. 273) to sustain the proposition that, where the superior landlord gives a notice to repair to his lessee, and the latter gives notice to his sub-lessee, and upon his default goes in and does the necessary repair, the lessee can recover against his sub-lessee. That case, however, went upon the ground that the sub-lessee had proper notice to repair, before the commencement of the action. It was admitted by Lord Coleridge in the present case, that, had there been a breach of the specific covenant to repair within two months after notice, the measure of damages which the plaintiffs would have been entitled to recover would have been the expenses which they had incurred in putting the premises in repair. That view of the case is fully in accordance with the opinion of Mr. Justice Bayley, expressed in his judgment in *Colley* v. *Streeton*, that "the measure of damages was properly the loss which the plaintiffs sustained by reason of the default of the defendants. That was the sum reasonably expended by them in doing such repairs as were necessary, for the purpose of avoiding a forfeiture of the lease." On this point of the case, however, it was held that the two months' notice, which was requisite to be given, had not been duly given by the plaintiffs, and in consequence the plaintiffs could not rely on a breach of this covenant. The plaintiffs, however, fell back upon the breach of the general covenant to repair, and upon that point also the Court decided against them, holding that no substantial damages can be recovered under the general covenant where no damage has been done to the reversion, and the reversioner has not been injured by anything done, or omitted to be done by the defendant. Mr Justice Brett observed:—"The lessors would, also, have an implied right to sue for damages, but they had no right to go upon the premises and do the repairs themselves. It is admitted that the premises were out of repair; but, instead of availing themselves of the right of forfeiture, the plaintiffs do the necessary repairs themselves, in order to save a forfeiture as between themselves and a superior landlord; and they claim to be entitled to recover the expenses thus incurred as damages under the third breach (which was founded upon the general contract). That they cannot do." The Court subsequently intimated that, had the point been taken at the trial, the plaintiffs would have been entitled to nominal damages under the third breach. The Court treated the case of *Davis* v. *Underwood* (2 H. & N. 570), where substantial damages were recovered, as merely deciding that where the mesne landlord had determined his lease by his own act, this did not prevent his recovering substantial damages for the defendant's breach of covenant (in not repairing) while he remained owner of the reversion. Upon the whole, we think that the decision of the Common Pleas in the present case, although no doubt it at first bears rather a harsh aspect, will be found consistent with the principles of justice, as well as law. The plaintiffs had, in the present case, a right to re-enter on the premises and forfeit the interest of the sub-tenant, which right they neglected to avail themselves of. Having chosen not to make use of this right, they had no legal claim to create a new remedy for thimselves; and having elected themselves to perform the defendant's duty, they could not then demand satisfaction, when they had neglected the proper means of setting themselves right which were offered them by the law.

In the very recent case of *Morony* v. *Ferguson*, in the Queen's Bench, in Ireland, a somewhat similar question arose. The action there was brought on a covenant to repair in a lease; the evidence went to show that the premises had fallen into disrepair, but that after the action was brought considerable sums of money were spent by the defendant in repairing them. The action was brought before the end of the term for which the premises were leased. The jury found for the defendant. Mr. Justice Barry, who tried the case, certified that, in his opinion, the verdict was against the weight of evidence, but that, "according to the rule laid down by the cases as to the measure of damages when the action is brought before the end of the term, a verdict for the plaintiff could only have been for nominal damages." On the new trial motion the defendant relied on a series of authorities, among others *Watts* v. *Judd* (5 M. & Gr. 598), and *Young* v. *Harris* (2 C. & J. 14), to show that a new trial will not be granted, on the ground that the verdict was against the

Digitized by Google

weight of evidence, if merely nominal damages can be obtained. The plaintiffs relied on *Macnamara* v. *Vincent* (2 Ir. Ch. R. 504) to show that they were entitled to substantial damages. The Court, however, acquiesced in the view set out in the report of Mr. Justice Barry, that nominal damages only could have been recovered, but held that this action differed in its nature from a new action for the recovery of a sum of money, and granted a new trial. Although this decision seems to differ from *Young* v. *Harris*, and that class of cases, it appears to be in accordance with the English authorities on the subject of the measure of damages in cases of this nature.

THE NEW LAW OFFICERS.

WE refer our readers to the concise biographies of these distinguished personages copied in another column from *The Times*. We have already expressed, in former numbers of this Journal, our opinion, and that of the entire Profession, of the pre-eminent qualifications of the Right Hon. J. T. Ball, for the high office of Lord Chancellor, which he now adorns. The mere recital of the stages of Mr. Ormsby's University and professional career, proves his standing, experience, and knowledge; and the testimony of his contemporaries can, if unbiassed, bear witness to his professional qualifications, and the patience, dignity, and urbanity of his disposition. As to Mr. Plunket, we almost dread the consequences of expressing an opinion. One of our contemporaries has stigmatised the appointment as a scandal and a shame. Another, of an opposite way of thinking, has praised the appointment as the happiest that could be devised, and represented the learned gentleman as the most suitable that could be selected. A third, who sometimes approves the old proverb, *in medio tutissimus ibis*, gives Mr. Plunket credit for qualifications which no one who knows him can deny him; but at the same time we cannot abstain from thinking that its praise is so very faint that it is almost condemnatory. In all this tumult about a third Law Officership we can fancy we see the object of it raising his hands in deprecatory remonstrance, and, with that well-known persuasive suavity, imploring his friends as well as his enemies to "bide a wee." For our part, we know as well as they he never sought the office, but yielded to the necessities of the occasion, and we cannot blame him for accepting an honour he never sought for or desired. As to his qualifications for the office, we have no hesitation in saying they are equal, if not superior, to some of his predecessors; and we and those who have opportunities of knowing him have no fear of the result. But few able men have ever rushed rapidly to the front without incurring the envy of some, at least, of those they have distanced in the race.

NOTICE TO QUIT.

WE beg to call our readers' attention to the correspondence on this subject in our present issue, and to say that we shall be happy to receive and publish any further communications on the subject. We intend to refer to the matter editorally in an early issue, as the question is of the utmost importance to landlords and tenants under the new Act, and it is most desirable that it should be thoroughly discussed, and settled one way or the other on authority.

BROWNE'S DIARIES AND ALMANACKS FOR 1875.—We have received the annual issues of these useful articles manufactured by Messrs. Browne and Nolan, Nassau-street, and can speak in commendatory terms of their suitability to the uses for which they are designed. Their price is a marvel of cheapness, and they certainly deserve an extended patronage.—*Irish Times.*

TRADE GUARANTEES AGAINST LOSS OF EMPLOYERS' GOODS.

Two rather interesting cases were heard by Mr. Barton at the Southern Divisional Police Court on Saturday. The first was one in which two operative shoemakers were charged with having stolen several pairs of unfinished boots belonging to the shopkeeper for whom they worked. Now, both men belonged to a guarantee society called the National Amalgamated Union, and their employer held from that society, in respect to each of them, an indemnity to the amount of £10 for materials given them to work with. Defendants' counsel, therefore, urged that their offence was not criminal, simply amounting to a breach of contract. It is evident that if this plea were allowed absolute validity, guarantee societies would be neither more nor less than a direct encouragement to irregularities of a nature very disagreeable to employers. Luckily, the latter are not left without a remedy at law. In the case under notice the shopkeeper did not resort to the proper means of obtaining satisfaction. As Mr. Barton pointed out, instead of charging the men with larceny and illegal possession, their employer should have proceeded against them under a recent statute, which compels workmen in such cases to pay compensation under pain of liability to a fine of forty shillings. The charge was dismissed, but it is yet open to the prosecutor to obtain satisfaction under the Summary Act. We would direct the special attention both of masters and men to this case, which clears up a question on which much doubt has hitherto rested. The guarantee system is widely prevalent in Dublin, and not less prevalent in the minds of operatives is the impression that as the employer is indemnified to the extent of £10, they are free to pawn or otherwise dispose of materials entrusted to them, and not exceeding the value of the guarantee. This opinion is entirely erroneous, and it is very fortunate for the interests of all parties that it is so. By the statute cited by Mr. Barton, masters are provided with a prompt remedy against irregularities which would otherwise gravely interfere with the transaction of their business, and workmen are deprived of a temptation which it is much better for themselves that they should be without.—*Irish Times.*

ENGLISH DEBTORS IN IRELAND.

On this subject the *Law Times* says:—In regard to the observations in our last issue upon the subject of the Judgment Extension Act, a country solicitor writes:—"A great number of officers of various regiments who are quartered here incur debts to a considerable amount with the tradesmen, and just on the eve of their departure they promise to remit the amount on their arrival in Ireland, and some of them give acceptances which are frequently dishonoured, and the debts are seldom paid. They take no notice of applications. Presently they are ordered to a foreign station, embarking from some port in Ireland. Some die; others retire, and are not to be found. I have had many cases of this kind. I have written to the Horse Guards, but with no beneficial result; and therefore I think that where debts are contracted in England, writs from our Superior Courts (and it should be extended to the County Court practice) ought to be available for service in Ireland. Defendants could instruct their attorneys to appear and defend if necessary, but, as matters now stand, it appears to me the only course for a creditor to adopt, is to instruct some solicitor in Ireland to issue process, and then *the creditor would have to go there* to prove his debt. It was an unfortunate omission in the 18th section of the Common Law Procedure Act. Hundreds of persons are prejudiced by the want of greater facilities for obtaining payment of their debts owing to this difficulty. The advantage should be mutual, so that where debts are contracted in Ireland, the creditor should issue process there, and get same served in England, and it should apply to Scotland." There is very much to be said in favour of the views of our correspondent upon this important subject; but as to the suggested unfortunate omission in the Common Law Procedure Act, it was, on the contrary, a deliberate act of the Legislature, secured by the action of certain Irish peers when the Bill was before the House of Lords. Legislation may be fairly required on the subject.

Digitized by Google

DUBLIN METROPOLITAN POLICE COURT.

December 12, 1874.

(Before T. A. Barton, Esq., LL.D.)

Winstanly v. Caravan and Kirwan.

Trade guarantees by workmen against loss of employer's goods no defence against criminal proceedings for illegally pawning such goods—Proceedings should be under Summary Act, 25 & 26 Vict., c. 50, and not for felony under the Larceny Act.

These were prosecutions against two workmen for larceny and illegal possession of several pairs of unfinished boots, the property of their employer.

For the prosecutor: *P. Keogh*, instructed by *Mr. E. A. Ennis.* For the defendants: *Curran*, instructed by *Mr. P. A. White. Mr. Charles Fitzgerald*, for the Amalgamated Union Guarantee Society.

Mr. Barton.—The defendants are charged with two offences—1st (under the 24th & 25th Vict., c. 96), for the *larceny* of boots and material, the property of Mr. Winstanly, their employer, and 2ndly (under the 5th Vict., c. 24, s. 53.), for the *illegal possession* of these goods. The evidence showed that they had pawned Winstanly's goods, of the respective values of £2 and £1 10s., which had been entrusted to them, as his workmen. It has been argued for the defendants that the offence amounted to a breach of contract only, and not to a public offence, inasmuch as Mr. Winstanly held in respect of each of the prisoners, and furnished by themselves, an indemnity from a "Guarantee Society," styled "The National Amalgamated Union," to the amount of £10, for work and materials entrusted by him to the defendants. The question raised is an important one, because of the prevalence in Dublin of a trade's custom of guarantees such as these, and of the existence of much doubt and confusion as to their legal effect. I found from the evidence that the impression existed widely among operatives that the effect of such an indemnity is to leave them free to pawn, or otherwise dispose of their employers' property entrusted to them, provided its value be within the limit of £10—the sum prescribed by the Society's guarantee. I am clear that the form of indemnity proved in this case creates no conflict whatever between civil and criminal proceedings, and that if a larceny had been committed and proved, an indictment would lie. In fact a printed notice at the foot of the Society's form of Indemnity, seems to have been framed with a view to anticipate such objection as I have heard raised, and also with a distinct reference to the observations of Tindal, C.J., in *Kier* v. *Leenan*, 9 Q.B, 236, a leading modern authority on the Compromise of Offences.

Upon other and quite distinct grounds, however, I am of opinion that the proper remedy has not been had recourse to by the prosecutor. The evidence shows that these defendants, as workmen, pawned materials, the property of their employer, to the value in all of but £2 and £1 10s. respectively—that is, to less than £5. Now, for this particular offence a distinct and specific procedure is provided by a recent Act, which has made it a Summary offence only, and no longer a Felony; and I am clear that since the date of that Act its provisions should regulate such cases as these. I refer to the Act 25 & 26 Vict., c. 50, s. 7, which provides, that artificers, workmen, &c., who shall unlawfully dispose of or retain in their possession, without the consent of their employers, work or materials entrusted to them, the *value not exceeding £5*, shall pay compensation to the party aggrieved, and be liable to a fine for forty shillings, or one month's imprisonment. Mr. Winstanly, or others similarly situated, should therefore proceed under the Summary Statute I have last referred to, and not for a felony under the Larceny Act.

On these grounds, I dismiss the charge.

Mr. Ennis.—It may be contended that although that Act has been passed the defendants are still liable, and could be charged for the simple larceny, and that the Act of Parliament mentioned gave only a cumulative remedy.

Mr. Barton.—Where the amount is over £5 there can not be the slightest doubt that Mr. Winstanly could proceed against the defendants for the larceny, but, that Act having been passed for a specific purpose, I think it would be better that the defendants should be proceeded against anew.

Mr. Ennis said his client would adopt that course, and prosecute the men for stealing the property.

THE LAW CLERKS' ASSOCIATION.

The central committee met on Monday evening, at their rooms, 207 Great Brunswick-street. The attendance included the vice-president, who took the chair, and Messrs. Jervise, Flynn, Power, Keegan, Farrelly, Dodd, Flynn, and Wheatley. A draught of the prospectus of the Provident Institute of the Associated Law Clerks of Ireland was brought up, approved of, and directed to be printed and circulated among the members, and a general meeting is to be called to consider the details. The proposed rates of subscription and benefits to be conferred are substantially the same as those of the Liverpool Provident Clerks' Institute. A communication was read from a gentleman in a solicitor's office, but not an Associated Law Clerk, complaining of an alleged injustice on the part of his employer, in reference to the receipt of some commissions payable by established usage to the clerk. While sympathy was expressed with the complainant on the case put forward, it was decided that inasmuch as he was not an associate, the committee could not interfere in the matter.

CONCLUSIVENESS OF APPELLATE DECISIONS.

During the judicial career of a learned Vice-Chancellor who recently retired from the Bench, the question of the competence of Courts of first instance to re-open questions decided by Courts of Appeal came somewhat frequently to the surface. "There are in my recollection," said Vice-Chancellor Malins, in *Dugdale* v. *Dugdale* (L. R. 14 Eq. 234), "no less than three decisions of Lord Westbury which Vice-Chancellor Stuart declined to follow." In one of these cases (*Drummond* v. *Drummond*, 14 W. R. 829, L. R. 2 Eq. 335), the Vice-Chancellor refused to be bound by two successive judgments of the Lord Chancellor, and the Full Court of Appeal subsequently declared (15 W. R. 267, L. R. 2 Ch. 32) that he was right in doing so. In another case, *Collins* v. *Lewis*, L. R. 8 Eq. 708), the same judge pronounced an opinion that *Hensman* v. *Fryer* (16 W. R. 162, L. R. 3 Ch. 420) was "clearly a mistaken decision," and declined to decide in accordance with it. The same course was pursued with reference to the same decision by Vice-Chancellor Malins in *Dugdale* v. *Dugdale*, where *Hensman* v. *Fryer* was pressed in argument as being exactly in point, and it was stated that in fact the bill had been framed upon the supposition that the decision of the Court of Appeal was a binding authority. The learned Vice-Chancellor, however, said that he was not bound to follow a decision of the Court of Appeal, "if clearly erroneous," and he came to an opposite conclusion to that expressed in *Hensman* v. *Fryer.* Some sort of warrant for occasional judicial rebellion was recently afforded by the language of Lord Chelmsford in delivering judgment in the House of Lords in *Peek* v. *Gurney* (22 W. R., p. 33), where, speaking of a decision of the House of Lords, in *Seymour* v. *Bagshaw*, where it appeared that the counsel for the plaintiff in error, without argument, submitted to a judgment for the defendant in error, the noble lord said that he could not understand how, under these circumstances, the Court of Exchequer, in a subsequent case, could consider *Seymour* v. *Bagshaw* as a conclusive authority.

It must have been, we imagine, on the strength of some of these cases that an attempt was made last week to induce the Judge of the Court of Arches to sit in judgment on the decision of the Privy Council in *Hebbert* v. *Purchas.* The counsel for Mr. Mackonochie appear to have argued very strenuously that the decision of the Court of Appeal was given without the advantage of argument on the part of the defendant; that it was based on mistakes of fact as well as of law, and that it was irreconcilable with previous decisions of the same tribunal. The learned judge appears to have been so far impressed with the argument as to declare that "it did not require a long experience in the discharge of judicial duties to be aware of the very great disadvantage under which a Court laboured when it was compelled to

Digitized by Google

decide a case, and especially a very important case, upon an *ex parte* argument. Under those circumstances, he thought that it would now be competent for him to hear a re-argument of those points." But he added that, "upon reflection, he was satisfied that such a course would, on the whole, be inexpedient, and would not further the ends of justice. All those points might be re-argued before the Privy Council, and if there had been any miscarriage of justice in the former decisions of that tribunal, it was fully competent for it to rectify its error without the intervention of another judgment on the same subjects from that Court."

We cannot but consider it matter for congratulation that the learned judge has thus followed the usual practice of the Courts. With the particular case of *Martin* v. *Mackonochie* we have no concern, although it might perhaps have been suggested that, with Sir Robert Phillimore's elaborate judgment in *Hebbert* v. *Purchas* before them, the latter case could hardly be correctly said to have been decided by the Privy Council without argument for the defendant. But, in the interests of suitors and the profession, it is to be hoped that no further extension may be given to the rather dangerous doctrine to which we have referred. No one would deny that there may be cases where a decision of the Appeal Court has been obviously founded on a mistake, and where it would be proper for a judge of first instance to decline to follow such a decision. But the result of laying down any such rule as that whenever a Court of Appeal has not had the advantage of argument on both sides its decision has no binding force, would be to launch us on a sea of uncertainty, to drift helplessly about according to the varying currents of judicial opinion.—*Solicitors' Journal.*

THE IRISH LAW OFFICERS.

The Chancery Commissioners will sit for the last time on Monday next. Our contemporary, the *Times*, says:—We understand the following are the new Irish Law Officers:—The Right Hon. John Thomas Ball, LL.D., of Merton, in the county of Dublin, Queen's Advocate in Ireland, and Attorney-General, who has just been nominated Lord Chancellor of Ireland, is the son of the late Major Benjamin Marcus Ball, of the 40th Foot. He was born in the year 1815, and was educated at Trinity College, Dublin, where he took his Bachelor's degree with high honours in 1836. He was called to the Irish Bar in Michaelmas Term, 1840, and has been a Bencher of the King's Inns, Dublin, since 1863. In 1850 he obtained the honour of silk, was successively Solicitor-General and Attorney-General for Ireland during Mr. Disraeli's administration in 1868. He has been one of the Parliamentary representatives of the University of Dublin since the year 1868. He was created an Honorary Doctor of Laws at Oxford in 1870, and was sworn a Privy Councillor in 1868. Dr. Ball married, in 1852, Catherine, daughter of the Rev. Charles R. Elrington, Regius Professor of Divinity in the University of Dublin. Mr. Henry Ormsby, Q.C., the present Solicitor-General, who now succeeds Dr. Ball in the Attorney-Generalship, is a member of a good Irish family, very many of whose members have been graduates of Trinity College, and is a year or two older than the new Lord Chancellor. He was educated at Trinity College, Dublin, where he took his Bachelor's degree in 1834—two years previous to his Lordship—and was called to the Irish Bar in Michaelmas Term, 1835. He was nominated a Queen's Counsel in 1858, and was appointed Solicitor-General in 1868, under Mr. Disraeli, and resumed his post on the return of his party to place and power last Spring. Mr. Ormsby has never held a seat in the House of Commons. The Hon. David Robert Plunket, Q.C., who succeeds Mr. H. Ormsby as Solicitor-General, is the fourth, but third surviving son of John Span, third Lord Plunket, by Charlotte, third daughter of the late Right Hon. Charles Kendall Bushe, and consequently a grandson of the first Lord Plunket, the great orator and lawyer, who held the Great Seal in Ireland from 1830 to 1834, and again from 1835 to 1841. He was born on the 3rd of December, 1833, and was educated at Trinity College, Dublin, where he took his Bachelor's degree in 1859. He was called to the Irish Bar in 1862, and in 1868 was appointed "Law Adviser to the Castle at Dublin," a post which is often a stepping-stone to more important legal promotion. He was nominated "one of her Majesty's Counsel in Ireland learned in the Law" in 1868. He has represented the University of Dublin in the Conservative interest since 1870, when he succeeded to the vacancy caused by the retirement of Mr. Anthony Lefroy.

THE NATIONAL BANK *v.* M'KENNA AND OTHERS.

The Court of Appeal in Chancery, London, gave judgment on the 14th in the suit brought by Mr. Parker, public officer of the National Bank, against Sir Joseph M'Kenna and Messrs. Harvey Lewis, Vanderbyl, and Henshaw, three late directors of the bank. The object of the suit was, it will be remembered, to compel the defendants to account for and pay over to the National Bank the profits which they had, in alleged misuse of their powers as directors, received by means of the issue of a large number of new shares in 1864, and subsequent dealings therewith. It was alleged that the defendants, in fraudulent disregard of their duties to the bank, had realized large profits, which they ought not to have received, and which they ought now to refund. The defendants insisted that all that had been done by them had been within the scope of the authority conferred upon them as directors by the constitution of the company. Vice-Chancellor Bacon had declared that the defendants were trustees for the bank of all moneys which they had received from the sale or disposition of the shares in question, and ordered them to pay all the costs of the suit up to the date of hearing. From this decision they appealed. Their lordships said that the defendants, as agents for the bank, must account to their principals for all profits made by them in the course of their agency, but they held that there was no ground for the charges of fraud and conspiracy brought against the defendants, and the plaintiffs must pay the costs of so much of the suit as had been occasioned by those charges.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Tuesday and Wednesday, the 12th and 13th days of January, 1875, *at Eleven o'clock.*

N.B.—All Papers to be lodged on or before *21st December, 1874.*

The FINAL EXAMINATION of Candidates seeking admission as Attorneys, will be held at the same place, on Thursday and Friday, the 14th and 15th days of January, 1875, *at the same hour.*

By order of the Council,
JOHN H. GODDARD, *Secretary.*
Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Friday, the 22nd of January, 1875, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

EASTER TERM, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Hilary Term.*

By order,
JOHN H. GODDARD, *Secretary.*
Solicitors' Hall, Four Courts, Dublin.

Digitized by Google

CORRESPONDENCE.

We throw open the columns of this Journal most willingly for the discussion of subjects of interest to the Profession; but it must be understood that we do not necessarily agree with all the opinions expressed by our correspondents.

Letters and communications intended for publication and addressed to The Editor, *53, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

NOTICE TO QUIT UNDER THE LAND ACT, 1870.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—As many landlords and their agents have adopted the simple form of Notice to Quit determining the tenancy on the last gale day of the calendar year, regardless of the commencement of the year of the tenancy, I do not think you will consider any excuse necessary for drawing your attention more closely to the subject, and pointing out what I humbly conceive to have been a misconception of the Land Act, and the effect of the two cases referred to in the leading article of your issue of last Saturday.

In the first place, I consider the policy of the 58th section of the Land Act to have been intended for the prevention, in future, of the disturbance of any tenant in March or May, when his crops would be in the ground, or when it would be too late for an in-coming tenant to till or sow. The pernicious effects of such unreasonable disturbance in past times called loudly for a remedy, as lands were frequently left untilled for an entire year in consequence, and either grew weeds or were left in fallow as a common for the cattle of the neighbourhood. Besides this, the litigation attendant on the right to emblements, and the precarious occupation conferred on the tenant to enable him to take the "waygoing crop," were productive of so much ill will and evil consequences, that it became necessary to sweep them all away, and, accordingly, this section provides that "no Notice to Quit should take effect until after the expiration of not less than six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year." This provision seems simple, clear, and direct; but the writer of your leading article in the first of his propositions says:—"As this section does not *abridge* but *enlarges* the common law right of the subject, that, therefore, whenever a tenancy commences in March or on a gale day that is *not* the last gale day of the calendar year, then, in the absence of express agreement to the contrary, the tenant is entitled to *twelve* calendar months' Notice to Quit;" in other words, to a Notice to Quit *not* ending on the last gale day of the calendar year, in violation of the 58th section of the Act. This seems to me a startling proposition. If the common law right is to be preserved, notwithstanding the express substitute provided by the 58th section, then the only way to harmonize it with the statute law would be to hold that a Notice to Quit served in the case of a March or a May tenancy should be for a year and a half instead of a year, as a six months' notice determining the tenancy in September would, according to his reasoning, be bad, it would not be the last gale day of the tenancy, and for the converse reason the next ensuing gale day would be bad, as it would not be the last gale day of the calendar year; therefore, in order to let both elapse, you must go on to the third gale day, which will be the last gale day of the calendar year next subsequent to the last gale day of the year of the tenancy. But even then a specious argument might be raised, that as the third gale day does not coincide with the last gale day of the tenancy, the landlord should have waited for another gale day, and the force of "send the fool farther" might thus be prolonged indefinitely. But on examination of the authorities it will be seen that with the exception of an obiter dictum of Fitzgerald, B., in *Ferguson* v. *Daly*, there is no foundation for the writer's first proposition

The uncertainty of the Notice to Quit was the sole *ratio decidendi* of that case, and it did not touch the question of which was the right day or which the wrong. *Lord Ashtown* v. *Larke*, in the Common Pleas, decided that as the alternative day was the last gale day of the calendar year, and as the landlord had waited for its expiration, he was entitled to recover. This case is the converse of that put by your contributor, and it is in compliance with the 58th section, which his case would not be. I, therefore, cannot concur in the reasoning advanced by the learned writer of that article. I conceive the 58th section a remedial enactment, to be construed literally, and not an implied enlargement of the common law right, for I can find nothing in it, even impliedly, preserving the common law right, much less enlarging it, and I believe it would lose much of its beneficial efficacy if such a construction were put upon it.

Your obedient servant,

A Constant Reader.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—Allow me to draw your attention to the fact that your opinion as to Notice to Quit, in the simple form, is directly opposed to that given in De Moleyn's, page 63 (last edition).

Your opinion is that the Land Act makes no change in the previous law, and that (when no mention is made as to when it shall terminate), a tenancy, which commenced at March, will terminate at March.

Mr. De Moleyns says that it will terminate at September.

The reason you give for your opinion is that the intention of the Act is to benefit the tenant, and that he is benefited by being allowed to continue his tenancy till March. I come to an opposite conclusion from the same premises. I think that an agricultural or pastoral tenant would consider that, if his tenancy is to terminate at all, he would be benefited more by its ending at September than at the following March, because the winter half year is unremunerative.

Your obedient servant,

A Land Agent.

15th Dec., 1874.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—The moot point discussed in the last issue of your useful Journal appears to me to bear the solution offered. With the views expressed I venture to concur. I venture to think that the language of the section is best thus interpreted. No Notice to Quit can take effect (*i.e.*, terminate the tenancy) until a period of six calendar months shall have expired, *but not even then* (in the absence of express agreement), *unless the notice has been served six calendar months before the last gale day of the calendar year. But the requirements as to* SERVICE *will not affect your old rights as tenant.* The Legislature says:—Your notice to quit must (when you have made no express agreement), for the sake of uniformity, in all cases be six months before the last gale day of the calendar year. This interpretation is powerfully fortified by the argument based on the tenant's common law right and the general scope of the statute. The words of the *dictum* of Fitzgerald, B., in *Ferguson* v. *Daly*, are:—"Two constructions of the section were suggested on the argument of this case. On the one hand it was said that it enables the landlord to determine the tenancy by a notice served six months before the last gale day of the calendar year, without reference to the real commencement of the tenancy, which, if the tenancy did not commence on that gale day might, and in the present case would, abridge the Common Law right of the tenant to notice. On the other hand it was said that the tenancy is still only determinable by notice for half a year expiring at the end of the tenancy, but not even then unless the notice has been served six months before the last gale day of the calendar year, which would, in effect, give the tenant twelve months' notice, unless his tenancy commenced on such last gale day. *There would seem to be great difficulty in adopting the former of these constructions.*" I agree, Sir, for my part, with the view expressed in your columns.

Yours faithfully,

Muops.

Digitized by Google

ATTORNEYS.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—It is really painful, and very unfortunate, that one cannot go into any of the Courts without hearing, perhaps, the greatest "*bladder-um-skight*," or the silliest junior pronouncing, with an insulting twang, the name by which members of our profession are known, and, in most cases, it has nothing to do with the result, and is the foundation of no argument. Members who have been many years in the profession are so hardened and accustomed to it as to take no notice of the insult. However, I am sure the junior members of the profession have sufficient spirit to mark the cowardly and ungrateful speaker, and take care that they will never give him the opportunity of insulting their profession again; and I am sure it would be a great check on those kind of people if the Incorporated Law Society's attention was called to the matter. My experience of the matter proves that it is those who patronise the Solicitors' Benevolent Association, &c., are the first to insult.

> . . . If you know
> That I do fawn on men, and *hug* them hard,
> And after scandal them, . . .
> Then hold me dangerous.

I am, Sir,
Your obedient servant,
An Afflicted Attorney.

LEGAL EDUCATION.

TO THE EDITOR OF THE IRISH LAW TIMES.

Sir,—I have passed with success through several examinations, taken classical honours in Trinity College, and the gold medal and £10 of our Incorporated Law Society, and I am under age. Therefore, I may be allowed to say something about education in general, and the Law Society's examinations for apprentices in particular. I took a high place at the "preliminary," and subsequently the gold medal without tutorial assistance or any "grinding," in which I have little belief. and I think the Society's examinations easy for students in general, and not too hard for candidates of the minimum age—sixteen. They are not so hard as the entrance examination in T.C.D., for there is no Greek, no Latin Composition, and no Algebra, and there are, I believe, no pieces set on paper from the Latin course. At all events, I am sure of this, that a youth aged from sixteen to twenty who has passed the College entrance, will pass the other. How then shall we account for the fact that while few candidates are "spun" in the College entrance, many are "spun" in the Apprentices' Preliminary Examinations? I think the fact is, that persons of inferior preparation go to the Solicitors' profession—persons who have little education and less talent, and about seventy per cent. of whom will never be in any way distinguished. The cleverer and more ambitious youth go to the Bar, or the Indian Civil Service, or Medicine, or Mercantile life. Solicitors in general, outside their profession, are men of small intellectual calibre. In fact, I suspect, that as rudimentary education is more diffused, higher education is not extended in the same proportion, and persons are being reduced to an intellectual level of mediocrity. Now, the Preliminary Examination is not too hard for a youth of sixteen, who has been really educated, or who has been temporarily "crammed." The Latin books are the usual ones read in schools, Cæsar and Sallust are absurdly easy, Virgil is far more difficult—to me, indeed, one of the most difficult of Latin authors. The parsing and grammatical questions asked are not very searching, yet Sir Richard Orpen said that many of the candidates show "an utter ignorance of the principles of the Latin language," and attributes this to use of translations—a ruinous plan—or trusting in "grinders"—a pernicious class. Most schoolboys like English History, and a youth of sixteen could easily compass that and the Geography. Book-keeping is simple, and with a good teacher may usually be mastered in a short time. Arithmetic is the next important subject, but the sums set are not very formidable. As for Composition, a writer, like a poet, is born, not made. I have read many amusing "essays"—attempts they were indeed, and very weak ones. Anyone ought to be able to write correctly and well from dictation, and everyone ought to spell correctly. If then fifty per cent. of the candidates are rejected, the inference is that they are the intellectual riff-raff of our youth. The English Composition is feared by many; the Examiners must be often amused at the ideas and phrases which come officially before them. The fact is, correct spelling, decent English (which so few of our press writers and novelists really give us), and a legible hand, go for much in the Society's Examinations, and justly so. The two former show the foundation on which a knowledge of the other subjects is to be built; the latter is a good point, for everyone ought to write *legibly* (I do not ask for flourishes, or scriveners' style, or commercial style, or literary style, or Civil Service style); and as the idea that geniuses always write illegibly is now partly dissipated, I think the Examiners are right to allow credit for writing. True, it is mechanical; editors (no disrespect to you, Sir) and many clever men often write vilely; scriveners, who know nothing, beautifully. I am in favour of making the entrance to all professions difficult—that to the legal profession more difficult than at present—and of encouraging intellectual culture (which will never detract from professional ability) by all possible means. Above all, I am for nullifying the *cram system*, which gets men through College, into the legal professions, into the Civil Service, frequently even into the Indian Civil Service. This *system* is utterly destructive of any mental power; it is pernicious in the extreme; it is pouring knowledge of all sorts in at one ear, while it runs out immediately after the examination from the other ear. Civil Service Examiners have seen the mischief of it, but can only faintly mitigate it, for many a "crammed" man enters the Service, to the exclusion of a man of far higher real abilities, who is not stuffed full of facts and figures. I do not suppose five per cent. of the men who go up for the Apprentices' Preliminary work by themselves, yet I venture to say that those who do derive more real profit from such work, and retain the general knowledge far longer than persons who work under masters. Of course masters are requisite in the beginning of all things, but a time comes when painters, poets, musicians, statesmen, students—all such persons emerge into intellectual or artistic light, and arrive at mental manhood, when they in turn are fitted to become masters of others. Turning now to your remarks in a recent issue, I think the College entrance far harder than the Apprentices' Preliminary, and I agree with you that the standard of the latter is *not* too high for youths of sixteen educated at a good school. As to the person who said a candidate had been rejected because, in his essay, he "gave expression to sentiments which were not in accord with those of the Examining Council, or some of them," I simply do not believe it. I believe if a candidate wrote an essay, in the style and language of Macaulay, in support or praise of Atheism, persecution, or communism, he would deserve, and would get, the highest possible marks in that subject, and I should be *very* reluctant to think otherwise. The examiners are there to judge style and diction, not morality, and I am sure that personal, political, or religious bias, is as absent from examiners acting officially, as anyone can desire or consider possible. They are there as critics, and the duty of the critic is to weigh every point and feature, to distrust the verdict of a single mood, and to be perfectly dead to all extraneous or personal influences. I have been examined by many examiners, and have never doubted their perfect sincerity and impartiality. As to marks, and a "minimum pass standard," I do not care for either. Let each man be judged *all round*, and let him not be "spun" because he has failed greatly in any one subject, If a rigid line must be drawn, I think fifty per cent. would be a fair minimum, but I would always sooner leave examiners to judge me on general merits. Whether the present style of examination for apprentices and for their gold medal is really the best, is quite another question, about which I may write to you again.

I am, Sir,
Your obedient servant,
An Apprentice.

Dublin, 17*th December*, 1874.

Digitized by Google

APPOINTMENT.

Deputy-Lieutenant.—The Lord Lieutenant has been pleased to approve of the appointment of Plunkett Kenney, Esq., as Deputy-Lieutenant for the county of Monaghan, *vice* E. W. Lucas, Esq., deceased.

COURT PAPERS.

LANDED ESTATES COURT.

SALES

Dec. 4th.—Before the Hon. Judge Flanagan.

County Wicklow.—Lydia Pim, owner and petitioner. The lands of Ballymurrin, Lower, containing 194a. 1r. 25p., held under fee-farm grant, situate in the barony of Arklow, and producing an estimated annual profit rent of £257 1s. 10d. Sold to R. Ellis for £5,650. Solicitors, *Molloy and Watson.*

County Dublin.—James A. Gandon, owner; J. Atkinson and another, petitioners.

Lot 1.—Part of the Pettycannon lands in Lucan. Sale adjourned.

Lot. 2.—Part of the lands of Castleknock. No biddings.

Lot. 3.—House and premises No. 20, Thomas-street, Dublin, held in fee; profit rent £25. Sold to W. H. Jackson for £380.

Lot 4.—The house and premises, No. 31, Castle-street, held under lease for 3 lives renewable for ever, and producing an annual profit rent of £12 3s. 1d. Sale adjourned. Solicitor, *W. R. Meredith.*

County Mayo.—H. V. Sampey, owner and petitioner. Part of the lands of Carrowmore, containing 128a. 0r. 12p., held in fee, situate in the barony of Clanmorris, and producing an annual profit rent of £95 19s. 7d. No biddings. Solicitors, *V. B. Dillon and Co.*

County Wexford.—Trustees W. W. Campbell and another, owners and petitioners.

Lot 1.—Previously sold.

Lot 2.—The lands of Tomnahealy, Clondarragh, and Barroge, containing 326a. 0r. 18p., held under fee-farm grant, and producing an annual profit rent of £313 8s. 9d. Sold to Owen Fogarty for £6,300. Solicitors, *Crookshank Brothers and Leech.*

C. Wilson and another, owners and petitioners.

Lot 1.—The lands of Sleedagh and others. Sale adjourned.

Lot 2.—Other part of the lands of Sleedagh and the lands of Cherriestown, containing 95a. 0r. 36p., held in perpetuity, situate in the barony of Bargy, and producing an annual profit rent of £107 19s. Sold to John W. Carrige for £2,200.

Lot 3.—Sale adjourned.

Lot 4.—Other part of the lands of Cherriestown and the lands of Sleedagh, containing 55a. 1r. 1p., held in perpetuity, situate in the barony of Bargy, and producing an annual profit rent of £60 5s. 10d. Sold to J. W. Carrige for £1,200.

Lot 5.—Part of the lands of Scar and the tolls and customs of the fairs of Scar, containing 85a. 1r. 22p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £81 1s. Sold to Mrs. Kavanagh, the tenant, for £2,110.

Lot 6.—Other part of the lands of Scar, containing 68a. 2r. 33p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £52 16s. 4d. Sold to J. W. Carrige for £1,020.

Lot 7.—Part of the lands of Rochestown, containing 98a. 1r. 16p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £94 17s. 2d. Sold to same purchaser for £1,800.

Lot 8.—Part of the lands of Kilmannan, containing 45a. 0r. 5p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £72 17s. 2d. Sold to Moses Rochford for £1,563.

Lot 9.—Part of the lands of Regan, containing 76a. 2r. 32p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £57 17s. 6d. Sold to J. W. Carrige for £1,310.

Lot 10.—Part of the lands of Ballylibernagh, containing 82a. 2r. 31p., held in fee, situate in the barony of Bargy, and producing an annual profit rent of £96 2s. 1d. Sold to same purchaser for £1,850.

County Kilkenny.

Lot 11.—The lands of Rossroe, containing 147a. 0r. 5p., held in fee, situate in the barony of Gowran, and producing an annual profit rent of £65 14s. 8d. Sold to same purchaser for £1,470. Solicitors, *Nunn and Jones.*

Sales, December 11th.

County Dublin.—M. Carroll and others, owners and petitioners.

Lot 1.—Houses and premises, 68 and 69, Upper George's-street, Kingstown, held under lease for 79 years, and producing an annual profit rent of £49 12s. 4d. Sold to John Chomley for £560.

Lot 2.—The house and premises, 70 and 71, Upper George's-street, Kingstown, held under lease for 72 years, and producing an annual profit rent of £54 5s. Sold to Michael O'Brien for £620. Solicitor, *A. L. Barlee.*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

MONDAY.

Before Chief Registrar or Chief Clerk, at 12 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Walton and Nolan	Prove debts and vouch	*Larkin & Co.*
James J. Spring	do	*D. & T. Fitzgerald*
John Gallivan	Reference under order of 4th Dec., 1874	*Dehnehy*
Hollyford Mining Company	Vouch account	*Larkin & Co.*
Thomas Sturgeon	Settle title, conditions of sale, &c.	*Lynch*
Gillman and Potter	Prove debts	*Harvey & Dealy*

TUESDAY.

Before the Court, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
Edward Ellis	1st composition sitting	*Hunter*
Catherine Holland	do	*Neilson*
Malachi Murphy	2nd composition sitting	*Hamilton & Craig*
William J. Scott	1st public sitting	*O'Dowda*
Henry Hamilton	do	*Benner*
Patrick Gartland	do	*Hamilton & Craig*
Malachi Murphy	Final examination	*Hamilton & Craig*
John D. Seale	do	*Hamilton & Craig*
Owen Lynch	do	*Hamilton & Craig*
Martin Kelly	do	*Hamilton & Craig*
Daniel Coffey	do	*Cullen*
Edward S. O'Beirne	do	*Findlater & Co.*
Francis Flannery	do	*Findlater & Co.*
Edmond O'Beirne	do	*Larkin & Co.*
Edward J. Quinan	do	*Tatlow*
George Hamill	do	*Molloy & Watson*
Mary Carnegie	do	*Beauchamp*
George Marshall	Motion	*Carey*
Hazelton and Sheppard	do	*M'Combe*
Mary Smith	do	*Leachman*
Same matter	do	*Cronhelm & Co.*
Patrick Nolan	do	*Larkin & Co.*
E. D. Maccand	Application for certificate	*Leachman*
Mary Williams	do	*Scallan*
Henry Page	Audit and dividend	*Molloy & Watson*
James M'Aleenan	do	*Molloy & Watson*
Thomas M'Connell	do	*Larkin & Co.*
James Armstrong	do	*Larkin & Co.*
John Nolan	do	*Larkin & Co.*
Charles M'Entee	do	*Campbell*
John J. M'Cosker	do	*Rosenthal*
Elder and Adams	do	*Neilson*

Digitized by Google

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Michael Dunne	Prove debts and vouch	*O'Dowda*
John Godfrey	Vouch account	*Lett*
William Foxall	Reference	*Oldham & Eaton*

WEDNESDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Thomas Delany	Costs	*Coppinger & Son*
James Delany	do	*Coppinger & Son*

ADJUDICATIONS IN BANKRUPTCY.

Daly, Keevan, Moate, Westmeath, grocer and draper. Sittings, *Tuesday, December* 29, and *Tuesday, January* 12. *White*, solr.

Kinahan, James, Park-street, Dundalk, Louth, timber merchant. Sittings, *Tuesday, January* 12, and *Tuesday, January* 26. *Larkin & Co.*, solrs.

Metcalf, William, trading as the Dundalk Workhouse Company, William-street, Dublin, commission agent. Sittings, *Tuesday, January* 5, and *Friday, January* 22. *Oldham and Eaton*, solrs.

Miller, Mathew, Coolnamuck, county Kilkenny, farmer. Sittings, *Tuesday, January* 12, and *Friday, January* 29. *Lett*, solr.

Milligan, David, trading as Milligan and Co., Newry, Down, hardware merchant. Sittings, *Tuesday, January* 5, and *Friday, January* 22. *Stewart*, solr.

M'Quitty, James, Hill-street, Belfast, wine and spirit merchant. Sittings, *Tuesday, January* 5, and *Friday, January* 22. *Oldham and Eaton*, solrs.

Palmer, Samuel, 10, Capel-street, Dublin, boot and shoe dealer. Sittings, *Tuesday, January* 12, and *Tuesday, January* 26. *Jones*, solr.

Pollard, Patrick, Durrow, Queen's County, shopkeeper. Sittings, *Tuesday, January* 12, and *Tuesday, January*, 26. *Mathew*, solr.

Twomey, Timothy, Clashroe, county Cork, farmer. Sittings, *Tuesday, January* 12, and *Tuesday, January* 26. *O'Reardon and Barry*, solrs.

DIVIDENDS IN BANKRUPTCY.

Boyle, Richard, Ardcannaght, Tralee, Kerry, miller. 2nd and final dividend 11¾d. in the £., making with 1st dividend 5s. 11¾d. in the £. L. H. Deering, official assignee. *Casey & Clay*, solrs.

Cannon, William, Aungier-street, Dublin, dairyman. 1st dividend 3$\frac{5}{16}$d. in the £. L. H. Deering, official assignee. *Goff*, solr.

De Savigney, Louis, and Henry Ashe, trading as L. De Savigney, Ashe, and Co., of Abbey-street, Dublin, tea, wine, and spirit merchants. 1st dividend, 2s. 9d. in the £. L. H. Deering, official assignee. *Robinson*, solr.

Donovan, George Robinson, Youghal, Cork, ironmonger. 1st dividend 1s. 4d. in the £. L. H. Deering, official assignee. *Perry & Co.*, solrs.

Ferguson, George and Robert, trading as G. and R. Ferguson, Londonderry, builders and contractors. 1st dividend 8½d. in the £.

Ferguson, Robert, separate estate. 16s 7½d. in the £.

Ferguson, George, separate estate. 20s. in the £

C. H. James, official assignee. *Larkin & Co.*, solrs.

Fortune, James, Churchtown, Wexford, grocer 1st dividend 4s. 6½d. in the £. L. H. Deering, official assignee. *Thompson*, solr.

Gleeson, John, Killarney, Kerry, baker. 1st dividend 15s. in the £. L. H. Deering, official assignee. *Casey & Clay*, solrs.

Marsden, John, Annolee House, Cootehill, Cavan, farmer. 1st dividend 4d. in the £. C. H. James, official assignee. *Tatlow*, solr.

M'Lenegan, Bernard, Killygarron, Antrim, farmer. 1st dividend 16s. 7¾d. in the £. C. H. James, official assignee. *Mathews*, solr.

Moylan, Patrick, Gort, Galway, grocer. 2nd and final dividend 7d., making, with 1st dividend, 1s. 4d. in the £. L. H. Deering, official assignee. *Perry and Co.*, solrs.

Nash, Joseph Gadsden, and Arthur Power Harty, trading as Nash, Harty, and Co., Albert-quay, Cork. 4th and final dividend 1$\frac{5}{16}$d. in the £, making, with former dividends, 7s. 4$\frac{5}{16}$d. in the £.

Separate Estate of J. G. Nash. 2nd and final dividend 2¾d. in the £, making, with 1st dividend, 8s. 1½d. and ⅜th of 1d. in the £.

L. H. Deering, official assignee. *Larkin and Co.*, solrs.

Mory, William S., 74, Old George's-street, Cork, widow, coach builder. 1st dividend 11s. 3d. in the £. L. H. Deering, official assignee. *Oldham and Eaton*, solrs.

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	DECEMBER Fri. 11	Sat. 12	Mon. 14	Tues. 15	Wed. 16	Thur 17
	Government.						
-	3 p c Consols	91⅝¾	—	91⅝¾	91⅝¾	91⅝¾	91¾
—	New 3 p c Stock ..	90⅝	90⅝¾	90¾	90⅝	90⅝¾	90¾
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	--	—	108	—	108
—	4 p c Oct. '88 } Bk. of Irel.	102⅝	—	—	102⅞	—	—
	Banks.						
100	Bank of Ireland ..	—	312	312	312½	—	312½
25	*Hibernian Banking Co.* ..	—	59½	59½	58 xd	58⅝	59¼
15	*London Joint Stock* ..	—	—	53	—	—	—
20	*London and Westminster* ..	77½	—	77⅝	—	—	77½
3½	*Munster Bank (Limited)*	9⅜½	9⅜⅝	—	—	9½	—
30	*National Bank*	69½¾	69⅝½¾	—	67½	68	68
15	*National of Liverp'l (Ltd)*	—	16¼½	—	16⅝	16¼½	16⅝
25	*Provincial Bank* ..	90⅜⅝	—	90	90½	—	—
10	Do. New ..	—	—	36	35⅞	—	—
10	*Royal Bank*	30⅝½	—	—	30⅝½	30½	—
	Steam.						
50	British & Irish	—	—	51½	—	—	—
100	City of Dublin	—	107½	—	—	—	108
50	Peninsular and Oriental .	—	—	—	x d	-	—
	Mines.						
3½	*Berehaven (Limited)*	—	—	-/6	—	—	-/4
1	Killaloe Slate Co. (lit'd) .	—	—	—	—	—	17/6
2½	Wicklow Copper	—	—	—	—	3	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	10⅞	—	—	10⅞	10⅞	10⅞
10	Dublin Tramways ..	6¼½	—	—	—	—	—
100	Grand Canal ..	54⅞	—	55	55	55	55
25	Ir. C. S. & Gl Building Co.	—	31	—	—	—	—
	Railways.						
50	Belfast and Northern Cos.	—	—	69⅝⅞	—	69⅝	—
100	Dublin and Belfast Junct.	94½⅝	—	94½	94½	—	—
100	Dublin and Drogheda	117	—	—	—	—	118
100	Dublin, W'klow, & W'ford	75½	—	—	75⅞	75⅞	—
100	Gt. Southern and Western	—	108⅞	108½⅝	—	107½	108
100	Midland Gt. Western .	—	—	82½	—	83½	83½⅝
50	Waterford and Limerick ..	—	—	—	30⅝	—	—
	Railway Preference.						
100	Gt. South'n & West'n 4 p c	99⅝	—	—	—	—	99½
10	Irish North Western A 5 p c	—	—	—	—	—	4½
100	Londonderry and Enniskillen B, from Oct '66 5 p c	—	103	—	—	—	—
100	Mid. Great Western, 5 p c	—	--	—	110	—	—
50	Watfd. & Limerick, 5 p c rd	--	50⅝½	—	—	—	—
100	Do., 4½ p c ..	—	99½	—	—	—	—
50	Do., new red, 1860–72, 5 p c	—	50½	—	—	—	—
	Railway Debentures.						
—	Belfast & Nth'n Cos, 4 p c	97½	—	—	--	—	—
—	Dublin & Meath 4 p c ..	80	—	—	—	—	80
—	D., W., & W., 4½ p c ..	—	—	—	100½	100½	—
--	Gt. North'n & West'n 4½ p c	--	—	100½	100½	—	100
—	Gt. South'n & West'n, 4 p c	—	—	-	—	—	100
—	Irish Nth Westn 1st C 5 p c	—	—	—	101	—	100½
--	Midland Gt. West'n, 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	103½	--
—	Waterf'd & Limerick 4½ p c	—	—	—	—	--	—
—	Do., 4½ p c	--	--	—	—	—	102

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—6 per cent., 1st December, 1874
Of Deposit—3½ per cent., 1st December, 1874.

Name Day—December 29th, 1874.
Account Days—December 30th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

THE LAW OF HUSBAND AND WIFE.—The Supreme Court of Illinois, in the case of *Martin* v. *Robson* (13 Am. Law Register 547)—in which it was held that the necessary operation of the statutes of Illinois giving a married woman the sole control of her property and earnings, free from any control or interference of the husband, was to discharge the latter from any liability for the wife's torts committed during coverture out of his presence and without his participation—conclude their judgment with the following description of the position of husband and wife under the above-mentioned statutes:—"They are not one as heretofore. They are one in name, and are bound by solemn contract, sanctioned by both divine and human law, to mutual respect;

Digitized by Google

should be of the same household, and one in love and affection. But a line has been drawn between them, distinct and ineffaceable, except by legislative power. His legal supremacy is gone and the sceptre has departed from him. She, on the contrary, can have her separate estate; can contract with reference to it; can sue and be sued at law upon the contracts thus made; can sue in her own name for injury to her person and slander of her character; and can enjoy the fruits of her time and labour, free from the control or interference of her husband. The chains of the past have been broken by the progression of the present, and she may now enter upon the stern conflicts of life untrammelled. She no longer clings to and depends upon man, but has the legal right and aspires to battle with him in the contests of the forum; to outvie him in the healing art; to climb with him the steeps of fame; and to share with him in every occupation. Her brain, and hands, and tongue are her own, and she should alone be responsible for slanders uttered by herself."

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

GERNON and BARRY—December 15, in the R. C. Cathedral, Marlborough-street, William Gernon, of 53 Lansdowne-road, Esq., A.M., barrister at-law, and Secretary to the Irish Charity Commission, to Anne Mary Josephine, relict of David Fitzjames Barry, of Brooklodge House, in the county of Cork, Esq., R.C.C.A., and youngest daughter of the late Timothy O'Donovan, of O'Donovan's Cove, in same county, Esq., J.P.

DEATHS.

DARBEY—December 8, at her residence, Brighton Lodge, Balbriggan, Elizabeth, relict of the late Patrick Darbey, Esq., M.D., Drogheda, and daughter of the late Ralph Dopping, Esq., barrister-at-law, Erne Head, county Longford.

INSURANCES:

THE GUARANTEE SOCIETY OF LONDON
(Empowered by Special Act of Parliament—Session 1842),
19, BIRCHIN-LANE, LONDON.

This Society was the first Public Company established in Great Britain to obviate the inconvenience and defects of Suretyship by Private Bondsmen; and its security is adopted by Her Majesty's Government, Banks of England and Ireland, Corporations of London and Dublin, and nearly all the principal Bankers, Railway Companies, and Commercial Firms in the United Kingdom.

Agents for Ireland:
WILLIAM G. DU BEDAT & SONS,
Government Stock and Share Brokers,
Fire and Life Offices,
1 and 2, FOSTER-PLACE, DUBLIN. 574

MISCELLANEOUS:

JEREMIAH D'ARCY,
SCRIVENER, LAW STATIONER, AND PRINTER.
OFFICE -27, BACHELORS'-WALK, DUBLIN.

Registry and Judgment Searches carefully made. *Country Orders promptly attended to.* 309

T. KILMARTIN and SON,
SCRIVENERS AND LAW STATIONERS,
ESTABLISHED 1867,
21, KING-STREET, BELFAST.

A WELL RECOGNISED AND FREQUENT SOURCE OF
DISEASES of the MOUTH, TONGUE, and GUMS,
Is contact with the Cement of Envelopes over the preparation of which p oper cleanly supervision is rarely exercised. We pay strict attention to this department: but to obviate all danger—at the same time combining safety to the contents—Mr. HELY, of this firm, invented and perfected

THE EUREKA ENVELOPE,
For which Her Majesty granted Letters Patent, No. 524, under the Great Seal. The adhesive matter being placed on the under flap, the great advantage is obtained that the Mouth and Tongue are applied to

FRESH CLEAN PAPER,
Not more expensive than ordinary Envelopes of similar qualit.es.

☞ *Order from your Stationers. We Supply the Trade only.*

HELY, HARRIS, & CO.,
ALEXANDRA ENVELOPE WORKS,
9 to 11, DENMARK-STREET, DUBLIN.
Upwards of three hundred hands employed in the production of Envelopes. 371

PUBLIC NOTICES:

THE SOCIETY OF THE ATTORNEYS
AND SOLICITORS OF IRELAND.
(*Incorporated by Royal Charter*).

NOTICE.

ATTORNEYS' AND SOLICITORS' ACT (IRELAND), 1866, *29th and 30th Vic.*, c. 84.

1.—The Members of this Profession are requested to take notice, that all Certificates to practise, issued to them under the above Act, for the year 1874, will continue in force *until the Fifth day of January*, 1875, *inclusive*, and no longer. (*42nd sec.*)

2.—Forms of the Declaration to be filled up (in duplicate), and to be signed by each Attorney or Solicitor, or by his Partner, or in case such Attorney or Solicitor shall reside more than twenty miles from Dublin, then by his Dublin Agent, being an Attorney or Solicitor (*meaning a practising Solicitor*), on his behalf, are to be had at the Office of the Registrar of Attorneys and Solicitors (Secretary's Office), Solicitors' Buildings, Four Courts. (*34th sec, 31st sec. The Chancery (Ireland) Act, 1867, 30 & 31 Vic., cap. 44.*)

3.—The sum of Five Shillings is to be paid for every Certificate. (*29th & 30th Vic., cap. 84, sec. 34.*)

4.—Forms of Declarations will be issued on and after the 2nd of January, 1875, from Eleven o'clock a.m. to Three o'clock p.m., each day, and upon their being returned correctly filled and signed as hereinbefore mentioned, Certificates will be issued, between same hours, *to parties entitled to receive same*, to be taken by them to the Stamp Office to be stamped.

5.—Every Certificate stamped on and after 6th February, 1875, must be produced to the Registrar within a month after payment of the duty, to be entered by him, until which payment of duty and subsequent entry no Attorney or Solicitor is duly qualified to practise. (*37th, 41st, and 46th sections.*)

6.—Certificates must be entered as heretofore in the various Courts.

By Order,
JOHN H. GODDARD, Secretary.
Solicitors' Buildings, Four Courts, Dublin,
December, 1874.

N.B.—As a number of Gentlemen have *not* complied with Memorandum No. 5, as above, for the year 1874, and as the Registrar's Certificate does *not* operate as a License to practise until duly stamped, as required by Law, such Parties will be required to prove payment of Stamp Duty on their Certificates for 1874, before Certificates for 1875 can be issued to them. 621

JOHN O'MALLEY,
4, SAINT ANDREW-STREET, DUBLIN,
LAW AND GENERAL STATIONER,
SCRIVENER, PRINTER, LITHOGRAPHER, ENGRAVER, AND ACCOUNT-BOOK MANUFACTURER.
Licensed to Sell Law and General Stamps. 310

MONEY:

MORTGAGES ON ESTATES,
LIFE INTERESTS, AND REVERSIONS.

Messrs. SALTER & CO., have large Funds available for Loans upon the above Securities, to which they desire to direct the attention of Landed Proprietors, Solicitors, and others requiring Money on Mortgage.

They also invite applications for Securities from Capitalists, Trustees, and others, desirous of Investing Money either in Large or Small Amounts.

41, Lower Sackville-street, Dublin; and
11, Pancras-lane, London, E.C. 520

BILLS of £20 to £500, Discounted with despatch, and Cash Advanced on Farmers' Leases, Goods in Bond, Reversions, or any *bond fide* Security, on moderate and strictly confidential terms, and MORTGAGES to any amount negotiated on best terms consistent with security, by

MR. FITZSIMONS,
474 18, Fleet-street, Dublin.

TO SOLICITORS and OTHERS—Mr. MONTAGU BRAHAM is prepared to make Temporary Advances on Personal or other Securities pending negociations for Loans, Sales in Landed Estates' Court, Bills of Costs, &c. Applications strictly confidential.

Mr. MONTAGU BRAHAM,
611 37, South Frederick-street, Dublin.

Digitized by Google

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—

WM. MORTIMER, M.A., LL.D.,
26, York-street, Dublin.

600¼

MR. JAMES CURRAN, Ex-Scholar, Trinity College, Dublin: First Classical Sizar and Honorman; First University Prizeman in Civil Law, Second in Modern History, and Fourth in English Literature;

36, HARDWICKE-STREET,

Prepares Gentlemen for the Entrance and Term Examinations in the Universities, Civil Law Examinations, Royal College of Physicians and Surgeons, Arts Examination of Apothecaries' Hall, Preliminary Examination of Attorneys' Apprentices, &c. 617

CRAIG, GARDNER, & CO., ACCOUNTANTS, TRINITY CHAMBERS, 40 AND 41, DAME-STREET, DUBLIN. 308

LEGAL POSTINGS:

LANDED ESTATES' COURT, IRELAND.

FINAL NOTICE OF DECLARATION OF TITLE.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of Gordon Evelyn Tombe, (Declaration of Title) Owner and Petitioner.

WHEREAS the said Gordon Evelyn Tombe has made application to the Landed Estates' Court, Ireland, for a Declaration that he has a good and sufficient Title to Part of the Lands of Ballyronan and Hall's Farm, containing 100a 2r 7p, statute measure, and Part of the Lands of Newtownmountkennedy Demesne, containing 2a, like measure, situate in the barony of Newcastle, manor of Mountkennedy, and county of Wicklow, held under lease dated 12th day of December, 1780, for the residue of a term of 999 years.

Now, this is to give Notice that the Court has investigated the Title to the said lands, and has decided that the said Gordon Evelyn Tombe has a good and sufficient Title for the residue of said term to the said lands and premises, subject only to the rent, leases, tenancies, and easements set forth in the Rental, and to the Incumbrances set forth in the Schedule of Incumbrances, which Rental and Schedule of Incumbrances are now lodged in my office, and may be inspected by any person. And further take notice, that a draft Declaration of such Title has been settled, and may be inspected in my office; and that on the expiration of one month from the publication hereof, the Court will proceed to sign such Declaration, subject only as aforesaid. And all persons objecting to such Declaration, or having any Tenancy, Claim, or Incumbrance, not admitted in said Rental or Schedule, are hereby required, within the said period of one month, to show cause as they may be advised against the signing thereof; and no appeal against such Declaration of Title, on behalf of any person, will lie after the signature and registration of same.

Dated this 14th day of December, 1874.

JAMES M'DONNELL, Examiner.

JOHN TREVOR FOX, Solicitor having carriage of Proceedings, 50 Lower Sackville-street. 630

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

HUGH JOHN HALL, of Hilltown, in the County of Down, Spirit Dealer and Shopkeeper, a Bankrupt.

A Public Sitting will be held before the Court, at the Four Courts, Dublin, on TUESDAY, the 12th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, to Audit the Assignee's Account and make a first dividend in this matter.

Dated this 14th day of December, 1874.

THOMAS FARRELL, Chief Clerk, Registrar.

CHARLES HENRY JAMES, Official Assignee, 30 Upper Ormond-quay, Dublin.

WILLIAM E. ARMSTRONG and CRONHELM, SON, and TOBIAS, Solicitors for the Assignees, 9 Eustace-street, Dublin. 633

IN THE COURT OF BANKRUPTCY, IRELAND.

PATRICK POLLARD, of Durrow, in the Queen's County, Shopkeeper, was on the 8th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 12th day of JANUARY, 1875, and on TUESDAY, the 26th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

JEHU MATHEWS, Solicitor, 9 Lower Dominick-street, Dublin. 634

IN THE COURT OF BANKRUPTCY, IRELAND.

WILLIAM METCALFE, of William-street, in the City of Dublin, Commission Agent, trading as The Dundalk Warehouse Company, was on the 8th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 5th day of JANUARY, 1875, and on FRIDAY, the 22nd day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Deputy Registrar.

OLDHAM & EATON, Solicitors, 42 Fleet-street, Dublin. 635

IN THE COURT OF BANKRUPTCY, IRELAND.

JAMES M'QUITTY, of Hill-street, Belfast, in the County of Antrim, Wine and Spirit Merchant, was on the 8th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 5th day of JANUARY, 1875, and on FRIDAY, the 22nd day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to CHARLES HENRY JAMES, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

HUGH DOYLE, Registrar.

OLDHAM & EATON, Solicitors, 42 Fleet-street, Dublin. 636

IN THE COURT OF BANKRUPTCY, IRELAND.

In the Matter of

RICHARD SHACKLETON LEADBEATER, of Stradbally, in the Queen's County, Miller, a Bankrupt.

A Public Sitting will be held before the Chief Clerk, at the said Court, at the Four Courts, Dublin, on MONDAY, the 11th day of JANUARY, 1875, at the hour of Eleven o'clock forenoon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 7th day of December, 1874.

THOMAS FARRELL, Chief Clerk.

LUCIUS HENRY DEERING, Official Assignee, 33 Upper Ormond-quay, Dublin.

ALMA & HACKETT, Solicitors for the Assignees, 21 Bachelors'-walk, Dublin. 637

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, December* 19, 1874.

Digitized by Google

THE IRISH LAW TIMES
AND SOLICITORS' JOURNAL.

VOL. VIII. SATURDAY, DECEMBER 26, 1874. No. 413.

THE LAND ACT (1870).

TENANCIES FOR LESS THAN A YEAR CERTAIN.

NOTICES TO QUIT.

WE refer to this question as being intimately connected with that discussed in our two last numbers, viz., the form of Notices to Quit, as suggested by the cases of *Ferguson* v. *Daly*, and *Ashtown* v. *Larke*. In doing so we beg to direct the attention of our readers to the case of *Wright* v. *Tracey* in the Court of Common Pleas, reported in Ir. Rep. 7 C. L. 134. In that case the letting was for a *dairy accommodation* for one year certain, to commence on the 25th of March, 1871, and end on 25th March, 1872. The plaintiff gave the defendant notice in December, 1871, that he should be prepared to give up possession on the 25th of March, 1872, the end of his tenancy; the possession was demanded on the 25th of March and 1st of April, 1872, and having been refused, an ejectment was brought. The defendant at the trial contended he should have had Notice to Quit, under the 69th section, which provides, "where any tenancy at will or *less than a tenancy from year to year* is created by a landlord after the passing of this Act, the tenant under such tenancy shall *on quitting his holding* be entitled to Notice to Quit and compensation, *in the same manner in all respects* as if he had been a tenant from year to year, provided that this section shall not apply to any letting or contract for the letting of land, made and entered into *bonâ fide* for the temporary convenience or to meet a temporary necessity of either the landlord or the tenant."

The defendant (the tenant) insisted at the trial that the plaintiff should be non-suited, as a six months' Notice to Quit was not served on him pursuant to that section. This the learned Judge (Fitzgerald, J.) refused to do, and directed a verdict for plaintiff, reserving liberty to move to change it into a verdict for defendant. On the motion to make the conditional order absolute, Lawson and Morris, JJ., were of opinion that the tenancy was *less than a tenancy from year to year*, and, therefore, *primâ facie*, within the 69th section; but being for a term certain, and not for an uncertain period, the 69th section did not apply, and, therefore, the verdict should stand. Monahan, C.J., dissented from his brethren, and held that as it was a tenancy for a less term than from year to year, that the plain words of the 69th section, requiring a Notice to Quit, were obligatory, and could not be gotten rid of by holding that they were only applicable to uncertain interests. In this state of uncertainty of decision, the case was brought to the Exchequer Chamber, and is fully reported (*Wright* v. *Tracey*, 8 I. L. T. R., p. 142). The majority of the Judges there held that the decision of the Common Pleas should be upheld, but for a totally different reason to that assigned by the Court below—viz., that a tenancy for a year certain was *not* less than a tenancy from year to year, and, therefore, the 69th section did not apply. We remarked upon this very important decision in our issue of the same date, page 394, and in our leading article of that number congratulated the public and the Profession on having this very difficult question finally set at rest. But we regret to find that our anticipations are not likely to be fulfilled, and that the question has again cropped up in a most unforeseen manner, and one which is totally ungoverned by the decision of the Court of Exchequer Chamber, and also that of the Common Pleas. The case is that of *Brew* v. *Canole*, as yet undecided, but which stands for further argument in the Court of Exchequer. That was a case of ejectment for overholding, brought to recover lands in the county of Clare, held under an agreement in writing for *eight months certain*. The case was tried before Mr. Justice Lawson (who decided *Wright* v. *Tracey*), at the last Summer Assizes. Plaintiff having proved the above facts and others leading to the inference that the letting was for the temporary convenience of the tenant, so as to bring it within the province of the 69th section, and the tenant denying this, the question was left to the jury, *who disagreed*. The Judge then directed them to find for the plaintiff on the facts proven; the defendant objecting, and insisting on the necessity of a notice to quit in the absence of a finding against him on the question of temporary convenience, the question was reserved for the Court above.

Last term O'Brien, Q.C., with him M. O'Loughlin, obtained a conditional order to set aside the verdict for misdirection of the learned Judge. Heron, with him P. O'Brien, showed cause and argued that as it was manifestly a tenancy for less than a year certain, a Notice to Quit was essential under the 69th section.

The Court having some difficulty, especially in consequence of the decision of the Court of Common Pleas in *Wright* v. *Tracey*, that a Notice to Quit was not required in the cases of tenancies less than from year to year, where the term was for a certain period, directed the case to stand over for re-argument next Hilary Term.

We should have waited for the decision before directing the attention of our readers to the case but for the connexion between the question thus raised and that already discussed by us on Notices to Quit, and also the dilemma which holding a Notice to Quit as necessary in those cases will inevitably lead to. In *Wright* v. *Tracey* if a Notice to Quit were necessary it could not terminate on the last gale day of the calendar year if it was served for the last gale day of the tenancy, and if it was served for the last gale day of the calendar year, it would be for a gale day *after* the termination of the tenancy, as the tenancy was for a year certain, terminating on the 25th March. In *Brew* v. *Canole*, if a six months' notice to quit at the end of the tenancy be held to have been necessary, the tenant should have been served almost contemporaneously with his first entry into possession, and if it should be held that the notice should be served *on quitting his holding*, a like dilemma may result as in *Wright* v. *Tracey*. If by the agreement there are no gale days, the question arises, how is the 58th section to be applied at all. So much as regards the difficulties of applying the provisions prescribing Notices to Quit. Then as to compensation, we find as great difficulties in applying the provisions of the 3rd and 4th sections of the Act, which regulate the scale of disturbance by the number of years rental, and for improvements by those of *predecessors in title*, and other provisions inconsistent with a term *certain* and for a limited period. These difficulties would be lessened if it appeared in evidence that the letting was an ex-

Digitized by Google

pedient devised for the purpose of evading the provisions of the Land Act, and renewing the short terms from time to time, so as to preclude the possibility of its being construed a tenancy from year to year, and therefore within the provisions for compensation and Notice to Quit. This was the mischief for which the Act provides a remedy by the 69th section, but where this attempt at evasion does not manifestly appear, we think the remedy ought not to be applied. In *Wright* v. *Tracey* the letting was for dairy purposes, which seems to us to come within the 3rd exception of the 16th section for compensation, viz., "any letting for the purposes of agistment or for temporary depasturage;" we, therefore, think when the letting bears intrinsic evidence of being for a temporary purpose of convenience the Court, in the absence of evidence of *mala fides*, should construe the tenancy according to the terms of the contract between the parties, and thus avoid the difficulties and protracted litigation which, leaving the question to a mixed jury, influenced by personal predilections, must inevitably produce.

LORD JUSTICE CHRISTIAN.

WE print in another column some remarks of the Lord Justice of Appeal, in a case before the Court of Appeal in Chancery. The remarks are not in the least pertinent to the case, but were made in reference to the speech of the Lord Chief Justice of Ireland at the banquet to Her Majesty's Judges at the Mansion House, wherein the Lord Chief Justice referred to the fact that the Court of Chancery was "headless." Mr. Christian chooses to differ from the Lord Chief Justice, and seized the first opportunity to display the difference. We do not propose discussing the question. Chief Justice Whiteside is rather more than able to take his own part in any controversy that may arise, even with such an antagonist as the Lord Justice of Appeal; but we desire to call attention to the fact that Lord Commissioner Lawson, while he reciprocated the good feeling which existed between the members of the Court of Appeal in Chancery, is reported to have said that he was not in a position to offer an opinion on the other matters suggested by the Lord Justice, and made that remark lest he should be supposed to concur in them.

LIABILITY OF SOLICITORS FOR MISCONDUCT OF PARTNERS.

We suppose that the most adventurous of underwriters sleep sound on the stormiest nights. If they allowed themselves to dwell on their risks, life would be insupportable. The glorious theory of averages is their mainstay and consolation. On the same principle, solicitors put out of sight and out of mind the perils which surround them in the conduct of business. In large firms, carrying on an extensive and multifarious business, there must be continual danger of some slip, of some fraud practised against the firm or its clients, calculated to do great injury. Some few years ago a verdict for a heavy sum of money was recovered against a solicitor, because his partner had, in a weak moment, given a chance of escape to a defendant arrested on a *capias*. Besides this class of perils, there is the further risk of a partner doing a dishonest act under such circumstances as to make the innocent partners liable to the party wronged. These cases generally present features of peculiar hardship, and are precisely of that class of cases in which the innocent defendants are amply justified in fighting the question of liability to the utmost. The contests raised upon them have evoked so much ingenuity and subtlety of argument, that the distinctions drawn in them have acquired singular nicety; and in order to ascertain, in any given instance, whether the innocent partners can be held responsible, it becomes necessary to scan the facts with minuteness.

Clients are often compelled, in the transaction of business, to entrust one member of a firm of solicitors with money. They frequently hand over money for a specific investment, and occasionally for the general purpose of investment. In case of the person so trusted with money misappropriating it, there arises the question whether it was received by him in the course of his ordinary business as a solicitor, so that receipt by him is a receipt by the other members of his firm. In *Harman* v. *Johnson*, 22 Law J. Rep. (N. S.), Q. B. 297, it was held that the receipt of money by one of a firm of attorneys from a client, professedly on behalf of the firm, for the general purpose of investing it as soon as he can meet with a good security, is not an act within the scope of the ordinary business of an attorney so as to render partners liable to account for the money so deposited, such a transaction being part of the business of a scrivener, and attorneys, as such, not necessarily being scriveners. But if money be so deposited with one partner for the purpose of its being invested on a particular security, the other partners are liable to account for it, such a transaction coming within the ordinary business of an attorney.

In *St. Aubyn* v. *Smart*, Law Rep. 5 Ch. App. 646, "the plaintiff, being entitled to a fund in Court, gave the firm of solicitors who had acted for him in the matter a joint and several power of attorney to receive the money from the Accountant-General. The plaintiff sent the power to B., one of the partners, who received the money and signed the receipt in his own name. B. paid the money into his private banking account, and shortly afterwards absconded with it. The letters on the subject of the power of attorney and the cost of stamping it were charged for in the bill of costs of the firm. Upon a bill seeking to make S., the other partner, liable to pay the money, but not praying for an account, it was held that the money must be treated as having come into the hands of the firm in the course of their business as solicitors, and that S. was liable for its repayment with interest.

Next in order of date came the celebrated case of *Lord Dundonald* v. *Masterman*, 38 Law. J. Rep. (N. S.), Ch. 350. There the plaintiff retained a firm consisting of three partners as his solicitors. The main object of the retainer was to carry out a series of arrangements with the plaintiff's creditors. The business of the plaintiff was conducted almost exclusively by one member of the firm, who received large sums of money for the purpose of making various payments to creditors and to the beneficiaries of an estate of which the plaintiff was executor. This member of the firm misappropriated a large sum of money received in the course of these transactions. The various matters carried out by the solicitor were entered and charged for in the books of the firm. The plaintiff obtained a decree against the innocent members of the firm, and in the course of his judgment Vice-Chancellor James said:—"The question is, then, whether it is possible to treat the money so paid in the course of the professional business which was undoubtedly the professional business of the firm, under professional advice which was undoubtedly the advice of the firm, as paid otherwise than to the firm. I hold that it is impossible so to treat it, however hard it may be on innocent parties. It is surely within the ordinary every-day practice of a firm of solicitors or attorneys to receive moneys from a client for the purpose of satisfying the demands of the creditors whom they are employed to arrange with. It is surely within the ordinary every-day practice of a firm of solicitors and attorneys to receive from a client, an executor, moneys, sometimes to pay the demands of Government, sometimes to pay legatees, and sometimes to pay into Court; in short, to receive money for a specific purpose connected with the professional business they have in hand, just as in *Harman* v. *Johnson* the Court held it was within the ordinary business of such a firm to receive moneys for the purpose of making a specific investment on mortgage."

We have drawn attention to these cases because in the December number of the *Law Journal Reports* there is a report of the important case of *Plumer* v. *Gregory*, decided by Vice Chancellor Malins on the eve of the Long Vacation (43 Law J. Rep. (N. S.) Ch. 803). Messrs. Jonas and William Gregory, father and son, were solicitors in partnership, and Mrs. Plumer, a married lady, was a client of the firm. In April, 1869, Mrs. Plumer had in hand £3,000. William Gregory asked her for £1,300 as a loan, to assist

Digitized by Google

another client in buying an advowson. She advanced the money, and a memorandum was signed by both partners acknowledging the receipt of the money for the purpos, indicated. In the same year William Gregory applied to he for £1,700, as a loan to one F., who desired to borrow that sum by way of mortgage on some land in Wales. She handed that sum over personally to William Gregory, but at the time received neither security nor acknowledgment. In August, 1862, Jonas Gregory retired from business. In August, 1864, Mrs. Plumer applied to William Gregory for some explanation of the investment of the £1,700, and he gave her his own bond for the amount. In January, 1865, Jonas Gregory died possessed of considerable estate, and in 1872 William Gregory died insolvent. The object of the bill filed by Mrs. Plumer was, of course, to get a decree against the estate of Jonas Gregory. The liability of the estate to make good the £1,300 was not seriously disputed, and the contest in the case was as to the sum of £1,700. The Vice-Chancellor dismissed the bill as to the claim for the latter sum. His Honour said that as Jonas Gregory never received any part of this sum, he could only be liable for it on the ground that his partner's receipt for it was his receipt, or, in other words, that it was a partnership transaction. His Honour further said that one partner has no authority to bind the other partners by borrowing money, unless it is borrowed in the usual course of business, and for specific business purposes. The mere statement that the money was to be lent to a client was not enough to bind the partner. If the firm had been employed to prepare securities for the plaintiff, the matter appearing in the ordinary way in their books, a payment of money to one of the partners would have been a payment to both, because it would then have been received for the purpose of being invested on specific security, within the meaning of the decided cases.—*The Law Journal.*

THE GERMAN CRIMINAL LAW.

A German paper says that a singular instance of the working of the German criminal law was brought out by a case which was tried before a jury the other day at Hamburg. The case in itself was very simple. A house in Hamburg was broken into, and a quantity of silver plate stolen from it. Some time after a pedlar, who had already been imprisoned several times for theft, was apprehended at Ratzeburg, and the stolen property was found upon him. Being accused of the robbery, and put upon his trial, the pedlar denied that he was guilty of the burglary, and accounted for his possession of the property by saying that he had stolen it from the real burglar, whom he had met while travelling upon the high road between Eutin and Schwartau; which, if true, would have reduced his crime to simple theft. Two questions were, therefore, put to the jury—(1) whether the prisoner was guilty of burglary and theft, or (2) whether, according to his own statement, he had merely stolen the things from the real burglar. The jury pronounced him guilty of the burglary and theft, but only by seven votes against five; whereupon it seems, by the German law, the ultimate decision of the question devolved upon the Court. They acquitted the prisoner upon this count, and the jury were then required to give their verdict upon the charge of simple theft contained in the second question, which remained still unanswered. The result was that the prisoner was declared guilty by more than seven votes, and condemned by the Court to five years' imprisonment. But, of course, this last verdict could only have been obtained by the concurrence of several of the jurymen who had previously pronounced the prisoner guilty of the burglarious theft in Hamburg, but now found him guilty of stealing the property from the real burglar on the high road between Eutin and Schwartau. Obviously, however, only one of the two charges could have been true. The result would have been more singular still if the seven jurymen, who had pronounced the prisoner guilty on the first charge, had adhered to their verdict; for the decision of the majority which pronounced him guilty of the burglary having been set aside by the Court, he must have been acquitted on the minor charge, and thus, notwithstanding his confession, would have escaped scot-free.

OBITUARY.

MR. P. F. O'MALLEY, Q.C.

Among the many Irishmen who cast in their lot with the English bar, Mr. O'Malley was one of the oldest and almost the best known. It is with extreme regret that we have now to announce his death, which took place very suddenly on last Thursday week, at his residence in London. Mr. O'Malley died in harness, as he was leading Council in two cases heard, on the day of his death, at Guildhall. The deceased gentleman was a son of C. O'Malley, Esq., of The Lodge, near Castlebar, in the County of Mayo, and after taking his degree in Trinity College, Dublin, went in 1826 to Lincoln's Inn, whence he afterwards migrated to the Middle Temple, and by that Hon. Society was called to the English Bar, in Hilary Term, 1834. He joined the Norfolk Circuit, and had been the leader of it since the promotion of Mr. Serjeant Byles to the Bench. Mr. O'Malley was a staunch Conservative, and in 1868 he unsuccessfully contested the borough of Finsbury. He married in 1841 a daughter of Mr. William Rodwell, of Ipswich, and leaves three sons and one daughter. His eldest son, Mr. Edward Loughlin O'Malley, was called to the bar at the Middle Temple in Hilary Term, 1866.

He had a large Parliamentary practice, especially in Irish cases, and conducted them with marked success. Our readers will not be surprised to learn that he was brother to the late Charles O'Malley, Q.C., formerly a distinguished member of the Connaught Circuit, who will be remembered as the prototype of Lever's hero—Mr. Charles O'Malley, previously to becoming a barrister, having been an officer in the dragoons.

MR. F. J. GRAHAM.

We regret to have to announce the death of Mr. F. J. Graham, Solicitor, of Enniskillen, who died on the 22nd inst., at the early age of 23 years. Mr. Graham was the youngest son of John Graham, Esq., the well known and eminent Solicitor of Enniskillen; and shared in the business of his father. Although but a short time admitted to the profession, Mr. Frederick Graham had already acquired the confidence of numerous clients in Fermanagh and the neighbouring counties, by his assiduity, ability, and high principled conduct, as he had previously won the esteem and regard of all with whom he came in contact during his years of studentship by his amiable and obliging disposition. This young gentleman's early death, while it is an irreparable loss to his family, will be also deeply regretted by a large circle of friends.

LORD ROMILLY.

We regret to announce the death at his residence, Cromwell-road, London W., on Wednesday, of Lord Romilly. The deceased nobleman, who was born in 1802, was the second son of the celebrated advocate and statesman Sir Samuel Romilly, M.P. Having been educated at Cambridge, he was called to the Bar at Gray's Inn in 1827, and subsequently became a Q.C. and Bencher of the Inn. From 1842 to 1845, and again in 1846, he sat in the House of Commons for Bridport, and for Devenport in 1847–51. He was Solicitor-General in 1848–50, and Attorney-General in 1850–51, subsequent to which period he for 20 years held the office of Master of the Rolls. Lord Romilly married, in 1833, a daughter of Dr. Otter, Bishop of Chichester, who died in 1856, and by whom he had four sons and four daughters. His eldest son, William Romilly, Clerk of Enrolments in Chancery, succeeds to the title. Lord Romilly was knighted in 1848, and was created a peer of the United Kingdom, under the style of Baron Romilly, of Barry, Glamorganshire, in 1865. After the death of Lord Westbury he was appointed to continue the arbitration in the case of the European Assurance Society, in connexion with which he has given several important decisions—notably that relating to the "novation" of policies. During his presidency over the Rolls Court, Lord Romilly paid great attention to the preservation and publication of the public records of the kingdom, and thus greatly aided historical enquiry and criticism.

Digitized by Google

QUARTERLY INDEX TO SUBJECTS OF CASES.*

Administration : (see *Landlord and Tenant.*)
concurrent suits in English and Irish Courts; removal of assets; liability of administrator; conflict of jurisdiction. *Ex parte Croker.*—R. 169.
bill for administration; misconduct of executor; costs. *Farrar* v. *Carroll.*—R. 172.
Admiralty (see *Necessaries—Evidence*).
Admission by prisoner (see *Evidence*).
Advowson (see *Irish Church Act*).
Advertisements, order for insertion of; Settled Estates Acts; summons in Chambers. *Re Fegan's Settlement.*—R. 206.
Arrangement, opposing; creditor who has not proved; claimant returned on schedule. *Re W.*—Mis. 565.
Attorney, practising without certificate; penalty; 37 & 38 Vict., c. 68, s. 12. *Re R. D. Law.*—Mis. 558.

Ballot Act (see *Election*).
Bankruptcy : (see *Arrangement—Habeas Corpus.*)
adjudication, annulment of; intermediate execution, by bankrupt, of power of appointment; sale in Landed Estates Court by appointee. *Ker's Estate.*—R. 174.
adjudication, annulling on equitable grounds; assent, by petitioning creditor, to trust deed for benefit of creditors; estoppel from relying on deed as act of bankruptcy. *Ex parte Vance and Wilson, in re H.*—R. 185; *Ex parte the Provincial Bank, in re Easdale.*—R. 209; *Ex parte Birley, in re Easdale.*—R. 212.
act of; transfer of trader's whole property; pre-existing debt; advances on faith of agreement for transfer. *Young* v. *Moriarty.*—R. 177.
petitioning creditor; secured debt; debtor's summons; not giving up, or estimating value of security. *Ex parte Birley, in re Easdale.*—R. 212.
setting aside lease; jurisdiction, lessee not submitting to; action by lessee against messenger of Court; injunction. *Re Domvile.*—R. 196.
setting aside voluntary deed; jurisdiction to order delivery up of premises; evidence. *Re Nolan.*—R. 199.
witnesses residing in London; order for examination before London Court of Bankruptcy. *Re Dymoke.*—Mis. 565.
Bill of Sale (see *Bankruptcy*).
Bills of Exchange Act; motion, on notice, for leave to defend; defective copy of affidavit served. *Morrow* v. *Madine.*—Mis. 554.
Bona fide traveller (see *Licensing Act*).

Carriers' Act: (see *Railway.*)
passenger's luggage; jewellery over £10 value; non-declaration of value; felony by carrier's servant. *Gogarty* v. *G. S. & W. Ry.*—R. 161.
carriage of goods, over £10 value; non-declaration of value; delay caused by temporary loss. *Wallace* v. *D. & B. J. Ry.*—R. 163.
Civil-bill ejectment; verifying affidavit. *Shuter* v. *M'Lurdy.*—R. 216.
Confession (see *Evidence*).
Contract; interpretation; parol evidence to explain ambiguity; word of art; "Salesman"—*M'Mullen* v. *Greene.*—R. 166.
parol, for sale of goods; Statute of Frauds; subsequent memorandum of bargain, omitting price; parol evidence of price; part-performance. *Jeffcott* v. *N. B. Oil Co.*—Mis. 565.
Corporation Dues (see *Necessaries*).

Damages, measure of, for breach of covenant to repair; where only nominal recoverable, new trial granted. *Morony* v. *Ferguson.*—Mis. 637.
Debtors Act; costs of non-suit; order for payment; discretion as to granting; jurisdiction in Consolidated Chamber. *Holland* v. *Read.*—R. 168.
order for payment; proof of debtor's means; jurisdiction of Court *in banco*. *Anon.*—R. 206.
conditional order for committal; non-service within time limited for showing cause; evading service; making order absolute. *Wilson* v. *Donnell.*—Mis. 554.
debt accruing before passing of Act; rent due after, under written agreement of tenancy (*for a term of years*) executed prior to Act. *King* v. *Kennan.*—Mis. 574.
Detinue (see *Remittal of actions*).

Ejectment (see *Civil-bill Ejectment*).
Election, Parliamentary; lodger franchise; College-rooms. *Re M'Donogh.*—R. 184.
inspection of ballot-papers. *Re Drogheda Election Petition.*—R. 218.
bribery; notice; disqualification. *Drinkwater* v. *Deakin.*—Mis. 361.
Evidence: (see *Habeas Corpus—Bankruptcy.*)
of nautical expert; Court of Admiralty assisted by nautical assessors. *The Nagpore.*—R. 185.
confession of prisoner; inducement by constable; admission after inducement. *R.* v. *Doherty.*—R. 192.
bill to perpetuate; marriage within prohibited degrees. *Molony* v. *Molony.*—Mis. 574.
Executor (see *Administrator*).

False pretences, obtaining goods by; cheque on bank where drawer had no account. *R.* v. *Hazelton.*—Mis. 601.
Franchise (see *Election*).

Garnishee order; amount awarded under civil-bill decree; respite of decree; appeal. *Proctor* v. *Church.*—R. 206.
money lodged under, in C. P.; motion to draw, by judgment creditor in Q.B.; jurisdiction; notice of motion in three causes. *Curtin* v. *Fitzgerald.*—Mis. 545.
Graft in Equity (see *Landlord and Tenant*).
Guarantee by workmen against loss of employers' goods; goods illegally pawned; criminal procedure. *Winstanly* v. *Caravan and Kirwan.*—Mis. 639.
Guardian to infant petitioner, appointment of; petition presented. *Re Fegan's Settlement.*—R. 205.

Habeas Corpus Act; prisoner; postponement of trial.—*R.* v. *Dripps.*—R. 193.
trial of issues in Court of Bankruptcy; witness in prison; *habeas corpus ad test. Re Smith.*—Mis. 564.

Irish Church Act; purchase of advowsons; incapacitated owners; money lodged in Court. *Ex parte Viscount Monck.*—R. 191.

Jurisdiction (see *Administration—Debtors Act—Garnishee order—Landlord and Tenant*).

Landed Estates Court (see *Bankruptcy—Landlord and Tenant*).
Landlord and Tenant: (see *Damages.*)
compensation for disturbance and improvements; L. & T. Act, 1870; waiver of notice to quit; ejectment for non-payment of subsequent rent. *Flynn* v. *Vernon.*—R. 184.
compensation for disturbance and improvements; maximum claim for disturbance; election. *Gordon* v. *Murphy.*—R. 194.
town-park, what constitutes. R. 209.

---

* Concluded from p. 527 *ante*. The numerals with R. prefixed refer to the pages of the Irish Law Times Reports. The numerals with Mis. prefixed refer to the pages of the miscellaneous portion of the Journal.

Digitized by Google

Ulster tenant-right; acquiring the tenant-right; letting, without incoming payment, by landlord in possession. *Magee* v. *Marquis of Bath.*—R. 219.
compensation for disturbance and improvements; sale by administrator, under order of Court of Chancery; custom on estate against assignment; purchase by trustee for benefit of administrator. *Parkinson* v. *Earl of Longford.*—R. 194.
L. & T. Act, 1870, s. 59; appointment of administrator for purposes of Act. *Re Barron.*—Mis. 565.
fiduciary relationship; administratrix of yearly tenant procuring lease to herself; Ulster tenant-right; L. & T. Act, 1870; graft in equity. *Kelly* v. *Kelly.*—R. 173.
L. & T. Act, 1870, s. 46; purchase of holding in Landed Estates Court, by occupying tenant. *Sherlock's Estate.*—Mis. 544.
non-payment of head-rent by landlord; salvage; head-rent paid by tenant; sale of landlord's interest. *Ahern* v. *M'Swiney.*—R. 172.
writ of restitution; L. & T. Act, 1860, s. 70; jurisdiction. *Stackpoole* v. *Hogan.*—Mis. 564.
compensation for disturbance and improvements; amendment of claim; unreasonable conduct of landlord; demanding increased rent; Ulster custom; acquiring tenant-right. *Wright* v. *Montgomery.*—Mis. 569.
Licensing Act; *bonâ fide* traveller; onus of proof. *Cantwell* v. *Dowling* (on App.)—Mis. 577.

Malicious injury (see *Presentment*).

Necessaries, payment of by master of ship; corporation dues; fee for reporting vessel. *The Belvidere.*—R. 176.
Ne exeat regno, writ of; not granted on administration summons. *Farrar* v. *Carroll.*—R. 172.
New trial (see *Damages*).
Notice to quit (see *Landlord and Tenant*).

Parties; bill to perpetuate testimony; marriage within prohibited degrees. *Molony* v. *Molony.*—Mis. 574.
Pleading: (see *Railway*).
duplicity; action for fraudulent representation. *Timpson* v. *Dalton.*—R. 184.
Postponement of criminal trial (see *Habeas Corpus Act*).
Presentment; Grand Jury Act; malicious injury; notice of application for compensation. *Re Hall's Presentment.*—R. 175.
chaplain, remuneration to for services to county infirmary; costs incurred by governor of gaol, in defending action at suit of prisoner; malicious injury to growing trees. *Re South Tipperary Presentments.*—R. 194.
repairing Court-house; presentment approved of by grand jury, and rejected at subsequent sessions; summary presentment. *Re Wicklow Court-house.*—R. 207.
malicious injury; vestments and other church property; fences; pack of hounds. *Re Collier.*—R. 208.
maintenance of lunatic asylum; presentment. *Re Limerick Presentments.*—Mis. 545.
coroner's inquests; presentment. *Re Tullamore Presentments.*—Mis. 545.
agrarian crime; Peace Preservation Act, 1870, s. 39; presentment; amount of compensation; alteration of area; costs. *Killeen* v. *Whiteford.*—Mis. 574.

Race; "gentleman rider." *Burton* v. *Walker.*—Mis. 611.
Railway: (see *Carriers' Act*).
condition limiting liability for loss and injury to goods; reasonableness of conditions when to be decided; demurrer; "through" rates; part transit by sea. *Moore* v. *M. Ry.*—R. 165.
loss of passenger's luggage; condition exempting from liability; reasonableness of condition; reference to condition, endorsed on ticket, not read by passenger; "through ticket." *Kents* v. *M. Ry.*—Mis. 631.
liability to passenger for unpunctuality; notice restricting liability; wilful misconduct. *Beoke* v. *G. W. Ry.*—Mis. 578.
Remittal of action to inferior Court; detinue; visible means. *Stamp* v. *Hickey.*—R. 167.
Repair, covenant to (see *Damages*).

Sale of goods (see *Contract*).
Salvage (see *Landlord and Tenant*).
Security for costs; plaintiff resident in America; temporary residence in Ireland; property in Ireland. *Gaynor* v. *Short.*—R. 116.
plaintiff resident in England; Judgments Extension Act, 1868; special circumstances. *Yorke* v. *M'Loughlin.*—R. 201; *Cheeseman* v. *Campbell.*—R. 203.
plaintiff resident in Wales; non-statement of plaintiff's residence, in affidavit to ground motion; Judgments Extension Act, 1868. *Hunt* v. *Smyth.*—R. 203.
bill in equity; next friend of married woman, plaintiff; evidence of solvency; form of affidavits. *Savage* v. *James.*—R. 190.
Ship (see *Necessaries*).
Statute of Frauds (see *Contract*).

Trustee, appointment of new; husband of *cestui que trust*. *Jackson's Trusts.*—R. 174.

Will; legacy, specific or demonstrative. *Mytton* v. *Mytton.*—Mis. 631.
Witness (see *Evidence*).

Priorities under Registration Acts.—A case under the Yorkshire Registry Act (2 & 3 Anne, c. 4, s. 1), recently decided by the Court of Appeal in Chancery, and reported in this week's issue of the *Weekly Reporter* (*Credland* v. *Potter*), is deserving of careful consideration by all practitioners likely to have dealings with land in either of the two register counties, the words of the Middlesex Registry Act (7 Anne, c. 20) being, so far as this point is concerned, identical with those in the Yorkshire Act. The case, shortly stated, was as follows:—A registered legal mortgage, a further advance by the first mortgagee secured by a memorandum which was not registered, a subsequent second mortgage which was registered. The Court held, affirming the decision of Vice-Chancellor Bacon, that the second mortgage had priority over the unregistered further charge. The Act renders every unregistered "deed or conveyance" fraudulent and void against subsequent registered mortgagees or purchasers. The Court held that there was no magic in the word "conveyance," anything that passed an interest, or a further interest, in the land being a conveyance. An ingenious contention was raised on behalf of the first mortgagee in this way:—The effect of the Act is only to postpone an unregistered charge, it does not invalidate it, and it exists for all purposes except for the purpose of claiming priority over a registered charge. Moreover, the mere registration of a deed is not notice, and in the present case the first mortgagee did not get actual notice until after the registration of the second mortgage; the true condition of things then was as follows:—A first mortgage, a second mortgage, and immediately following the registration of the latter a subsequent equitable charge created in favour of the first mortgagee without notice by the first mortgagee of the intervening second mortgage; a state of things under which the first mortgagee is entitled to tack. This argument was met by the Court by giving full effect to the words of the statute 'fraudulent and void," under which they held that the further charge was to be considered void as against the second mortgagee for all purposes, and, in fact, as if it had no existence whatever.—*Solicitors' Journal.*

Digitized by Google

THE UNIVERSITY ELECTION.

As many of our readers are actively interested in the impending contest for the University of Dublin, we desire to call attention to a question of some importance likely to arise in connexion therewith. The promotion of Dr. Ball to be Lord Chancellor of Ireland, and the appointment of Mr. Plunket as Solicitor-General, will cause a double vacancy in the representation. It is known that there will be a very keen contest between three (perhaps four) aspirants for the seat vacated by Dr. Ball; and though Mr. Plunket's re-election may be taken as absolutely safe, it is by no means certain that he will be unopposed. Under these circumstances, it becomes a question of practical importance to consider what course ought to be taken with reference to the fresh elections. The procedure is regulated by statute, according to which the Speaker is bound to give notice, within six days after he has been duly informed of the vacancy, that at the expiration of six days from the date of the notice he will issue his warrant for the sealing of the writ. It will depend upon the course taken by the Government as to formally filling up the appointments whether the elections thereby rendered necessary are to take place under the same or separate writs, and, in the latter case, which writ is to be issued first.

A very slight consideration will show that the Government have three courses before them. If they are willing that the re-election of the Solicitor-General and the election of his new colleague should take place at one and the same time, they have only to take care that all three appointments (of Lord Chancellor, Attorney-General, and Solicitor-General) should appear in the same *Gazette*, and that the two vacancies thus created should be forthwith duly notified to the Speaker, who will then be bound to insert one notice and issue one warrant for a writ for the filling up of both vacancies. If, on the other hand, they desire the elections to take place separately, they have only to delay the formal completion of *either* appointment until after the other has been duly brought to the Speaker's notice, and he has gazetted the statutory notice, when, as he cannot insert another notice until at least the next gazette, an interval of not less than three days will necessarily take place between the elections. Supposing the Government do determine to adopt this course, it is immaterial for our purpose to consider which writ should issue first. We can indeed see reasons for supposing that it would be convenient to have the re-election of the Solicitor-General over before the occurrence of the contest which will inevitably take place for the other vacancy, and we have shown that they can so arrange if they think it worth while. On the other hand, we can see no possible benefit to them or anyone else, in delaying the re-election of the Solicitor-General till after the conclusion of the other contest, and thus almost to a certainty involving the constituency in two contested elections within a few days of one another, and exposing the Solicitor-General to the risk of opposition from a class of electors who would probably at a double election confine their exertions to the election of his colleague.—*Solicitors' Journal.*

COURT OF CHANCERY APPEAL.

Remarks of the Lord Justice of Appeal.

Mulholland and others *v.* Killen and others.

Dec. 22.—Lord Commissioner Lawson and the Lord Justice of Appeal sat to deliver judgment in the above case, which was argued about five weeks ago.

Lord Commissioner Lawson having read the judgment of Lord Commissioner Napier, in which he (Lord Commissioner Lawson) concurred, affirming the decision of the Vice Chancellor, and dismissing the appeal.

The Lord Justice of Appeal said he had some doubts whether the plaintiffs had sufficiently established, at law, their ownership of the sea shore in question, so as to warrant the Court of Chancery in granting the prayer of a bill of peace, and thereby quieting the plaintiffs for ever in the possession of the shore, and excluding therefrom all the rest of the public. His Lordship, having commented at considerable length on the case of *Mulholland* v. *Killen*, tried before Baron Fitzgerald more than nine years ago, in which the same question was raised, then observed:—

I have thus tried to make intelligible the considerations which, I must confess, have left me full of misgivings as to the soundness of this decree, though it has met with the approval of both the Lords Commissioners. Then the question presents itself—which is, under the circumstances, of little or no consequence to anyone but myself—what course ought I to take? If I were sitting alone, and were hearing this cause in the first instance, I believe that I should send it to a trial at law. But I am not hearing it in the first instance, and I am not sitting alone. I am sitting now with an advantage, the preciousness of which no one can realise but one who has, like me, for long years suffered from the want of it—the advantage of being associated with colleagues whose judgment, whose knowledge, whose conversance with the affairs of this Court and exclusive devotion of their time to them, I can hold in that respect, that as when I find them agreeing with me I am encouraged; so when I find them differing from me, I am instantly held in check. The latter is precisely the position in which I find myself at this moment. And in which more than once before I have found myself since the commencement of the present admirable constitution of this Court, I say advisedly—and I am happy to take this, the last, opportunity of saying it—the present admirable constitution of this Court—headless though it be—a headless institution, as with exquisite appropriateness of time and place, and circumstances, it has been lately called by one who seldom stops to measure his phrases by his knowledge of whatever subject he may take a fancy to declaim about. I have great pleasure in informing that very eminent legal personage, as he has been good enough to concern himself about us, that the Court of Chancery in Ireland is now, and has been for the last nine months of this year, under very excellent headship and leadership, indeed—and in particular as to this its upper branch, of which I can speak with some knowledge—this the Court of Appeal in Chancery—this, let me remind our censor, the first and most exalted without a single exception among all the Courts within this realm, whether of law or of equity, as the Court must needs be which hears appeals from the Court of the Lord Chancellor himself, when we have the felicity to possess one—that never since it was founded has it been better headed, better guided, better led, smoother in working, more harmonious in mutual help and co operation, more efficient in every way for transacting the public business than it has been during the last three terms of the present year. And I may say so much for it, as no share in the credit of it is due to myself; for having been, as I was, a member of the Court in its evil days, it is obvious that I can claim no share in the praise now due to its greater excellence. And if I am asked where lies the difference—the difference between then and now—I answer, it is the old difference—the one so unhappily familiar to us in Ireland—the difference between those who, being judges indeed, can be content with being nothing else, and those who are party politicians first and judges afterwards. And, as I have said so much, I will add one word more, with that contrast before us, and with the experience which recent times have given us, of what the politico-judicial mixture really means here in Ireland, I shall be to the last incredulous—I shall refuse to believe it till I see it—that any measure assuming to be a great reform of the Irish Judicature shall pass both Houses of Parliament which shall not provide for the dissolution, at some not distant day, of that ill starred and most pernicious union under which the claims of party service are seen competing with those of judicial duty—upon the time, the energies, and the impartialty of the judge. I hope it will not be thought that I have transgressed the occasion by taking the opportunity at this, the last sitting of the Appeal Court under the Chancery Commission, to bear my humble testimony to its merits; and it is because it has been such as I have endeavoured to describe it that I enjoy the privilege of taking the course which I am now about to do—that, though I have not succeeded in dispelling my own doubts, though the reasons which have carried conviction to the minds of the Lords Commissioners have failed to do so to mine; yet in the mere fact that they have deliberately, and after consideration, concurred in a precise and definite con-

Digitized by Google

clusion, I find reason sufficient to satisfy me in surrendering to their opinion impressions which, after all, are, perhaps, no better than ill-digested doubts. Another consideration there is, which has weighed with me a good deal, because it brings the case within the scope of a danger, the most sinister and menacing, perhaps, of all, which now hangs over the administration of justice in this country. *Mulholland* v. *Killen* was tried in 1865. We are now in 1874. We know the fate which has in that interval fallen upon the Irish jury system. I shall say no more of it now than this, that I should be slow indeed, in this or any other case, to send the verdict of a jury, such as juries were in 1865, to be reviewed by a jury such as juries can be in 1874. I do not formally dissent from the order of the Court.

Lord Commissioner Lawson stated in a few words that he fully reciprocated the feelings which the Lord Justice had expressed as existing between the members of the Court for the last nine terms. It was their most anxious desire to do the business of the Court as best they could. He was not in a position to offer an opinion on the other matters suggested by the Lord Justice, and only wished to make that remark, lest he should be supposed to concur in them.

The decision of the Court below was accordingly affirmed, and the appeal dismissed, but without costs.

THE VENDOR AND PURCHASER ACT, 1874.

However inactive the past session may have been in a purely political sense, it has certainly been far from barren in enactments which affect the general character of our jurisprudence. The law of real property has in particular undergone many important modifications. We have had a Married Women's Property Act, a Powers Amendment Act; the Statutes of Limitations have been altered, or rather, in effect, repealed, and we now have an "Act to Amend the Law of Vendor and Purchaser, and further to simplify Title to Land." The latter statute, which is one of truly commendable conciseness and brevity, may be described as being simply of a revolutionary character. The effect of reading the present statute upon a conveyancer of the old school, nourished upon Fearne's Contingent Remainders, versed in the mysteries involved in attendant and satisfied terms, the supposed *scintilla juris* and other metaphysical abstractions which one finds in old law books, would, we imagine, be startling in the extreme, especially when he came to that section which for some purposes practically abolishes the distinction between real and personal property. In this connexion it may be useful to notice the striking analogy between the English and the Roman law in this respect. The history of Roman law, as Sir Henry Maine has pointed out, is the history of the assimilation of *res mancipi* to *res non-mancipi;* and though these two divisions of property do not precisely correspond with our "real" and "personal," still the process is closely analogous to what has taken place in our own jurisprudence, where the law of real property has been more or less simplified on the model of personal.

We must, however, notice the provisions of the Act more in detail, as almost every paragraph embodies a change of momentous importance. The first section enacts that forty years instead of sixty shall be the period for commencement of title; subject, however, to the proviso that an earlier title may be required in those cases where a purchaser may now demand more than sixty years An earlier title may now be required where the documents give rise to the suspicion that estates tail still subsist, or where, in a word, there are doubtful and suspicious circumstances connected with the earliest document produced. It is well, perhaps, that this saving clause is added. If, however, we were to measure the probable results of an Act like the present simply by the difference between the periods marked as the root of title, we should greatly underrate its magnitude. The indirect consequences of such an enactment are of even greater importance than the direct. It is not as though purchasers never gave a fair price for property with less than a strictly marketable title. On the contrary, full value is often given where fifty and even forty years is the longest period during which the title can be traced; and that, too, even by the Court of Chancery itself. "In fact, such purchases are constantly sanctioned by the Court of Chancery;" and in some circumstances the Court will sanction purchases "with a title very far from marketable:" Dart's V. & P. p. 80. We may, therefore, infer that, hereafter, it will be a very common practice to buy land on twenty-five or thirty years' title—nay, the Court itself may invest the funds of its suitors in property as questionable. The old period was fixed on the measure of a tolerably long life; the present period is practically half such a life time, or a little more. Of course much may be said in favour of the change on the ground of the greater publicity given in modern times to sales and transfers of lands by means of advertisements circulated far and wide, and of the consequent multiplication and greater accessibility of documentary evidence of different kinds. Prediction in such a case is obviously out of the question; but we trust that our lawmakers have long and earnestly considered the question from all points of view before introducing a measure so sweeping.

The second section, with its sub-divisions, is of scarcely less importance. The first of these sub-sections is that a lessee or assignee of a lease is no longer to be entitled to examine the title to the freehold. To estimate this change aright, we must consider it in connexion with the foregoing paragraph. A twenty-five or thirty years' title will hereafter, as we have seen, probably in many cases be the ultimate foundation for a lease of sixty or seventy years or longer, and perhaps one or two under leases for twenty-one years or less. We presume, however, that the lessee or assignee, if he discovers, from independent investigation, a flaw in the freehold title, will be allowed to plead that knowledge, so as to avoid specific performance. It will, no doubt, be open to the intended lessee or assignee to stipulate in the agreement, or before the actual execution of the lease, for on inspection of the freehold title; but we are not sure that it would not have been better to leave the lessor to take care of his own interests. The second sub-division embodies what is commonly inserted in conditions and agreements for sale, that recitals, statements, and descriptions of facts, &c., contained in deeds, Acts of Parliament, or statutory declarations twenty years old, shall form what is termed by writers on jurisprudence a *præsumptio juris*, not a *præsumptio juris et de jure;* a presumption, that is, which is to be taken as true until proved to be false. To this, probably, no serious objection will be taken, nor to that which follows, which makes an equitable right to have copies of documents of title produced of equal value with a legal right of the same kind. But it is not equally obvious why the present rule as to the possession of deeds, when an estate has been sold to different purchasers, should be altered. It certainly seems the preferable plan for the purchaser of the most valuable part to take the deeds and covenant for their production, rather than for the vendor to keep them, however small a portion he may retain. Such alterations of the law seem to be gratuitous, especially where it is so easy in each particular case to modify the ordinary practice. Questions of this kind are surely best left to the operation of voluntary contract. The new rule, however, may be beneficial in freeing vendors from the necessity of obtaining valuations of the unsold part of their property, in order to determine which lot is of the greater value. The third section of the Act appears to be *otiose*. We cannot see why it should be necessary to state explicitly that trustees are to be subject in sales and purchases to the same rules as govern other vendors and purchasers. And the marginal note here is, as usual, obscure, "Trustees may sell, &c., notwithstanding rules." The words of the section are:—"Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act. The true analysis would, therefore, be, "Trustees may sell, &c., in accordance with rules." The latter, perhaps, is so exceedingly like an identical proposition that it probably never occurred to the writer that it was, nevertheless, the true significance of a law solemnly passed by the Legislature. The fourth section goes very far in the direction of Lord Mansfield's wish to make a mortgage a simple charge upon the land, and in all respects personal property. As so great a step has been taken, it is perhaps a pity that a complete measure has not been passed. The law of mortgage is made unnecessarily complex; as, for some purposes, a mortgage

Digitized by Google

is real property, being an out-and-out conveyance of the legal estate, whilst for others it is personal, as the mortgage debt passes to the personal representatives of the mortgagee. The present statute leaves the law still more anomalous than it was, and will, we suspect, require to be supplemented. The form of the deed will apparently still be a conveyance of the legal estate to the mortgagee, his heirs, and assigns, but the new law makes that legal estate transferable by the personal representatives of the mortgagee, in whom it never vested. Truly English statute law partakes of the illogical character which belongs to most of our institutions. It is noticeable, too, that the form of the section is permissive: The legal personal representative *may* convey. Are we to infer from this that the mortgagor, on payment of the debt and interest, can elect from whom to demand a reconveyance? The succeeding section tends equally to render uncertain and indefinable the lines which separate real from personal property. The bare legal estate in fee-simple of a trustee is to vest in his executor or administrator. There are many difficulties and ambiguities attending the present Law of Mortgages and Trusts, but it seems a singularly strange way of remedying them to enact, as the present Act apparently does, that a conveyance to persons, their heirs and assigns, shall, by implication, vest an estate in their executors and administrators. We were under the impression that our law did not favour estates by implication. The purpose which actuated the framers of this statute was unquestionably good; but they have not considered all that was involved in those branches of law which they set themselves to alter, and consequently their work is one-sided, and only tends to make confusion worse confounded. The great underlying question is whether the existing difference in the devolution of real and personal property is right and desirable. Mr. Joshua Williams thinks not, and we are of the same opinion. If the distinction in this respect were done away in addition to the greater fairness and justness in the law, there would also be greater clearness and freedom from ambiguity.

That object of unfailing solicitude on the part of the Legislature, the married woman, does not of course escape notice in this most comprehensive statute. Fortunately so little is said about her that she will have no cause of complaint, and that little is perfectly unexceptionable. It is to the effect that when she is a bare trustee she may convey or surrender as if she were a *feme sole*. The succeeding section, however, the seventh, is more startling. It seems that tacking of mortgages, and other charges and interests, are no longer to be allowed. We do not question that this is a most salutary change. It will give both greater scope and greater safety to investments on real securities. The old rule was founded on technicalities of English law, and certainly had no foundation in the first principles of morality. Hereafter the security of a loan upon mortgage will be exactly proportioned to the value of the property, minus incumbrances already created. Equitable owners will find it easier to borrow on reasonable terms, and a wider field will be open to investors. And even the Court of Chancery itself will not hesitate to lend the funds at its disposal upon a second charge.

The 8th section deals with a question which sadly needs authoritative determination—we mean the question of registration. Where a will devising land in Middlesex or Yorkshire has not been registered, an assurance by the devisee or anyone claiming under him, if registered before, is to prevail over any assurance from the testator's heir-at-law. As we might expect, the enactment is too narrow and not explicit enough. It only deals with one class of cases, and it seems doubtful how far it really alters the law as to them. Are we to infer that if it is not registered in due time, it shall not in any case take such precedence? If we are, then the present rule is repealed by implication. For "in equity registration is no protection against an unregistered assurance of which the party claiming under the registered instrument had notice prior to the completion of his purchase or security": Dart's V. & P., p. 780. If we are to gather that the purchaser from the heir is, upon registration, to have precedence only in case he has not had notice, express or constructive, of the prior unregistered deed, then it is a great pity that the Act does not say so, and it only adds another difficulty to a subject which was already sufficiently intricate. We need only notice of the concluding sections that they seem to provide a rapid remedy for difficulties arising from contracts for sale.—*The Law Times.*

THE LAW CLERKS' ASSOCIATION.

A meeting of the central committee was held on Monday evening, at 207, Great Brunswick-street. The vice-president was in the chair, and among those in attendance were:—Messrs. Jervise, Dodd, Pride, Flynn, Keegan, Farrelly, M'Dermott, and Devereux. Proofs of the prospectus of the new Provident Institute were submitted, and directions were given for the circulation of copies among all law clerks, whether members of the association or not, with the view of preparing their minds for the discussion to take place upon it at the next general meeting. Mr. Flynn handed in a subscription of 10s. from Mr. Joshua Brereton towards the library fund, and it was announced that the library and reading room would be closed during the Christmas holidays until the first Monday in January. The treasurer's accounts having been audited, arrangements were made for the preparation of the annual report of the retiring committee, and the meeting adjourned to Monday next to consider it.

APPOINTMENT.

New Attorney.—On the 22nd and 23rd inst., Mr. John Francis Small, of Newry, was admitted an Attorney and Solicitor of Her Majesty's High Courts of Common Law and Chancery in Ireland. Mr. Small was a very distinguished student, both in law and general literature, having taken first place at his preliminary examination, and the silver medal at the last final examination, on high answering, and after severe competition. These proofs of industry and ability are the best guarantees for future success, and the exercise of the same qualities will make Mr. Small as successful in his profession in the future as in the past.

NOTES OF ENGLISH DECISIONS.
(From the *Law Times.*)

Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 11—Right of a Married Woman Trader to maintain an Action against her Bankers for Breach of Contract.—A married woman, carrying on business separately from her husband as a sole trader, and having in that capacity a banking account, sued her bankers for damages for not presenting a bill of exchange deposited with them for that purpose, for not giving her notice of the dishonour of a bill of exchange entrusted to them, and for dishonouring her cheques, they having funds of hers at the time to meet them: Held, that she was entitled to maintain the action, it being a remedy for the protection and security of her wages, earnings, money, and property within the meaning of the 11th section of the Married Women's Property Act 1870: (*Sumners* v. *The City Bank*, 31 L. T. Rep. N. S. 268. C. P.)

Bills of Sale Act 1854 (17 & 18 Vict., c. 36), s. 7—Formal Possession—Apparent Ownership.—Where a mortgagee of furniture under an unregistered bill of sale puts a man into possession of the furniture, but allows it to be used by the mortgagor, the furniture remains in the "apparent possession" of the mortgagor within the meaning of the Bills of Sale Act, 1854, and in the event of the mortgagor's bankruptcy occurring while the man is in possession, the furniture will pass to the trustee in the bankruptcy: (*Ex parte Jay; Re Blenkhorn*, 31 L. T. Rep. N. S. 260. Chan.)

Married Woman's Will—Desertion by Husband—Limited Grant—Married Women's Property Act.—Testatrix was a married woman who had been deserted by her husband in 1866. The property which she disposed of by her will consisted of her earnings since 1866, which had all been invested since 1870. The Court limited the probate to property acquired since 1870, the date of the Married Women's Property Act: (*In the goods of E. Pepper*, 31 L. T. Rep. N.S. 274. Prob.)

Digitized by Google

BOOKS RECEIVED.

We have received the following books for review :—

A Manual of Constitutional History, founded on the Works of Hallam, Creasy, May, and Broom; containing the Fundamental Principles and the Leading Cases in Constitutional Law. By FORREST FULTON, LL.B., B.A. (Lond.), of the Middle Temple, Esq., Barrister-at-Law. London: Butterworths, 7, Fleet-street. 1875.

A Compendium of Irish Sanitary Law, containing the Public Health (Ireland) Act, 1874, and the Acts incorporated therewith; also the Acts relating to Workshops, Common Lodging Houses, Bakehouses, the Adulteration of Food, Drink, and Drugs, and the Burial Grounds Acts, with Explanatory Notes, a Collection of Legal Decisions in Sanitary Cases, and an Index. By JOHN OUSELEY BYRNE, Esq., A.B., Barrister-at-Law. Second edition. Dublin: William McGee, 18, Nassau-street. 1875.

Public Health (Ireland) Act, 1874:—*Digest of the Sanitary Laws in Force in Ireland. Prepared under Direction from the Local Government (Ireland) Board.* By W. D. WODSWORTH, Esq., Assistant Secretary. Dublin: Alex. Thom, 87 and 88 Abbey-street. 1874.

LAW STUDENTS' JOURNAL.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO ATTORNEYS, PURSUANT TO "*The Attorneys and Solicitors Act (Ireland), 1866.*"

DUBLIN, MICHAELMAS TERM, 1874.

COMMON LAW.

1. What is meant by the "extraordinary jurisdiction" of the Superior Courts of Common Law? Give instances of its exercise.

2. What is the distinction between *express* and *implied* contracts? and give some instances of those of the latter description.

3. What are the cases in which a previous request will be plied when the consideration is executed?

4. What is the difference between *concurrent* and *continuing* consideration? Give instances of both.

5. To what extent are common carriers liable at Common Law for the safety of goods conveyed? How has this liability (as to carriers by land) been modified by statute?

6. If goods be stolen, and the owner prosecute the thief to conviction, the goods having meanwhile been sold in market overt, who shall have the goods?

7. To what extent does the maxim *caveat emptor* prevail in reference to the goodness of that which is purchased? Refer to some of the leading cases on this point.

8. How does an unauthorized alteration in a deed or other written contract affect the validity of the instrument?

9. Define a partnership—how constituted? What enactments respecting this are contained in a recent statute? In how many ways may a partnership be dissolved?

10. State generally the rules regulating the rights and liabilities of principal and agent on a contract by the agent.

11. When husband and wife are living separate, what is the law as to the husband's liability for his wife's debts? What is the law as to a husband's liability for the debts of his wife contracted before marriage?

12. Illustrate the maxim—
"*Ex turpi causa non oritur actio.*"

13. Mention any exceptions to the rule forbidding the reception of parol evidence for the purpose of qualifying a written contract.

14. Explain the distinction between void and voidable contracts, and enumerate the principal classes of contracts which come under each head.

15. To what actions can a plea of tender be pleaded, and what are the requisites to constitute a valid tender?

REAL PROPERTY, CONVEYANCING, AND EQUITY.

1. What are the principal provisions and what has been the effect of the statute of uses? To what extent do conveyances and settlements depend at the present time on the statute of uses?

2. Give an account of the successive changes in the law as regards the right to devise lands by will.

3. "A" devised a term of years to "B" and the heirs male of his body; what estate does "B" take in the term, and who would be entitled thereto on the death of "B"?

4. State accurately the distinction between executed and executory trusts, and between trusts executory in marriage articles and trusts executory in wills.

5. State and illustrate the general rule as to the nature of the contracts of which specific performance will be granted.

6. Define *satisfaction.* Into what four classes may cases where satisfaction occurs be divided? State the distinction between "satisfaction" and "performance."

7. What is the distinction, and the reason of it, between the liability of a trustee and an executor who joins in the receipt for purchase-money, which is in fact received and misapplied by his co-trustee or co-executor?

8. Mention the covenants from vendor to purchaser, and from purchaser to vendor, in a conveyance of leasehold estate.

9. What is the proper form to be used in giving an estate in fee simple to two or more persons as joint tenants? What are the four unities of joint tenancy, and which of them is common to a joint tenancy and a tenancy in common?

10. What was the general rule as to the obligation of a purchaser to see to the application of the purchase money? What enactments have affected this rule?

11. An estate is given to "A" and the heirs of his body by his present wife; she dies without issue. What is the estate of "A"? Can he acquire a fee-simple?

12. State the general form, clauses, and covenants in a deed of mortgage of fee-simple estate. In a mortgage of leaseholds.

13. In the case of marriage articles, when are words which at law would confer an estate tail otherwise construed? What is the construction given to these words in such a case?

14. "A" made his will, and subsequently married and died in the year 1837. Was his will revoked by his marriage?

15. State the distinction between a contingens remainder and an executory interest. What are the two rules to be observed in the creation of contingent remainders?

CHANCERY PRACTICE.

MR. DIX, *Examiner.*

1. For what purpose are parties served with Notice of Decree, and what should such notice contain?

2. In case a party so served desires to take part in the suit, and have notice of proceedings, what is it necessary he should do?

3. What step should be taken by the Plaintiff in a suit, in case he desires to affect the Landed Property of Defendant in any way by his proceedings?

4. State the different modes of giving evidence in the Court of Chancery.

Digitized by Google

5. What is necessary to ground an application by Plaintiff to appoint a *Guardian ad litem* for a Minor Defendant?

6. State some of the applications upon which orders may be made by the Chief Clerk in Chambers.

LANDED ESTATES COURT PRACTICE.

Mr. D'Alton, *Examiner.*

1. How, and by whom, is a Chancery Receiver discharged from Lands when sold by this Court?

2. In what position are the costs of a "Limited Owner," in proceedings for a partition, exchange, or division of intermixed Lands?

3. When, and how, can a Purchaser obtain an injunction to put him into possession of the Lands purchased by him?

4. When a married woman joins in or consents to an application under the "Settled Estates Act," or for a sale of an unincumbered estate, what should be done before a conditional order will be made?

5 Where purchase-money is to be paid wholly or in part by an Incumbrance, what does the Purchaser require, and in what form should the consideration money be stated in his Conveyance?

6. If a Purchaser desire that his Conveyance should not be "recorded," what steps should he take, and within what period?

PROBATE COURT PRACTICE.

Mr. Maxwell, *Examiner.*

1. Can the Court of Probate appoint a receiver over real estate, and if so, when, and by what proceeding?

2. To whom is a bond to be passed by an administrator on obtaining a grant? Explain the proceedings to sue on it, and by whom they are to be taken.

3. State the proceeding necessary for the appointment of an administrator *pendente lite*, and the purpose for which the grant is made, and define the power of the administrator under it.

4. Can a Grant of Probate or administration issued in England or Scotland be made effectual in Ireland, and if so, explain the steps to be taken for the purpose?

5. Can the Court of Probate enforce an order against a Corporation, and if so, when and by what proceeding? and explain the course to be pursued.

6. Can a blind person make a Will, and if so, is any and what special proof required to support it?

COMMON LAW COURTS PRACTICE.

Mr. Hamerton, *Examiner.*

1. What step should a Defendant take when a ground of defence to an action arises after he has pleaded?

2. Describe an interpleader, and what is the most common occasion of its adoption?

3. What is a Writ of Revivor, and when is it used?

4. To Register a Judgment on a Mortgage, by whom should Affidavit be made?

5. When a Judgment has been obtained in Ireland, describe how you proceed to make it available in England and Scotland.

6. Does any and what difference in practice exist in the Superior Courts in Ireland, as to contents of an affidavit to obtain secuity for costs?

PRACTICE OF THE COURT OF BANKRUPTCY AND INSOLVENCY.

Mr. Findlater, *Examiner.*

Under "The Bankrupt and Insolvent Act, 1857," and "The Bankruptcy (Ireland) Amendment Act, 1872."

1. Supposing a Bankrupt, as Trustee, shall be seized of any real estate, or possessed of, or entitled to, any personal estate, what summary course is open to the persons interested, to remove him from his office and procure a transfer or conveyance of the trust property to a new Trustee?

2. What preliminary steps must be taken prior to bringing an action against the messenger of the Court or his assistants for anything done by them in obedience to a Warrant of the Court?

3. When a purchase is made from a Bankrupt *bona fide*, and for valuable consideration, and the purchaser had notice at the time of such purchase of an act of Bankruptcy, is the transaction impeachable at any time afterwards?

4. What power has the Court of staying proceedings against a Bankrupt or arranging Debtor?

5. State the mode in which an order of the Court can be enforced in England or Scotland.

6. Has the Court any power of giving possession to a purchaser of lands of a Bankrupt sold by it? and, if so, give full particulars?

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

NOTICE.

The Preliminary Examination of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Tuesday and Wednesday, the 12th and 13th days of January, 1875, *at Eleven o'clock.*

N.B.—All Papers to be lodged on or before *21st December, 1874.*

The Final Examination of Candidates seeking admission as Attorneys, will be held at the same place, on Thursday and Friday, the 14th and 15th days of January, 1875, *at the same hour.*

By order of the Council,
JOHN H. GODDARD, *Secretary.*

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Friday, the 22nd of January, 1875, at Three o'clock, p.m.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Easter Term, 1875.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their Papers *on or before the first day of next Hilary Term.*

By order,
JOHN H. GODDARD, *Secretary.*

Solicitors' Hall, Four Courts, Dublin.

THE SOCIETY OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

(Incorporated by Royal Charter.)

Hilary Session, 1875.

LEGAL EDUCATION.

NOTICE.

William Hickson, Esq., Professor of Law for the Profession of Attorneys and Solicitors, will deliver his course of Lectures for the Hilary Session, in the Solicitors' Hall, Four Courts, on Mondays and Thursdays, at 10 minutes before 10 o'clock, a.m.

The first Lecture will be delivered on *Thursday*, the *14th day of January, 1875.*

The course will consist of *Twelve* Lectures, Three-fourths of which *must* be attended, so as to entitle Candidates to Professor's Certificate.

By Order,
JOHN H. GODDARD,
Secretary.

Solicitors' Hall, Four Courts, Dublin,
December, 1874.

The Professor of Law has fixed upon the following Book for Lectures, viz., "Williams' Law of Real Property," last edition.

Digitized by Google

COURT PAPERS.

LANDED ESTATES' COURT.

PETITIONS FILED *in the month of November*, 1874.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT £ s. d.	SOLICITOR
Nov. 2	Hans S. H. Browne, owner; *John Bermingham, petitioner*	Sale	Mayo and Galway	1,080 8 8	*Davis and Montfort*
" "	Patrick Kelly and Anne Kelly, his wife, (administratrix of John Ellis, deceased), owner; *Same, petitioner*	Sale	Dublin	424 0 0	*Edward F. Smith*
" 4	Martin Young owner; *Catherine O'Gorman, petitioner*	Sale	Cork	40 0 0	*John Barry*
" "	Hugh Cullen, owner; *Thomas Verdon and others, petitioners*	Sale	Kildare	1,200 0 0 estimated annual value	*Edward Caraher*
" "	Michael P. Cody and wife, owners; *Rev. Thomas Aveling and others, petitioners*	Sale	Longford	167 10 0	*H. J. P. West*
" "	Eliza Colgan, owner and petitioner	Sale	Kildare	50 13 4	*William Carey*
" 5	Marcs. Anthony Levinge, owner & petitioner	Sale	Meath	812 16 5	*Samuel Gerard*
" "	William H. Cummings, owner; *Richard Gordon, petitioner*	Sale	Antrim	Not stated	*H. and W. Seeds*
" 6	Jane M'Phearson and others, owners; *Samuel Gilliland, petitioner*	Sale	Donegal	4 10 10	*R. F. Martin*
" 7	The Hon. James Boothy Roche and several others, owners; *The said Hon. B. B. Roche, petitioner*	Sale	Cork and Waterford	4,788 2 5	*Barrington and Co.*
" "	Jane M. French and others, owners and petitioners	Declaration of title	—	—	*James W. O'Reilly*
" 7	Joseph Keatinge, owner; *G. O'Brien Kennedy, petitioner*	Sale	Wicklow	85 0 0	*G. O'B. Kennedy*
" "	Rev. Charles Lawrence, owner; *Charles O. Blake and another, petitioners*	Sale	Galway	Not stated	*E. and G. Stapleton*
" 9	Francis M. Anderson, owner and petitioner	Sale	Cork	1,221 19 5	*Francis Hodder*
" 10	Robert Exham, owner and petitioner	Sale	Dublin	362 5 3	*Jeffrey Browning*
" 11	Margaret Magrath, owner; *Teresa Maher, petitioner*	Sale	Dublin	800 0 0 Estimated value	*Jeremiah Mara*
" "	John M'Minn, owner; *Anne Joyce, petitioner*	Sale	Down	189 18 8	*E. F. Smith*
" "	Michael Hynes and others, owners; *George Gardiner, petitioner*	Sale	Waterford	In owner's possession	*W. H. Parker*
" "	David Sherlock, owner and petitioner	Sale	Dublin	In owner's possession	*D'Alton and Co.*
" 12	Thomas D. Yourell, owner; *Munster Bank, petitioners*	Sale	Dublin and Meath	13 3 1	*Maxwell and Co.*
" 16	Morgan M'Swiney, owner; *Anthony O. Geran and another, petitioners*	Sale	Cork	82 11 0	*Simon Creagh*
" "	James P. Welply, owner; *Thomas George Everell, petitioner*	Sale	Cork and Tipperary	Not stated	*Alma and Hackett*
" 18	Christopher S. Brice, owner and petitioner	Sale	Dublin	186 10 0	*F. R. Pim.*
" 19	Edward Lloyd and others, owners and petitioners	Sale	Tipperary	359 12 2	*Keely and Co.*
" "	Charles H. James and others, assignees of John Hazleton, owners; *Catherine Thompson and others, petitioners*	Sale	Armagh	247 5 4	*H. and W. Seeds*
" 20	Edward Gillman, owner; *Thomas Kayler, petitioner*	Sale	Cork	324 7 5	*D'Alton and Co.*
" "	Nicholas J. Gannon and another, owners; *John Brennan, petitioner*	Sale	Kildare and Meath	1,778 13 8	*Ford and Doherty*
" "	William B. Ritchie, owner and petitioner	For declaration of title	Belfast	In owner's possession	*Crawford and Lockhar*
" 21	Dublin Port and City Railway Co., owners; *Maria Mooney, petitioner*	Sale	Dublin	Not stated	*M. K. Cullen*
" 23	Richard Thomas Bond, owner; *Henry James Lynch and wife, petitioners*	Sale	Roscommon	In owner's possession	*J. B. Concannon*
" "	Trustees of will of Hugh Morgan Tuite, owners and petitioner	Sale	Westmeath	864 19 6	*T. A. Cusack*
" 24	James Carty, owner and petitioner	Sale	Dublin	87 10 0 Estimated valuation	*P. J. Kelly*
" "	John Carty, owner; *James Carty, petitioner*	Sale	Dublin	Not stated	*P. J. Kelly*
" 25	Thomas L. Roberts, owner and petitioner	Sale	Cavan	219 18 3	*G. W. Thompson*
" "	Rev. Edmund L. Walsh and others, owners	Sale	Westmeath	194 16 3	*Tyrrell and Stanuel*
" 25	Dominick Darcy, owner; *John Hughes, petitioner*	Sale	Mayo	634 15 7	*L. G. O Neill*
" 27	Anne Barry and others, owners; *Kathleen O'Donovan, petitioner*	Sale	Cork	155 18 0	*Maxwell and Co*
" "	Rev. Henry R. Hoare and others, owners and petitioners	Sale	Clare	115 7 8 Moiety for sale	*Robert Mecredy*

Digitized by Google

LANDED ESTATES' COURT—PETITIONS FILED—*continued.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
				£ s. d.	
Nov. 27	Henry John Going, owner and petitioner	Sale	Cork	176 17 8	*Keily and Lloyd*
„ 30	Louisa Brady and others, owners; *James Delacour, petitioner*	Sale	Cork	768 7 2	*J. and W. G. Lane*
„ „	Trustees of will of Hugh M. Tuite and another, owners; *George Pim, petitioner*	Sale	Westmeath	Not stated	*John Hone*

COURT OF BANKRUPTCY.

SITTINGS FOR NEXT WEEK, so far as appointed.

TUESDAY.

Before the COURT, at 11 o'clock.

BANKRUPTS	NATURE OF SITTING	SOLICITOR
John S. Lofthouse	1st public sitting	*Oldham & Eaton*
Wm. Armstrong	do	*Oldham & Eaton*
William Logue	do	*Lett*
James Shallow	do	*Lett*
Michael Monahan	do	*Rynd*
Patrick Tallon	do	*Gerrard*
George Meares	2nd composition sitting	*Rynd*
Same matter	Final examination	*Casey & Clay*
Eugene O'Sullivan	do	*Larkin & Co.*
John M. Greer	do	*Jones*
James Kealy	do	*Casey & Clay*
Michael Morris	do	*Lett*
Henry M'Carthy	do	*Lett*
Robert Silk	do	*Byrne*
John M'Donald	do	*Neilson*
Robert D. Scott	do	*Casey & Clay*
Patrick Reilly	do	*Hamilton & Craig*
John Lynch	do	*Casey & Clay*
John Parsons	do	*Casey & Clay*
Geoffrey Davies	do	*O'Conor*
George Hamill	do	*Molloy & Watson*
———	Application to dismiss debtor summons	*Todd*
H. M'Kerihan	Examine witnesses	*Findlater & Co.*

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

Philip M'Cusker	Prove debts and vouch	*Perry & Co.*
Walton and Nolan	do	*Larkin & Co.*

THURSDAY.

Before CHIEF REGISTRAR or CHIEF CLERK, at 12 o'clock.

James Ryan	Costs	*Casey & Clay*

ADJUDICATIONS IN BANKRUPTCY.

Coulter, Robert, Kesh, Fermanagh, grocer. Sittings, *Tuesday, January* 12, and *Friday, January* 29. *Fay and M'Gough,* solrs

Grady, George, Ballybough Road, grocer and spirit dealer. Sittings, *Friday, January* 15, and *Tuesday, February* 2. *Robinson,* solr.

Miller, Matthew, Coolnamuck, Kilkenny, farmer. Sittings, *Tuesday, January* 12, and *Friday, January* 29. *Lett,* solr.

Nagle, Luke J., Nenagh, Tipperary, grocer. Sittings, *Tuesday, January* 12, and *Friday, January* 29.

Roche, James, Corn Market, Wexford, grocer. Sittings, *Friday, January* 15, and *Tuesday, February* 2. *Perry & Co.,* solrs.

O'Grady, Richard Rose, Rookwood, Rathfarnham, gentleman, Sittings, *Tuesday, January* 19, and *Friday, February* 5. *T. M'Govern,* solr.

O'Leary, Cornelius, of Pope's Quay, and Nile-street, Cork, undertakers. Sittings, *Tuesday, January* 19, and *Friday, February* 5. *Larkin & Co.,* solrs.

O'Connell, William James S., St. John's-square, Limerick. Sittings, *Tuesday, January* 19, and *Tuesday, February* 5. *Casey & Clay,* solrs.

Thompson, Joseph S. N. T., Barny, Wexford, miller. Sittings, *Friday, January* 15, and *Tuesday, February,* 2. *T. A. Barlow,* solr.

Twomey, Timothy, Clashroe, Cork, farmer. Sittings, *Tuesday, January* 12, and *Tuesday, January* 26. *O'Reardon and Barry,* solrs.

DIVIDENDS IN BANKRUPTCY.

Brooks, John Knockapolis, Castleblayney, farmer and cattle dealer. 1st dividend, 5s. 8¼d. in the £. C. H. James, official assignee. *Casey and Clay,* solrs.

Creswell, Wm., Ramelton, Donegal, farmer. 1st dividend, 2s. 9d. in the £. C. H. James, official assignee. *J. Mathews,* solr.

Cresswell, Joseph, Whitecastle, Derry. 1st Dividend, 1s. 8d. in the £. C. H. James, official assignee. *J. Mathews,* solr.

Geraghty, Martin, Ballinlobe, Mayo, draper. 2nd and final dividend, 10¾d. in the £, making with 1st dividend 8s. 10¾d. in the £. L. H. Deering, official assignee. *Larkin & Co.,* solrs.

Hackett, James, Amiens-street, Dublin, coachbuilders. 1st dividend, 1s. 1½d. in the £. L. H. Deering, official assignee. *Neilson,* solr.

Harris, William Henry, Abbey-street, Dublin, glass manufacturer. 2nd and final dividend, ¾d. in the £, making with 1st dividend 1s. 11½d. in the £. L. H. Deering, official assignee. *Oldham and Eaton,* solrs.

Hennessy, John James, Kenmare, Kerry, grocer, spirit and general merchant. 1st dividend 4s. in the £. L. H. Deering, official assignee. *Thompson,* solr.

Keane, John, Aungier-street, Dublin, pawnbroker. 1st dividend 8s. 6d. in the £. C. H. James, official assignee. *Casey & Clay,* solrs.

Keegan, Francis, Lower Baggot-street, Dublin, fishmonger. 1st dividend 4s. 10d. in the £. L. H. Deering, official assignee. *Boughey,* solr.

Kough, George Harley and Edward Harley, trading as Harley Kough, Brothers, Rosbercon, Kilkenny, ironfounders. 1st dividend 8s. 10¾d. in the £. L. H. Deering, official assignee. *Perry and Co.,* solrs.

Mahony, Martin, High-street, Waterford, shopkeeper. 2nd and final dividend 2¼d. in the £, making with 1st dividend 8d. in the £. L. H. Deering, official assignee. *Bradley and Son,* solrs.

O'Brien, Patrick, Ballymote, Sligo, general draper. 2nd dividend ¾d., making with 1st dividend 3s. 8¾d. in the £. L. H. Deering, official assignee. *Findlater and Co.,* solrs.

O'Neill, Thomas F., Carrick-on-Suir, Tipperary, miller and corn merchant. 2nd dividend 10¾d., making with 1st dividend 4s. 10¾d. in the £. L. H. Deering, official assignee. *Maxwell and Weldon,* solrs.

Rowan, John, William, and Robert, St. Paul's Mills, Belfast, flax spinners. 1st dividend 1s. 8d. in the £. C. H. James, official assignee. *Oldham and Eaton,* solrs.

Shea, Daniel, Tralee, Kerry, shopkeeper. 1st dividend, 8¼d. in the £. L. H. Deering, official assignee. *Perry and Co.,* solrs.

Sheridan, Anthony M., Ballyjamesduff, Cavan, draper. 1st dividend 2s. 9½d. in the £. C. H. James, official assignee. *Findlater and Co.,* solrs.

Thornton, William Henry, Cadamstown, King's County, gentleman farmer. 1st dividend 12s. 4½d. in the £. C. H. James, official assignee. *Whelan and Son,* solrs.

Walker, Samuel Henry, Thomas-street, Dublin, salt and coal merchant. 1st dividend on new proofs 2s. 3½d. in the £. L. H. Deering, official assignee. *Findlater and Co.,* solrs.

Williams, Mary, Cork, widow, coach builder. 1st dividend, re-struck, 11s. 11d. in the £. L. H. Deering, official assignee. *Oldham and Eaton,* solrs.

Digitized by Google

DUBLIN STOCK AND SHARE LIST.

*Paid	DESCRIPTION OF STOCK	DECEMBER Fri 18	Sat. 19	Mon. 21	Tues. 22	Wed. 23	Thur 24
	Government.						
—	3 p c Consols	91⅞	91¾⅞	91⅞	—	91⅝¾	—
—	New 3 p c Stock ..	90¾⅞	90¾⅞	90⅞	90¾⅞	90¾⅞	90¾⅞
	INDIA STOCK.						
—	5 p c July '80 } Trsfble. at	—	—	—	107½	—	107⅝
—	4 p c Oct. '88 } Bk. of Irel.	102½	—	102½	—	—	—
	Banks.						
100	Bank of Ireland ..	x d	300	297	297	—	300
25	*Hibernian Banking Co.* ..	—	59¾	59½	59⅝¾⅞	60–½	59¾
20	*London and County* ..	64½	—	—	—	—	64¾½
15	*London Joint Stock* ..	—	—	—	—	—	52½
20	*London and Westminster* ..	—	—	77⅝	77	76¾	76½–7
3½	*Munster Bank (Limited)*	—	9¼	—	—	—	—
30	*National Bank*	68⅝¾⅞	68½–9	68¾	68¾½	68–¼½	—
15	*National of Liverp'l (Ltd)*	—	16¼½	—	—	—	16¼½
25	*Provincial Bank* ..	88	—	—	85	—	88
10	Do. New ..	—	—	34½	—	—	34½
10	*Royal Bank*	—	—	30¾½	30⅝	—	30⅝
15	*Union of London* ..	—	48¾	—	—	48¾	—
	Steam.						
100	City of Dublin	—	108¼	108¼	—	—	—
	Mines.						
7	*Cape Copper M. Co. (lit'd)*	x d	—	—	—	—	—
1	Killaloe Slate Co. (lit'd) .	—	17/6	—	18/9	18/3	18/–
2½	Wicklow Copper	—	—	—	—	7½	—
	Miscellaneous.						
10	Alliance & Dub. Cons.' Gas	—	—	—	10⅝¾⅞	10⅝	10⅝¾
10	Dublin Tramways ..	—	6–⅛	6⅛	6⅛	—	6⅛ 6
100	Grand Canal ..	—	—	—	—	—	55½
7½	*M'Swiney & Co., limited*	7¾	—	7¾	—	—	—
9-4-7	*Patriotic Assurance* ..	—	—	-	-	10⅝	10⅝
	Railways.						
50	Belfast and Northern Cos.	69¼½	—	69¾	69¼½	—	—
20	Cork, Blackrock & Passage	10	—	—	—	—	—
100	Dublin and Belfast Junct.	—	—	—	—	93–2½	93½
100	Dublin and Drogheda	-	—	—	117	—	118
100	Dublin, W'klow, & W'ford	—	—	—	—	75½	—
100	Gt. Southern and Western	108¼	—	—	108¼	108	108
100	Midland Gt. Western ..	83½	—	—	—	—	—
50	Waterford and Limerick ..	—	—	—	30¾	—	—
	Railway Preference.						
50	D., W., & W., 5 p c (1860)	—	—	—	—	—	—
50	Do. do. (1865)	—	54	—	—	—	—
100	Gt. South'n & West'n 4 p c	99	99	—	—	—	—
10	Irish North Western A 5 p c	—	—	—	—	—	4½
100	Mid. Great Western, 5 p c	—	—	—	110½	—	—
50	Watfd. & Limerick, 5 p c rd	—	—	—	—	—	—
100	Do., 4½ p c	—	100	—	—	—	—
	Railway Debentures.						
—	Dub. & Belfast Junc., 4 p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	100	—	—	—
—	D., W., & W., 4½ p c ..	—	—	—	—	—	100½
—	Do., 4½ p c	—	—	102½	—	—	—
—	Gt. North'n & West'n 4½ p c	—	—	—	—	—	—
—	Gt. South'n & West'n, 4 p c	—	—	—	—	99½	—
—	Irish Nth Westn 1st C 5 p c	—	—	—	—	—	—
—	Midland Gt. West'n, 4½ p c	—	—	100½	—	—	—
—	Do., 4½ p c	—	—	—	—	—	—
—	Waterf'd & Limerick 4½ p c	—	—	—	—	—	—
—	Do., 4½ p c	—	—	—	—	102	—

* Shares not fully paid up are given in *Italics*.

Bank Rate—Of Discount—6 per cent., 1st December, 1874
Of Deposit—3½ per cent., 1st December, 1874.

Name Day—December 29th, and January 13th, 1874.
Account Days—December 30th, and January 14th, 1874.

On Saturdays business commences at 11 30 a.m., and the Stock Brokers' Offices close at 1 p.m.

A JUDICIAL REBUKE.—The *York Herald* says that Mr. Justice Denman startled assize-court blackguardism on the 14th, at Warwick, by an outburst of judicial indignation. Suppressed tittering reaching his ear from the gallery whilst a witness was reluctantly repeating indelicate language, his lordship exclaimed in a tone of astonishment and anger, "Good God, is this a Christian country?" Having threatened to have one man arrested who had been laughing at every indelicate expression, his lordship added—"Let us have decency in courts of justice. One does not come to be amused by filth which one is obliged to extract in cases that disgrace the country."

BROWNE'S DIARIES AND ALMANACKS FOR 1875.—Again we welcome the appearance of Browne's most useful, complete, and now famous Diaries, Almanacks, and Pocket Books for the New Year. They are replete with necessary information, and turned out of hands in the most finished style.—*Freeman's Journal.*

A SCENE IN A COUNTY COURT.—A singular scene was enacted in the Banbury County Court lately. Mr. Cooke, the judge, had a judgment summons before him, and he told the plaintiff, a leather-seller, named Marsh, that as he had not shown that the defendant had the means to pay, he would not make an order. The judge added that members of the House of Commons had complained about County Court judges committing men to prison who could not pay; he was not going to be brought before the House of Commons for the plaintiff or any other man. The plaintiff said he wanted justice, and that the County Court was a mere mockery if he did not get it. For this remark Mr. Cooke fined the plaintiff forty shillings, and another forty shillings for putting his hat on before he left the Court.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.

GRAHAM—December 22, at Manorhamilton, Frederick James Graham, Esq., solicitor, youngest son of John Graham, Esq., solicitor, of Enniskillen, aged 23 years

HODGENS—December 18, at his residence, 57 Bath-avenue, Dublin, of bronchitis, Thomas Hodgens, Esq., LL.D., barrister-at-law.

MONEY:

MORTGAGES ON ESTATES, LIFE INTERESTS, AND REVERSIONS.

Messrs. SALTER & CO., have large Funds available for Loans upon the above Securities, to which they desire to direct the attention of Landed Proprietors, Solicitors, and others requiring Money on Mortgage.

They also invite applications for Securities from Capitalists, Trustees, and others, desirous of Investing Money either in Large or Small Amounts.

41, Lower Sackville-street, Dublin; and
11, Pancras-lane, London, E.C. 520

BILLS of £20 to £500, Discounted with despatch, and Cash Advanced on Farmers' Leases, Goods in Bond, Reversions, or any *bond fide* Security, on moderate and strictly confidential terms, and MORTGAGES to any amount negotiated on best terms consistent with security, by

MR. FITZSIMONS,
474 18, Fleet-street, Dublin.

TO SOLICITORS and OTHERS.—Mr. MONTAGU BRAHAM is prepared to make Temporary Advances on Personal or other Securities pending negociations for Loans, Sales in Landed Estates' Court, Bills of Costs, &c. Applications strictly confidential.

Mr. MONTAGU BRAHAM,
611 37, South Frederick-street, Dublin.

MISCELLANEOUS:

CRAIG, GARDNER, & CO.,
ACCOUNTANTS,
TRINITY CHAMBERS, 40 AND 41, DAME-STREET,
DUBLIN. 308

A WELL RECOGNISED AND FREQUENT SOURCE OF DISEASES of the MOUTH, TONGUE, and GUMS, Is contact with the Cement of Envelopes over the preparation of which proper cleanly supervision is rarely exercised. We pay strict attention to this department: but to obviate all danger—at the same time combining safety to the contents—Mr. HELY, of this firm, invented and perfected

THE EUREKA ENVELOPE,
For which Her Majesty granted Letters Patent, No. 524, under the Great Seal. The adhesive matter being placed on the under flap, the great advantage is obtained that the Mouth and Tongue are applied to

FRESH CLEAN PAPER,
Not more expensive than ordinary Envelopes of similar qualities.

☞ *Order from your Stationers. We Supply the Trade only.*

HELY, HARRIS, & CO.,
ALEXANDRA ENVELOPE WORKS,
9 to 11, DENMARK-STREET, DUBLIN.
Upwards of three hundred hands employed in the production of Envelopes. 371

Digitized by Google

LEGAL EDUCATION:

ATTORNEYS' APPRENTICES' PRELIMINARY EXAMINATION.

DR. MORTIMER'S Class is in full operation. The following distinctions (including 2nd recommended, 4th and 5th places in October, 1st and 3rd in May, and 2nd and 3rd in April, 1874) have been obtained by his pupils:—Gold Medal and £10 Prize (three times); Silver Medal and £5 Prize; Public Commendation under the Benchers; 1st place (seven times); 2nd place (six times); 3rd place (seven times); 4th place (four times). During the last three years seven have been recommended to compete for the Prize, and in all 116 have passed. Address—

WM. MORTIMER, M.A., LL.D.,
26, York-street, Dublin.
600½

MR. JAMES CURRAN, Ex-Scholar, Trinity College, Dublin; First Classical Sizar and Honorman; First University Prizeman in Civil Law, Second in Modern History, and Fourth in English Literature;

36, HARDWICKE-STREET,

Prepares Gentlemen for the Entrance and Term Examinations in the Universities, Civil Law Examinations, Royal College of Physicians and Surgeons, Arts Examination of Apothecaries' Hall, Preliminary Examination of Attorneys' Apprentices, &c. 617

LEGAL POSTINGS:

HIGH COURT OF CHANCERY.

ADVERTISEMENT FOR CREDITORS.

Pursuant to a Decree of the High Court of Chancery, in Ireland, wherein Edward De Moleyns, Administrator of the Estate and Effects of Major Chidley Downes Coote, deceased, is plaintiff; and Theresa Coote, otherwise Reinbod, widow, and Sir Charles Henry Coote, Baronet, are defendants—the Creditors of the said

MAJOR CHIDLEY DOWNES COOTE, who died in or about the 6th day of March, 1872, at Antibes, in France—are, on or before the 12th day of January, 1875, to send by post, pre-paid, to B. W. ROOKE, of 22 Nassau-street, in the City of Dublin, in Ireland, the Solicitor of the said Edward H. De Moleyns, the Administrator of the said Major Chidley Downes Coote, their Christian and surnames, addresses and descriptions, and in case of firms, the names of the partners and style and title of firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; or in default thereof they will be peremptorily excluded from the benefit of the said Decree.

Every Creditor of the said Major Chidley Downes Coote, holding any security is to produce the same before the Right Honourable the MASTER OF THE ROLLS, at his Chambers, at the Four Courts, Dublin, in Ireland, on the 2nd day of FEBRUARY, 1875, at Eleven of the clock in the forenoon, being the time appointed for adjudicating on the claims.

Dated this 28th day of November, 1874.

B. E. WHITESTONE, Chief Clerk.

B. W. ROOKE, Solicitor, 22 Nassau-street, Dublin, Ireland. 618

HIGH COURT OF CHANCERY.

Pursuant to a Decree of the High Court of Chancery, made in the Cause wherein Charles Edward Billing is plaintiff; and George Ion Grant and Louisa Grant, his wife, Lambert Hepenstal Ormsby, John Charles Grant, Reverend Benjamin Henry Johnson, and Jane Johnson, his wife, William Basil Orpin, Amelia Billing, Ida Emily Billing, Helena Drana Maud Mary Billing, and George Lambert Watson Hepenstal, are defendants; and bearing date the 13th day of November, 1874—the Creditors of

THEOBALD BILLING, late of No. 41 Upper Mount-street, in the City of Dublin, Solicitor, deceased—who died in or about the month of March, 1873—are, on or before the 18th day of JANUARY, 1875, to send by post, pre-paid, to Messrs. MEADE and COLLES, of No. 8 Kildare-street, Dublin, the Solicitors of the said Charles E. Billing, who is the executor of the said Theobald Billing, their Christian and surnames, addresses, and descriptions, and in the case of firms, the names of the partners and style or title of the firm, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them; and all persons claiming to have incumbrances affecting the real estate of the said Theobald Billing, are by their Solicitors to come in and prove their claims at the Chambers of the VICE-CHANCELLOR, Four Courts, City of Dublin, on or before said 18th day of JANUARY, 1875; or in default thereof they will be peremptorily excluded from the benefit of said Decree.

Every Creditor or Claimant on real estate holding any security is to produce the same before the VICE-CHANCELLOR, at his Chambers, Four Courts, Dublin, on TUESDAY, the 26th day of JANUARY, 1875, at Twelve o clock noon, being the time appointed for hearing and adjudicating upon the claims.

Dated this 18th day of December, 1874.

A. T. CHATTERTON, Chief Clerk.

MEADE and COLLES, Solicitors for plaintiff, No. 8 Kildare-street, Dublin. 641

IN THE COURT OF BANKRUPTCY, IRELAND.

SAMUEL PALMER, of 40 Capel-street, in the City of Dublin, Boot and Shoe Dealer, was on the 8th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on TUESDAY, the 12th day of JANUARY, 1875, and on TUESDAY, the 26th day of JANUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Esq., Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

THOMAS FAGAN, Registrar.

ROBERT JAMES JONES, Solicitor, 17 Eustace-street, Dublin. 644

IN THE COURT OF BANKRUPTCY, IRELAND.

JOSEPH T. THOMPSON, of Newtownbarry, in the County of Wexford, Miller, was on the 18th day of December, 1874, adjudged Bankrupt.

Public Sittings will be held at the Court of Bankruptcy, Four Courts, Dublin, on FRIDAY, the 15th day of JANUARY, 1875, and on TUESDAY, the 2nd day of FEBRUARY, 1875, at the hour of Eleven o'clock in the forenoon, whereat the Bankrupt is to attend, and to make a full disclosure and discovery of his Estate and Effects. Creditors may prove their Debts, and at the First Sitting choose a Creditor's Assignee. At the Last Sitting the Bankrupt is required to finish his Examination.

All persons having in their possession any Property of the Bankrupt, must deliver it, and all Debts due to the Bankrupt must be paid, to LUCIUS H. DEERING, Official Assignee, Upper Ormond-quay, Dublin, to whom Creditors may forward their Affidavits of Debt.

A. F. LLOYD, Registrar.

FREDERICK A. BARLOW, Solicitor, 14 North Great George's-street. 643

In the LANDED ESTATES' COURT, IRELAND.

CITY OF DUBLIN.

SALE,
On FRIDAY, the 15th JANUARY, 1875.

In the Matter of the Estate of Thomas Hennessy Crofts and Ellen Teresa Moriarty, Owners and Petitioners.

TO BE SOLD BY AUCTION, Before the Honourable Judge Flanagan, At the Landed Estates' Court, Four Courts, In the City of Dublin,
On FRIDAY, the 15th day of JANUARY, 1875.
In One Lot,

The Plot of Ground, with the Houses and Premises thereon, known as 37, 38, and 39 Westland row, and Strip of Ground adjoining, situate in the Parish of St. Mark and City of Dublin, held for the residue of the term of 999 years, computed from the 1st May, 1842, subject to the yearly rent of £50, and producing the net annual profit rent of £97 13s 10d.

Dated this 12th day of November, 1874.

C. E. DOBBS, Examiner.

This property offers a valuable investment to a purchaser. The profit rent of £97 13s 10d, is well secured, the premises being let on leases under the tenement valuation, and each tenant having a valuable interest in his holding.

Proposals for the purchase of the premises by private offer will be received by Mr. Thomas Henry Kane, solicitor, up to the 6th day of January, 1875, and if considered sufficient, will be submitted to the Judge for his approval, without further notice.

For Rentals and particulars apply at the Registrar's Office, Landed Estates' Court; to

THOMAS HENRY KANE, Solicitor having the carriage of the Sale, 89 Talbot-street; or to

ROBERT JAMES JONES, Solicitor for the Owner, 17 Eustace-street, Dublin. 616

BINDING "THE IRISH LAW TIMES."—SUBSCRIBERS are informed that they can have *THE IRISH LAW TIMES AND SOLICITORS' JOURNAL*, with TITLE PAGE and Copious INDEX, Bound at the following Prices, per Volume, viz.:—Whole-bound in Cloth, 2s. 6d; half-bound in Law Calf, 4s.; whole-bound in Law Calf, 6s. 6d. Also the Acts of the past Sessions, printed uniformly with THE IRISH LAW TIMES, and bound up with THE LAW TIMES, or bound up separately, at proportionate Rates,

AT THE
Office of THE IRISH LAW TIMES AND SOLICITORS' JOURNAL
53, UPPER SACKVILLE-STREET, DUBLIN.

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thomas and City of Dublin.—*Saturday, December* 26, 1874.

Digitized by Google

THE

IRISH LAW TIMES REPORTS.

CONTAINING

CASES DECIDED IN THE SUPERIOR COURTS

OF

Equity and Common Law in Ireland;

AND ALSO IN THE

PROBATE, AND MATRIMONIAL CAUSES, LANDED ESTATES, ADMIRALTY, BANKRUPTCY, LAND CASES RESERVED, REGISTRY-APPEALS, CHURCH TEMPORALITIES, AND ASSIZE COURTS, AND IN THE COURTS OF QUARTER SESSIONS,

AND

LAND SESSIONS.

TO WHICH IS ADDED

A DIGESTED INDEX

OF ALL SUCH CASES REPORTED IN THE IRISH LAW TIMES REPORTS, AND IN CONTEMPORANEOUS LEGAL REPORTS, DURING THE YEAR 1874.

EDITED BY

EDWARD NETTERVILLE BLAKE,

BARRISTER-AT-LAW.

VOLUME VIII.

DUBLIN:

PRINTED AND PUBLISHED BY THE PROPRIETOR,

JOHN FALCONER, 53, UPPER SACKVILLE-STREET.

1874.

Digitized by Google

Digitized by Google

TABLE OF CASES

REPORTED IN THIS VOLUME.

EQUITY CASES.

A

PAGE

Adjudication, *re a Disputed*—(B.) - - - 34
Do. do. —(Ch. Ap.) - - - 77
Ahern *v.* M'Swiney—(R.) - - - - 172
Alexander, Sankey *v.* (1)—(V.C.) - - - 157
Do. (2)—(V.C.) - - - - 159
Arranging Debtor, *re an*—(B.) - 8, 27, 92, 106, 160
Attorney-General, Daly *v.*—(V.C.) - - - 70

B

"Belvedere," the—(Adm.) - - - - 176
Birley, Brothers, *ex parte*—(B.) - - - 212
Blakely and Crawford Estate, *re*—(R.) - - 17
Breslin *v.* Hodgens—(V.C.) - - - - 110
Brown *v.* Roberts, *re*—(Ch. Ap.) - - - 169

C

Caldbeck's Trusts—(V. C.) - - - - 119
Carew, a bankrupt, *re*—(B.) - - - 90
Carroll *v.* Keays—(Ch. Ap.) - - - - 47
Carroll, Farrer *v.*—(R.) - - - - 172
Carroll, Keays *v.*—(Ch. Ap.) - - - - 47
Church Temporalities, Commissioners of—(V.C.) - 191
Connor, a bankrupt, *re*—(B.) - - - 71
Cooke, Evans *v.* (1)—(R.) - - - - 17
Do. (2)—(R.) - - - - 118
Cowan, *Goods of*—(Pro.) - - - - 120
Crawford and Blakely Estate, *re*—(R.) - - 17
Croker, *ex parte*—(Ch. Ap.) - - - - 169

D

Daly *v.* the Attorney-General—(V. C.) - - 70
D'Arcy, Hughes *v.*—(R.) - - - - 130
Debtor, *re* an Arranging—(B.) - 8, 27, 92, 106, 160
Denny's Estate, *re*—(Ch. Ap.) - - - 153
De Serancourt, a bankrupt, *re*—(B.) - - - 60
Do. do. —(Ch. Ap.) - - - 137
Devery, *Goods of*—(Pro.) - - - - 120
Domvile, a bankrupt, *re*—(B.) - - - 196
Dooley's Estate, *re*—(L.E.) - - - - 141
Dundas's Trust, *re*—(R.) - - - - 117

E

Easdale, *re* (1)—(B.) - - - - - 209
Do. (2)—(B.) - - - - - 212
Estate of Crawford and Blakely—(R.) - - - 17
——— Denny—(Ch. Ap.) - - - - 153
——— Dooley—(L.E.) - - - - 141
——— Greer—(L.E.) - - - - - 87
——— Henderson—(L.E.) - - - - 105
——— Ker—(L.E.) - - - - - 174
——— Nixon (1)—(L.E.) - - - - 30
——— Do. (2)—(L.E.) - - - - 111
——— Rooney, J.—(Ch. Ap.) - - - 125
——— Rooney, P.—(L.E.) - - - - 83
——— Tierney (1)—(L.E.) - - - - 29
——— Do. (2)—(L.E.) - - - - 62

PAGE

Evans *v.* Cooke (1)—(R.) - - - - - 17
Do. (2)—(R.) - - - - - 118
Ex parte Birley, Brothers—(B.) - - - - 212
——— Croker—(Ch. Ap.) - - - - - 169
——— Harrison—(V.C.) - - - - - 82
——— Knott—(R.) - - - - - 81
——— Monck, Viscount—(V.C.) - - - - 191
——— Provincial Bank—(B.) - - - - 209
——— Sutcliffe—(R.) - - - - - 117
——— Vance and Wilson—(B.) - - - - 185
——— Walsh—(V.C.) - - - - - 37
——— Wilson, Vance and—(B.) - - - - 185

F

Farrar *v.* Carroll—(R.) - - - - - 172
Fegan's Settlement, *re* (1)—(V.C.) - - - 205
Do. (2)—(V.C.) - - - 206
Flynn, a bankrupt, *re*—(B.) - - - - 112

G

Gillman and Potter, Paul and Stoker *v.*—(Ch. Ap.) - 9
Goods of Cowan—(Pro.) - - - - - 120
——— Devery—(Pro.) - - - - - 120
Greer's Estate, *re*—(L.E.) - - - - - 87

H

Harris, a bankrupt, *re*—(B.) - - - - 121
Harrison, *ex parte*—(V.C.) - - - - - 82
Henderson's Estate, *re*—(L.E.) - - - - 105
Hodgens, Breslin *v.*—(V.C.) - - - - 110
Hughes *v.* D'Arcy—(R.) - - - - - 130

I

In re An Arranging Debtor—(B.) - 8, 27, 92, 106, 160
—— Blakely and Crawford Estate—(R.) - - 17
—— Brown *v.* Roberts—(Ch. Ap.) - - - 169
—— Carew, a bankrupt—(B.) - - - - 90
—— Church Temporalites, Commissioners of—(V.C.) 191
—— Connor, a bankrupt—(B.) - - - 71
—— Disputed Adjudication, a—(B.) - - - 34
—— Do. —(Ch. Ap.) - - 77
—— De Serancourt, a bankrupt—(B.) - - 60
—— Do. —(Ch. Ap.) - - 137
—— Dublin and Drogheda Ry. Co.—(R.) - - 81
—— Easdale (1)—(B.) - - - - - 209
—— Do. (2)—(B.) - - - - - 212
—— Fegan's Settlement (1)—(V.C.) - - - 205
—— Do. (2)—(V.C.) - - - 206
—— Flynn, a bankrupt—(B.) - - - - 112
—— H.—(B.) - - - - - - 185
—— Harris, a bankrupt—(B.) - - - - 121
—— M'Keown, deceased—(R.) - - - - 18
—— Nolan, a bankrupt—(B.) - - - - 55
—— Do. —(Ch. Ap.) - - - 199
—— S., an alleged bankrupt—(B.) - - - 43
—— The Goods of Cowan—(Pro.) - - - 120
——— Devery—(Pro.) - - - 120
—— W., a Solicitor—(R.) - - - - - 51

Digitized by Google

J

	PAGE
Jackson's Trusts—(V.C.)	174
James, Savage *v.*—(Ch. Ap.)	190

K

Kearney *v.* O'Flaherty—(R.)	157
Keays *v.* Carroll—(Ch. Ap.)	47
Kelly *v.* Kelly—(V.C.)	173
Ker's Estate, *re*—(L.E.)	174
Knilans, Watson *v.*—(R.)	157
Knott, *ex parte*—(R.)	81

L

Lowry *v.* Patterson—(R.)	109
Lydon *v.* Lydon—(Ch. Ap.)	85

M

M, *re*—(B.)	34
Do.—(Ch. Ap.)	77
M'Keown, deceased, *re*—(R.)	18
M'Swiney, Ahern *v.*—(R.)	172
Monck, *ex parte*—(V.C.)	191

N

"Nagpore," the—(Adm.)	185
Nixon's Estate, *re* (1)—(L.E.)	80
Do. (2)—(L.E.)	111
Nolan, a bankrupt, *re*—(B.)	55
Do. —(Ch. Ap.)	199
Nolan *v.* Nolan—(R.)	104

O

O'Flaherty, Kearney *v.*—(R.)	157
O'Geran and Ahern, M'Swiney *v.*—(R.)	172

P

Palmer *v.* Smith—(M.)	108
Patterson, Lowry *v.*—(R.)	109
Paul and Stoker *v.* Gillman and Potter—(Ch. Ap.)	9
Provincial Bank, *ex parte*—(B.)	209

R

Roberts, Brown *v.*—(Ch. Ap.)	169
Robinson, Sturgeon *v.*—(R.)	13
Rooney, J., Estate of—(Ch. Ap.)	125
Rooney, P., Estate of—(L.E.)	83

S

S., an alleged bankrupt, *re*—(B.)	43
Sankey *v.* Alexander (1)—(V.C.)	157
Do. (2)—(V.C.)	159
Savage *v.* James—(Ch. Ap.)	190
Smith, Palmer *v.*—(M.)	108
Solicitor, a, *In re* W.—(R.)	51
Stoker, Paul and *v.* Gillman and Potter—(Ch. Ap)	9
Sturgeon *v.* Robinson—(R.)	13
Sutcliffe, *ex parte*—(R.)	117

T

	PAGE
Tierney's Estate, *re* (1)—(L.E.)	29
Do. (2)—(L.E.)	62
Trusts of Caldbeck—(V.C.)	119
——— Dundas—(R.)	117
——— Jackson—(V.C.)	174

V

Vance and Wilson, *ex parte*—(B.)	185
Viscount Monck, *ex parte*—(V.C.)	191

W

W., a Solicitor, *re*—(R.)	51
Walsh, *ex parte*—(V.C.)	37
Watson *v.* Knilans—(R.)	157
Wilson, Vance and, *ex parte*—(B.)	185

COMMON LAW CASES.

A

Alleyne, Keogh *v.*—(Ex.)	73
Anonymous—(Ex.)	206
Arkins *v.* Magrath—(C.P.)	21
Athlone Election Petition—(C.P.)	62, 67

B

Barry *v.* Cass—(Con. Ch.)	124
Barry *v.* Cork and Bandon Railway Co.—(Cir. C.)	67
Bath, Marquis of, Magee *v.*—(Cir. C.)	219
Bennett *v.* Jones—(L.S.)	94
Bolland and Ruddock *v.* Porter—(L.S.)	93
Byrne, Hester & Co. *v.*—(Con. Ch.)	53

C

Campbell, Cheeseman *v.*—(C.P.)	203
Campbell, Doyne *v.*—(Ex.)	101
Campbell, Maginnis and, *re*—(Q.B.)	20
Campion *v.* Campion—(C.P.)	147
Carmody, O'Brien *v.*—(Q.S.)	207
Carroll, White *v.*—(Q.B.)	63
Casey *v.* Galway—(Con. Ch.)	90
Cass, Barry *v.*—(Con. Ch.)	124
Cheeseman *v.* Campbell—(C.P.)	203
Cheevers *v.* Morgan—(L.S.)	33
Church, Proctor *v.*—(C.P.)	206
Claffey, *re*—(Q.B.)	20
Clarke *v.* Croker—(C.P.)	96
Cleary *v.* Lenihan (1)—(Q.B.)	146
Do. (2)—(Q.B.)	160
Coleman *v.* Fayle—(Q.B.)	88
Collier and wife *v.* D. W. & W. Ry. Co.—(C.P.)	24
Collier, *re* Rev. M.—(Cir. C.)	208
Comerford *v.* Sawrey—(L.S.)	25
Connell *v.* Dillon—(Con. Ch.)	115
Connolly *v.* Lord Digby—(L.S.)	68
Connor *v.* Sweetman—(Cir. C.)	103
Connor, Torkington *v.*—(C.P.)	89
Coote, Lappin and Little *v.*—(L.S.)	92
Corcoran, Treacy *v.*—(C.P)	65
Cork, Corporation of, The Queen *v.*—(Q.B.)	131
Cork and Bandon Ry. Co., Barry *v.*—(Cir. C.)	67
Court-house, Wicklow, *re*—(Cir. C.)	207
Cox, Thomas *v.*—(Con. Ch.)	52
Croker, Clarke *v.*—(C.P.)	96

Digitized by Google

D

PAGE

Dalton, Timpson *v.*—(Q.B.) - - - - - 184
D'Arcy, Hunter *v.*—(Q.B.) - - - - - 95
Digby, Lord, Connolly *v.*—(L.S.) - - - - 68
Dillon, Connell *v.*—(Con. Ch.) - - - - 115
Doherty, The Queen *v.*—(Cir. C.) - - - - 192
Dormoy, Sommet *v.*—(Q.B.) - - - - - 14
Dowden, Taylor *v.*—(L.S.) - - - - - 83
Doyle, Reilly *v.*—(Cir. C.) - - - - - 209
Doyne *v.* Campbell—(Ex.) - - - - - 101
Dripps, The Queen *v.*—(Cir. C.) - - - - 193
Drogheda Election Petition, *re*—(C.P.) - - - 218
Dublin, Corporation of, Griffin *v.*—(Con. Ch.) - - 123
Dub. and Belf. Junct. Ry. Co., Wallace *v.*—(C.P.) - 163
Dub. W. & W. Ry. Co., Collier and wife *v.*—(C.P.) - 24
Dunlop, Shaw *v.*—(Con. Ch.) - - - - - 76

E

Earl of Longford, Parkinson *v.*—(L.S.) - - - 194
Ennis, Shiel *v.* (1)—(C.P.) - - - - - 42
Do. (2)—(C.P.) - - - - - 67

F

Fayle, Coleman *v.*—(Q.B.) - - - - - 88
Flynn *v.* Vernon—(L.S.) - - - - - 184

G

Gallagher, Woods *v.*—(Cir. C.) - - - - 124
Galway, Casey *v.*—(Con. Ch.) - - - - 90
Galway Election Petition—(C.P.) - - - - 113
Gaynor *v.* Short—(Con. Ch.) - - - - - 116
Gogarty *v.* G. S. & W. Ry. Co.—(C.P.) - - - 161
Goodman, Reede and, *v.* Pipon—(Q.B.) - - - 18
Gordon *v.* Murphy—(Cir. C.) - - - - - 194
Grainger, Spaide *v.*—(Q.B.) - - - - - 53
Graves, Johnston *v.*—(Ex.) - - - - - 76
Great S. & W. Ry. Co., Gogarty *v.*—(C.P.) - - 161
Greene, M'Mullen *v.*—(C.P.) - - - - - 166
Greham *v.* Kavanagh—(Con. Ch.) - - - - 8
Griffin *v.* Mayor and Corporation of Dublin—(Con. Ch.) - - - - - - 123
Gunning, Sir H., Hynes *v.*—(L.S.) - - - - 70

H

Hall, Kinnerk *v.*—(L.S.) - - - - - 150
Hall's Presentment, *re*—(Cir. C.) - - - - 175
Hanway *v.* Taylor—(Ex.) - - - - - 98
Hart, White and, *v.* Carroll—(Q.B.) - - - - 63
Hayes, Reardon *v.*—(Con. Ch.) - - - - 116
Hely *v.* Kennedy—(Q.S.) - - - - - 26
Hepenstall, Williams *v.*—(C.P.) - - - - 6
Hester & Co. *v.* Byrne—(Con. Ch.) - - - - 53
Hickey, Stamp *v.*—(Con. Ch.) - - - - 167
Holland *v.* Reed—(Con. Ch.) - - - - - 168
Hunt *v.* Smyth—(Ex.) - - - - - 203
Hunt, Weston *v.*—(C.P.) - - - - - 115
Hunter *v.* D'Arcy—(Q.B.) - - - - - 95
Hynes *v.* Sir H. Gunning—(L.S.) - - - - 70

J

James *et al.* *v.* Moriarty—(Q.B.) - - - - 177
Johnston *v.* Graves—(Ex.) - - - - - 76
Jones, Bennett *v.*—(L.S.) - - - - - 94
Joyce *v.* O'Donnell—(C.P.) - - - - - 113
Justices of Co. Dublin, Queen *v.*—(Q.B.) - - - 184

K

PAGE

Kavanagh, Greham *v.*—(Con. Ch.) - - - - 8
Kavanagh *v.* Power—(L.S.) - - - - - 33
Kearse, *re*—(Q.B.) - - - - - - 14
Keating, Murley & Co. *v.*—(Con. Ch.) - - - 52
Kennedy, Hely *v.*—(Q.S.) - - - - - 26
Keogh *v.* Alleyne—(Ex.) - - - - - 73
Kinnerk *v.* Hall—(L.S.) - - - - - 150

L

Lappin and Little *v.* Coote—(L.S.) - - - - 92
Lenihan, Cleary *v.* (1)—(Q.B.) - - - - 146
Do. (2)—(Q.B.) - - - - 160
Longford, Earl of, Parkinson *v.*—(L.S.) - - - 194

M

Magee *v.* Marquis of Bath—(Cir. C.) - - - 219
Maginnis and Campbell, *re*—(Q.B.) - - - - 20
Magrath, Arkins *v.*—(C.P.) - - - - - 21
Marquis of Bath, Magee *v.*—(Cir. C.) - - - 219
Marshall, *re*—(Q.B.) - - - - - - 1
Martin *v.* O'Leary—(C.P.) - - - - - 218
Mayo Election Petition—(C.P.) - - - - 42
Mayor and Corporation of Cork, Queen *v.*—(Q.B.) - 131
Mayor and Corporation of Dublin, Griffin *v.*—(Con. Ch.) - - - - - - 123
M'Blain *v.* Weir—(Q.B.) - - - - - 31
M'Donogh, *re*—(Rev.) - - - - - 184
M'Dougall *v.* Mayor and Corporation of Cork—(Q.B.) 131
Midland G. W. Ry. Co., Ranahan *v.*—(Q.S.) - - 34
Midland Ry. Co., Moore *v.*—(C.P.) - - - - 165
M'Loughlen, Yorke *v.*—(Q.B) - - - - 201
M'Lurdy, Shuter *v.*—(C.P.) - - - - - 216
M'Mullen *v.* Greene—(C.P.) - - - - - 166
Moore *v.* the Midland Railway Co.—(C.P.) - - 165
Morgan, Cheevers *v.*—(L.S.) - - - - - 33
Moriarty, Young *v.*—(Q.B.) - - - - - 177
Moroney *v.* Moroney—(C.P.) - - - - - 136
Murley and Co. *v.* Keating—(Con. Ch.) - - - 52
Murphy, Gordon *v.*—(Cir. C.) - - - - 194
Murphy *v.* The Justices of Dublin—(Q.B.) - - 134

N

North Tipperary Presentments, *re*—(Cir. C.) - - 116

O

O'Brien *v.* Carmody—(Q.S.) - - - - - 207
O'Donnell, Joyce *v.*—(C.P.) - - - - - 113
O'Donnell *v.* Smith—(Con. Ch.) - - - - 32
O'Donnell *v.* Tighe—(C.P.) - - - - - 42
O'Leary, Martin *v.*—(C.P.) - - - - - 218
O'Toole, Parsons *v.*—(Q.B.) - - - - - 72

P

Parkinson *v.* Earl of Longford—(L.S.) - - - 194
Parsons *v.* O'Toole—(Q.B.) - - - - - 72
Porter, Bolland *v.*—(L.S.) - - - - - 93
Power, Kavanagh *v.*—(L.S.) - - - - - 33
Presentments, N. Tipperary, *re*—(Cir. C.) - - 116
Proctor *v.* Church—(C.P.) - - - - - 206

Digitized by Google

Q

PAGE

Queen *v.* Doherty (1)—(Cir. C.) - - - 192
Do. (2)—(Cir. C.) - - - 192
———*v.* Dripps—(Cir. C.) - - - 193
———*v.* Justices of Co. Dublin—(Q.B.) - - 134
———*v.* Mayor and Corporation of Cork—(Q.B.) - 131
———*v.* Unkles—(Q.B.) - - - - 38
Quinn, Ramsay *v.*—(C.P.) - - - - 194
Quirke, *ex parte*—(Cir. C.) - - - - 194

R

Ramsay *v.* Quinn—(C.P.) - - - - 194
Ranahan *v.* M. G. W. Ry. Co.—(Q.S.) - - 34
Reardon *v.* Hayes—(Con. Ch.) - - - 116
Reed, Holland *v.*—(Con. Ch.) - - - 168
Reede and Goodman *v.* Pipon—(Q.B.) - - 18
Reilly *v.* Doyle—(Cir. C.) - - - - 209
Roche *v.* Roche—(C.P.) - - - - 7
Ruddock, Bolland and, *v.* Porter—(L.S.) - - 93

S

Sawrey, Comerford *v.*—(L.S.) - - - 25
Shaw *v.* Dunlop—(Con. Ch.) - - - - 76
Shiel *v.* Ennis (1)—(C.P.) - - - - 42
Do. (2)—(C.P.) - - - - 67
Short, Gaynor *v.*—(Con. Ch.) - - - - 116
Shuter *v.* M'Lurdy—(C.P.) - - - - 216
Smith, O'Donnell *v.*—(Con. Ch.) - - - 32
Smyth, Hunt *v.*—(Ex.) - - - - 203
Sommet *v.* Dormoy—(Q.B.) - - - - 14
Spaide *v.* Grainger—(Q.B.) - - - - 53
Spunham *v.* Walsh—(Q.S.) - - - - 27
Stamp *v.* Hickey—(Con. Ch.) - - - 167
Sweetman, Connor *v.*—(Cir. C.) - - - 103

T

PAGE

Taylor *v.* Dowden—(L.S.) - - - - - 83
Taylor, Hanway *v.*—(Ex.) - - - - - 98
Thomas *v.* Cox—(Con. Ch.) - - - - - 52
Tighe, O'Donnell *v.*—(C.P.) - - - - - 42
Timpson *v.* Dalton—(Q.B.) - - - - 184
Tipperary Presentments—(Cir. C.) - - 116, 194
Torkington *v.* Connor—(C.P.) - - - 89
Tracey, Wright *v.*—(Ex. Ch.) - - - - 142
Treacy *v.* Corcoran—(C.P.) - - - - - 65

U

Unkles, Queen *v.*—(Q.B.) - - - - - 38

V

Vernon, Flynn *v.*—(L.S.) - - - - - 184

W

Wallace *v.* Dub. and Belfast Junct. Ry. Co.—(C.P.) - 163
Walsh, Spunham *v.*—(Q.S.) - - - - - 27
Weston *v.* Hunt—(C.P.) - - - - - 115
White and Hart *v.* Carroll—(Q.B.) - - - 63
Wicklow Court-house, *re*—(Cir. C.) - - - 207
Weir, M'Blain *v.*—(Q.B.) - - - - 31
Williams *v.* Hepenstall—(C.P.) - - - 6
Woods *v.* Gallagher—(Cir. C.) - - - 124
Wright *v.* Tracey—(Ex. Ch.) - - - - 142

Y

York *v.* M'Loughlen—(Q.B.) - - - - 201
Young *v.* Moriarty—(Q.B.) - - - - 177

Digitized by Google

A DIGEST

OF ALL THE

CASES DECIDED IN IRELAND AND REPORTED

DURING THE YEAR 1874,

IN

VOLUME VIII. OF THE IRISH LAW TIMES REPORTS,

OR IN

OTHER LEGAL REPORTS, DURING THE SAME PERIOD.

*** In the following Digest the letters *Ch. Ap.* after the name of a case indicate the Court of Chancery Appeal; *Ch.*, the Court of Chancery; *R.*, Rolls Court; *V. C.*, Vice-Chancellor's Court; *Exch. Ch.*, Exchequer Chamber; *C. C. R.*, Crown Cases Reserved; *L. C. R.*, Land Cases Reserved; *Q. B.*, Queen's Bench; *C. P.*, Common Pleas; *Ex.*, Exchequer; *Con. Ch.*, Consolidated Chamber; *Pro.*, Probate; *Mat.*, Matrimonial Causes; *L. E.*, Landed Estates; *Adm.*, Admiralty; *B.*, Bankruptcy; *Reg. Ap.*, Registry Appeals; *Q. S.*, Quarter Sessions; *L. S.*, Land Sessions. The figures which follow those letters denote the page in the IRISH LAW TIMES REPORTS. Then follow references to other publications where the case is reported—the letters *Ir. R.* (*Eq.* or *C. L.*), representing the "Irish Reports;" *W. R.*, the "Weekly Reporter;" and *I. L. T. & S. J.*, THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

EQUITY CASES.

ACCORD AND SATISFACTION—[*See* BANKRUPTCY, 14.]

ADMINISTRATION—[*See* PROBATE COURT PRACTICE—CONCURRENT JURISDICTION—PERSONAL ESTATE.]

1—A creditor may obtain, under 30 & 31 Vict., c. 44, s. 158, an order on summons for the administration of the real estate of a deceased person, without joining the other creditors of the deceased.—In re *M'Keown, deceased* (R.), p. 18 - 22 W. R. 292.

2—A personal representative who has duly distributed the assets, under the 22 & 23 Vict., c. 35, s. 29, ought to give an unpaid creditor full information as to the particular parties among whom he had so distributed the assets; but, for this purpose, a reference to the residuary account passed by him is sufficient. If he did not give such information before suit instituted by the creditor, he will be refused the costs of defending himself and claiming the protection of the statute. *Filgate* v. *Lindsay* (V.C.), Ir. R. 8 Eq. 61.

—After order made by the Court of Chancery for the administration of real and personal estate, it is a contempt of that Court to present, without its leave, a petition to the Landed Estates' Court for a sale of the real estate.—*Hardman* v. *Leech* (V.C.), Ir. R. 8 Eq. 400.

—An executor, who had drawn out of bank a sum of money, forming portion of the assets of the testator, wrote to a legatee of the testator, claiming 6 per cent. on his portion and that of the other legatees, and informed him that he was about to emigrate from the kingdom. A bill to administer assets was thereupon filed, and a writ of *ne exeat regno* was issued against him. In his answer, the executor admitted being in possession of the assets, and gave a full account thereof:—*Held*, that the costs of the proceedings, up to and including the answer, must be paid by the executor, but that he was entitled to the subsequent costs.—*Farrar* v. *Carroll* (R.), p. 172.

—By a deed—reciting, *inter alia*, that all the testator's assets, save a small sum retained to meet contingencies, and some doubtful debts, had been received by the executrix and applied in payment of debts, and that there remained only a sum sufficient to pay the legatees one-half of their respective legacies—the legatees, in consideration of the sums paid on account of these legacies, released the executrix from all claims which they then had or thereafter might have.—*Lawe* v. *Lawe* (V. C.), Ir. R. 8 Eq. 327.

ADMIRALTY—[*See* NECESSARIES—EVIDENCE.]

ADVERTIZE, Liberty to—[*See* SETTLED ESTATES ACTS—SETTING DOWN CAUSE FOR HEARING.]

ADVICE, Absence of Professional—1—Although a confidential relation subsists between the beneficial owner and an agent employed by the trustee for the management of the trust property, yet there is no actual incapacity in the agent to purchase from the beneficial owner, even though the latter has not had the advantage of independent professional advice; in such a case, however, it is not sufficient for the agent to show that he gave the full value; he must go further, and show that he dealt with the beneficial owner at arm's length, and after a full disclosure of all that he knew with respect to the property.—*King* v *Anderson* (V.C.), Ir. R. 8 Eq. 147.

2—In 1843, S. K., by a voluntary deed, granted to his mother E. certain premises, consisting mainly of houses held on leases for lives perpetually renewable, upon trust for himself absolutely, subject to a life annuity thereby created in her favour, which exceeded the net annual produce of the property. In 1849 he married H., and died in 1855, having spent most of the interval abroad, and having devised his estate to her for life, with remainder to their son T. in *quasi* fee, and a power to her to sell at the best price, the proceeds to be applied in conformity with the devises. E had, in 1852, appointed A. her agent for the collection of the rents and general management of the property, he being also agent for the immediate landlord of the greater number of the holdings; and in 1859 H. sold all the premises to A. for her own benefit, E. joining in the conveyance to him, and consenting thenceforth to accept a reduced annuity. The purchase-money was largely made up of renewal fines, which had been allowed to accumulate, until in the case of some of the holdings they exceeded the value. H. had no other advice in the transaction, or knowledge of the circumstances of the property, than what she obtained from A., whom she charged to have had notice of the trusts of her husband's will, H. having, in 1872, and shortly after T. had come of age, filed a bill to set aside the sale:—*Held* (reversing the decision of the Vice-Chancellor), that, on the mere ground of her want of a competent and disinterested adviser, the conveyance must be set aside; that considerations founded on the measure of the plaintiff's intelligence, the extent of her knowledge of the property, and the intrinsic prudence of the bargain, were, therefore, really irrelevant, and that, under the circumstances, she had not been guilty of laches.—*King* v. *Anderson* (Ch. Ap.), Ir. R. 8 Eq. 625.

ADVOWSON—[*See* CHURCH TEMPORALITIES ACTS.]

Digitized by Google

AFFIDAVIT—[*See* LANDED ESTATES COURT PRACTICE, 1.]

When an affidavit was sworn before issue was joined in the cause, and the deponent died before notice of its being sworn was served upon the opposite party, and such notice when served did not contain any mention of the death:—*Held*, that the affidavit could not be used.—*Evans and another* v. *Cook and others* (R.), p. 17—22 W. R. 252.

AGENT OF TRUSTEE—[*See* ADVICE, ABSENCE OF PROFESSIONAL.]

AGREEMENT FOR LEASE — [*See* INJUNCTION — SPECIFIC PERFORMANCE.]

ALIENATION, Covenant against—[*See* FEE-FARM GRANT, 4.]

ANSWER—1—Where, on motion for a decree, the defendant had omitted to serve notice of his intention to use his answer as evidence, but the plaintiff had included the answer in the list of documents at the foot of his notice of motion for a decree, and had referred in his answering affidavits to all the allegations contained in the answer:—*Held*, that the answer was admissible in evidence.—*Nolan* v. *Nolan* (R.), p. 104—Ir. R. 8 Eq. 562; 22 W. R. 752.

2—Liberty given to file a supplemental answer putting in issue a decree pronounced subsequently to the filing of the original answer.—*Blake* v. *O'Kelly* (V. C.), Ir. R. 8 Eq. 67.

APPOINTMENT, Power of—[*See* SETTLEMENT, 2—ENTAIL, 2—BANKRUPTCY, 17.]

APPORTIONMENT ACT, 1870—A testator bequeathed shares in banking companies to specific legatees. He also appointed residuary legatees. The specific legatees claimed the whole of the dividends, and the residuary legatee claimed the portion that had accrued up to the death of the testator:—*Held*, that the Apportionment Act, 1870, applied, and that the residuary legatee was entitled to that portion of the dividends that had accrued up to the death of the testator. *Roseingrave* v. *Burke*, Ir. R. 7 Eq. 186: *Capron* v. *Capron*, 22 W. R. 347, followed.—*Daly* v. *The Attorney-General* (V.C.), p. 70—Ir. R. 8 Eq. 595.

ARBITRATION—[*See* AWARD OF ARBITRATORS.]

ASSETS [*See* ADMINISTRATION—CONCURRENT JURISDICTION.]

ATTACHMENT—[*See* DEBTORS ACT, 1872, 2, 3—CONTEMPT OF COURT, 2.]

AWARD OF ARBITRATORS—This Court has jurisdiction, under the "Common Law Procedure Act, 1856," to make a submission to arbitration a rule of Court, and to remit the award to the arbitrators, enlarging the time for making a final award—*Wright* v. *Griffin* (R.), Ir. R. 8 Eq. 560.

BANK SHARES, Apportionment of Dividends—p. 70.

BANKRUPTCY—1—Previous to filing a petition for arrangement with his creditors, a trader had brought a suit in the Court of Admiralty, claiming a cargo of wheat in the defendant's possession; in which suit the defendant succeeded, with costs. At the second composition meeting in the arrangement matter, the defendant, who remained owner and possessed of the wheat, having applied for payment of the costs in full, the Court refused the motion.—*In the Matter of an Arranging Debtor* (B.), p. 8.

2—Subsequently to the service of a summons and plaint the defendant's attorney wrote, November 11, 1873, to the plaintiff's attorney, asking the latter to take £10 in part payment of the debt, and to give the defendant a week for payment of the balance; to which a reply was written, November 12, offering to give the time required if a security was given for payment of the balance. On November 14 judgment by default was marked for the full amount of the debt and costs, the £10 or the security not having been received. On that same day, the defendant telegraphed that he would comply with the terms proposed, and wrote, enclosing a cheque for £10, adding that he would send the security; after receipt, and in consequence of which, the plaintiff's attorney wrote, November 15, stating that although judgment had been marked, it would not be entered, or execution issued; but the defendant, before the receipt of this letter, consulted his attorney, by whom proceedings were taken, for the purpose of effecting a composition with the defendant's creditors, and, upon a petition for arrangement filed, accordingly, by the debtor, a protection order was made on November 18. The cheque given was dishonoured for want of funds:—*Held*, that the judgment-creditor was not entitled to payment in full of the amount of his demand, or of £10 thereof, or of the costs of the proceedings up to and including the marking of the judgment.—*In the matter of an Arranging Debtor* (B.), p. 27.

3—The Bankruptcy (Ir.) Amendment Act, 1872, and the Debtors Act (Ir.), 1872, are to be construed as conjoint portions of the one code—The 22nd section of the Bankruptcy (Ir.) Amendment Act, 1872, is to be construed as a remedial enactment.—Rent accruing due and payable after the passing of the Bankruptcy (Ir.) Amendment Act, 1872, by a lessee or assignee of a lease executed or assigned before the passing of the Act, will be held to be a debt contracted by the lessee or assignee before the passing of the Act, and therefore not to constitute a good petitioning-creditor's debt within section 22.—In re *M., a Disputed Adjudication* (B.), p. 34; on App. *see* BANKRUPTCY, 8.

4—A creditor who is present, either in person or by an authorized agent, at a meeting of creditors, when the execution of an assignment by the debtor of all his estate and effects for the benefit of all his creditors is sanctioned and directed, and who does nothing to signify dissent on his part, will be held to be estopped, as a privy thereto, from taking advantage of the deed as an act of bankruptcy.—In re *S., an Alleged Bankrupt* (B.), p. 43, where the arguments and judgment are reported *in extenso*.—*S. c., sub. nom.*, In re *S., an Arranging Trader*, Ir. R. 8 Eq. 51.

5—James Nolan, while indebted to Hugh Nolan and others, executed an indenture demising to John Nolan 86 acres of land, at an annual rent of £137 1s. 2d.; and absolutely assigning to him chattels of the value of over £800. The lands were subject to a head-rent of £99—for payment of which John Nolan did not expressly covenant—leaving a profit-rent payable to James Nolan. James Nolan, at the same time, transferred certain bank-shares to John Nolan. He was possessed of no other property; and the reason influencing him was, that litigation was depending between him and Hugh Nolan, and that John Nolan said that, if the deed were not executed, all would go to Hugh. James Nolan in his own name, within three weeks after, sold the chattels by public auction, and subsequently obtained a civil bill decree against a purchaser, on which occasion, though John Nolan was a witness, no reference was made to the deed. Nearly the entire proceeds of the auction were received by John Nolan, and by him applied, under James Nolan's direction, in discharge of liabilities of the latter. James Nolan, continuing indebted as aforesaid, was afterwards adjudicated bankrupt on his own petition:—*Held*, that the deed was void as against the assignees in bankruptcy of the bankrupt, under 10 Car. 1, sess. 2, cap. 3. and that the possession of the lands should be delivered up to the assignees.—In re *James Nolan, a Bankrupt* (B.), p. 55; on App. *see* BANKRUPTCY, 20.

6—A person adjudicated a bankrupt, desiring to annul the adjudication, must proceed under the 129th section of the 20 & 21 Vict. c. 60. If he omits to do so, he must proceed by petition of appeal before the Court of Appeal. Where the bankrupt does not contest the validity of the adjudication within the period prescribed by the Act, the Court of Bankruptcy has no jurisdiction afterwards to entertain an application to review the adjudication, either under sections 129 or 358 of 20 & 21 Vict. c. 60, or section 6 of 35 & 36 Vict. c. 58. *Carter* v. *Dimmock*, 4 H. L. 337, followed.—In re *De Serancourt, a Bankrupt* (B.), p. 60; on App. *see* BANKRUPTCY, 15.

7—Where the assignees of a bankrupt have elected under the B. & I. Act, 1857, section 271, not to accept the bankrupt's interest in a lease, a disclaimer under the B. A. Act, 1872, section 97, is unnecessary.—Re *Connor, a Bankrupt* (B.), p. 71.

8—The interpretation-clause of the Debtors Act (Ir.), 1872, is not to be construed as incorporated with the Bankruptcy Amendment Act (Ir.), 1872.—Rent accruing due and payable after the passing of the Bankruptcy (Ir.) Amendment Act, 1872, by a lessee or assignee of a lease executed or assigned before the passing of the Act, will be held to be a debt contracted by the lessee or assignee before the passing of the Act, and, therefore, not to constitute a good petitioning creditor's debt within section 22. Order of Harrison, J. (8 I. L. T. R 34), affirmed.—In re *M., a Disputed Adjudication* (Ch. Ap.), p. 77.

9—In order that an act, which would cause a distribution of assets different from what would be made in bankruptcy, may be constituted a fraudulent preference, it must be an act done in contemplation of immediate bankruptcy, and on the mere motion of the bankrupt.—C. having purchased, through M., a cargo of maize, and being able to pay a portion only of the purchase-money, M., in order to aid C. in paying the residue, procured certain mercantile firms to accept bills of exchange amounting to £6.000, drawn by C., the acceptors being guaranteed by M. against all liability, C. discounted the bills with the Provincial Bank. At the instance of the manager of the Bank (who was aware that C. was in pecuniary difficulties, but who did not apprehend bankruptcy), C., in January, 1874, deposited with him certain trade bills, as a security to the Bank for the bills for £6.000 previously discounted. On February 3rd, 1873, the manager of the Bank, at the instance of M., applied to C in reference to M's liability on his guarantee, and it was arranged that, after satisfying the obligations to the Bank, the proceeds of the trade bills should be held by the Bank as a security for M. The bills guaranteed by M. came to maturity on February 7th, 1873, and were taken up by the acceptors to whom M. had become liable. And on March 14th, 1873, C. was adjudicated bankrupt:—*Held*, that the dealing with the trade bills did not amount to a fraudulent preference.—Re *Carew, a Bankrupt* (B.), p. 90.

10—Motion granted, that a creditor of an arranging debtor should be entitled to prove on the estate, under the Bankruptcy Amendment Act (1872), section 47, for the money-value of policies of insurance mortgaged by the arranging-debtor to the creditor, such value having been ascertained by a valuation made, at the creditor's instance, by a public notary.—In re *L., an Arranging Debtor* (B.), p. 92.

11—If a debtor who has carried an arrangement under the arrangement clauses of the Irish Bankruptcy and Insolvency Act, 1857, fail to pay the instalments of the composition which his creditors have agreed to accept, the creditors are remitted to their original rights. The Court of Bankruptcy will not restrain such a creditor from proceeding, in a Court of Common Law, to recover the entire amount of the debt for which he had agreed to take a composition in the arrangement matter.—Re *J. L., an Arranging Debtor* (B.), p. 106.

12—The Court of Bankruptcy will not set aside a fraudulent agreement executed by a bankrupt, where same comprises a valid declaration of trust in favour of infant children, the Court not having jurisdiction to appoint guardians for the infants, or to bind their rights by an order setting aside the instrument.—Re *Flynn, a Bankrupt* (B.), p. 112.

13—On an application by a bankrupt, whose estate did not realize 10s. in the £1, in a bankruptcy heard before the Court, for a certificate of conformity, under 35 & 36 Vict., cap. 58, sec. 56, sub-sec. 1, the official assignee reported, under 215 G. O., 1872, "That the books of the bankrupt had been imperfectly kept, and that such fact might be attributed to his late irregular habits, and that since he had passed his final examination he had given assistance to realize his estate." And further, "That there had not come to his knowledge, during the realization of the property or otherwise, any matter to show that the bankruptcy, or the failure to pay 10s. in the £1, had arisen from circumstances for which the bankrupt could be held responsible, except as follows: 1st, the irregular habits previously referred to; 2nd, the circumstance that such irregularity may (though such has not been specifically shown to have had that consequence) have led the bankrupt to part with his property on credit to debtors who have not paid for it, and from whom it would appear the assignees have little prospect of recovering their debts. That, however, he has no reason to believe

Digitized by Google

that the debts are fictitious, or have been fraudulently created, or otherwise than in the ordinary way of trade, though some of the debts returned in his statement of affairs as due were, afterwards, shown to have been already paid to the bankrupt. And that the goods, taken at cost price, and all his debts actually due to the estate, so far as known, had they been all good and fully realized, would appear to amount to a sum sufficient to pay 10s. in the £1, although the result of the realization falls so far short of that rate of dividend":—*Held*, that, although the irregularity firstly imputed to the bankrupt would have been a ground for withholding his certificate, had it been shown that, as a result, property of the creditors entrusted to the bankrupt had been improperly dealt with, yet that, such not being shown, the bankrupt was, upon the facts stated in the report of the official assignee, entitled to an immediate certificate of conformity.—Re *Harris, a Bankrupt* (B.), p. 121.

14—On February 8th, 1872, a trader presented a petition for arrangement with his creditors, under 20 & 21 Vict., c. 60, and obtained a protection order under section 343. At the first sitting, in March, 1872, the majority of his creditors assented to his proposal for a composition, to be secured by promissory notes and by the vesting of his property in the official assignees. The creditors' proposal was, subsequently, confirmed by the Court. S. was returned, in the debtor's schedule, as an unsecured creditor whose debt was admitted. He did not prove his debt, or vote in the arrangement matter. Pending the arrangement proceedings, he, on Feb. 15, obtained a judgment in an action against the debtor, for a portion of the debt returned on the schedule; and, on Feb. 20, registered the judgment as a statutable mortgage against lands of the debtor. In April the debtor had duly lodged his composition notes, including composition notes on the whole debt due to S. The notes were posted to S., and by him endorsed, and same were paid at maturity. The arrangement having been carried through, the trader received his certificate, pursuant to the statute, on Aug. 12, 1973:—*Held*, (1.) That the registration of the judgment as a mortgage was not a "process," within 20 & 21 Vict., c. 60, s. 343. (2.) That, as the creditor had not proved in the arrangement matter, it was not competent to him to assent or dissent within the statute, nor was he barred by the statutable operation of the arrangement proceedings from realizing his demand under the judgment mortgage. (3.) That the mere payment to and acceptance by the creditor of the composition on his whole demand did not operate as an accord and satisfaction thereof, as it was not shown that he had in fact, or by implication from his acts, concurred in the arrangement, and received the composition notes with the intention of accepting same in full satisfaction of his entire demand. In re *Lambe's Estate*, 3 Ir. L. T. 224; in re *Ferrall*, 1 Ir. L. T. 102, followed.—In re *Estate of Rooney, Owner and Petitioner* (Ch. Ap.), p. 125.

15—Although a bankrupt does not contest the validity of his adjudication within the period prescribed by 20 & 21 Vict., c. 60, s. 129, the Court of Bankruptcy has jurisdiction afterwards to entertain an application to rescind it, under 35 & 36 Vict., c. 48, s. 6. But the Court will not in general, in the exercise of its discretion, entertain an application for such purpose after the periods limited for showing cause under 20 & 21 Vict., c. 68, s. 129, and for appealing under s. 29 of that Act, have elapsed, unless under special and peculiar circumstances.—In re *De Serancourt, a Bankrupt* (Ch. Ap.), p. 137.*

16—The Court has not jurisdiction under 20 & 21 Vict., c 60, s. 250, 35 & 36 Vict., c. 58, s. 66, to order that a fee paid, on the binding of an apprentice to an arranging trader, should be returned, where the arrangement has been concluded, providing for the complete distribution of his assets, without having made any provision for the payment of such apprentice fee.—In re *J. L., an Arranging Debtor* (B.), p. 160.

17—K., having an estate for life in certain lands, which were settled in strict settlement, and a power to appoint portions for younger children (the power of appointment being secured by a term of years), was adjudicated bankrupt, and, in conjunction with his assignees, sold and conveyed to a purchaser his life interest in the lands, the subject of the charge and term for years. He afterwards, during the bankruptcy proceedings, executed the power of appointment. The bankruptcy was finally annulled:—*Held*, that the deed of appointment was void, as being in fraud of the purchaser of the bankrupt's interest in the lands.—*Estate of David S. Ker, Owner; Charles F. Ker, Petitioner* (L. E.), p. 174.

18—A creditor, who (amongst others) had assented to a deed, whereby a debtor assigned all his estate to trustees for the benefit of his creditors, and who, afterwards, assented to an agreement for a composition by the debtor, to be secured by sureties on his behalf, and to a resolution of creditors acceding to the agreement, subsequently, in concert with the debtor and his sureties, for the purpose of getting rid of the effect of the deed, agreement, and resolution, procured an act of bankruptcy to be committed by the debtor, and, thereupon, filed a petition against him, upon which he was adjudicated a bankrupt. Upon a petition presented by the trustees:—*Held*, that the adjudication should be annulled.—Ex parte *Vance and Wilson;* in re *H.* (B.), p. 185.

19—Where a lease, executed by a bankrupt, is impeached as fraudulent by the assignees in bankruptcy, and the decision of the question of its validity or invalidity is necessary and expedient for the purpose of doing complete justice, or making a complete distribution of property, the Court of Bankruptcy has jurisdiction to decide the question, although the lessee refuses to appear and submit to the jurisdiction of the Court.—Where the lessee of a lease executed by a bankrupt, and impeached as fraudulent by the assignees in bankruptcy, brings an action of trespass against the messenger of the Court of Bankruptcy, in respect of an entry on the demised premises under the warrant of the Court, and the Court deems it expedient and necessary to decide the question of the validity or invalidity of the lease, for the purpose of doing complete justice or making a complete distribution of property, an injunction will be granted to restrain the further prosecution of the action, until the question of the validity or invalidity of the lease is decided, although the lessee refuses to appear and submit to the jurisdiction of the Court.—In re *Sir Charles Compton Domvile, a Bankrupt* (B.), p. 196.*

20—Where a deed disposing of all the grantor's property was executed, without valuable consideration, by the grantor while indebted, and he, still owing some of the debts then due, became bankrupt shortly afterwards:—*Held* (affirming the order of Miller, J., 8 Ir. L. T. R. 55), that the deed was void as against the assignees in bankruptcy of the grantor, and that the lands thereby conveyed should be delivered up to the assignees.—In re *Nolan, a Bankrupt* (Ch. Ap.), p. 199.

21—A trader in Belfast was indebted to the Provincial Bank, in a considerable sum of money, on foot of bills of exchange drawn by the firm of Lowry, Valentine, and Kirk, and accepted by the trader. Lowry, Valentine, and Kirk, who had discounted the bills in the Provincial Bank, were also in embarrassed circumstances, and about to stop payment, and this to the knowledge of the bank. After some negociations with the trader, the bank handed to John Lowry, head of the firm of Lowry, Valentine, and Kirk, three of the trader's over-due acceptances for £1,000 each, upon which the firm of Lowry, Valentine, and Kirk issued a debtor's summons. Subsequently Lowry's solicitor, in presence of an officer of the bank, offered to withdraw the debtor's summons if the trader executed a trust deed vesting all his estate in trustees for the benefit of all his creditors, which he accordingly did without delay. The bank refused to execute the trust deed, and, relying upon it as an act of bankruptcy, filed a petition against the trader, and obtained an adjudication against him:—*Held*, that the bank, having stood by while the trader was forced or induced to execute the deed, must be taken as having acquiesced in its execution, and assented thereto, and could not take advantage of it as an act of bankruptcy.—Ex parte *The Provincial Bank;* in re *Easdale* (B.), p. 209.

22—Petitioning creditors, in their petition and the affidavit in support of it, relied upon debts due by a trader, amounting to £200, which were stated to be part of his debts to the petitioning creditors. The petition and affidavit stated that the petitioning creditors held a security or lien upon goods of the bankrupt in the hands of a New York firm, which security or lien they waived as against the debt on which they relied, but without prejudice to their right to retain it against their other demands:—*Held*, that the petition did not comply with the 21st section of the Bankruptcy Amendment Act, 1872, and could not support an adjudication.—The petitioning creditors had as their commission agents, in Belfast, a firm which admittedly, by one of its members, had been active in procuring the trader to sign the trust deed relied on, by the petitioning creditors, as an act of bankruptcy. It was proved that the petitioning creditors had no knowledge of the execution of the trust deed, and that their agents were not agents in that behalf:—*Held*, that the petitioning creditors were not precluded from relying on the trust deed as an act of bankruptcy.—Re *O'Neill*, 7 I. L. T. R. 20, over-ruled.—Ex parte *Birley Brothers;* in re *Easdale* (B.), p. 212.

23—A testator by his will, made in 1827, after devising an estate of freehold to each of his four daughters, devised a renewable freehold to his son R.; and directed that, if any of his five children should die without issue lawfully begotten, their share and shares of the property devised should still and regularly go to the surviving children and their issue lawfully begotten:—*Held*, that R. took an estate in *quasi* tail.—R. became bankrupt without having barred the *quasi* entail:—*Held*, that, though there is no provision in the Irish Bankruptcy Acts for disposition of estates in *quasi* tail, all the estate which the bankrupt could have disposed of became vested in his assignees, who were, consequently, entitled to sell the *quasi* fee.—*Estate of Leadbeater* (L. E.), Ir. R. 8 Eq. 421.

24—A judgment creditor and equitable mortgagee by deposit of deeds registered his judgment as a statutory mortgage against the lands of the debtor, within three months before the filing of a petition under which the latter was adjudicated a bankrupt:—*Held*, (1.) That, by s. 331 of "The Irish Bankrupt and Insolvent Act, 1857" (20 & 21 Vict. c. 60), the statutory mortgage was avoided; (2.) That, the statutory mortgage being unavailable as a legal security, the mortgage by deposit of deeds was unmerged as an equitable security.—*Estate of Elliott* (L. E.), Ir. R. 8 Eq. 565.

25—Act of bankruptcy; imprisonment for non-payment of money; arrest under Debtors Act, s. 7.—Re *B.;* ex p. *Hester* (B.), Notanda, 8 I. L. T. & S. J. 109.

26—Certificate of conformity; failure to pay 10s. in the £1; audit meeting not held.—Re *Parker* (B.), Notanda, 8 I. L. T. & S. J. 109.

27—Debt of petitioning-creditor; judgment-debt, costs, and interest.—Re *T. Irwin* (B.), Notanda, 8 I. L. T. & S. J. 54.

28—Disclaimer of lease by assignee in bankruptcy; time for extended.—Re *Boyle* (B.), Notanda, 8 I. L. T. & S. J. 88.

29—Reputed ownership; goods bought when purchaser insolvent.—Re *T. O'Connor* (B.), Notanda, 8 Ir. L. T. & S. J. 64.

30—Trade assignee, appointment of; nominee having no personal interest; creditor out of the jurisdiction.—Re *Bromfield* (B.), Notanda, 8 Ir. L. T. & S. J. 137.

31—Advertisement of sale of premises; arranging debtor.—Re *J. N.* (B.), Notanda, 8 Ir. L. T. & S. J. 64.

32—Debts barred by statute of limitations; proof; arranging debtor.—Re *J. F. B.* (B.), Notanda, 8 I. L. T. & S. J. 109.

* See *Estate of Borrowes*, 6 Ir. L. T. R. 178. As to the power of appeal, see B. A. Act, 1872, s. 66, in which it was deemed necessary to expressly provide that *appeals* should lie only in the manner directed by the Act of 1857.—E. N. B.

* See on app. 9 Ir. L. T. R. 21.

33—Arrangement; creditor withdrawing proof of debt; costs of proof.—Re *E. R.* (B.), NOTANDA, 8 I. L. T. & S. J. 178.

34—Final examination; adjournment *sine die;* certificate of conformity.—Re *O'Dwyer* (B.), NOTANDA, 8 I. L. T. & S. J. 401.

35—Sheriff paying year's rent to landlord; bankruptcy of tenant.—Re *Kenirey* (B.), NOTANDA, 8 I. L. T. & S. J. 449.

36—Absconding bankrupt; expenses of trying to arrest; escape.—Re *Payne* (B.), NOTANDA, 8 I. L. T. & S. J. 402.

37—Election; proof of debt; discharge of bankrupt from arrest.—*Girond* v. *Burke* (Ex.), NOTANDA, 8 I. L. T. & S. J. 450.

38—Report of Chief Registrar; objections to report; appeal.—Re *Nolan* (B.), NOTANDA, 8 I. L. T. & S. J. 472.

39—Conveyance to purchasers of leasehold, by official assignees and mortgagee of bankrupt lessee; covenant by purchaser to pay rent reserved; exemption from liability of property of assignees and mortgagee; warranty of title.—Re *O'Connor* (B.), NOTANDA, 8 I. L. T. & S. J. 511.

40—Arrangement, opposing; creditor who has not proved; claimant returned on schedule.—Re *W.* (B.), NOTANDA, 8 I. L. T. & S. J. 565.

41—Witnesses residing in London; order for examination before London Court of Bankruptcy.—Re *Dymoke* (B.), NOTANDA, 8 I. L. T. & S. J. 565.

42—Petition to draw money lodged in Court; suppression of fact of bankruptcy of petitioner.—Ex parte *Knott* (R.), p. 81.

43—Costs of motion; power to grant, where not asked for by notice.—In re *Nolan, a Bankrupt* (B.), p. 60; (Ch. Ap.), p. 200.

44—Adjudication; bankrupt, though not having surrendered, showing cause against.—In re *De Serancourt, a Bankrupt* (B.), p. 60; (Ch. Ap.), p. 137.

BEQUEST—[*See* DEVISE, 2, 4, 5, 7—FEME COVERT, 4.]

BILL, taking pro confesso—[*See* PRO CONFESSO.]

BUILDING SOCIETY—A Building Society, under one of its rules, charged fines against a borrower, for non-payment of monthly instalments of loans, in such a manner that they were cumulative, and increased in arithmetical progression. The rule was ambiguous in its terms, and admitted of several constructions:—*Held*, that the rule being ambiguous, must be construed strictly against the Society which sought to enforce it.—A puisne incumbrancer had notice of all the proceedings in the matter. Some months after the schedule of incumbrances had been ruled, he sought to re-open the accounts of the petitioner, a Building Society, on the ground that they were inequitable, unwarranted by the rules, and illegal. A portion of the funds sufficient to meet his claims remained in Court:—*Held*, that, notwithstanding his laches, the accounts might be re-opened on payment of costs by the puisne incumbrancer, it appearing that part of the proceeds of the sale remained in Court, and that the account itself could not be sustained.—*Re Tierney's Estate* (L.E.), p. 29.

CHARITY—[*See* TRUSTEE, APPOINTMENT OF NEW, 2.]

CHURCH TEMPORALITIES ACTS—[*See* TOTIES QUOTIES COVENANT.]

Money lodged in Court as the value of advowsons in the case of incapacitated owners, under the 57th section of the Irish Church Act, 1869, not allowed to be transferred to a different credit, but directed to be invested in Government new 3 per cent. stock to the credit of the matter in which it was lodged.—*In the Matter of the Commissioners of Church Temporalities in Ireland, and the Advowson of Athlacca and Croome; ex parte Viscount Monck* (V.C.), p. 191.

COMMISSIONERS OF LUNATIC ASYLUMS—The Court has no power to order the purchase-money of lands taken by the Commissioners of Lunatic Asylums and paid into Court under 1 & 2 Geo. IV., c. 33, to be invested in the purchase of other lands, or to award against the Commissioners the costs of drawing the money out of Court.—Where a statute is incorporated in another, the effect is the same as if the provisions of the former were re-enacted in the latter for all its purposes; and the repeal of the former does not repeal its provisions so far as they have been incorporated in an Act which is not repealed, and which incorporation was for the purpose of providing for a subject matter not within the original statute.—In re *Commissioners of Lunatic Asylums* (R.), Ir. R. 8 Eq. 366.

CONCURRENT JURISDICTION—M., a creditor of an intestate, and plaintiff in an administration suit, "M. *v.* R.," in the English Court of Chancery, obtained therein a decree to account against R., the defendant, and administrator of the intestate. Subsequently B., the widow of the intestate, instituted an administration suit, "B. *v.* R.," and obtained therein a decree to account, in the Irish Court of Chancery, against R. as administrator, B. undertaking to abide any order that might be made in reference to the Irish suit by the English Court in the suit of "M. *v.* R." An order was afterwards made in the suit of "M. *v.* R.," with B.'s consent, that all further proceedings in the suit of "B. *v.* R." should be stayed till the chief clerk should have made his certificate under the decree in the suit of "M. *v.* R." Subsequently C., an Irish creditor of the intestate, served R. with a writ of summons and plaint for the amount of his debt, and (the Irish Court of Chancery having refused to restrain C. from proceeding at law) marked judgment for the amount of his debt, with interest and costs. Nearly all the available assets had been transferred, in the meantime, from Ireland to the credit of the English suit of "M. *v.* R." On appeal from an order of Chatterton, V.C., refusing a motion by C. in the suit of "B. *v.* R.," that R. should be declared personally liable to pay him the amount of his claim on foot of the judgment he had obtained:—*Held*, having regard to the condition in the decree in "B. *v.* R.," and it not having been shown that R. had done any act save in obedience to the orders of the English Court of Chancery, that R. was not personally liable to B. for the amount due on foot of the judgment.—*Ex parte Croker: in re Browne* v. *Roberts* (Ch. Ap.), p. 169.

CONTEMPT OF COURT—[*See* ADMINISTRATION, 3.]

Attachment for; discharge from custody.—*Murray* v. *Tracey; Gallagher* v. *Gallagher* (V.C.), NOTANDA, 8 I. L. T. & S. J. 400.

COSTS—[*See* WITNESS, 4—SOLICITOR, 2, 3—PROBATE COURT PRACTICE, 6, 9—SECURITY FOR COSTS—BANKRUPTCY, 1, 2, 43—ADMINISTRATION, 2, 4.]

COVENANT AGAINST ALIENATION—[*See* FEE-FARM GRANT, 4.]

COVENANT POSTPONING REDEMPTION—A mortgage contained a covenant by the mortgagor not to redeem for eight years, and, five years being yet unexpired, the mortgagor presented a petition for sale in the usual form:—*Held*, that the covenant was cause against making an absolute order for sale.—*Estate of Hone* (L. E.), Ir. R. 8 Eq. 65.

CROSS-EXAMINATION OF WITNESS—[*See* WITNESS.]

DEATH—[*See* AFFIDAVIT—SETTLEMENT, 2.]

DEBTORS (IRELAND) ACT, 1872—[*See* BANKRUPTCY, 3, 8, 25.]

1—Costs, by the final order in a cause, having been awarded to be paid by the plaintiff to the defendant, and default in payment having been made, the defendant applied, under 35 & 36 Vict., c. 57, s. 6, for an order for payment by instalments, but without grounding the application on any proof of the plaintiff's means of payments. The Court refused the motion.—*Sturgeon* v. *Robinson* (R.), p. 13.

2—A solicitor who, acting under a power of attorney, receives money for a client, and neglects to pay it over, when ordered by the Court to pay the same in his character of solicitor, is guilty of misconduct in respect of which an attachment may be issued against him, within the 35 & 36 Vict., c. 65, sec. 5, sub-sec. 4, although his default may be occasioned by inability to pay.—*In re W., a Solicitor* (R.), p. 51—Ir. R. 8 Eq. 355; 22 W. R. 479.

3—Unless a decree or order directing the payment of money contain within it a statement (in compliance with Rule 9 of the General Orders under "The Debtors Act (Ireland), 1872") that the payment may be enforced by attachment, an attachment cannot issue without the special leave of the Court obtained on motion *ex parte.*—When it sufficiently appears to the Court, from the proceedings in the cause, that the debt was contracted before the passing of the Act (6th August, 1872), or that it comes within such of the excentions to s. 5 as are cognizable by the Court of Chancery, an order for the issuing of an attachment may be made without affidavit; otherwise, an affidavit, showing the above facts, must be filed.—*Kelly* v. *Kelly* (V.C.), Ir. R. 8 Eq. 497.

DEBTS—[*See* PAYMENT OF DEBTS.]

DEED, Impeachment of—[*See* ADVICE, ABSENCE OF PROFESSIONAL—VOLUNTARY CONVEYANCE, 1, 2—LANDED ESTATES COURT PRACTICE, 3—BANKRUPTCY, 5, 12, 19, 20.]

1—Upon a bill to set aside a deed as obtained by fraud, misrepresentation, and undue influence, the case, as far as related to fraud and misrepresentation, failing, it was held that there was no presumption of law that the deed had been procured by undue influence, arising merely from its having been executed by a sister-in-law at the instance of her brother-in-law, with whom she resided, and to secure a loan to whom, by a third person, aware of the relationship, the deed was executed.—*Evans* v. *Cooke and Elwood* (R.), p. 118.

2—The repeal of the Usury laws does not affect the power of a Court of Equity to review and set aside usurious transactions where they are founded on fraud. Accordingly, a series of deeds charging sums advanced by a money-lender with exorbitant interest on the borrower's estates, which were ample security, were set aside save to the extent of securing the actual advances with moderate interest; the deeds containing unprecedented clauses, such as authorizing a sale without notice, and empowering the lender to pay off existing charges (which bore interest at £6 per cent. only), and to charge £20 per cent. thereon, and other clauses of a similar character; the Court being of opinion that the clauses were introduced by the fraud and device of the money-lender without the knowledge of the borrower, who was unprotected by proper professional advice.—*Howley* v. *Cook* (R.), Ir. R. 8 Eq. 570.

DEED, Construction of—[*See* ENTAIL, 1, 2—SETTLEMENT, 3.]

DEED, Evidence of—[*See* EVIDENCE, 3]

DEVISE—[*See* FEE-FARM GRANT, 4—LIMITATIONS, STATUTE OF, 1—FEME COVERT, 4.]

1—A testator—seised in fee of a number of townlands situate in several baronies and parishes in the county of R., four of them being in the parishes of T. and A. and barony of B.—devised all his right, title, and interest in the lands he possessed in the county of R., and situate and being in the half barony of B., parishes of Killukin and Kilumod, also in the parishes of Kilglass and Killouston, to his five stepbrothers, not subject to charges which he had paid off; and, after giving some legacies, appointed his cousin his executor and residuary legatee. There was no half barony of B. or parish of Killouston in the county of R., but there was a barony of B. and parish of Kiltrustan:—*Held*, that the lands in the parishes of T. and A. did not pass by the will, but descended to the heir-at-law, and that all the other lands, including those in the parish of Kiltrustan, were devised.—The testator, being originally tenant in tail subject to charges secured by a term, paid off several of the charges, for some of which he took assignments to a trustee for himself, and for others took receipts, with an undertaking to assign endorsed. He executed a disentailing deed of *all* the lands of which he was tenant in tail, for the purpose of getting payment out of Court of the price of part of the settled estate taken by a railway company, and thereby acquired the fee subject to the term, and afterwards paid off other charges, taking simple receipts for the money. There were other charges to a considerable amount on the estate, of equal priority with and puisne to the charges paid off, which rendered it for the interest of the owner that the charges he paid off should not merge, and by his will he exonerated his devised estates from the charges:—*Held*, that *all* the charges were subsisting on the undevised

Digitized by Google

estates, and passed by the will to his executor and residuary legatee.—The devisees and heiress-at-law of the testator were made parties defendants in a suit to raise the charges:—*Held*, no objection to the suit that it involved a decision on the construction of the will between the co-defendants.—*Keogh* v. *Keogh* (R.), Ir. R. 8 Eq. 179; 22 W. R. 506. On App. *see* DEVISE, 6.

2—A testator bequeathed a legacy to each of his two daughters, and directed that if either of them should remain unmarried, she should have power to dispose of her property by will as she pleased, but no power of diminishing the principal sum during her life; and that they should, in the event of their dying unmarried, dispose of their legacies to their brothers or sisters, nephews or nieces, but to no other person or persons whatever; one of the daughters having died unmarried and intestate:—*Held*, that the direction of the testator gave her a power coupled with a trust, and that the capital of her legacy was divisible in equal shares among the persons pointed at.—The testator directed that his daughters should receive (out of the residue, if necessary) £6 per cent. per annum on their legacies; and one of them having received during her life a lower rate of interest:—*Held*, that her representatives were entitled to receive out of the residuary estate the arrears due to her, though she had never demanded that the interest should be made up to £6 per cent. per annum.—*Hargrove's Trusts* (V. C.), Ir. R. 8 Eq. 256.

3—In 1787 a testator devised perpetually renewable freeholds, a term of years, and other interests (unknown) upon trust out of the rents and profits to pay to, or permit and suffer to be received by S., during his life an annuity of £150, with power of distress, and also to charge "the said farms and lands" with a jointure not exceeding £150 for his wife; the annuity, subject to such jointure, to go to his "issue male" as he should appoint, and, in default of appointment, share and share alike; provided that, in case he should die without "issue male," as soon as the jointure should be satisfied, the annuity should sink into the freehold and be no longer chargeable; with power also, in case he should die without "issue male," to charge "the said farms and lands" with £1,000 for his "daughters," as he should appoint, and, in default of appointment, share and share alike, but if he should die without "female issue," the £1,000 should not be a charge on the lands:—*Held* (reversing the decision of the Vice-Chancellor), that S. did not take a perpetual annuity.—*Hedges* v. *Harpur* (3 De G. & Jo. 129) distinguished.—*Per* Christian, L.J.:—The words of limitation which, applied to a fee-simple estate in land or in a pre-existing rent, would carve out of them estates tail, will, when used in the creation of a rent *de novo*, create it for the same estate.—*Drew* v. *Barry* (Ch. Ap.), Ir. R. 8 Eq. 260.

4—A testator's consent to a marriage to take place *after his death* does not dispense with a condition of forfeiture, annexed to a bequest in his will, that the legatee shall forfeit the same in case he marry without the consent of persons named in the will. A testator devised the lands he held in D., and his stock, crop, &c., to his son W. P.; provided that he should forfeit the same in case he should marry without the consent of A., B., and C., with a gift over in case of his marriage without such consent; and he appointed a residuary legatee. It appeared by the evidence that after the date of the will the testator gave a qualified assent—*i.e.*, he did not object—to W. P.'s marriage with E. if it took place after his death. W. P. married E. after the testator's death without the knowledge or consent of A., B., and C.:—*Held*, that he had forfeited his bequest.—Under a bequest of lands, "stock, crop, farming implements, household furniture and effects, whatsoever and wheresoever," money in bank and debts due to the testator will pass.—*Lowry* v. *Patterson* (R.), p. 109—Ir. R. 8 Eq. 372.

5—A testator, after mentioning specific portions of his personal estate, bequeathed them to several persons, and the remainder of these effects (all his debts being paid), if any remained, he left to his sister; there was no general residuary bequest:—*Held*, that the undisposed of residuary personal estate was the primary fund for payment of the debts.—*Corbet* v. *Corbet* (R.), Ir. R. 8 Eq. 407.

6—In 1871 a testator, seised in fee of a number of townlands situate in several baronies and parishes in the county of R.—four of them being in the parishes of T. and A. and barony of B.—devised "all my right, title, and interest to the lands I possess in the county of R., and situate and being in the half barony of B., parishes of Killukin and Killumod, also in the parishes of Kilglass and Killouston," to his step-brothers, to be equally divided among them, "and not subject to any charges which I have paid off." There was no *half* barony of B. nor parish of Killoustan in the county of R., but the estate comprised a parish of Kiltrustan. The testator, who had succeeded to the property in 1854 as tenant in tail, paid off several of the charges, for some of which he took assignments to a trustee for himself, and for others receipts, with an undertaking to assign endorsed. In 1862 he executed a disentailing deed of all the lands, thereby acquiring the fee subject to the term, and afterwards paid off further charges, taking simple receipts for the money. There were other charges to a considerable amount on the estate, which made it his interest that those he paid off should not merge. In a suit instituted by his executor and residuary legatee to raise them all, his devisees and heiress-at-law were made co-defendants:—*Held*, that the lands in the parishes of T. and A. did not pass by the will, but that all the others, including those in the parish of Kiltrustan, were devised. That all the charges were subsisting on the undevised lands only, and passed to the residuary legatee. That it was no objection to the frame of the suit that it involved a decision on the construction of the will between co-defendants; and that a Court of Equity had full jurisdiction to deal with the case.—*Keogh* v. *Keogh* (Ch. Ap.), Ir. R. 8 Eq. 449.

7—A testator, after leaving certain legacies, directed that the residue of the "yearly rents and profits" of his estates should be applied in payment of his debts and of the expenses of administration, and "after payment of same," to pay £30 a year to A. for life:—*Held*, affirming the decree of Chatterton, V.C., that the annuity was not to commence until after payment of the debts, &c. (Christian, L.J., *diss.*)—*Rawson* v. *M'Causland* (Ch. Ap.), Ir. R. 8 Eq. 617;* 22 W. R. 145.

* See *s.c.* 9 Ir. L. T. R. 29, where the judgments delivered are reported *in extenso*.

DIVIDENDS, Apportionment of—p. 70.

DOMICIL—[*See* TRUSTEE RELIEF ACT.]

The domicil of the husband will sustain the jurisdiction of the Court over the wife, though married abroad, always after marriage resident abroad, and charged with adultery committed abroad.—The domicil of the husband is sufficient to sustain the jurisdiction of the Court over the wife, and that jurisdiction is not defeated by non-residence, except in cases where the non-residence affects the domicil.—Long residence abroad is in favour of the acquisition of a new domicil, but it may be rebutted by circumstances showing that there was no intention of acquiring a new domicil.—*Gillis* v. *Gillis* (Mat.), NOTANDA, 8 I. L. T. & S. J. 414.—Ir. R. 8 Eq., 597.

DONATIO MORTIS CAUSA—[*See* GIFT.]

DONEE OF POWER—[*See* SETTLEMENT, 2.]

EASEMENT—[*See* PRESCRIPTION ACT.]

E. H. and J. H. being jointly seised as tenants in common of certain lands, executed a partition deed, whereby the lands were conveyed to a trustee upon trust, as to one part to the use of E. H., as to the other part to the use of J. H. A right of way through part of the land of E. H. *held* not to pass to J. H., in the absence of express words in the deed of partition. *James* v. *Plant*, 4 A. & E. 749, followed.—*Estate of Henderson* (L. E.), p. 105.

ENTAIL—[*See* BANKRUPTCY, 23—DEVISE, 8.]

1—In 1816, R. Day conveyed the lands of D. by a voluntary settlement to trustees to the use, after his death (in the events which happened), of R. D. Denny, the second son of his only daughter's marriage with Sir Edward Denny, the elder, for life, and after the death of R. D. Denny, "to the use of the first son of the body of the said R. D. Denny lawfully to be begotten, not being entitled to [certain 'Denny estates'] or any part thereof by any limitation made or to be made thereof or by descent, until he shall become entitled to said Denny estates by any limitation thereof or by descent *or* [*sic*] remainder to the use of the second, third, and every other son in succession of the body of the said R. D. Denny until such second, third, or any other son of the body of the said *Sir Edward Denny* [*sic*; should be 'R. D. Denny'] shall become so entitled to said Denny estates or any part thereof, according to priority of birth, and to the heirs male of *their* bodies *not being so entitled to said Denny estates*, and in default of such issue to the absolute use of the settlor." The deed contained, among other indications that R. Day intended the first son of R. D. Denny to take an estate tail, a subsequent clause providing that "if any of the issue of the body of the said R. D. Denny, or any of the heirs male of the body of any of the said issue, shall by any limitation made or to be made thereof or of any part thereof or by descent, being at the time the heirs male of the said Sir Edward Denny, become entitled to the said Denny estates," the lands of D. should revert to the settlor in fee. R. Day died in 1841, having devised his reversion to his eldest son (by a second marriage). R. D. Denny died in 1864, and in 1872 his eldest son, R. A. Denny, who had executed a disentailing assurance of the lands of D., filed a petition in the Landed Estates Court for sale of the inheritance to discharge incumbrances. Sir Edward Denny, the younger (R. Day's eldest grandson), a bachelor seventy-six years of age, was at that date tenant for life, under a re-settlement of 1819, of the Denny estates, with successive remainders to his issue, and to the petitioner, in tail. The Judge of the Landed Estates Court having refused to sell more than a life estate of R. A. Denny in the lands of D.:—*Held*, on appeal (reversing the decision of the Court below), that the petitioner took an estate tail under the deed of 1816.—[*Per* Christian, L.J.—Where the meaning of a clause in an instrument is doubtful, the Court may insert punctuation, as a means of showing what construction the words are capable of; and if, by such aid, the Court is enabled to see that the language can bear an interpretation which will make the whole instrument rational and self-consistent, it is bound to adopt that interpretation, in preference to another which would attribute to the parties an intention utterly capricious, insensible, and absurd.]—That the words "not being entitled to said Denny estates" in the sentence creating the limitations in tail were explicable as an anticipatory statement of the effect of the subsequent shifting clause; otherwise they would have indicated a kind of qualified estate tail unknown to the law.—That the Landed Estates Court had full jurisdiction to determine the nature of the petitioner's estate in the lands of D., as well as every other question of law or of equity involved in that of the right of sale; and that, since he sought a *bonâ fide* sale of an incumbered estate, and not an abstract declaration of title, it was not more "expedient" to leave the matter to be adjudicated upon by a Court of law after Sir Edward Denny's death. In re *Acheson's Estate* (I. R. 3 Eq. 105) and in re *Cuthbert's Estate* (4 Ir. L. T. 86, I. R. 4 Eq. 572) distinguished.—In re *Denny's Estate* (Ch. Ap.), p. 153—Ir. R. 8 Eq. 427.

2—The owner of lands, held *pour autre vie*, granted them for a term by way of mortgage, and afterwards settled the equity of redemption upon J. M. as tenant in *quasi* tail; J. M., while he was such tenant in tail in possession, joined in a deed whereby the mortgagee, in consideration of payment of the principal sum, an arrear of interest, and costs, assigned the lands to other persons subject to the old equity of redemption, and by that deed J. M. *confirmed* the assignment and covenanted with the assignees for good title:—*Held*, that he thereby barred the *quasi* entail.—The donee of a power, when executing a deed of appointment, "limited and appointed" not only the lands the subject of the power, but other lands of his which were not subject thereto:—*Held*, that the words "limit and appoint" operated as a grant of the latter lands.—*MacAndrew* v. *Gallagher* (V. C.), Ir. R. 8 Eq. 490.

EVIDENCE—[*See* WITNESS—SUBPŒNA AD TESTIFICANDUM—PRODUCTION OF DOCUMENTS—PROBATE COURT PRACTICE, 3—PART PERFORMANCE.]

1—Where the Court is assisted by nautical assessors, the evidence of a nautical expert will not be received.—The "Nagpore" (Adm.), p. 185.

Digitized by Google

2—Bill to perpetuate; marriage within prohibited degrees.—*Molony* v. *Molony* (Ch.), NOTANDA, 8 I. L. T. & S. J. 574.

3—On motion for a decree, upon proof being given *vivâ voce* of an unsuccessful search in the Master's Office and in the Public Record Office for original deeds—which ought to have been, as of record, in one or other of those depositories—secondary evidence of their contents was received, although the bill did not aver their loss.—*Breslin* v. *Hodgens* (V. C.), Ir. R. 8 Eq. 397.

4—The Court received parol evidence of the contents of a lost will and admitted it to probate, upon being satisfied by evidence, which the Court deemed clear, cogent, certain, and fairly free from suspicion—(1) as to the *factum* of the alleged will; (2) that its contents were substantially such as were alleged; and (3) that one of the defendants, the heir-at-law, had, after the death of the testator, got possession of the will, and suppressed or destroyed it. *Wharram* v. *Wharram* (3 Sw. & Tr. 301; 33 L. J. Pr. M. & Ad. 75) contrasted. *Semble*, as against spoliation much less cogent evidence is required than in the case of mere loss.—The will was made in 1862, and the testator died in 1867; and, taking into consideration the delay in applying for probate, the Court named a reduced sum for the costs to be paid by the defendants.—*Mahood* v. *Mahood* (Pro.), Ir. R. 8 Eq. 359.

EXECUTION OF WILL—1—A signature made by some other person not in the presence (though by the direction) of a testator, is not "such signature" as can be "acknowledged" by the testator under s. 9 of the Wills Act.—An intending testator "held a pen in his hand and put it to his name" (not written in his presence) "or placed it on a mark" made on a will prepared for him by a solicitor; but no proof could be given whether any ink was in the pen or any visible trace made when he so held the pen:—*Held*, though the will was properly attested, that the Court could not presume a due execution.—*Kevil* v. *Lynch* (Pro.), Ir. R. 8 Eq. 244.

2—At the foot of a will, signed by the testator and attested by two witnesses, there appeared subscribed, beneath the signature of the testator, the signature of D., who was the principal legatee and sole executrix; on motion on behalf of D., the Court, being satisfied by evidence that her signature had not been added with any intention of attesting the execution, ordered D.'s signature to be excluded from the probate.—*In the Goods of Murphy* (Pro.), Ir. R. 8 Eq. 300.

EXECUTOR—[*See* ADMINISTRATION—SOLICITOR, 4, 5—PROBATE COURT PRACTICE, 1.]

FEE-FARM GRANT—1—A receiver over lands having obtained a fee-farm grant, which he and the lessor had executed, applied by petition, under the Renewable Leasehold Conversion Act, for an order, directing that one of the Masters should execute it for the lessee, who was out of the jurisdiction of the Court:—*Held*, that the Court had no power under the Act to grant the order.—Petitions by receivers, under the Act, should be entitled in the cause or matter to which the receivers have been appointed, as well as in the matter of the Act.—Ex parte *Harrison* (V. C.), p. 82.

2—The owner of the reversion being abroad, and neglecting to comply with an order directing him to execute a fee-farm grant under the Renewable Leasehold Conversion Act, the Court ordered that the grant should be executed by one of the Masters (Ex p. *Guerin*, 4 Ir. L. T. 562, followed).—Ex parte *Walsh* (V. C.). p. 37.—Ir. R. 8 Eq. 146.

3—A guardian *ad litem*, appointed by a Master in Chancery, in a petition referred to him under the 15th section of the Chancery (Ireland) Regulation Act, 1850, has no power to execute leases on behalf of the minor for whom he is appointed. *Semble:* In a cause fully constituted, with a guardian of the minor's estate duly appointed, a Court of Equity could not, unless on a petition filed for the purpose, direct such guardian to execute a fee-farm grant on behalf of the minor, so as to confer a valid title on the grantee. In a 15th section petition for administration, the Master refused to appoint a guardian for the purpose of executing a fee-farm grant, on behalf of a minor, but directed a petition to be filed for the purpose, under the Renewable Leasehold Conversion Act.—*Palmer* v. *Smyth* (M.), p. 108.

4—A lease for lives renewable for ever, containing a covenant against alienation without consent of the landlord, and providing for payment of an increased rent in case of a breach, was devised by the lessee, and the devisee paid, during thirty-five years, the lesser rent, without any claim having been made for the increased rent:—*Held*, on a petition by the devisee for a fee-farm grant, that, under those circumstances, it should be presumed that the landlord had consented to the devise, and, therefore, he was not entitled to have the increased rent inserted in the grant.—*Quære*, whether a devise without consent is a breach of a covenant against alienation?—Ex parte *Raymond* (V. C.), Ir. R. 8 Eq. 231.

5—A lessee for lives renewable for ever being a minor, the Court, on petition, appointed a guardian for the purposes of the Renewable Leasehold Conversion Act.—Ex parte *Tittle* (V. C.), Ir. R. 8 Eq. 237.

6—A lessee for lives renewable for ever, on applying for a renewal, lodged in bank to the credit of the lessor a sum based on a calculation of interest at the rate of *5 per cent.* on the renewal and septennial fines, and the Court subsequently made an order recognizing that calculation:—*Held*, that, there being thus an admission by the lessee that the interest should be calculated at that rate, the 21th General Order did not apply, and that subsequently accruing interest should be calculated at that rate.—*The Corporation of Dublin* v. *The Earl of Meath*, Ir. R. 8 Eq. 471.

FEME COVERT—[*See* WITNESS, 1—SECURITY FOR COSTS, 1.]

1—On petition by a married woman, who had been deserted by her husband, to draw out of Court money to which she became entitled:—*Held*, that notice of the petition should be given to the husband, notwithstanding that a protection order, under 28 Vict., c. 43, had been obtained.—In re *Dundas's Trust;* ex p. *Sutcliffe* (R.), p. 117—22 W. R. 676.

2—Under ss. 22 & 68 of the Irish Fines and Recoveries Abolition Act (4 & 5 Wm. IV., c. 92), a married woman can by deed, acknowledged under that statute, dispose of an interest in realty limited to her for her sole and separate use contingent upon the insolvency of her husband, although the contingency has not arisen. *Quære*, can she by a deed not so acknowledged? *Bestall* v. *Bunbury* (13 Ir. Ch. R. 318) observed upon.—*Estate of Smallman* (L. E.), Ir. R. 8 Eq. 249.

3—A fund in Court, to which a married woman was entitled to her separate use, ordered, with the consent of her husband, to be transferred to her name, pursuant to the "Married Women's Property Act, 1870" (33 & 34 Vict., c. 93, s. 3).—*Frank and Wife* v. *Mackay* (V. C.), Ir. R. 8 Eq. 93.

4—Bequest to, "for her sole use and benefit."—Re *Flynn, a Bankrupt* (B.), p. 112.

FIDUCIARY RELATION—[*See* VOLUNTARY CONVEYANCE, 2—ADVICE, ABSENCE OF PROFESSIONAL, 1, 2.]

The widow and administratrix of a tenant from year to year of a holding in Ulster, continued in possession for two years after his death, and, the tenancy having been then determined by notice to quit, offered no resistance to an ejectment brought by the landlord, who took formal possession, but left her in undisturbed occupation at the same rent:—*Held*, that, though there was no fraud in the transaction, the new tenancy was a graft on the old for the benefit of the next-of-kin of the intestate; even though there were a custom on the estate that a holding should not be divided amongst the next-of-kin of an intestate, but be given to the widow, if a desirable tenant.—*Kelly* v. *Kelly* (V. C.), p. 173—Ir. R. 8 Eq. 403.

FINES—[*See* BUILDING SOCIETY—FEE-FARM GRANT, 6.]

FORFEITURE UNDER NON-ALIENATION CLAUSE—[*See* FEE-FARM GRANT, 4.]

FRAUD CHARGED, relying on other grounds, p. 118.

FRAUDULENT CONVEYANCE—[*See* DEED, IMPEACHMENT OF.]

GIFT—Assuming that a bank deposit receipt, whether indorsed or not, may, by manual delivery, be the subject of a *donatio mortis causa*, the evidence of the gift must be clear and unequivocal. A *donatio mortis causa* may be coupled with a trust or a condition, but the expression of the trust or condition must form part of the donation, either by being contemporaneous with it or so coupled with it, by contemporaneous words of reference, as in effect to be incorporated with it. On the day before his death R. stated to B.'s wife how, in the event of his death, he wished his property to be disposed of, and on the following morning, having dictated and signed an order on the Provincial Bank to pay to B the amount of bank deposit receipts, attempted to indorse them, but, after indorsing the first, was unable to proceed, and very shortly afterwards died without giving any further expression of his intention:—*Held*, not to be a valid *donatio mortis causa* to B., either absolutely or as a trustee.—*Dunne* v. *Boyd* (V.C.), Ir. R. 8 Eq. 609.*

GRAFT—[*See* LEASE—FIDUCIARY RELATION.]

GRANT—[*See* ENTAIL, 2.]

GUARDIAN—[*See* BANKRUPTCY, 12—FEE-FARM GRANT, 3, 5—LUNATIC, 1.]

A special guardian to an infant petitioner, under the Settled Estates Acts, may be appointed after the petition has been presented.—In re *Fegan's Settlement* (V. C.), p. 205—Ir. R. 8 Eq. 596.

HEAD RENT, Payment of by sub-tenant—[*See* SALVAGE.]

HEIR—[*See* PERSONAL ESTATE.]

INFANT—[*See* LANDS CLAUSES CONSOLIDATION ACT—GUARDIAN.]

INJUNCTION [*See* BANKRUPTCY, 11, 19—TEMPORARY BAR.]

1—Where A., a former receiver over portion of a property, to another portion of which he was himself entitled, after an order directing division in a partition suit remained in possession of the entire property, and B. the person entitled to the other portion of the lands, before execution of the mutual conveyances attempted by force, to oust A. from that portion of the lands to which B. was entitled, an application for an injunction against an action for trespass against B. was refused; but an injunction was granted against A. setting up a tenancy from year to year in himself to a portion of the lands, which he alleged was acquired by him while acting as receiver for the whole property for a minor under the Court of Chancery, notwithstanding the receipt of rent from him by the agent of the minor subsequent to his discharge as receiver, A. having elected to accept a scheme for division proposed under the partition suit, in which the portion of the lands in question was treated as not in the occupation of any tenant—*Hughes and another* v. *D'Arcy* (R.), p. 130.

2—Pending a partition suit, the Court will not interfere with the possession, nor allow it to be interfered with by the parties, until the partition shall have been completed; and, therefore, refused an injunction to restrain the defendant, who was in occupation of the portion allotted to the plaintiff, from proceeding with an action of trespass against the plaintiff for forcible entry. Previously to the execution of the mutual conveyances in partition, one of several tenants in common will not be restrained from distraining for his proportion of the rent which had accrued due before the certificate, embodying the partition, has been made.—*Hughes* v. *D'Arcy* (V.C.), Ir. R. 8 Eq. 71.

3—In 1870 B. furnished to H., who had agreed shortly before to take from him a lease for thirty-one years of certain lands, a memorandum embodying its proposed terms. H. having, among other amendments, struck out a clause binding him to keep the fences in repair, returned the draft as accepted. B., in acknowledging its receipt, described that cancellation as "the only thing I now see likely to cause any difference

* See *s.c.* 9 Ir. L. T. R. 17.

between us," adding, "such a point should not cause any difference between us, as I believe it is the usual custom for a tenant" to keep the fences in repair. B. having subsequently filed a bill for specific performance:—*Held*, that there was a concluded agreement for a lease including the cancelled clause, and that he was entitled to a decree. Immediately after the filing of the bill, H. had instituted an action against B. for alleged breaches of the contract as interpreted by him, whereupon B. (before answer) amended by traversing the breaches charged, and praying for an *ad interim* injunction to stay the proceedings at law, which he obtained on motion. His answer having replied in detail to the traverse, B. filed affidavits at great length in support of it. The Court having afterwards made a decree for specific performance, giving B. his costs up to and including the hearing, except those of the said affidavits:—*Held*, that under the provisions of the Chancery Amendment Act, 1858, and the Chancery Regulation Act, 1862, the Court was bound to dispose finally of all questions arising out of the contract, and that, therefore (though the plaintiff had not so prayed), the injunction should be made perpetual, and the cause referred to Chambers, where an inquiry, as directed in detail by the decree, and on which the costs of B.'s said affidavits should depend, would afford adequate relief to both parties. *Semble*, where there is a concluded agreement for a lease, followed by a negociation as to some of the covenants it is to contain, upon all of which the parties agree with the exception of one repudiated by the defendant, but by law implied in every lease "unless otherwise provided," the Court will decree specific performance, and the execution of a lease including the rejected covenant.—*Blakeney* v. *Hardie* (Ch.), Ir. R. 8 Eq. 381.

INTEREST—[*See* Building Society—Deed, Impeachment of, 2—Solicitor, 3—Fee-farm Grant, 6—Devise, 2.]

"IRISH CHURCH ACT, 1869"—p. 191.

JUDGMENT-MORTGAGE—[*See* Bankruptcy, 14, 24.]

JURISDICTION—[*See* Concurrent Jurisdiction—Master's Report—Lunatic, 2—Entail, 1.]

LACHES—[*See* Limitations, Statute of—Specific Performance, 2—Objection to Title, Waiver of—Building Society.]

LANDED ESTATES COURT, Jurisdiction of—p. 153.

LANDED ESTATES COURT PRACTICE—[*See* Sale, 1, 2.]

1—Order made that an affidavit be received and filed, which was sworn by two deponents, but contained only one jurat, and in the jurat of which, though the affidavit was, in fact, made before a commissioner in Canada, the place of swearing did not appear.—*Estate of Nixon* (L. E.), p. 80.

2—The Court refused to make an order for sale on foot of a general charge of debts created by a will; as it would be, in effect, undertaking to administer the assets of the testator. *Semble*, the Court would make an order for sale, if there were pending in Chancery an administration suit which would necessarily result in a decree for a sale.—*Estate of Warnock* (L. E.), Ir. R. 8 Eq. 239.

3—Where there are circumstances tending *prima facie* to show conveyances to be fraudulent, under 10 Car. 1, sess. 2, ch 3, the Court will retain the moneys due under them to an incumbrancer, pending a suit in Chancery, to set the conveyances aside, and this too although the creditor, asking to have the money retained, have no charging order, or lien on the property comprised in the conveyances.—*Estate of Tierney* (L. E.), p. 62.

LANDLORD AND TENANT ACT, 1870—[*See* Fiduciary Relation—Sale, 2.]

LANDLORD AND TENANT LAW AMENDMENT ACT, 1860.—Section 29 of 23 & 24 Vict. c. 154, applies, in respect of the right to cut turf, as well to tenancies from year to year created by parol as to demises by lease.—*Estate of Brown* (L. E.), Ir. R. 8 Eq. 297.

LANDS CLAUSES CONSOLIDATION ACT, 1845—Money lodged by the Commissioners of Church Temporalities under s. 57 of "The Irish Church Act, 1869," was, on the petition of a tenant for life, ordered, under s. 69 of "The Lands Clauses Consolidation Act, 1845," to be invested in the purchase of tithe rentcharges issuing out of lands in strict settlement, although the infant tenant in tail was not served with the petition or represented before the Court.—*Ex parte Lord Leconfield* (R.), Ir. R. 8 Eq. 559.

LEASE—[*See* Part Performance—Specific Performance—Fiduciary Relation—Temporary Bar—Injunction, 3.]

Lands held under a lease for lives, having been devised to Mary for life, and, after her death, to Thomas absolutely, they joined in surrendering the lease, and procured a new one for lives to themselves and their heirs as joint-tenants; Thomas devised the lands, but Mary survived him, and devised them to the defendants:—*Held*, that the legal estate granted by the new lease was vested in the defendants as devisees of Mary, in trust for the plaintiff as the heir of Thomas and also of his devisee.—*Hill* v. *Hill* (V. C.), Ir. R. 8 Eq. 140; (Ch. Ap.) 622.*

LIMITATIONS, Statute of—1—A. devised his real estate to B. charged with the payment of £10,000 each to K. and his nephew C., K. had no nephew called C., but had a grand-nephew called C., who was unknown to A. A. died in 1831, and in 1832 C. claimed the legacy from B., who refused to pay it on the ground that C. was not the legatee intended. C. did not again claim. B.'s heir (on whom the estate descended) by his will created an express trust "for the payment of all charges or claims then existing" on the estate, and died before 1851. In 1869 the personal representatives of C. (although previously for years in possession of the previous correspondence about the legacy) claimed the £10,000 from the person then in possession of the lands charged, subject to the last-mentioned trusts:—*Held*, that the claim was barred by lapse of time, and C.'s knowledge, or means of knowledge of his rights, notwithstanding the express trust.—*Carey* v. *Cuthbert* (R.), 22 W. R. 249.

2—Where an order for sale has been made, that order is to be considered as having been made on behalf of every person who has an interest in the proceeds of the sale, whether the petition be presented by an owner or incumbrancer; and if, within the time of limitation affecting an incumbrance on the estate, an order for sale is made, the order will take the incumbrance out of the operation of the Statute of Limitations.—In re *Colclough*, 8 Ir. Ch. Rep. 330, followed.—*Estate of Nixon* (L. E.), p. 111.

LUNATIC—1—On an application by a plaintiff that a guardian *ad litem* be appointed for one of the defendants in the suit who was alleged to be of unsound mind, although not so found by commission:—*Held*, that a statement in the affidavit of the plaintiff, repeating an allegation in the answer of the other defendants, that the defendant was "imbecile," was insufficient evidence that the defendant was of unsound mind.—*Watson* v. *Knilans and others* (R.), p. 157—22 W. R. 639.

2—Between the presenting of the petition for an inquiry in the case of an alleged lunatic and the official finding he may be restrained by the Court from leaving the jurisdiction, and his property may be protected from any disposition or misuse by which the purpose of the inquiry might be frustrated; but this interference, being provisional and only allowed as subservient to the investigation, cannot co-exist with an order prohibiting the prosecution of the latter. The Lord Chancellor for the time being intrusted with jurisdiction in lunacy matters may vary or discharge the orders therein of his predecessors.—In re *Lawler* (Ch.), Ir. R. 8 Eq. 506.

LUNATIC ASYLUM [*See* Commissioners of Lunatic Asylums.]

MARRIAGE [*See* Devise, 4—Testamentary Instrument—Partnership—Promise in consideration of Marriage—Voluntary Conveyance, 1.]

Within prohibited degrees; 5 & 6 Will. IV., c. 54.—*Molony* v. *Molony* (Ch.), Notanda, 8 I. L. T. & S. J. 574.

MARRIED WOMAN—[*See* Feme Covert.]

MASTER'S REPORT—This Court has no jurisdiction to allow exceptions for alleged mistake of law, to be taken to a report of a Master which had been confirmed by special order of the Lord Chancellor by *fiat* on a petition to confirm the report.—*Quære*, if it had been confirmed merely by the operation of 137 G. O. 1843?—*Delacherois' Trusts* (V. C.), Ir. R. 8 Eq. 613.

MINOR—[*See* Lands Clauses Consolidation Act—Guardian.]

MORTGAGE—[*See* Covenant postponing redemption—Solicitor, 4, 5.]

MORTGAGEE, fraud by [*See* Solicitor, 4, 5.]

NECESSARIES—Corporation dues paid on a ship in the Port of Dublin are not such necessaries as create a lien in this Court.—*The* "Belvidere" (Adm.), p. 176.

NE EXEAT REGNO, Writ of, when granted, p. 172.

NOTICE, constructive, of tenancies—Notice of the occupation by a tenant, from year to year, is notice between vendor and purchaser, that the occupation is under the terms of a tenancy from year to year. *James* v. *Lichfield*, L. R. 9 Eq. 51, followed.—*Carroll* v. *Keays*; *Keays* v. *Carroll* (Ch. Ap.), p. 47—Ir. R. 8 Eq. 97; 22 W. R. 243.

OBJECTION TO TITLE, partial waiver of—In granting a decree for the specific performance of an agreement to purchase plaintiff's lands, where the defendant has been guilty of delay and other acts amounting to a partial waiver of his originally unrestricted right to investigate the vendor's title, the Court will refuse an inquiry in the case of the items as to which there has been such acceptance, allowing it to proceed as to the rest. In July, 1871, S. agreed to purchase all "C.'s interest" in a portion of lands which were held under a lease of 1848 for a long term of years at a substantial rent, and which portion had been conveyed to a trustee for C. in December, 1857, indemnified against any part of the rent. S. did not go into possession, although the agreement, which was silent as to C's making title, provided that possession should be given in November. C.'s solicitor, M., furnished his abstract of title in March, 1872, and, on request, a further one in May. In June, S.'s solicitor, K., made various requisitions thereon, one of which required proof of the title of the lessor, whose estate had been sold in the Incumbered Estates Court early in 1857, subject to the lease. M., in reply, offered a copy of the Incumbered Estates Court conveyance, and by the 17th of July had complied with all the requisitions. No further communication was received from K. till the 24th October, when, in answer to M.'s letters, urging the completion of the transaction, he wrote requiring the appointment of a new trustee of the deed of December, 1857, the original one having died in 1864. A new trustee was immediately appointed, and C. having shortly after filed a bill for specific performance and for a declaration that S. had accepted the title:—*Held* (varying the decree of Lord O'Hagan, L. C., who decided there had been no waiver of title, and granted an unrestricted inquiry in Chambers), that S. might rely upon any new objection to the title, but not upon the liability of the indemnified premises to the rent reserved in 1848, nor upon any other objection appearing on the abstracts theretofore furnished, and that he might call for any of the documents promised him by M. except the Incumbered Estates Court conveyance, the production of which might be dispensed with in Chambers if it should prove to be no longer within C.'s procurement.—*Corless* v. *Sparling* (Ch. Ap.), Ir. R. 8 Eq. 325.

* See *s.c.* on app. 9 I. L. T. R. 1, where the judgment of the Court is reported *in extenso*.

Digitized by Google

PART PERFORMANCE—Neither the "Leases and Sales of Settled Estates Act" (19 & 20 Vict. c. 120), nor the "Landed Property (Ir.) Improvement Act, 1860" (23 & 24 Vict. c. 153), affects the established rule, that a parol agreement to grant a lease entered into by a tenant for life with leasing power, coupled with part-performance by the lessee during the lifetime of the tenant for life, does not bind the remainderman who did not acquiesce in the part-performance or know of the agreement.—The evidence of a plaintiff on his own behalf as to an agreement with a man since dead ought, in the absence of corroboration, to be disregarded.—*Hope* v. *Lord Cloncurry* (V. C.), Ir. R. 8 Eq. 555.

PARTIES—Bill to perpetuate testimony; marriage within prohibited degrees; 5 & 6 Will. IV., c. 54.—*Molony* v. *Molony* (Ch.), NOTANDA, 8 I. L. T. & S J., 574.

PARTITION—[*See* INJUNCTION, 1, 2—EASEMENT.]

PARTNERSHIP—Dissolution of, by marriage; business carried on by one partner after dissolution; bill to wind up; arbitration-clause in deed; staying proceedings under C. L. P. A. Act, 1856, s. 14.—*Dennehy* v. *Jolly* (R.), 22 W. R. 449.*

PAYMENT OF DEBTS—[*See* DEVISE, 5—LIMITATIONS, STATUTE OF, 1—SOLICITOR, 4, 5.]

PERSONAL ESTATE—[*See* RECITAL, ERRONEOUS IN CODICIL—DEVISE, 5.]

1—The vendor's heir-at-law, who has obtained a decree setting aside the sale on repayment of the purchase money to the purchaser, has no equity to resort to the personal estate to recoup him—not even to a portion of it identified as part of the purchase money. —*Ryder* v. *Ryder* (R.), Ir. R. 8 Eq. 86.

2—The heir-at-law is bound, as to the personalty, by a decree in a testamentary suit of which he was cognizant, although he had not been cited and had not intervened, unless the decree was founded on a compromise or something equivalent to a compromise;—Where, therefore, probate had been decreed on a verdict directed in consequence of non-appearance of a party to the record, an heir-at-law so situated was held to be barred by the decree from disputing, save as to the realty, the validity of the will proved, and condemned in costs.—*Semble*, the question of revoking a probate granted in solemn form may be brought before the Court by motion, on notice to show cause why it should not be revoked.—*Moran* v. *Moran* (Pro.), Ir. R. 8 Eq. 308.

PRACTICE—[*See* LANDED ESTATES COURT PRACTICE—PROBATE COURT PRACTICE—ADMINISTRATION—AFFIDAVIT—ANSWER—AWARD OF ARBITRATORS—DEBTORS ACT, 1872—FEE-FARM GRANT—FEME COVERT—GUARDIAN—LUNATIC—PRODUCTION OF DOCUMENTS—RECEIVER—SECURITY FOR COSTS—SETTING DOWN CAUSE FOR HEARING—SETTLED ESTATES ACTS—TIME, COMPUTATION OF—WITNESS.]

PRESCRIPTION ACT—Uninterrupted user, for thirty years next before 1873, of an easement (watering cattle) over lands held under a lease for lives renewable for ever, which, in 1865, was converted into a fee-farm grant under the Renewable Leasehold Conversion Act:—*Held*, that the time during which the lands were held under the lease should be excluded from the computation of the prescriptive period, and that, therefore, no right to the easement was acquired under the Prescription Act.—*Estate of Harding* (L. E.), Ir. R. 8 Eq. 620.

PRIVILEGED COMMUNICATIONS—[*See* PRODUCTION OF DOCUMENTS.]

PROBATE COURT PRACTICE—[*See* PERSONAL ESTATE, 2—EVIDENCE, 4.]

1—A suit had been compromised and probate granted to the plaintiffs, two of three executors, on the terms of a consent (which was not made a rule of Court) that the defendant—the third executor—should renounce probate and admit himself indebted to the testator's estate in a certain sum, to be secured by a mortgage of his share of the testator's real property. The defendant having, afterwards, refused to execute such a mortgage:—*Held*, that the Court had no jurisdiction to enforce the consent. It is not the practice to make a consent of such a nature a rule of this Court.—*Hammond* v. *Hammond* (Pro.), Ir. R. 8, Eq. 322.

2—The widow's right to administration to her husband, deceased, will not be postponed in favour of the next of kin because the widow is in prison, having been arrested on suspicion of being implicated in the murder of her husband.—*In the Goods of Devery* (Pro.), p. 120.

3—An attesting witness had refused to make any affidavit as to the execution of a will: on application under s. 29 of the Probate Act, 1857, on behalf of the widow of the deceased, who was desirous of obtaining administration with the will annexed, it was ordered that she be at liberty to issue a *subpœna ad testificandum* to the attesting witness, requiring him to attend before the Court to be examined *vivâ voce* touching his knowledge of the will, and of his having attested the same. *In the Goods of Dorgan* (Pro.), NOTANDA, 8 I. L. T. & S. J. 486—Ir. R. 8 Eq. 326.

4—Limited administration will not be granted to a person entitled to general administration, where no special circumstances are shown.—*In the Goods of Cowan* (Pro.), p. 120.

5—The surety in the Probate Court of an administrator who has got money assets of the intestate in his hands may lodge it in Court under the Trustee Relief Act. The balance of the assets of an intestate, after they have been fully administered, should be lodged to a credit entitled "In the Matter of the 11 & 12 Vict. c. 68, and separate credit of the next-of-kin" of the intestate.—*In the Goods of Monahan* (Pro.), Ir. R. 8 Eq. 358.

6—The Court has no jurisdiction to give costs to the Crown. *Semble*, the rule not to give costs to an unsuccessful litigant applies much more strongly in interest causes than in cases of contested wills. An application for a certificate for a special jury made on the morning next after the verdict, and before any intermediate case had been taken up:—*Held*, not to be too late. - *Goode* v. *Joint* (Pro.), NOTANDA, 8 I. L. T. & S. J., 415—Ir. R. 8 Eq. 425.

7—Where the persons interested under a questioned will, lodged in the Registry, had not propounded it nor appeared to a citation to show cause why it should not be condemned, the Court, on motion on notice on behalf of the next-of-kin, after reading affidavits of want of capacity, pronounced the questioned will invalid, and granted administration as in case of intestacy.—*Brennan* v. *Dillon* (Pro.), Ir. R. 8 Eq. 94.

8—If, upon motion to fix the mode of trial, the judge shall direct a cause to be tried before the Court itself with a jury, he will send to the jury—instead of the "general issue,"—special issues upon each question of fact raised by the pleadings.—*Isaac* v. *Grant* (Pro.), NOTANDA, 8 I. L. T. & S. J., 401 - Ir. R. 8 Eq. 253.

9—The next-of-kin cited the executors to bring in a probate which had been granted in common form, and to show cause why it should not be revoked; and, at the same time, gave notice that they merely required the will to be proved in solemn form, and intended only to cross-examine the witnesses who should be produced in support of the will:—*Held*, that the 46th Rule (Cont.) did not apply, and that the next-of-kin were liable for costs, although they had withdrawn a plea of undue influence which they had filed.—*Gibson* v. *Gibson* (Pro.), Ir. R. 8 Eq. 320.

PRO CONFESSO, taking bill—1—The Court, at the same time that it made an order to take the bill *pro confesso*, gave permission to set down the cause in the then Term's list.—*Westenra* v. *Barlow* (V.C.), Ir. R. 8 Eq. 473

2—If the party on whom rests the affirmative of issues directed to be tried by a jury, before the Court, does not proceed to trial in the time directed by the order, the proper course is to move to have the issues taken *pro confesso*.—*Underwood* v. *Darracott* (R.), Ir. R. 8 Eq. 345.

PRODUCTION OF DOCUMENTS—A filed a bill to obtain a declaration that the defendants B, a solicitor, together with C, D, and E, were jointly and severally liable to pay a sum of money which A had advanced, through the means of B, on a mortgage to C. The bill charged a breach of trust by D and E (the trustees of C's marriage settlement), as the result of which the security proved insufficient, and imputed fraud to all the defendants. B had acted in relation to the transaction as solicitor for A, D, and E. Upon motion by A, that D and E should produce all letters and copies of letters which had passed between them and B:—*Held*, that all letters and copies of letters written in reference to the subject of the suit, and before the dispute arose which superinduced the litigation should be produced, save such as should be shown, upon affidavit, to contain legal advice and opinions merely.—*Sankey* v. *Alexander* (V.C.), p. 157, where the *order* made is given—Ir. R. 8 Eq. 241.

PROMISE IN CONSIDERATION OF MARRIAGE—A father, before the marriage of his son, stated in a letter to the father of the intended wife, "I will give C one-third of my business, which will at present be sufficient to support them respectably and something to spare; and at my death he will have half the business, and a child's share of what property I may be worth." The father in his lifetime, in consideration of love and affection, assigned a mortgage to the son, to take effect at the father's death, with a power of revocation reserved thereby to the father, which he did not exercise. He also advanced other property to others of his children at different periods during his life. By his will he left to his son C "one shilling in full of all claims in reference to my property, having already given to him what I consider fair and reasonable;" he directed his debts to be paid, and divided his property among his widow and his other children:—*Held*, that by the letter the father contracted a debt payable out of the assets which he had left at his death, but that the son was bound to bring into account and give credit for the value of the mortgage which the son insisted on retaining:—*Held*, also, that the other children were not bound to bring into account the advancements made to them.—*Keays* v. *Gilmore* (R.), Ir. R. 8 Eq. 290; 22 W. R. 465.

RECEIVER—[*See* FEE-FARM GRANT, 1.]

1—The plaintiff in a bill for foreclosure, filed May 19, 1874, moved on July 9, 1874, to have a receiver appointed, alleging that the premises in question were falling into disrepair, and that the occupying tenants were committing dilapidations:—*Held*, that, the motion having been delayed until the eve of the long vacation, a receiver should not be appointed.—*Kearney* v. *O'Flaherty* (R.), p. 157.

2—The application for a reference for the appointment of a new receiver in the room of one who had died, may be by a motion *ex parte*.—*Molloy* v. *Hamilton* (V.C.), Ir. R. 8 Eq. 499.

RECITAL, Erroneous, in Codicil—A testator having by his will devised his "fee-simple and other freehold property," in default of issue of his own, to N. for life, remainder to the sons of N. successively in tail, made a codicil as follows: "Having left in the said will my fee estate and personal property to S. M. Nugent in case I had no family, I do not now revoke my bequests to him; but as I have no children, and have lived very happily with my devoted wife, I will and bequeath to her an annuity of £200 sterling, over and above her legal jointure, to be paid her by S. M. N. off my estate as long as she lives:"—*Held*, that the testator's personal estate was undisposed of.—*Nugent* v. *Nugent* (R.), Ir. 8 Eq. 78.

RECORD OF TITLE ACT—Where a title is recorded by an owner, the mortgagee, under a mortgage from a previous owner, is entitled to retain the land certificate. —*In the matter of P. Rooney* (L. E.), p. 83.

REGISTRY ACTS—[*See* VOLUNTARY CONVEYANCE, 1.]

* See s.c. 9 Ir. L. T. R. 3.

Digitized by Google

RELEASE—[*See* Administration, 5.]

RENEWABLE LEASEHOLD CONVERSION ACT—[*See* Fee-farm Grant.]

REPORTING SHIP, Fee for, p. 185.

RESCINDING ORDERS—[*See* Bankruptcy, 15—Solicitor, 1.]

SALE—[*See* Landed Estates Court Practice, 2, 3—Limitations, Statute of, 2—Covenant Postponing Redemption—Personal Estate, 1.]

1—Where the vendors had caused a map to be prepared, with the portion to be sold (consisting of two lots) coloured green, and. after the preparation of the map, changed their intention and determined not to sell the smaller lot, the purchaser, who thought *bona fide* that he was purchasing both lots, and had paid his purchase-money, was held entitled to be discharged from the purchase.—*Estate of Greer* (L. E.), p. 87.

2—Landlord and Tenant Act (Ir.), 1870, s. 46; purchase of holding, in Landed Estates Court, by occupying tenant.—*Estate of Sherlock* (L. E.), Notanda, 8 I. L. T. & S. J., 544.

SALVAGE—Where lands, sub-let to tenants who had duly paid the rent reserved to their immediate landlord, were evicted for non-payment of a head-rent payable by him, and a habere was about being executed, the sub-tenants, in order to save their own interests, and that of their immediate landlord, redeemed the premises, paying the head-rent and costs of the ejectment:—*Held*, that the head-rent and costs should be declared a charge on the immediate landlord's interest in the lands, and that, in the event of default in payment thereof, his interest should be sold.—*Locke* v. *Evans*, 11 Ir. Eq. 52, followed—*Ahern and O'Geran* v. *M'Swiney* (R.), p. 172—Ir. R. 8 Eq. 500: (Ch. Ap.*) Ir. R. 8 Eq. 624.

SECURITY FOR COSTS—1—Where the next friend of a married woman plaintiff is required by the defendant to give security for costs, on the ground that such next friend is not in solvent circumstances, the Court, unless clearly satisfied upon the evidence that the next friend is possessed of means to pay the costs, over and above all his existing liabilities, will order security for costs to be given, or that a different and sufficient next friend be appointed.—*Savage* v. *James* (V. C.), Notanda, 8 I. L. T. & S. J. 88; (Ch. Ap.), 8 Ir. L. T. R. 190.

2—Although a plaintiff who wilfully misrepresents his place of residence upon the record will be ordered to give security for costs, this does not extend to a case where it is done innocently and from mere error.—*Lamb* v. *Fottrell* (V. C.), Ir. R. 8 Eq. 69.

SETTING DOWN CAUSE FOR HEARING—Appearance having been entered for the defendant, who had gone abroad to avoid service of the bill, and the plaintiff having obtained liberty to advertise the filing of the replication, the Court, on motion *ex parte*, gave the plaintiff liberty to advertise the notice of setting down the cause for hearing.—*Stephens* v. *Ryan* (V. C.), Ir. R., 8 Eq. 50.

SETTLED ESTATES ACTS—[*See* Guardian.]

For the purpose of obtaining an order to have advertisements under the Settled Estates Acts inserted in newspapers, the application should be made by summons in Chambers, and not by an *ex parte* motion.—In re *Fegan's Settlement* (V. C.), p. 206.

SETTLEMENT—1—Where a settlor directed maintenance for his children to be paid to their mother for their support, up to fourteen years of age, out of yearly income, and from fourteen to twenty-one to be allowed by trustees "out of the share" of each child in a certain fund of £6,000 to which each would be entitled on attaining the latter age, and there was no direction for the payment of interest on that fund from fourteen to twenty-one:—*Held*, that the maintenance for each child from fourteen to twenty-one must come wholly out of the capital of the share of that child in the sum of £6,000.—*Cusack* v. *Jellico* (Ch. Ap.), 22 W. R. 344.

2—In 1837 J. P., in exercise of a power contained in his marriage settlement of 1789, appointed £3,193, the residue of a trust fund (subject to his own life interest therein), to his daughter L. by a deed poll, which was also executed by his wife E. By a subsequent will, he gave all the residue of his real and personal estate to E. on trust to pay his debts, and, subject thereto, for her own benefit. J. P. died in 1839, and in 1840, on the marriage of L., a settlement was executed, to which E., as well as G. and H., the representatives of the trustees of 1789, were parties, and which—after reciting that the residue of £3,193, represented by the deed of 1837 to be at its date available for the original trusts, was not really so, but that portion of it had been paid to J. P. for the purpose of advancing his children, and that the actual residue in 1837 amounted to £833 "only, and no more"—declared the latter sum, together with a legacy of £190 bequeathed to her by her father, to constitute her "marriage portion," and that, accordingly, she and her intended husband released G. and H. from all further claim on foot of the trust fund of 1789. In 1841 V., a creditor of J. P., filed a bill to administer his estate, and in that suit all his property was realized and distributed among his reported creditors, except the freehold lands of K., which had been settled in tail male on the marriage of his son K. P., with an alternate reversion to J. P. in fee, neither L. nor her husband (who died in 1849) made any claim in that proceeding, of which she alleged they had had no notice. E. died in 1851, and in 1858 H. P., as her general devisee, went into possession of K., on the death of K. P., whose only son J. had not been heard of for many years, and in 1866 presented a petition to the Landed Estates Court for the sale of K., in which matter L. filed a claim on foot of the original trust fund, but the petition was dismissed for want of evidence of J.'s death. In 1868 L. having filed a bill against H. P. and E.'s executor, claiming the balance of £2,300, with interest from her father's death:—*Held* (affirming the decree of the Vice-Chancellor), that her demand could not be sustained.—*Philips* v. *Pennefather* (Ch. Ap.), Ir. R. 8 Eq. 474.

* See *s.c.* on app., 9 Ir. L. T. R., 13, where the judgments delivered are reported *in extenso*.

3—By a postnuptial settlement, reciting that A. had a large family, and was anxious to make a provision for them in the case of his death or of the death of B., his wife, and, for that purpose, had determined to execute the settlement, leaseholds were assigned to trustees upon trust, in case B. should survive A., to permit her to take one-third of the profit rents, the other two-thirds to go to the maintenance, &c., of such of their children as should require it; and, after the death or second marriage of B., the entire to be expended on the education and putting to trade or business of such of the children as should require it; and, in case A. should survive B., upon trust to permit him to receive the entire of the rents during his life, one-half to be expended on the maintenance, &c., of such of the children as should require it; and, in case A. should neglect so to apply the one-half of the rents, the trustees should receive it, and so apply it; and, after the death of A., the said property to go and become the property of the said children of A. and B. as A. should appoint; and, in case of the death of any of the said children before they should become *entitled* to said property, then his or her share to go to and be equally divided among the survivors of such children, and if but one, the whole to that one. A. appointed a share to a child who died in his lifetime:—*Held*, that the children who survived the father took the share so appointed, the word "entitled" being construed "entitled in possession."—*Beale* v. *Connolly* (R.), Ir. R. 8 Eq. 412

SOLICITOR—[*See* Debtors Act, 1870, 2—Production of Documents—Deed, Impeachment of.]

1—Money awarded to two persons, as compensation for property taken from them by a railway company, had been lodged to their credit in Court. Subsequently, one of those persons was adjudicated a bankrupt. An order was obtained from this Court, directing the payment out of Court of the sum lodged by the railway company; but, in the petition on which the order was pronounced, the fact of the bankruptcy of one of the petitioners was suppressed, as also the fact that the other petitioner was a minor. On motion, by the assignees in bankruptcy, to rescind the order for payment out of Court:—*Held*, that the order should be rescinded, and the money paid over to the assignees in bankruptcy; and that the solicitor who obtained the order, and was guilty of the suppression of facts, should be suspended from practising in the Court.—*The Dublin and Drogheda Ry. Co.;* ex parte *Knott* (R.) p. 81.

2—Where it was sought to restrain a solicitor from proceeding in a suit to recover costs, and to declare him guilty of fraud, on the ground of not having disclosed a will affecting the title in property which his client was about to purchase, it appearing that a copy of the will had been handed to a solicitor who had previously acted for the vendee in the sale:—*Held*, that fraud should not be presumed against the defendant, notwithstanding the fact that he had prepared an answer to be sworn by the plaintiff in a Chancery suit, in which it was expressly stated that the plaintiff made the purchase without any notice of the will. A bill which rests on a charge of fraud, if the charge of fraud fails, cannot be sustained on other grounds.—*M'Elroy* v. *Murphy* (R.), 22 W. R. 501.

3—A security taken for untaxed costs gives a solicitor no right to interest on them. There may, however, be a contract to pay such interest, if it be made with full knowledge, sufficient advice, and necessary warning; but, in the absence of these, it will be of no force between solicitor and client. A primary decree having set aside as an absolute conveyance an assignment of lands by a client to his solicitor, which, however, was ordered to stand as a security for the amount to be found due to the latter, at its date, for cash advances and costs:—*Held*, that the defendant should pay the costs of the suit up to and including the first hearing, but that each party should bear his own subsequent costs—it appearing doubtful, on the taking of the account, whether there was not still a small balance due to the defendant at the date of the final decree. *Fowler* v. *Moore* (2 Jo. Eq., Exch. 415) approved and followed; *Lawless* v. *Mansfield* (2 Dr. & War. 587) commented on.—*Shannon* v. *Casey* (Ch.), Ir. R. 8 Eq. 307.

4—An estate was mortgaged to S. for a large sum, which, though purporting on the face of the mortgage to be the money of S., was in fact advanced by E., N., and S. By an instrument, executed under the hand and seal of S., he acknowledged that about £9,000 of the money belonged to N., and declared that he would hold that sum in trust for N. S. fraudulently dealt with the mortgage and the moneys received thereby, so that ultimately N.'s share of the money was lost:—*Held*, that N., after the death of S., was entitled to prove against his assets as a specialty creditor.—N. was the solicitor of E., to whom the principal part of the mortgage money belonged, and it was owing to N.'s negligence or remissness that S. got and retained possession of the deed of mortgage, by means of which he was enabled to perpetrate his frauds, which also caused a loss to E. of a very large part of the moneys received by the mortgage which belonged to him. After the death of S., in the course of the administration of his estate in a cause petition referred to the Master under the 15th section of the Chancery Regulation Act, 1850, N. being his administrator, and having filed a charge claiming as a specialty creditor as above mentioned, the executors of E. got liberty to discharge the claim:—*Held*, that they could only make such a case against N.'s claim as the personal representative of S. supposing him an independent person, could have made, and that a supposed equity put forward by the executors of E. against N. to prevent his claiming as above mentioned against the general assets of S., until they were recouped all losses arising out of S.'s dealings with the mortgage, founded on the alleged negligence or fraud of N., should be asserted against N. in a plenary suit.—*Norris* v. *Sadleir* (R.), Ir. R. 8 Eq. 160.

5—An estate was mortgaged to S. for a large sum, which, though purporting on the face of the mortgage to be his money, was in fact advanced by E. (the principal contributor), S. himself, N., and others. Two days subsequently S. executed a deed acknowledging that about £9,000 of the money belonged to N., for whom he declared he would hold the same in trust. S. afterwards dealt fraudulently with the mortgage and the moneys secured by it, so that ultimately N.'s share was lost. It

Digitized by Google

was owing to the negligence of N., who was E.'s solicitor, that S. got and obtained possession of the deed of mortgage, whereby he was enabled to perpetrate his frauds, which also caused a loss to E. of a large part of his contribution to the loan. After the death of S., in the course of the administration of his estate in a cause petition referred to the Master under the 15th section of the Chancery Regulation Act, 1850, N., being his administrator, filed a charge claiming as a specialty creditor under the declaration of trust, and the executors of E. obtained liberty to discharge the claim:—*Held*, upon the law and facts together (affirming the decision of the Master of the Rolls), *Per* Napier, C. S., and Christian, L. J., *diss.* Lawson, C. S., that N. was entitled to prove against the assets of S. as a specialty creditor. That the executors of E. could only make such a case against N.'s claim as the personal representative of S., assuming him to be an independent person, could have made, and that a supposed equity put forward by them against N. (and founded on alleged negligence or fraud), to prevent his so claiming against the estate of S. until they were recouped all losses arising out of the latter's dealing with the mortgage, should be asserted in a plenary suit.—*Norris* v. *Sadleir* (Ch. Ap.), Ir. R. 8 Eq. 519.

SPECIALTY DEBT—[*See* SOLICITOR, 4, 5.]

SPECIFIC PERFORMANCE — [*See* INJUNCTION, 3 — PART PERFORMANCE — NOTICE, CONSTRUCTIVE, OF TENANCIES — OBJECTION TO TITLE, PARTIAL WAIVER OF.]

1—Where there was a parol agreement for the letting of the residue of the term of the vendors, without the length of the term having been defined, and the defendants afterwards took possession of the premises, specific performance was decreed.—Specific performance will not be decreed where the evidence so directly conflicts as to leave the mind of the Court in uncertainty as to what are the precise terms of the contract; but, in estimating the testimony, the Court will consider all the corroborating circumstances and probabilities of the case.—Observations on the manner of conducting business of a judicial character depending in the Vice-Chancellor's Court—*Paul and Stoker* v. *Gillman and Potter* (Ch. Ap.), p. 9.

2—On April 11, 1870, Martin Lydon agreed in writing to assign certain leasehold premises to John Lydon. On April 16, Martin Lydon's attorney, by his instructions, caused a notice to be served on John Lydon, stating that his client disputed the validity of the agreement, that same was fraudulently obtained and while said Martin Lydon was inebriated, and that he would proceed to have same, if set up, set aside. A draft assignment, reciting the agreement, was furnished by John Lydon's solicitor on April 20th, no other answer being given to the notice. The draft was returned unapproved. Martin Lydon, on 29th April, assigned the premises to another person. Martin Lydon died on Nov. 14, 1870. In March, 1872, John Lydon filed a bill for specific performance:—*Held*, that specific performance should not be enforced. Per Christian, L.J. (Acc. Lawson, L.C.)—The plaintiff's not having filed a bill to enforce specific performance during the seven months which, after the notice disputing the validity of the agreement, elapsed during the lifetime of Martin Lydon, of itself disentitled the plaintiff to relief.—*Lydon* v. *Lydon* (Ch. Ap.), p. 85.

STATUTE, Construction of—[*See* COMMISSIONERS OF LUNATIC ASYLUMS—BANKRUPTCY, 3, 8.]

STAYING PROCEEDINGS—[*See* PARTNERSHIP—INJUNCTION.]

SUBPŒNA AD TESTIFICANDUM—The Court of Chancery has power, under the 17 & 18 Vict., c. 34, and the 21 & 22 Vict., c. 27, s. 3, to direct the issuing of a subpœna *ad testificandum* to witnesses residing in England or Scotland, commanding them to attend the trial of questions of fact directed in any proceeding in that Court to be tried by a jury before itself. The affidavit on which the application for such a writ is founded must disclose facts to show that the attendance of the witnesses is reasonably necessary.—*Underwood* v. *Darracott* (R.), NOTANDA, 8 I. L. T. & S. J. 64—Ir. R. 8 Eq. 348.

SUPPRESSION OF FACTS—[*See* SOLICITOR, 1, 2.]

TAIL, Estate in—[*See* ENTAIL—BANKRUPTCY, 23.]

TEMPORARY BAR—Upon a bill filed for a declaration of the continuing validity of a lease, and for delivery of possession under it, the Court, being of opinion that the question in dispute was one more properly cognizable at law, made an order for the waiver of a temporary bar which affected the plaintiff's proceeding by ejectment (although there was no specific prayer for the removal of such obstruction), and directed the bill to be retained pending the result of the action.—In 1851, shortly after the death of an occupying lessee (under an unregistered lease for years containing a condition of re-entry), intestate and leaving a widow and four infant children, an ejectment for non-payment of rent was brought under the Process and Practice Act (13 & 14 Vict., c. 18). The writ was served on the widow and children (who at the date of its service had abandoned the premises), and on every under-tenant in possession, and no defence having been taken, the lessor entered a parliamentary appearance by attorney for all the defendants, including the infants (who should have appeared by guardian), and he thereupon obtained judgment, issued an *habere*, and re-entered upon the lands. The youngest of the children attained age in 1861, and in 1865 two of them, J. and B., with a view to reversing the judgment of 1851 for error in fact, instituted proceedings at law, which eventuated in the Exchequer Chamber, in 1869, overruling an intermediate decision of the Exchequer, and, as against the plaintiffs in error, annulling the judgment of 1851, which was affirmed as against all the other defendants in ejectment. J. and B. having subsequently applied to the Exchequer to set aside the *habere*, and for a writ of restitution, that Court set aside the *habere*, but made no rule on the motion as to restitution. The lessee's children, whose mother had died in 1865, and three of whom had taken out administration to him in 1866, then brought an ejectment on the title against G., the lessor's representative, and the trustees of a term in the lands created in 1865 by a registered deed executed on the marriage of G.'s son. The defendants in that action proceeding to rely on the legal term, the lessee's administrators filed a bill praying that the lease of 1840 might be declared subsisting, and that they might be restored by injunction to the possession of the lands, with consequential relief, but not praying specifically for the removal of temporary bars:—*Held* (discharging the order of the Vice-Chancellor), that, in the absence of proof of notice to the defendants, purchasers for value under the settlement, the bill should be dismissed in so far as it sought to give priority to the lease; that the question as to the subsistence of the latter was one more proper to be decided in the pending ejectment with which the plaintiffs should immediately proceed, the defendants being restrained from pleading thereto any temporary bar; that in the event of the plaintiffs obtaining judgment in that action, no writ of *habere* should issue thereon without the leave of the Court below; and that in the meantime the bill (except in so far as now dismissed) should be retained.—*Le Clerc* v. *Greene* (Ch. Ap.), Ir. R. 8 Eq. 203—22 W. R. 428.

TESTAMENTARY INSTRUMENT—In 1873 N. H., in contemplation of the marriage of his son, J. H., signed, and two witnesses attested, the written instrument referred to below. The contemplated marriage having been solemnized, and N. H. having died:—*Held* (1), that by the solemnization of the contemplated marriage the instrument had been rendered irrevocable; (2) that the words "I give them supreme command" were words of present operation and the postponed interest had vested immediately; and that, therefore, the instrument could not be admitted to probate as a will.—*In the Goods of Halpin* (Pro.), Ir. R. 8 Eq. 567.

TIME, Computation of—In computation of time under the 256th General Order of 1867, "time of vacation" means the time after all the Equity Judges have finally completed their sittings.—*Blake* v. *Blake* (V. C.), Ir. R. 8 Eq. 505.*

TITLE—[*See* OBJECTION TO TITLE, PARTIAL WAIVER OF—TOTIES QUOTIES COVENANT.]

TITHE RENT-CHARGE, Purchase of—[*See* LANDS CLAUSES CONSOLIDATION ACT, 1845.]

TOTIES QUOTIES COVENANT—Where an inferior tenant in possession of ecclesiastical lands held under a lease containing a *toties quoties* covenant for renewal has been recognized as such by his immediate landlord's accepting rent from him, and applies for a subperpetuity grant of the premises under the Church Temporalities Acts, such landlord, having himself obtained a statutory grant of the fee, is bound to execute the required conveyance without demanding a statement of his tenant's title.—In re *Meylers, Minors* (Ch.), Ir. R. 8 Eq. 466.

TRUSTEE, Appointment of new—1—The husband of a *cestui que trust* will not be appointed trustee of a settlement, in the absence of special circumstances.—*Jackson's Trusts* (V. C.), p. 174.

2—On a petition to appoint a new trustee of a charity, praying that a scheme should be settled whereby persons filling certain offices should, by virtue thereof, be trustees of the charity:—*Held*, that the Court had no power to settle a scheme whereby such persons should *ex officio* be trustees; and that, at most, particular persons might be empowered to appoint future trustees.—*Caldbeck's Trusts* (V. C.), p. 119.

TRUSTEE RELIEF ACT—[*See* PROBATE COURT PRACTICE, 5.]

Funds, lodged under the Trustee Relief Act, to the separate credit of minors, natives of and domiciled in Scotland, ordered to be transferred to the minors and their curator.—*Ferguson's Trusts* (R.), Ir. R. 8 Eq. 563—22 W. R. 762.

TURF, Right to cut—[*See* LANDLORD AND TENANT LAW AMENDMENT ACT, 1860.]

UNDUE INFLUENCE—[*See* DEED, IMPEACHMENT OF, 1—VOLUNTARY CONVEYANCE, 2.]

USURY—[*See* DEED, IMPEACHMENT OF, 2.]

VACATION—[*See* TIME, COMPUTATION OF.]

VENDOR AND VENDEE—[*See* SALE—PERSONAL ESTATE, 1.]

VOLUNTARY CONVEYANCE—[*See* DEED, IMPEACHMENT OF—PROMISE IN CONSIDERATION OF MARRIAGE.]

1—D. in 1840, by a voluntary deed, duly registered, charged certain sums of money on land in favour of his three daughters. M. subsequently married one of them, being aware of the charge in her favour, and understanding it was to be paid, and a settlement, unregistered, granting said charge to M. on trust, was executed in 1848, on the marriage. D. in 1871, by a registered lease, demised the lands to his son at a gross undervalue:—*Held*, that the marriage imported valuable consideration into the voluntary deed of 1840, and that the lessee was not a purchaser for value so as to entitle him to defeat the prior voluntary deed.—That, assuming the lessee under the registered lease of 1871 to have been a purchaser for value, he was not entitled to priority, as the purchaser for value under the unregistered settlement of 1848 was entitled to fall back on the registered deed of 1840. In re *Flood's Estate*, 13 Ir. Ch. R. 315, followed.—*Estate of Dooley* (L. E.), p. 141.

2—In 1851, G. K. A., a bachelor, 48 years of age, and tenant in tail in possession, under his parents' marriage settlement (subject to a jointure of £190 (Irish) in favour of his mother, H. A., and to a charge of £2,000 (Irish) for younger children), of a freehold property producing about £450 a year, made a voluntary and irrevocable disposition of the premises, limiting them to himself for life (with power to charge thereon a jointure of £100 a year, and £1,000 for his younger children); remainder to his issue in tail male; remainder to his two youngest brothers, J. S. A. and J. H. A. (both of whom resided with him and his mother), for their lives and the life of the survivor; remainder to the plaintiff, the eldest son of the donor's next brother, E. A. (who was of intemperate habits), in tail male, with an ultimate remainder to the donor in fee. The deed further provided for the payment, after the deaths of H. A. and the donor, and failure of his issue male, of an

* See *Moore* v. *Waring*, 9 Ir. L. T. R. 5.

Digitized by Google

annuity of £100 during the life of the survivor of J. S. A. and J. H. A., for the benefit of the plaintiff's mother and her children by E. A. The transaction was kept concealed from E. A. (who died in 1852) and from the plaintiff till after the death of the donor, who survived J. H. A., and died a bachelor and intestate in 1866. The plaintiff having come of age in 1868, filed a bill in 1871 to set aside the deed, on the grounds, (1) of the mental incapacity of the donor, who was admittedly eccentric, and inexperienced in business matters; (2) of undue influence exercised over him in the procurement of the deed by his brothers, J. S. A. and J. H. A. (one of whom was a barrister and the other a solicitor), without his having had really independent legal advice; (3) of the fiduciary relation existing between him and J. S. A., who was his agent, and alleged to have the absolute control of his affairs; and (4) of the absence of a power of revocation in the deed. *Held*, on the law and facts together (affirming the decree of the Vice-Chancellor, with a variation as to costs), that the Court being, on the whole, satisfied of the donor's capacity and the insufficiency of the other grounds of impeachment, the deed should be allowed to stand; but that, in consequence of its concealment by the donee, J. S. A., who was the principal defendant, he should bear his own costs, both of the appeal and of the hearing below. The principles affecting the decision of the Court in such cases fully discussed by Christian, L.J.—*Armstrong* v. *Armstrong* (Ch. Ap.), Ir. R. 8 Eq. 1.

WARRANT to bring up Bankrupt for examination—[*See* WITNESS, 5.]

WAY, Right of—[*See* EASEMENT.]

WILL—[*See* DEVISE—TESTAMENTARY INSTRUMENT—RECITAL, ERRONEOUS IN CODICIL—FEME COVERT, 4—EXECUTION OF WILL—EVIDENCE, 4.]

WITNESS—[*See* SUBPŒNA AD TESTIFICANDUM.]

1—Where an application was made that a married woman might be examined by a Commissioner, pursuant to 19 & 20 Vic., c. 120, s. 87, it not being shown that the married woman would be put to personal inconvenience by her attendance before the Master of the Rolls, beyond the fact of her having to make the journey from Belfast to Dublin:—*Held*, that she should attend before the Master of the Rolls himself.—*Estate of Crawford and Blakely* (R.), p. 17.

2—Where a party to a suit examines a witness *ex parte* before the Examiner of the Court, and the opposite party serves notice of his intention to cross-examine such witness at the hearing, the party on whose behalf the direct evidence is given must, in order to be enabled to use it, submit the witness for cross-examination. The witness is to be considered as under the dominion of the party on whose behalf he gives evidence. The Court will not appoint a special examiner for the purpose of taking the cross-examination, under the Chancery Regulation Act, 1867, s. 96, except under very special circumstances; and if the witness has left the jurisdiction, it must be shown, to the full satisfaction of the Court, that it is out of the power of the party applying for such appointment to produce the witness at the hearing of the suit.—*Sankey* v. *Alexander and others* (V.C.), p. 159.

3—The words "motion, petition, or other proceeding before the Court"—in ss. 91 and 93 of the Chancery Act, 1867—embrace a motion for a decree.—On a motion for a decree, the cross-examination and re-examination of witnesses who have been examined *ex parte* before an Examiner, or have made affidavits, must be had before the Court itself; save in the special instances provided by ss. 95 and 96 of the Chancery Act, 1867.—Liberty to read documents at the hearing, subject to all just exceptions, must be obtained by side-bar order, and not by motion of course.—*Breslin* v. *Hodgens* (V.C.), p. 110—Ir. R., 8 Eq., 393.

4—In a suit for specific performance the plaintiff, after expiration of the time prescribed, obtained leave to cross-examine the two defendants at the hearing, and they, accordingly, attended at the hearing for the purpose, but the plaintiff declined to cross-examine them:—*Held*, that, although the plaintiff was entitled to the general costs of the suit, he should be disallowed all costs in reference to the cross-examination, and pay the expenses of the witnesses so attending.—*Guilfoyle* v. *Hutchinson* (V.C.), Ir. R. 8 Eq. 298.

5—Bankrupt in prison under warrant of Court of Bankruptcy; warrant to bring him up for examination; B. A. Act, 1872, s. 73; expenses—*Re J. Beahan, a bankrupt* (B.), NOTANDA, 8 I. L. T. & S. J. 486.

COMMON LAW CASES.*

ACKNOWLEDGMENT OF TENANCY—[*See* LANDLORD AND TENANT, 1, 2.]

ACTION, Right of, for tortious consequence of innocent act—[*See* STATUTE OF LIMITATIONS.]

ACT OF BANKRUPTCY—[*See* BANKRUPTCY, 1.]

ADJOURNMENT—[*See* APPEAL, 4.]

A Judge of Assize has power, on the application of the Crown, and notwithstanding the prisoner's demand for an immediate trial, to postpone such trial a second time after bill found by the grand jury, without ordering the prisoner's release on bail, if satisfied that such postponement is necessary in order to secure the ends of justice. *Semble*, the second clause of the 21 & 22 Geo. 3, c. 11, s. 6 (Ir.), applies only to cases where the prisoner had neither been indicted nor tried at the first Assizes after his committal.—*The Queen* v. *Dripps* (Cir. C.), p. 193.

ADMINISTRATOR—[*See* EXECUTION—"LANDLORD AND TENANT ACT, 1870," 4, 5, 17, 26.]

ADMISSION, by prisoner—[*See* EVIDENCE.]

AFFIDAVIT—[*See* SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT—CERTIORARI—CIVIL-BILL EJECTMENT.]

1—Filing supplemental, in support of conditional order for writ of *habeas corpus*.—*Re Kearse* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 54.

2—Copy of, on which motion grounded, omitting jurat.—*O'Donnell* v. *Smith* (Con. Ch.), p. 32.

AGREEMENT, Interpretation of—[*See* CONTRACT, 1, 4—EXECUTORY AGREEMENT.]

AMENDMENT—[*See* "DEBTORS ACT, 1872," 6.]

1—A defendant in an action of libel, in which a criminal offence was imputed to the plaintiff, having pleaded no libel, traverses of the publication and the defamatory sense imputed, and another plea to which a demurrer was allowed, moved for leave to file, in addition, a defence of justification, on the eve of the Assizes to which, on his own application, the venue had been changed, and when the plaintiff might, in the result, be thrown out of a trial:—*Held*, that the motion should be refused. *Hogan* v. *Sutton*, 2 Ir. L. T. 24, distinguished.—*Cleary* v. *Lenihan* (Q. B.), p. 160.

2—A plaint contained two special counts and a common count, and the plaintiff, pursuant to a consent made a rule of the Common Pleas, entered a *nolle prosequi* on the common count; the Exchequer Chamber having subsequently allowed a demurrer to the two special counts, the plaintiff, without setting aside the consent, applied to the Exchequer Chamber for liberty either to amend the special counts or to add the common count—the application was refused with costs.—*Mecredy* v. *Taylor* (Exch. Ch.), Ir. R. 8 C. L. 306.

3—Leave to amend, on demurrer; affidavit of facts proposed to be pleaded.—*Moore* v. *The Midland Railway Co.* (C. P.), p. 165.

APPEAL—[*See* RIGHT OF APPEAL—GARNISHEE ORDER, 2—"COMMON LAW PROCEDURE AMENDMENT ACT, 1870," 13, 15.]

1—Leave to appeal will not be granted where notice of appeal has not been lodged in the Master's office within the time prescribed by the C. L. P. A. Act, 1856, s. 43, unless the cause of the omission be explained on affidavit to the satisfaction of the Court.—*Billing* v. *Arnold* (Ex.), Ir. R. 8 C. L. 46.

2—Where the cause shown against a conditional order for a new trial was allowed by the unanimous decision of the Court, and, through inadvertence, leave to appeal was not asked for, the order allowing the cause shown was subsequently amended by giving leave to appeal, on the terms of the unsuccessful party paying the costs of the motion to amend.—*Newcomen* v. *Lynch* (Q. B.), Ir. R. 8 C. L. 553.

3—In ejectment the defendants obtained a verdict which was changed, by order of the Court, into a verdict for the plaintiffs, against which the defendants served notice of appeal, but, continuing in possession, delayed for eight months to furnish the case:—They were ordered to furnish it within ten days, or, in default, that the plaintiffs should be at liberty to state it.—*Leckey* v. *Watson* (Ex.), Ir. R. 8 C. L. 45.

4—Civil bill appeal, power to adjourn, at assizes, to a subsequent assizes.—*Hughes* v. *O'Donnell* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 137, 448.

APPORTIONMENT ACT—T., a Clerk of the Crown, discharged the duties of his office for a portion of a half-year, and then resigned. C., who was appointed to the post, discharged the duties until the next assizes, and then obtained, from the County Treasurer, the full amount which the 6 & 7 Will. 4, c. 116, enables a Grand Jury to present as payment for duties done within the entire six months previous. In an action by T. against C. to recover an apportioned part of the half-year's salary:—*Held*, that the salary of the Clerk of the Crown was apportionable under the 33 & 34 Vict., c. 35, and that an action for money had and received lay to recover such apportionment.—*Treacy* v. *Corcoran* (C. P.), p. 65—Ir. R. 8 C. L. 40.

APPORTIONMENT OF RENT—[*See* RENT, ACTION FOR, 1.]

ARGUMENTATIVE TRAVERSE—A plea confessedly double is, nevertheless, sufficient on general demurrer, if it contain a good answer to the cause of action (Fitzgerald, B., *diss.*). *Per* Fitzgerald, B.—A plea which is neither by way of confession and avoidance, nor by way of traverse, direct or argumentative, is bad on general demurrer. *Per* Fitzgerald, B.—In an argumentative traverse the new matter

* See Explanation of Terms *ante*, p. vii.

Digitized by Google

pleaded should amount to a qualified denial of the material fact traversed, so as to raise substantially the same issue as would have been raised by a direct traverse.—*Swift* v. *Mackin* (Ex.), Ir. R. 8 C. L. 140.

ARRANGEMENT—The plaintiff having filed a petition for arrangement in the Court of Bankruptcy and Insolvency, a resolution was passed by his creditors, under the B. & I. Act, 1857, s. 347, and confirmed by the Court, purporting to declare that his estate and effects should vest in two persons, one of whom was an official assignee. At the dates of the passing and confirmation of the resolution, there was a second official assignee, who was not named in the resolution as one of the parties in whom the plaintiff's estate was thereby required to vest:—*Held*, that the plaintiff was entitled to sue on a cause of action which had accrued prior to the date of the resolution. To divest an arranging trader of his estate and effects, under the B. & I. Act, 1857, s. 349, the resolution of creditors, passed in pursuance of s. 347, must require his estate and effects to vest in all the official assignees for the time being, either alone or conjointly with such other persons as may be named for that purpose in the resolution.—*M'Caul* v. *Campbell* (Ex.), Ir. R. 8 C. L. 35.

ARREST—[*See* Debtors Act, 1872.]

ATTACHMENT—On an application for an attachment, or criminal information, against a Justice of the Peace, for misconduct in the exercise or under the authority of his office, it must be shown that six clear days' previous notice in writing had been given to him.—*The Queen* v. *Rae* (Q. B.), Ir. R. 8 C. L. 524.

ATTACHMENT OF DEBT—[*See* Garnishee Order.]

ATTORNEY—Renewal of certificate to practise; conveyancing without licence, non-statement of, in affidavit to obtain renewal of certificate.—*Re Parsons* (Ex.), Notanda, 8 Ir. L. T. & S. J. 510.

AUCTION—[*See* Sale of Chattels, 1, 2.]

BALLOT ACT, 1872—[*See* Election, 1, 3, 5, 6, 7.]

BANKRUPTCY—[*See* Arrangement.]

1—Where a trader, in embarrassed circumstances, transfers the entire of his property, with a nominal exception, to a creditor, in consideration of pre-existing debts and liabilities, he thereby, *ipso facto*, commits an act of bankruptcy, within 20 & 21 Vict., c. 60, s. 92, notwithstanding that his actual intention may not have been to defeat or delay his general creditors—*Per* O'Brien, J.: A transfer of all a trader's effects, in consideration partly of a substantial present advance and partly of an antecedent debt, is not necessarily, *ipso facto*, an act of bankruptcy, within 20 & 21 Vict., c. 60, s. 92. It would be for the jury to determine whether the intent and object of the parties to the transfer were *bona fide*, or whether it was executed for the purpose, or had the effect of defeating or delaying the trader's general creditors, taking into consideration the circumstances connected with the transfer, and the adequacy of the present advance in proportion to the value of the property. If the jury believe that, upon the faith of an agreement for such transfer, subsequent payments are made to the trader, the transfer afterwards executed, should be considered as made as of the date of the original agreement, and such payments as equivalent to a present advance.—*James et al., Assignees of Young*, v. *Moriarty* (Q. B.), p. 177, giving an *authentic and uncompressed* report of the judgment, delivered—s.c. *sub nom. James* v. *Moriarty*, Ir. R. 8 C. L. 454 (the cases referred to in a footnote to which were alluded to by counsel for the plaintiff, but were not fully gone into in consequence of the interposition of the Court).

2—Chattel interests in land remain vested in a bankrupt or insolvent, until his assignees have elected to take same; and until such election, the assignees need not be joined with the bankrupt or insolvent, as parties in an ejectment on the title for the land.—*Hanway* v. *Taylor* (Ex.), p. 98, where the arguments, and judgment of the Court, are reported *in extenso*—Ir. R. 8 C. L. 254.

3—Trial of issues in Court of Bankruptcy; witness undergoing sentence of imprisonment; Habeas Corpus ad testificandum.—*In re Smith* (Con. Ch.), Notanda, 8 I. L. T. & S. J. 564.*

BERTH in Steam-vessel, Passenger's right to—[*See* Carrier, 6.]

BILL OF SALE—[*See* Bankruptcy, 1]

BILL OF EXCHANGE—[*See* "Summary Procedure on Bills of Exchange Act."]

BIRTH, concealment of—[*See* Secret disposition of dead Body of Child.]

BOROUGH FUND—Borough Funds held by Municipal Corporations, to be applied under 3 & 4 Vict., c. 108, s. 131, are impressed with the character of trust funds, to be disposed of for the purposes therein specified. There is no surplus of a Borough Fund, for the purpose of being applied for the public benefit of the inhabitants and improvement of the borough, under 3 & 4 Vict., c. 108, s. 131, so long as any debt contracted after the passing of the Act remains due by the Corporation, while the balance of receipts over expenditure is less than the sum so due. A Borough Fund, after satisfying the purposes primarily defined in 3 & 4 Vict., c. 108, s. 131, should be applied to the reduction of taxation, and the ultimate surplus disposed of for the public benefit of the inhabitants of the borough and the improvement of the borough. *Quære*, whether a payment out of the surplus of a Borough Fund is "for the public benefit of the inhabitants" of the borough, within 3 & 4 Vict., c. 108, s. 131, where same is allocated to a charitable infirmary, to which all the inhabitants might resort, in order to recoup expenditure incurred in consequence of an epidemic extensively prevailing in the borough? *Semble* (*per* O'Brien and Fitzgerald, JJ.), it would be for public benefit of the inhabitants, within that section. Observations (*per Cur.*) as to the necessity of greater circumspection by municipal corporations as regards the application of corporate funds, in order that payments to which the Borough Fund is primarily liable may not be allocated out of other rates.—*The Queen* v. *The Mayor and Corporation of Cork* (Q. B.), p. 131.

BREACH OF CONTRACT—The Defendants by their agent contracted to deliver 300 casks of oil during the season to the Plaintiff's customers, on receipt of orders from the plaintiff; on complaint by the Plaintiff of irregularity in the delivery of the oil, the Defendants' agent stated that they had no oil to give him:—*Held*, that this statement by the Defendants' agent of their inability to perform was a breach of contract upon which the Plaintiff might sue.—*Leeson* v. *North British Oil Company* (Q. B.), Ir. R. 8 C. L. 309.

BURGESS ROLL—[*See* Franchise, 2.]

CARRIERS—[*See* Railway and Canal Traffic Act, 1854—Negligence, 1.]

1—Where a railway company contracted to carry the wife of the plaintiff, but neglected to perform their contract, and the wife of the plaintiff was in consequence detained for a night at the station of the defendants, it was held that the plaintiff could not recover more than nominal damages, he not having been at home, and, in consequence, not having been deprived of his wife's society and companionship on that occasion, and there being no evidence of an injury to his wife depriving him of her services afterwards.—(Monahan, C.J., *diss.*).—*Collier and Wife* v. *The Dublin, Wicklow, & Wexford Ry. Co.** (C. P.), p. 24—Ir. R. 8 C. L. 21.

2—Where goods are consigned to a railway company for carriage, to be continued, beyond the limits of their own line of railroad, over another line not worked by them, subject to a condition printed on a consignment receipt accepted (though not signed) by the consignor, that the Company will only be accountable for loss occurring on their own line, and not for any occurring beyond the line as worked by themselves, the Company will not be accountable for loss or damage occurring, during transit, upon another line not worked by them.—*Ranahan* v. *The Midland Great Western (Ir.) Ry. Co.* (Q. S.), p. 34.

3—Goods were delivered to the Cork and Bandon Railway Company, at Bandon, consigned to a consignee in London, and were booked through; the consignor not paying for carriage, and signing a consignment-note containing a condition, that the Company would not be responsible for loss or damage happening beyond their own line. The goods were safely carried to Cork, and there delivered to a carrier, to be taken to the Bristol steamer. The carrier was not acting as such for the Railway Company; but, on his delivering the goods at the steamer, received from the Steam-ship Company payment for the carriage from Bandon to Cork. The goods were then forwarded by the Steam-ship Company to Bristol, charged with the money so paid, to be repaid, together with the dues for carriage to London, by the consignee at London. In the carriage between Bristol and London damage occurred, for which the consignor sued the Cork and Bandon Railway Company:—*Held*, that the defendants were not liable, as the contract between them and the consignor was only to carry from Bandon to Cork; and *semble* that, had the contract been to carry from Bandon to London, the defendants would have been exempted from liability by virtue of the condition in the consignment-note.—*Barry* v. *The Cork and Bandon Ry. Co.* (Cir. C.), p. 67.

4—In an action against carriers for loss of the plaintiff's goods, upon an issue that the loss arose from the felonious acts of the defendants' servants, it is sufficient for the plaintiff, under the Carriers' Act, section 8, to prove facts which render it more probable that the felony was committed by a servant of the defendants than by any one not in their employ. *Vaughan* v. *London and North Western Railway Company*, L. R. 9 Ex. 93, followed—*Gogarty* v. *The Great Southern and Western Ry. Co.* (C. P.), p. 161—Ir. R. 8 C. L. 344.

5—Where goods exceeding £10 in value, and of the description specified in the 1st section of the Carriers' Act (1 W. 4 c. 68), are delivered to a common carrier, without declaring their nature and value, and paying an increased rate for carriage, as notified and required, the carrier is exempted by the statute from liability for delay in the carriage, caused by his having temporarily lost the goods.—*Wallace* v. *Dublin and Belfast Junction Ry. Co.* (C. P.), p. 163—Ir. R. 8 C. L. 341.

6—In an action, in which one of the questions between the parties was, whether the defendant was justified in expelling the plaintiff from a berth in a steamer, it was proved that the plaintiff placed his coat upon the berth while it was vacant, afterwards applied at the office of the company to which the steamer belonged for the purpose of engaging the berth, and caused the company's agent or clerk, then in attendance at the office, to enter the plaintiff's name on the waybill opposite the number of the berth, but that the defendant, having also applied for the same berth, another agent or clerk of the company altered the waybill by inserting the defendant's name opposite the berth and alloting another one to the plaintiff, and that the plaintiff upon returning to the berth in dispute, after the steamer had started, found the defendant's servant at the door, who refused to allow him to enter. The plaintiff afterwards entered the berth, and was removed by the defendant. Evidence was also given that, according to the usage on board the steamer, the rights of the passengers *inter se* to berths during the voyage were to be determined by the waybill as finally settled and sent on board, and that disputes during the voyage with respect to passengers' accommodation should be decided by the captain or steward:—*Held*, that the plaintiff was not entitled to a direction that he was in possession of the berth in dispute; that the waybill as finally settled and delivered to the officers on board determined the right to the berth as between the plaintiff and the defendant; that the jury having found that the waybill, as finally settled for the purpose of the voyage, allotted the berth to the defendant, and that the defendant was in possession thereof at the time of the alleged assault, he was justified in removing the plaintiff, without using unnecessary violence, upon his refusing to leave the berth.—*Dysart* v. *Montgomery* (Ex.), Ir. R. 8 C. L. 245.

* Where a prisoner is in custody under warrant of the Court of Bankruptcy itself, see *Re Behan*, Notanda, 8 I. L. T. & S. J. 486.—E. N. B.

* See *Harriman* v. *Stowe*, 8 I. L. T. & S. J. 465.—E. N. B.

Digitized by Google

CERTIORARI—1—Showing by affidavit upon, that question of title arose before magistrates.—*R.* v. *Justices of Donegal* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 136.

2—Discretion as to issuing.—*R.* v. *Mayor and Corporation of Cork* (Q. B.), p. 131.

CIVIL-BILL APPEAL—[*See* APPEAL, 4—"COMMON LAW PROCEDURE AMENDMENT ACT, 1870," 15.]

CIVIL-BILL DECREE, [*See* "DEBTORS ACT, 1872," 1.—GARNISHEE ORDER, 2.]

CIVIL-BILL EJECTMENT—[*See* LANDLORD AND TENANT, 7.]

A civil-bill ejectment on the title brought under the 79th section of the 14 & 15 Vict., c. 57, and not being a proceeding between landlord, or lessor, and tenant, and not being brought for or against a person in occupation who has signed an acknowledgment under that Act, need not be verified by affidavit such as is mentioned in the 83rd section thereof.—*Shuter* v. *M'Lurdy* (C. P.), p. 216—Ir. R. 8 C. L. 577.

CLERK OF THE CROWN, Salary of, Apportionable—p. 65.

COLLEGE ROOMS—[*See* FRANCHISE, 1.]

COMMON LAW PROCEDURE AMENDMENT ACT, 1870.

1—When it manifestly appears that a count in detinue, claiming a return of the chattels, is a mere sham, and has been inserted in a summons and plaint for the purpose of ousting the jurisdiction of the Court to remit the action to the Civil Bill Court, there being no *bona fide* foundation for the alleged claim, the Court will strike out the count, and remit the action, unless it appears that the remaining causes of action are fit to be prosecuted in the Superior Court. *Ludlow* v. *Headley*, 7 Ir. L. T. R. 136, discussed—*Keogh* v. *Alleyne* (Ex.), p. 78, where the facts appearing on affidavit are given *in extenso*.—Ir. R. 8 C. L. 387.

2—Motion granted, that a count in detinue be struck out of the summons and plaint, and that the remaining causes of action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, sec. 6.—*Casey* v. *Galway* (Con. Ch.), p. 90.

3—Motion, that an action be remitted to the Civil Bill Court, under 33 & 34 Vict., c. 109, s. 6, refused, as the plaintiff was possessed of "visible means," it appearing that he was a practising attorney, and that he held a mortgage on lands for £61 5s. 6d. and interest. Scandalous matter, irrelevant to the motion, having been introduced into the affidavits filed in opposition to the motion, and a material fact as regards the plaintiff's means having been suppressed, the Court, while refusing the motion, gave no costs as against the applicant.—*Hunter* v. *D'Arcy* (Q. B.), p. 95.

4—In an action for trespass on the plaintiff's land and seizing two calves, a count in detinue for the calves being joined, it appeared that the calves had been seized and sold for £4 9s., under a civil bill decree against the plaintiff's son, which was the detention complained of; that the count for trespass to the land and taking the calves referred to the same proceeding upon which the cause of action in detinue was founded; and that the plaintiff was not possessed of visible means except her property, if any, in the said lands, but that the question to be determined in the action was whether the plaintiff or her son was the real owner of the lands and cattle. On motion that the action be remitted to the Chairman, under C. L. P. A. Act, 1870, s. 6:—*Held*, that the count in detinue should be struck out, and the action remitted, unless security for costs given. *Per* Morris, J.—The Court of Common Pleas adheres to the decision of *Byrne* v. *Ffrench*, 6 Ir. L. T. R. 10, that detinue may be remitted under C. L. P. A. Act, 1870, s. 6.—*Barry* v. *Cass* (Con. Ch.), p. 124.

5—Where, on a motion to remit to the Civil Bill Court an action in detinue, in which the plaintiff prayed for a return of the goods and for damages, the defendant offered to return the goods, and the plaintiff was willing to take them back, the Court ordered that, upon the terms of the defendant giving up the possession of the goods to the plaintiff, the action be remitted, unless the plaintiff should give security for costs.—Where, in answer to affidavits that the plaintiff was looking for a situation as milliner's assistant, and had no visible means of paying costs, the plaintiff deposed that she was entitled to a share in a valuable leasehold interest in a house and twenty acres of land, the Court was not satisfied that the plaintiff was possessed of "visible means," as the value or extent of the share was not stated.—*Stamp* v. *Hickey* (Con. Ch.), p. 167.

6—On a motion that an action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, s. 6, it appeared that the plaintiff was in the employment of his father, at a salary of £120 per annum, as manager of a business of cabinet-making and upholstery:—*Held*, that plaintiff's means were not "visible means" of paying costs within the 6th section of the C. L. P. A. Act, 1870. *Counsel* v. *Garvie* (5 Ir. L. T. R. 96, Ir. R. 5 C. L. 74) not followed.—*Torkington* v. *Connor* (C. P.), p. 89—Ir. R. 8 C. L. 340.

7—Where the plaint contains counts in contract and in tort, there is no power to remit the action to the Civil Bill Court.—*Semble* (*per* Fitzgerald and Barry, JJ.): where a groundless count is inserted in the plaint, it will be set aside, upon its being shown satisfactorily that it was inserted to defeat the power to remit.—*Connor* v. *Saurin* (Q. B.), Ir. R. 8 C. L. 146.

8—Where plaintiff resident abroad.*—*Clarke* v. *Pelling* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 54.

9—Scandalous matter in affidavits.—*O'Driscoll* v. *Blackwell* (Con. Ch.), NOTANDA, 8 Ir. L. T. & S. J. 54.

10—Where question of forgery raised; where no means of recovering under civil-bill decree against defendant.—*Flanagan* v. *Watson* (C. P.), NOTANDA, 8 I. L. T. & S. J. 54 (see note thereto, 8 I. L. T. & S. J. 166).

* See interlocutory *dicta* in *York* v. *M'Laughlin*, as reported 8 Ir. L. T. R. 202.—E. N. B.

11—Visible means; carter earning 12s. *per diem*.—*Ennis* v. *Murphy* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 89.

12—Breach of promise of marriage, where over £40 claimed.—*Cudden* v. *O'Brien* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 89.

13—Where question of forgery raised.—*Hacket* v. *M'Neill* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 89.

14—Action for unliquidated damages; power of appeal.—*Walsh* v. *M'Manus* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 109.

15—Remitting by consent, after time for moving; appeal from Chairman.—*Rodgers* v. *Larmour* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 220.

16—Remittal under section 5, though notice of motion framed under section 6.—*Macdermot* v. *Cox* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 448.

17—Where question of title raised; visible means.—*Stamp* v. *Hickey* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 485.

CONDITIONAL ORDER, supporting by Supplemental Affidavit—[*See* AFFIDAVIT.]

CONDITIONS OF HORSE-RACE, alteration of—[*See* HORSE-RACE.]

CONDITIONS OF SALE—[*See* DEVISE, 3].

CONFESSION OF GUILT—[*See* EVIDENCE—ELECTION, 1.]

CONSENT FOR JUDGMENT—[*See* CONTINUANCE OF PROCEEDINGS—"DEBTORS ACT, 1872," 2.]

CONSENT IN COURT BELOW, effect of in Error—[*See* AMENDMENT, 2.]

CONSOLIDATED CHAMBER*—[*See* JURISDICTION IN CONSOLIDATED CHAMBER.]

CONSTABLE, inducement by, to Confess—[*See* EVIDENCE.]

CONTINUANCE of PROCEEDINGS—[*See* "DEBTORS ACT, 1872," 2.]

In proceeding under 178 G. O. 1854, the period during which a plaintiff in ejectment had been restrained by injunction from proceeding will not be accounted against him as delay, although the injunction had been granted upon the usual condition of giving a consent for judgment in the ejectment.—*Hegarty* v. *Hegarty* (C. P.), Ir. R. 8 C. L. 24.

CONTRACT—[*See* BREACH OF CONTRACT—CARRIER—EXECUTORY AGREEMENT HORSE-RACE—PLEADING, 9—"RAILWAY AND CANAL TRAFFIC ACT, 1854."]

1—An agreement was entered into between the plaintiff and the defendant, that the plaintiff should enter the defendant's service, as "salesman," in the tea-trade, the plaintiff understanding that he was only to be employed as traveller. The plaintiff afterwards acted for some time in the capacity of traveller; but was ultimately required by the defendant to act in the wholesale warehouse of the defendant. In an action for breach of contract thereupon:—*Held*, that evidence to explain the meaning of the word "salesman," in the written agreement, was admissible.—*M'Mullen* v. *Greene* (C. P.), p. 166.

2—After a parol agreement for the sale of goods, to be delivered by successive consignments at a specified price, had been entered into, a memorandum in writing of the bargain, but omitting the price, was made and signed by the agent of the sellers; and several of the consignments were delivered, accepted, and paid for at the price agreed on:—*Held*, in an action for non-delivery of the remaining consignments, that the memorandum was merely an admission of a contract of which there had been part-performance, and that parol evidence was admissible to prove the price.—*Jeffcott* v. *North British Oil Co.* (Ex.), NOTANDA, 8 I. L. T. & S. J. 565—Ir. R. 8 C. L. 17.

3—Where a contract was entered into to deliver a quantity of barley by delivery in certain portions, each portion to be paid for on its arrival at the port of destination, some of the portions delivered were delivered short in weight; the plaintiff refused to pay for any more unless a reduction was allowed for the price of the deficiency, and also for re-weighing the barley:—*Held*, by the majority of the Court, that such a refusal did not amount to a rescission of the contract by the plaintiff.—*Corcoran* v. *Prosser* (Ex. Ch.), 22 W. R. 222.

4—A testator, who had entered into a contract with the plaintiff for the sale of lands, died before the completion of the purchase, and devised, *inter alia*, the legal estate in the lands to the defendant, and two other trustees who disclaimed. The testator bequeathed several annuities, and devised the rest of his estate to the defendant, after payment of the annuities, and declared that the lands included in the contract for sale should, if unsold, remain in the power and under the control of his trustees in the same manner as the rest of his estate. After the death of the testator, the plaintiff entered into an agreement with the defendant to take a conveyance of the lands from the defendant and the annuitants, or such of them as were entitled to annuities charged upon the lands. In an action for breach of the last-mentioned agreement:—*Held*, that the plaintiff was entitled to require the concurrence of the annuitants in the conveyance.—*Cumming* v. *Reid* (Ex.), Ir. R. 8 Eq. C. L. 166.

CONVEYANCE OF REALTY, Parties to—[*See* CONTRACT, 4.]

CONVEYANCING WITHOUT LICENCE—[*See* ATTORNEY—DEED.]

CORONER—[*See* PRESENTMENT, 6, 9.]

1—Where a prisoner in custody under a magistrate's remand, on a charge of homicide, desires to be present at a coroner's inquest upon the body of the deceased, in order to hear the evidence and instruct counsel, or to be tendered as a witness according to circumstances, and it is not shown that the ends of justice would be thereby frustrated, the Court will, on the application of the prisoner or of the Crown, grant a writ of *habeas corpus* to have the prisoner in attendance at the inquest, so as to be there examined, and so from day to day until the taking of the

* See note *infra*, p. xx.

Digitized by Google

inquisition has concluded. Under special circumstances, as where the case against the prisoner depends on circumstantial evidence only, and the prisoner desires to be present at the inquest in order to hear the evidence and to instruct counsel or attorney, a writ of *habeas corpus* will be issued, on such application, so as to have the prisoner in attendance at the inquest, although it is not sworn that the prisoner intends to be tendered as a witness—unless it is shown that the ends of justice would be thereby frustrated. *Semble*, that where, without other special circumstances, the prisoner wishes to be present at the inquest, in order to hear the evidence, and to assist counsel or attorney, a writ of *habeas corpus* may be issued, so as to have the prisoner in attendance at the inquest from day to day. *Re Reardon*, 7 Ir. L. T. R. 193, discussed and approved. *Re Cooke*, 7 Q. B. 653, distinguished.—Suggestions, as to altering the law excluding the evidence of the accused in criminal cases; and, as to providing a summary mode of bringing before coroners' inquests prisoners who are in custody under magistrates' remands.—*Re Marshall* (Q. B.), p. 1.

2—Motion granted for a writ of *habeas corpus*, to bring before a coroner's inquest persons who were suspected of having caused the death in question, and who were in custody under a magistrate's remand, so that they should be examined as witnesses at the inquest, and so that they should be there present from day to day.—*Re Maginnis and Campbell* (Q. B.), p. 20.

3—Motion granted, on the application of the Crown, for a writ of *habeas corpus*, so that a prisoner (in custody under a magistrate's remand, on a charge of infanticide) should be in attendance at a coroner's inquest from day to day, although not in order that the prisoner should be there examined as a witness.—*Re Claffey* (Q. B.), p. 20.

CORPUS DELICTI, Proof of—[*See* ELECTION, 1—SECRET DISPOSITION OF DEAD BODY OF CHILD.]

COSTS—[*See* "DEBTORS ACT 1872," 10, 11, 12—ELECTION, 6—GARNISHEE ORDER, 1 · RIGHT OF APPEAL—SECURITY FOR COSTS.]

1—Action for the conversion of the alluvial soil of the bank of a river alleged to be the plaintiff's; judgment by default, and damages assessed by a jury at £3:—*Held*, that the action having been brought *bonâ fide* for the purpose of trying a right, the circumstance of the defendant not defending it, and thus waiving the question, did not disentitle the plaintiff to full costs.—*Hickey* v. *O'Connor* (C. P.), Ir. R. 8 C. L. 509.

2—Shorthand report; construction of model; sheriff's fee for jury-panel; briefs for new trial motion.—*Jameson and Co.* v. *Royal Insurance Co.* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 375.

COUNTY CESS—[*See* "LANDLORD AND TENANT ACT, 1870," 2, 11.]

Waterworks; evidence of liability; mode of raising question of exemption—*Alma* v. *Corporation of Dublin* (M. C.), 8 I. L. T. & S. J. 195.

COUNTY INFIRMARY—[*See* OFFICE—PRESENTMENT, 3.]

COUNTY SURVEYOR—[*See* PRESENTMENT, 1.]

COURT-HOUSE—[*See* PRESENTMENT, 4.]

COVENANT FOR TITLE—[*See* LANDLORD AND TENANT, 4.]

CRIMINAL LAW—[*See* ADJOURNMENT—CORONER—"DOGS REGULATION ACT"—ELECTION, 1—EVIDENCE—GUARANTEE HOMICIDE—HOUSE, RIOTOUSLY PULLING DOWN—JUSTICE OF THE PEACE, 1, 2, 3—PERJURY—SECRET DISPOSITION OF DEAD BODY OF CHILD.]

DAMAGES—[*See* CARRIER, 1—OFFICE.]

In an action brought during the term for breach of covenant to repair, if the evidence shows that the premises were out of repair before action brought, the lessor is entitled to at least nominal damages; although the lessee expended money, after action brought, in repairing the demised premises.—*Molony* v. *Ferguson* (Q. B.), Ir. R. 8 C. L. 551.

DEBTORS ACT, 1872—1—A civil bill process was brought against a defendant, not specifying the date when the debt accrued, for a debt which in fact accrued after the passing of the Debtors Act (Ireland), 1872; and the defendant not appearing, a decree was granted for the amount. The entry of the decree in the book of the clerk of the peace did not specify the date when the debt accrued, or whether execution was to be against the person or goods of the defendant. The decree was filled up by the clerk of the plaintiff's attorney, with an award of execution against the goods; but afterwards the attorney, without any fraudulent intention, inserted in the decree the words "in the year 1871," as being the date when the debt accrued, and induced the clerk of the peace to alter the award of execution, making same against the body. The Chairman, misled by the decree as altered, signed same; and the defendant was arrested on foot of the decree after the coming into operation of the Debtors Act:—*Held*, that the debtor was entitled to be discharged from custody on a writ of *habeas corpus*.—Re *Kearse* (Q. B.), p. 14—*sub nom. Trousdell* v. *Kearse*, Ir. R. 8 C. L. 25.

2—It is competent to the parties to an action to contract themselves out of the operations of the 178th G. O., 1854, so that no rule need be entered before proceeding in the action, though no proceeding be taken for a year and a day after defence and before judgment.—Where, after the passing of the Debtors Act (Ir.), 1872, an agreement is concluded between a debtor and creditor, by virtue of which a principal debt due before the passing of the Act, and interest computed thereon up to the date of the agreement, are constituted one integral debt, and made a new starting-point as such in the dealings between the parties, bearing interest on the gross amount, it is not competent to the creditor to arrest the debtor under a *ca. sa.*, on foot of a judgment in respect of the liability so incurred.—*Arkins* v. *Magrath* (C. P.), p. 21, where the facts, arguments, and judgment are reported *in extenso*, and the judgment of Fitzgerald, J., in Con. Ch. is also given.—Ir. R. 8 C. L. 114.

3—An order will not be made under 35 & 36 Vict., c. 57, sec. 7, to arrest a defendant about to quit Ireland, unless it is shown that his absence would materially prejudice the plaintiff, in relation to the steps necessary to be taken in the prosecution of his action before final judgment.—*M'Blain* v. *Weir* (Q. B.), p. 31, where the affidavit is given in full, and the interlocutory *dicta* of the Court are stated.

4—A motion for an order, under the Debtors Act (Ireland), 1872, sec. 6, 1 G. O., 1873, against a defendant, for payment, should be made to a judge sitting *in camerâ*.—*O'Donnell* v. *Smith* (Con. Ch.), p. 32.

5—Where a defendant had removed all his effects, and was about quitting Ireland, and it was sworn, on behalf of the plaintiff, that efforts made to discover the place to which the effects were removed had failed, but that, if the defendant were arrested, it could be discovered, and that, if he were permitted to leave Ireland, there would be no use in proceeding with the action:—*Held*, that it was sufficiently shown that the absence of the defendant would materially prejudice the plaintiff in the prosecution of his action, for the purpose of an order under 35 & 36 Vict., c. 57, s. 7, to have the defendant arrested.—Where, after the defendant had been arrested under 35 & 36 Vict., c. 57, s. 7, the plaintiff delayed marking judgment beyond the time when he could and reasonably ought to have marked it, admitting that nothing was to be obtained by marking it, and avowing that he would not mark it, and required the defendant to be detained in custody merely for the purpose of putting pressure on him:—*Held*, that the order for the defendant's imprisonment should be varied, under 6 G. R. 1873, by reducing the period within which he was to be imprisoned.—The object of the seventh section of the Debtors Act (Ir.), 1872, is to secure the presence of the defendant within the jurisdiction, so that the proceedings of the plaintiff in prosecuting his action may be rendered of avail up to the marking of final judgment. Upon final judgment being marked, the order for the defendant's arrest would be annulled. And it would be expedient that orders under that section should provide, that upon the marking of final judgment the defendant should be discharged from custody.—*Hester and Co.* v. *Byrne* (Con. Ch.), p. 53.

6—Where judgment was recovered against a defendant for two gales of rent, one of which accrued due before and the other after the passing of the Debtors Act (Ir.), 1872, the Court allowed the plaintiff to amend the judgment by striking out the cause of action accruing subsequently to the passing of the Act.—*Shaw* v. *Dunlop* (Con. Ch.), p. 76.

7—A judge has jurisdiction in Consolidated Chamber to make an order under the Debtors Act, 1872, s. 6, 1 G. O., 1873, against a defendant for payment of a debt due. *O'Donnell* v. *Smith*, 8 Ir. L. T. R. 32, not followed.—*Reardon* v. *Hayes* (Con. Ch.), p. 116, where the *judgment* is given—Ir. R. 8 C. L. 402.

8—A plaintiff not having proceeded to trial, the defendant, after the lapse of three terms, obtained an order directing him to proceed, or that, in default, the action be dismissed with costs. The plaintiff neglecting to proceed, the action was, by a subsequent order, dismissed, with costs. On motion by the defendant, the Court, holding that the costs constituted a debt within the Debtors Act (Ir.), 1872, s. 6, ordered that the costs as taxed, together with the costs of the motion, be paid by monthly instalments. *Quære*, whether a Judge has jurisdiction, in Consolidated Chamber, to make an order for payment under the Debtors Act (Ir.), 1872, s. 6?—*Holland* v. *Read* (Con. Ch.*), p. 168, where the facts, interlocutory *dicta*, and judgment are given *in extenso*—Ir. R. 8 C. L. 403.

9—A motion for an order for payment, under the Debtors Act, 1872, s. 6, 1 G. O. 1873, should be made to a Judge in Chamber, and not to the Court *in banco*. Where an order for payment is applied for, under the Debtors Act, 1872, s. 6, it must be shown that the person making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default.—*Anonymous* (Ex.), p. 206.

10—Order for payment by instalments; taxed costs.—*Moore* v. *Gausen* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 108.

11—Judgment on writ of revivor; costs.—*Wogan* v. *Chamney* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 220.

12—Order for payment; costs of motion.—*White* v. *Power* (C. P.), NOTANDA, 8 I. L. T. & S. J. 375.

13—Conditional order for committal; non-service within time limited for showing cause; evading service; making order absolute.—*Wilson* v. *Donnell* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 554.

14—Debt accruing before passing of Act; rent due after, under written agreement of tenancy executed prior to Act.—*King* v. *Keenan* † (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 574.

DEED—Preparing without having conveyancing licence; 27 Vict. c. 8, s. 3.—*Anon.* (P. S.), 8 I. L. T. & S. J. 518.

DEED, Recital in—[*See* EJECTMENT ON THE TITLE, 1.]

DETINUE, Remitting action of—[*See* "COMMON LAW PROCEDURE AMENDMENT ACT, 1870," 1, 2, 4, 5.]

DEVISE—1—A will executed in 1851, contained a clause in the following terms:—"I leave to P. and M. D. the house and lands of L., until I am able to live there and enjoy it myself." At the date of the will the testator was absent from L., and was suffering from a dangerous illness; he, however, survived a considerable time, and, on several occasions afterwards, resided at L., and many years after the execution of the will, executed codicils which referred to and republished it. In an ejectment by parties entitled to the residuary real estate against P. and M. D., to recover the lands of L., parol evidence was offered by the

* The reports of Consolidated Chamber motions, no matter where appearing, are rarely, if ever, submitted to the judges for approval.

† The agreement of tenancy was for a term of years. The note of this case (taken in shorthand by a barrister) was authenticated by counsel in the case before it was published. See *Re M.* 8 I. L. T. R. 77—where *all* the judgments and interlocutory *dicta* are reported *in extenso*.

Digitized by Google

defendants, and admitted, showing that the testator entertained peculiar religious opinions, and believed that he would revisit the earth after his decease, for a period which he described as the millennium, and that he had frequently stated that he would reside at L. during that period:—*Held*, independently of the parol evidence as to the religious opinions of the testator, that the above clause in the will was to be construed as a devise, operating as a testamentary disposition, to take effect upon the death of the testator and not as a gift *inter vivos* of the lands, or the profits thereof, until the testator, on recovering from his then illness, should be able in his lifetime to enjoy them; that the words "until I am able to live there and enjoy it myself" should be rejected, as a limitation until an impossible event, and that the estate in the lands given to P. and M. D., passed to them unqualified by these words. *Semble*, that the parol evidence as to the testator's religious opinions was admissible for the purpose of explaining the meaning of the limitation.—*Bunbury* v. *Doran* (Ex.), Ir. R. 8 C. L. 516.

2—A testator, possessed of real and personal property, by his will appointed executors, ordering "that they, my executors, should act fairly, &c., in the several divisions of my property between my beloved wife and my legitimate children:"—*Held*, that the word "property" passed the testator's real estate to his wife and children, and that they took as tenants in common.—*Moroney* v. *Moroney* (C. P.), p. 136—Ir. R. 8 C. L. 174.

3—By a condition of sale of real estate, the title was stated to consist of a will (devising a renewable freehold to the vendor) and a subsequent fee-farm grant (made to the vendor under the "Renewable Leasehold Conversion Act"), and the purchaser was precluded from making any objection to the title prior to the grant:—*Held*, that an objection founded on the construction of the will was not precluded: that an objection to the title founded upon the construction of the will was not an objection *prior* to the fee-farm grant, but arose on the grant itself; inasmuch as, having been made under the "Renewable Leasehold Conversion Act," all the conditions to which the converted lease was subject were, by sect. 7, made to attach upon the fee-simple into which it had been converted. By the same condition of sale it was provided that the purchaser should assume that all the recitals in the fee-farm grant were correct:—*Held*, not to apply to an erroneous construction put on the will recited in the grant.—A testator by his will, made in 1882, devised his freehold property—held *pour autre vie*—to his seven children in several shares, the lands of Marybrook being the share devised to his son James, the vendor; and directed that should any of them die without leaving lawful issue to inherit the share of the child so dying, that the share should go to and be divided amongst his, her, or their surviving brothers or sisters, share and share alike, to be held by such survivor or survivors in the like manner as the original share of such survivor should or ought to be held:"—*Held* (having regard to the law before the Wills Act), *per* Fitzgerald and Dowse, BB., that the vendor took in the lands of Marybrook an estate in *quasi* tail; and that, therefore, the title was good: *Per* Deasy, B.—That the will gave the lands to the vendor subject to a valid executory devise over, to take effect in the event of his dying without leaving issue living at his death; and that, therefore, the title was bad. The natural and ordinary meaning of the word "survivor" in a will (whether of real or personal estate) is "longest liver."—The cases from *Hughes* v. *Sayer* (1 P. Wms. 534) to *Badger* v. *Gregory* (L. R. 8 Eq. 78) reviewed—*M'Clenaghan* v. *Bankhead* (Ex.), Ir. R. 8 C. L. 195.

DISTRESS, Illegal—[*See* Rent, Distress for.]

DISMISS "without prejudice," at Petty Sessions, pp. 38, 134.

"DOGS REGULATION ACT" [*See* Justice of the Peace, 3]

When a statute imposes a penalty for an offence against the public, the amount of which penalty is to be meted out by the justices according to the magnitude of the offence, the proceeding to recover the penalty is a criminal one. The prisoner was summoned before Petty Sessions on a charge of keeping a dog without a licence, contrary to "The Dogs Regulation (Ireland) Act, 1865," and, at the hearing, was sworn and examined as a witness on his own behalf:—*Held*—on his conviction upon an indictment for perjury committed in the course of that examination—that the proceeding at Petty Sessions was a criminal one, that the accused was incompetent to be examined as a witness, and that the conviction for perjury should be quashed.—*The Queen* v. *Sullivan* (C. C. R.), Ir. R. 8 C. L. 404.

EJECTMENT FOR NON-PAYMENT—[*See* Pleading, 4, 8, 11.]

EJECTMENT ON TITLE—[*See* Temporary Bar—Civil-Bill Ejectment—Pleading, 7—Landlord and Tenant—Right of Appeal.]

1—A recital in a deed of a will of real estate, coupled with a parol admission of the authenticity of a document purporting to be the will, made, *ante litem motam*, by the grantor, who took an interest under the will:—*Held*, upon production of the document, sufficient proof of the will against the grantee claiming under the deed. Mere possession is not sufficient to sustain an ejectment against a wrongdoer where it is shown that the title is out of the plaintiff. *Per* Monahan, C. J.: *Quære*, whether mere possession will not sustain ejectment against a wrongdoer?—S., the elder, who held the premises in fee, died sixty years ago, and his daughter C. having married S., the younger, they resided on the premises up to 1846, when S., the younger, died. In 1859, upon the marriage of C.'s daughter J. with the plaintiff, a settlement was executed by which C. purported to convey the entire interest in the premises to the plaintiff; that settlement recited a will of S. the younger, under which C. took an estate for life, remainder to P., the eldest son of the testator; remainder, upon the performance of certain conditions (never fulfilled) to the testator's three daughters, one of whom was J. P., the eldest son of S. the younger, died in his father's lifetime, and the plaintiff and J. continued to reside with C. upon the premises from 1859 until the death of the latter in 1871, when the defendant, the third son of C. and S. the younger, took forcible possession and remained there ever since:—*Held* (*dubitante* Monahan, C. J.), that the plaintiff could not recover in ejectment.—*Nagle* v. *Shea* (C. P.), Ir. R. 8 C. L. 224.

2—Extending time for pleading after expiry of statutable time; affidavit of merits.—*Galvan* v. *Nunan* (Con. Ch.), Notanda, 8 I. L. T. & S. J. 109.

ELECTION—[*See* Libel.]

1—The procedure to be pursued as to the summary jurisdiction conferred by section 4 of the "Ballot Act, 1872," is that prescribed by the Petty Sessions Act, 1851 (14 & 15 Vict., c. 93).—Upon a charge of violation of the secrecy of the Ballot, the information communicated by the accused is, of itself, sufficient evidence to convict him of the offence. Whiteside, C. J., *diss.*—*The Queen* v. *Uncles* (Q. B.), p. 38, where the *entire* evidence as to the offence is given—Ir. R. 8 C. L. 50.

2—Motion to have the case raised by a Parliamentary Election Petition stated as a special case refused—the motion being made to a Judge on the *rota* as Election Judge who was not a Judge of the Court of Common Pleas, instead of being made to the Court of Common Pleas, or to a Judge of that Court on the *rota* in chamber.—*O'Donnel* v. *Tighe and another*; *Shiel* v. *Ennis and another* (C. P.), p. 42.

3—Where, in an election petition, the only allegation was that votes had been improperly rejected by the returning officer, on the ground alleged that the votes had been so marked upon the ballot papers that the voters might be identified:—*Held*, a proper case to be decided upon a special case stated for the full Court.—*Shiel* v. *Ennis and another* (C. P.), p. 67.

4—The six days before the day appointed for the trial of a Parliamentary Election Petition, prescribed by 8 G. R., 1868, for the delivery of a list of objections, by a respondent who intends to go into a recriminatory case, under 31 & 32 Vict., c. 125, s. 53, are to be computed exclusive of Sundays, of the day on which the list is delivered, and of the day appointed for the trial.—*Joyce* v. *O'Donnel* (C. P.), p. 113—22 W. R. 654.

5—Liberty given to the Clerk of the Crown and Hanaper to permit the agents of the petitioners and respondents, in a Parliamentary election petition, to inspect ballot papers which had been received by the returning-officer, though objected to, on the part of a candidate, as having been marked so that the voters could be identified.—*Re Drogheda Election Petition* (C.P.), p. 218

6—A ballot paper ought not to be rejected because the voter's mark placed on the right-hand side, after the candidate's name, is placed to the left of the vertical line delineated on the ballot paper.—A returning-officer, acting *bona fide*, put such an erroneous construction upon a section of the Ballot Act as rendered a petition necessary; the Court declined to order him to pay any part of the costs. The returning-officer having, on his own mere motion, and without the interference of either candidate, put such an erroneous construction upon a section of the Ballot Act as rendered a petition necessary:—The Court decided, on a special case, that the petitioner and the respondent should each bear his own costs.—The petition contained an allegation which was not stated in the special case, which did not provide that the Court should be at liberty to have regard to the allegations in the petition:—The Court, upon the argument of the special case, refused to regard any allegation not stated in the special case.—At an election where there were two candidates for one seat, the returning-officer, by rejecting several votes given for the petitioner, reduced the numbers to equality, and was, accordingly, obliged, under the circumstances, to make a double return:—The Court, having decided, upon a special case, that those votes had been illegally rejected, certified that the petitioner ought to have been returned.—*Athlone Election Petition* (C. P.), Ir. R. 8 C. L. 240.

7—Inspection of ballot papers.—*Re Athlone Petition* (C. P.), Notanda, 8 I. L. T. & S. J. 88.

ELECTORAL FRANCHISE—[*See* Franchise.]

EVIDENCE—[*See* Contract, 1, 2—Coroner—Devise, 1—Ejectment on Title, 1—Election, 1—Fishery—Homicide—Justice of the Peace, 2—Secret Disposition of Dead Body of Child.]

Where a prisoner had been told by a constable, at ten o'clock a.m., that it would be better for him to tell the truth, and not put people to the extremities he was doing, an admission by the prisoner to another constable, after six o'clock in the evening of the same day, was not allowed to be given in evidence, although the second constable had previously cautioned the prisoner.—*The Queen* v. *Doherty* (Cir. C.), p. 192.

EXECUTION—The widow of an intestate remained in the possession of his assets for two years without taking out administration, and then took out administration, and revived and continued, as administratrix, an action which had been pending at the death of her husband. She was non-suited in the action, and judgment was marked against her in her own right:—*Held*, that the sheriff could not give a good title to a purchaser to a chattel real forming portion of the assets of the intestate, and sold under a *fi. fa.* issued against her for the costs of the non-suit.—*Williams* v. *Hepenstall*, (C. P.), p. 6—22 W. R. 412.

EXECUTORY AGREEMENT—Pending a claim for compensation under the Landlord and Tenant (Ireland) Act, 1870, by a yearly tenant, against whom a civil bill decree in ejectment had been obtained, a compromise of the claim was entered into between the claimant and the respondent (the landlord), and recorded in an order made, on consent, by the Chairman of Quarter Sessions, before whom the claim was at hearing, whereby, in consideration of a new tenancy from year to year, *to be created* between the respondent and a son of the claimant, the latter waived his claim under the statute, and it was provided that the agreement should contain certain clauses, that the respondent should undertake not to execute the decree in ejectment which should issue, and that an I. O. U. should be given by the claimant's son for the rent due:—*Held*, an executory agreement for a future tenancy—*Semble*, that the consent could not have any operation except as between the parties to the claim.—*The Earl of Leitrim* v. *Geelan* (Ex.), Ir. R. 8 C. L. 122.

EXCLUSION FROM OFFICE—[*See* Office.]

"FAIR COMMENT"—[*See* "No Libel," 1.]

Digitized by Google

FISHERY—King James I.—being seised of the lands of Rossmore and other lands adjacent to Lough Erne (which is a large navigable, enclosed water in which the tide does not flow or reflow), and of the whole soil and bed of the lake—did by Letters Patent grant the said lands and also certain islands, named, in Lough Erne, and also all other islands in Lough Erne being parcel of the said lands or any of them, and also a free fishery in the lake or waters of Lough Erne, and all waters, water-courses, fisheries, fishings, &c., lying and being in or within the same:—*Held*, that the soil of Lough Erne covered with water adjacent to the lands did not pass to the grantee to the middle thread of the lake.—The grant by the owner of the soil covered with water to another of a free fishery over the soil of the grantor is, as matter of construction, and especially in the case of the Crown, the grant of a fishery not exclusive; and evidence cannot be received to show that it was intended to exclude the grantor. The public have not of common right a common of fishery in large inland waters in which the tide does not flow or reflow, although they are navigable. The judgment of the Court of Common Pleas reversed. *Holford* v. *Bailey* (13 Q. B. 426) and *Marshall* v. *The Ulleswater Navigation Company* (3 B. & S. 732) observed upon.—*Johnston* v. *Bloomfield* (Ex. Ch.), Ir. R. 8, C. L. 68.

FLOODING LANDS—[*See* STATUTE OF LIMITATIONS, 2.]

FRANCHISE—1—On a claim to be registered a voter in respect of lodgings, under 31 & 32 Vict., c. 49, s. 4, it appeared that the claimant occupied separately and as sole tenant, and, for the twelve months preceding July 20, 1874, resided in rooms, on the ground floor of a building in Trinity College and within its walls, which were of the clear yearly value, if let unfurnished, of £10. The rooms were let to him at a year's rent; but no period for his tenancy was fixed or agreed upon. On the landings of several other storeys in the same building there were similar sets of rooms, each set being separate from, and not communicating with any other set; and no person had a right to enter the claimant's rooms without his permission. The rooms would not have been let to the claimant had he not been connected with the College, and engaged in its work:—*Held*, that the claimant was entitled to be registered a voter, as a lodger, within the meaning of the Representation of the People (Ir.) Act, 1868, s. 4.—*In re Rev. A. I. M'Donogh* (Rev. C.), p. 184.

2—A lease, still subsisting, was made of a house in Belfast to the R. C. Bishop of the diocese in trust (though not declared in writing) for the parochial clergy; the administrator of the parish and four curates (the applicants) resided in it, and were the only occupiers; each had a separate sittingroom and bedroom, and there were three other rooms which were common to all; they paid the rent, rates, and taxes out of weekly collections made in the church; if those collections were insufficient, they paid the difference out of their own incomes, and if there was a surplus, they divided it amongst themselves; they were not bound as curates to reside in the house for the discharge of their spiritual duties, and they might, if they thought fit, reside elsewhere; and each of them was liable to be removed at the discretion of the bishop:—*Held* (Whiteside, C. J., *diss.*) that they "jointly occupied as tenants" at will and were "inhabitant householders," within the meaning of 3 & 4 Vict., c. 108. ss. 30, 34; and that (their qualification in every other respect being undisputed) they were entitled to have their names inserted upon the burgess roll of the borough of Belfast. That it made no difference that, in the second case, the lease was made, not to the bishop, but to other persons as trustees for similar purposes. That it made no difference that, in the third case, the lease was made to the administrator of the parish, who resided in the house with the three curates who were the applicants. *Meyler's Case* (5 I. C. L. R. 54), decided upon the 13 & 14 Vict., c. 69, s. 6, observed upon, applied, and followed.—*The Queen* v. *Mayor of Belfast* (Q. B.), Ir. R. 8 C. L. 423.

FRAUDULENT REPRESENTATION—[*See* SALE OF CHATTELS, 1.—PLEADING, 5, 6.]

FRAUDS, Statute of—[*See* CONTRACT, 2.]

GAME—[*See* JUSTICE OF THE PEACE, 2.]

Trespass in pursuit of; reservation in lease; complainant in summons.—*Bourke* v. *Head* (P. S.), NOTANDA, 8 I. L. T. & S. J. 221.

GARNISHEE ORDER—1—A judgment entered for the amount of a verdict cannot be attached if the costs in the cause have not been taxed and added to the roll.—*Johnston* v. *Graves* (Ex.), p. 76.

2—The amount awarded by a decree under the L. & T. Act, 1870, which was respited until the next sessions for a proposed settlement, is not a debt which the Court can order to be paid over. *Semble*, that an appeal being pending would have the same effect.—*Proctor* v. *Church* (C. P.), p. 206.

3—Money lodged under garnishee order in Court of Common Pleas; subsequent garnishee order in Court of Queen's Bench, and motion by the judgment creditor to draw the money, before Queen's Bench Judge in Consolidated Chamber; jurisdiction; notice of motion in several causes. *Curtin* v. *Fitzgerald* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J., 472, 545.

GENERAL ORDERS, Power to contract out of operation of—[*See* "DEBTORS ACT, 1872," 2.]

GIFT—[*See* DEVISE, 1.]

GRAND JURY ACT—[*See* PRESENTMENT—APPORTIONMENT ACT.]

GREYHOUND, Keeping without Qualification—[*See* JUSTICE OF THE PEACE, 3.]

GUARANTEE—[*See* PLEADING, 9.]

By workmen against loss of employer's goods; goods illegally pawned; criminal procedure.—*Winstanley* v. *Caravan and Kirwan* (M. C.), 8 I. L. T. & S. J. 639.

HABEAS CORPUS—[*See* AFFIDAVIT—CORONER, 1, 2, 3—"DEBTORS ACT, 1872," 1—JUSTICE OF THE PEACE, 2.]

HABEAS CORPUS ACT—[*See* ADJOURNMENT.]

HABEAS CORPUS AD TESTIFICANDUM—[*See* BANKRUPTCY, 3.]

Prisoners undergoing sentence; affidavit of attorney, that they can give material evidence on trial.—*Darragh* v. *Graham* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 486.

HIRE OF GOODS—[*See* SALE OF CHATTELS, 2.]

HOMICIDE—The prisoner was indicted for the manslaughter of a woman by driving a cab over her in a public street, and his defence was that he had used due and proper care in driving the cab upon the occasion in question:—*Held* (O'Brien, J., *diss.*), that the burden of proving negligence did not lie on the Crown, but that upon the fact of the killing being proved, it was cast upon the prisoner to show that he had used due and proper care in driving the cab.—*The Queen* v. *Cavendish* (C. C. R.), NOTANDA, 8 I. L. T. & S. J. 415—Ir. R. 8 C. L. 278.

HORSE-RACE—A horse-race was announced to be held, subject to the conditions, "One sovereign entrance—weight for age," and the decision of the stewards to be final in all cases. According to the racing calendar, the weight, that month, for five-year old horses was nine stone thirteen pounds. After the horse, "The Gaiety," had been entered, the stewards altered the conditions, by changing the weight to nine stone for each horse; but the owner of "The Gaiety," although apprised of the change before he paid his entrance-fee, allowed the horse to run carrying nine stone thirteen pounds. The other horses carried nine stone. "The Gaiety" came in third. The treasurer held the stakes. The owner of "The Gaiety" having sued to recover them, as money had and received, in an action against a person who acted as clerk of the course, hon. secretary, and as one of the stewards, and who merely received the entrance-money and handed same to the treasurer:—*Held*, 1, that money had and received did not lie; 2, that the contract was not completed until payment of the entrance-money, and that the plaintiff, before then, having been notified as to the alteration in the condition, was bound by the condition as altered.—*Woods* v. *Gallagher* (Cir. C.), p. 124.

HOUSE, riotously pulling down—By the 24 & 25 Vict., c. 97, s. 11, it is enacted that if any persons riotously and tumultuously assembled shall unlawfully and with force demolish or pull down any house, every such offender shall be guilty of felony: the prisoners were convicted upon an indictment which averred that they "unlawfully, riotously, and routously did assemble, and unlawfully, riotously, and with force, demolish and pull down the house of W. W., and pull down and scatter a rick of hay of W. W., *contra pacem*:"—*Held* (Fitzgerald, B., *diss.*; Barry, J., *dub.*), that upon the hypothesis that the prisoners had demolished the house, not feloniously, but in the assertion of a supposed right, the indictment could be sustained as for a misdemeanour at common law; that is (*per* Lawson, J.), for a riot, with a statement of the demolition of the house as matter of aggravation. *Regina* v. *Langford* (C. & Mar. 602), considered.—*The Queen* v. *Casey* (C. C. R.), Ir. R. 8 C. L. 408.

HUSBAND AND WIFE—[*See* CARRIER, 1.]

INDICTMENT—[*See* HOUSE, RIOTOUSLY PULLING DOWN—JUSTICE OF THE PEACE, 3—SECRET DISPOSITION OF DEAD BODY OF CHILD.]

INFIRMARY, County, exclusion of Surgeon from—[*See* OFFICE.]

INTEREST, charging Interest upon—[*See* "DEBTORS ACT, 1872," 2.]

INTERPLEADER—[*See* SECURITY FOR COSTS, 1.]

Seizure of farm in execution; claim by third party; interpleader-summons not granted as to real estate.—*Gardiner* v. *Hinds* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 401.

IRISH LAW TIMES REPORTS, approval of, by Court of Queen's Bench, p. 161.

IRREGULARITY, setting aside proceedings for—[*See* SETTING ASIDE PLEADINGS, 1.]

JUDGMENT, Amendment of, p. 76.

JUDGMENT, entering nunc pro tunc—To get leave to enter judgment as of a former date, *nunc pro tunc*, it must be shown that the Court could, at that former date, have ordered such a judgment to be entered.—*O'Riordan* v. *Walsh* (Ex.), Ir. R. 8 C. L. 158.

JUDGMENT, setting aside—1—An affidavit, by the defendant's attorney, stating that he is advised and verily believes that the defendant has a good defence to the action on the merits, is an insufficient affidavit of merits, for the purpose of setting aside a regular judgment, which the defendant, through a fatality, has suffered to go by default.—*Griffin* v. *Mayor and Corporation of Dublin* (Con Ch.), p. 123.

2—Summons and plaint served on agent of defendant, but not forwarded to him by the agent.—*Pim* v. *Sheehan* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 108.

3—Final judgment marked for an unliquidated demand; claim for interest.—*Minors* v. *Purvis* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 108.

JURISDICTION in Consolidated Chamber—[*See* "DEBTORS ACT, 1872," 4, 7, 8, 9—GARNISHEE ORDER, 3—LANDLORD AND TENANT, 8—TEMPORARY BAR, 1.]

JURISDICTION in Petty Sessions—[*See* JUSTICE OF THE PEACE, 2, 3, 4, 5, 7.]

JURISDICTION OF JUDGE ON CIRCUIT—[*See* TEMPORARY BAR, 2.]

JUSTICE OF THE PEACE—[*See* ATTACHMENT.]

1—Magistrates at Petty Sessions having heard an assault case, dismissed same; and subsequently a fresh summons was issued against the defendant on the same charge. The magistrates refused to rehear the case. The prosecutrix stated that she had fresh evidence, but did not tender the evidence reduced to writing:—*Held*, that as no further informations were tendered, or statement made to the magistrates, on behalf of the prosecutrix, showing what would be proved besides what appeared on the previous informations, the Court would not, under 12 Vic., c. 16, s. 5, compel the magistrates to rehear the case.—*The Queen* (*Murphy*) v. *The Justices of County Dublin* (Q. B.), p. 134.

2—The defendant was convicted by two magistrates for having unlawfully in his possession certain pheasants, knowing them to have been stolen, and was sentenced to six months' imprisonment with hard labour. The

Digitized by Google

conviction was made by the two magistrates sitting in the Petty Sessions Court House upon a day, specially fixed by themselves, but which was not one of the days upon which the Petty Sessions of the district were usually held. Upon a motion to make absolute a conditional order for a writ of *habeas corpus* with a view to the discharge of the defendant from custody:—*Held*, 1. That the offence of which the defendant had been convicted was one under the 22nd section of 24 & 25 Vict., c. 96, and therefore punishable on a first conviction by a fine only. 2. That the magistrates were acting out of Petty Sessions, and, therefore, had no jurisdiction to make the conviction without first requiring the defendant to find bail for his appearance on the next regularly appointed Petty Sessions day.—*The Queen* v. *Martin* (Con. Ch.), Ir. R. 8 C. L. 556.

3—The respondent was summoned before Petty Sessions for keeping a "greyhound" without possessing the qualification required by the 10 Wm. III, c. 8, s. 2, and 27 Geo. III, c. 35, s 8:—*Held*,—affirming the decision of the justices,—that they had no summary jurisdiction to deal with the case. *Quære*, Would the proper course have been by indictment for a misdemeanour? *Quære*, Whether s. 6 of the "Dogs Regulation, Ireland, Act" (28 Vict., c. 50), materially affects the operation of the former statutes?—*Russell* v. *Dwyer* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 415—Ir. R. 8 C. L. 448.

4—Question of title ousting jurisdiction; certiorari; showing by affidavit that question of title existed.—*R.* v. *Justices of Donegal* (Q. B), NOTANDA, 8 I. L. T. & S. J. 136.

5—Trover; jurisdiction of Metropolitan Police Magistrate to order delivery of goods or their value.—*Cramer and Co.* v. *Morton*, (M. C.), NOTANDA, 8 I. L. T. & S. J. 503.

6—Mandamus; magistrates refusing to issue summons; previous summons dismissed without prejudice.—*R.* v. *Justices of Meath* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 415.

7—Summary jurisdiction; summons for offence under Ballot Act, 1872, s. 4; Petty Sessions Act, 1851, s. 21; dismiss without prejudice.—*The Queen* v. *Unkles* (Q. B.), p. 38.

LANDLORD AND TENANT—[*See* BANKRUPTCY, 2—DAMAGES—EXECUTORY AGREEMENT—LANDLORD AND TENANT ACT, 1870—RENT, ACTION FOR—RENT, DISTRESS FOR—STATUTE OF LIMITATIONS.]

1—The plaintiff had held lands as tenant to the defendant under a lease for lives, and was evicted for non-payment of rent; in February, 1868, the defendant took possession under a writ of *habere*, and let the lands to another person subject to redemption, the period for which would expire on the 4th of November, 1868, and, as they were not redeemed, relet them to the same person, who continued in possession down to 1872; but, in the meantime, the defendant had received a half-year's rent as due "by the representatives of the plaintiff" to the 1st of May, 1868, and another as due "by the representatives of the plaintiff" on the 1st of November, 1868:—*Held*, in an ejectment brought in 1873, that the above payments were evidence, which had been rightly submitted to the jury, of an acknowledgment by the defendant of the existence upon those days, of a tenancy in the plaintiff subject to a rent payable upon those days; and that, as no other tenancy appeared under which these gales would have been payable, the tenancy so acknowledged would, *primâ facie*, be a tenancy from year to year.—*Hamway* v. *Taylor* (Ex.), p. 98, where the judgment of the Court is reported *in extenso*—Ir. R. 8 C. L. 254.

—The plaintiff, in an action of ejectment on the title, produced an old lease of the premises for which the ejectment was brought, to his grandfather under whom he claimed; the plaintiff had left the country, and his mother, who had married the defendant, remained in possession as agent for her son for a very long period; a lesser rent than that originally reserved had been received by the head landlord:—*Held*, that this did not amount to a surrender in law of the original lease, and that the plaintiff was, in consequence, entitled to recover.—*Roche* v. *Roche* (C. P.), p. 7.

3—An alteration, in the landlord's receipts for rent, of the names of the occupying tenants does not, unless shown to have been assented to by all the parties interested, afford any evidence from which can be inferred either a change of the tenancy or a transfer of the legal rights.—*Bourke* v. *Bourke* (C. P.), NOTANDA, 8 I. L. T. & S. J. 502—Ir. R. 8 C. L. 221.

4—A limited express covenant for quiet enjoyment, contained in a lease made after the passing of the Landlord and Tenant Act, 1860, is sufficient to exclude the implication of a covenant for title under the 41st section of that Act.—*Leonard* v. *Taylor* (Ex. Ch.), Ir. R., 8 C. L. 300.

5—By an agreement under seal the premises in dispute were let for the term of one year at a yearly rent, payable quarterly; and it was agreed that the lessee might determine the tenancy at the expiration of one year by giving to the lessor three months' previous notice in writing, and that the lessee might continue tenant after the expiration of the term on punctual payment of the rent, free from disturbance or eviction by the lessor as long as the rent was punctually paid:—*Held, per* Monahan, C. J., and Lawson, J., that the estate created by the instrument and the payment of the rent was a tenancy from year to year, and that a clause declaring that such a tenancy was not to be determinable by a notice to quit was inconsistent with and repugnant to the nature of such estate; and that the lessor who had served notice to quit was entitled to recover. *Per* Keogh and Morris, JJ., that the estate created by the instrument was, in contemplation of law, an estate for the life of the tenant, and that the grantor was not entitled to recover.—*Holmes* v. *Day* (C. P.), Ir. R. 8 C. L. 235.

6—A notice to quit signed by the mortgagor alone, held sufficient to determine a tenancy created before the mortgage, where the tenant knew, previously to the service of the notice, that the mortgagor had a general authority from the mortgagee to determine tenancies. A notice to quit signed by a mortgagor, who had a general authority from the mortgagee to determine tenancies, held sufficient to determine a tenancy created before the mortgage, although the notice did not purport on the face of it to be upon behalf of the mortgagee.—*Stackpoole* v. *Parkinson** (Ex.), Ir. R 8 C. L. 561.

7—A notice to quit was signed by one of two tenants in common in her own right and on behalf of the other, who was residing abroad. Although a written consent of the absent tenant in common was given subsequent to the service of the notice:—*Held*, that the notice was insufficient, and that an ejectment brought upon it under 23 & 24 Vict., c. 154, s. 72, would not lie.—*Moroney* v. *Moroney* (C. P.), p. 136—Ir. R. 8 C. L. 174.

8—Writ of restitution; Landlord and Tenant Law Amendment Act, 1860, s. 70; jurisdiction.—*Stackpoole* v. *Hogan* (C. P.), NOTANDA, 8 I. T. & S. J. 564.

LANDLORD AND TENANT ACT, 1870.

1—The word "landlord" in the 4th section of the Landlord and Tenant (Ireland) Act, 1870, is not restricted in its meaning to the immediate landlord; and therefore, where a lessee for lives renewable for ever forfeited his interest by reason of his omitting to renew:—*Held*, that his subtenant was entitled to claim compensation for improvements from the head landlord.—In estimating the measure of improvements, the amount of wear and tear is to be deducted—not from their present cost—but, from the actual outlay by the tenant.—*Comerford* v. *Sawrey and others* (L. S.), p. 25.

2—A reservation of rent "over and above all taxes, charges, and impositions whatsoever," with a corresponding covenant to pay it, in a lease executed since the passing of the Landlord and Tenant (Ireland) Act, 1870, deprives the tenant of the right to deduct a moiety of the grand jury cess, under the 65th section of that Act.—*Hely* v. *Kennedy* (Q. S.), p. 26.

3—A public-house situated in a village, with an acre of land attached, held at an annual rent of £17, of which from £1 to £1 5s. represents the letting value of the land, is not "agricultural or pastoral" in its character, so as to come within the provisions of the Landlord and Tenant (Ireland) Act, 1870; and a notice to quit such tenancy need not be stamped.—*Spunham* v. *Walsh* (Q. S.), p. 27.

4—A claimant having died subsequently to his claim being lodged, the Court at the hearing, and without requiring a notice of motion to be served, nominated his widow as his administratrix for the purposes of the Landlord and Tenant (Ireland) Act, 1870. The consideration of the claim having been then adjourned to the next ensuing Land Sessions:—*Held*, that the respondent was not entitled to receive a notice of the appointment of such administratrix.—*Kavanagh* v. *Power* (L. S.), p. 33.

5—On the death of a tenant from year to year intestate, C., who derived no title from him, entered into possession and management of his property without taking out administration. A notice to quit having been served on C. personally, and a decree on an ejectment obtained against him, he claimed compensation for disturbance. The respondent disputed the claim, but, at the same time, lodged the amount in Court:—*Held*, that C. was entitled to the amount of compensation so lodged.—*Cheevers* v. *Hon. Mr. Deane Morgan* (L. S.), p. 33.

6—A. having agreed to become yearly tenant to B. of a farm, upon the usual terms prevailing on the estate, B. tendered to him a form of lease, at the same rent, and differing from such usual contract of letting in the following particulars:—It provided that all quarries of stone or slate, all marl clay, gravel, and sand, bog and bog timber, should be excepted out of the demise; that the lessee should not be entitled to any corn or other crop as a way-going crop, to be sown after the expiration of the demise; that the demise should be forfeited in the event of the tenant assigning, sub-letting, or sub-dividing the farm, becoming bankrupt or insolvent, or having his interest taken in execution, or any judgment, decree, or order being registered against it, or an order for the sale of it made by a competent Court. The tenant refused to abandon his former contract, and to accept the new one as offered, not receiving under the latter any equivalent for the benefits he was required to forego. He was then evicted; and, thereupon, claimed compensation for disturbance:—*Held*, that the refusal of the tenant to continue in occupation upon the terms of the new contract of tenancy, as offered, was not unreasonable conduct on the part of the tenant, so as to disentitle him to compensation for disturbance.—*Connolly* v. *Lord Digby* (L. S.), p. 68.

7—In order to satisfy the requirements of sec. 15, sub-sec. 1 of the Landlord and Tenant (Ireland) Act, 1870, the land which has an increased value as accommodation land, must be held by a resident in a town for the accommodation of his town house.—A landlord, for the purpose of repairing a mill-weir adjoining his tenant's land, raised earth and gravel from the field of the tenant, offering to pay compensation for the trespass. The tenant, however, brought an action against the landlord, which was left to arbitration, and resulted in an award of heavy damages for the mere surface trespass, the landlord being also subjected to the costs of the litigation. Contemplating that it would again become necessary to raise earth and gravel in like manner, for a similar purpose, and apprehending that the incidental trespass to the surface of the tenant's land would be again made the subject of similar litigation, instead of having any damages assessed by a less expensive process, the landlord served a notice to quit, and brought an ejectment against the tenant:—*Held*, that the conduct of the tenant was vexatious, and that the amount awarded him in the action should be taken into consideration in estimating his compensation for disturbance; and that the conduct of the landlord was not unreasonable, nor was the eviction capricious.—*Taylor* v. *Dowden and others* (L. S.), p. 83.

8—Compensation for disturbance granted to a tenant of lands held, subject to the Ulster custom, where the tenant had been evicted for having sold his farm to a purchaser without the landlord's consent, but there being no reasonable objection to the purchaser which could be maintained by the landlord.—*Lappin and Little* v. *Coote* (L. S.), p. 92. On app. see *infra*, 22.

* See *Peyton* v. *Connell*, 1 Ir. L. T. & S. J. 104; *Miles* v. *Murphy*, 5 I. L. T. R. 174.

Digitized by Google

9—Under the Ulster custom, where the tenant wishes to sell his tenant-right and to procure the necessary consent of his landlord to such sale, as being one to which no reasonable objection can be made on the landlord's part, it is to be considered that the tenant is entitled to a fair and reasonable price; that the landlord is entitled to have in the proposed purchaser a solvent tenant, to receive a fair increase of rent, and to have an arrangement effected beneficial to his estate in a moderate and reasonable point of view respecting it; and that the incoming tenant is entitled to the same right as the former tenant, to hold the premises at a moderate rent, not encroaching on the custom.—Conduct of a tenant held not so unreasonable as to warrant the disallowance of a claim for compensation, for disturbance, under the Ulster Custom.—*Bolland and Ruddock* v. *Porter* (L. S.), p. 93.

10—It is legitimate, according to the Ulster custom, that a revision in the valuation and alteration in the rent of the demised premises, should take place on special occasions; but, the tenant should not be called on to pay increased rent for his land in respect of improvements made by him, except in so far as they have increased the productive power of the land relating to its condition as originally demised; and it is not desirable that such changes in the rent reserved should be brought about by the service of notices to quit—the frequent habit of serving which is inconsistent with the Ulster custom.—*Bennett* v. *Jones* (L. S.), p. 94.

11—A dwelling-house, situate a little more than five miles from Dublin, having about 25 acres (Ir.) of land attached, was taken by a Dublin merchant, at £300 a year, as a residence, at the same time intending to make profit out of the land so as to contribute towards the payment of the rent. The premises were all enclosed by a wall. About 15 acres (Ir.) were in pasture, and 10 under buildings, ornamental grounds, and plantations. The rent, at a valuation, would be properly apportioned at £200 for the dwelling-house, garden, and ornamental grounds, and £100 for the rest of the premises. The tenant kept some 20 head of cattle on the land, and in one year had 20 tons of hay off the land. On a case stated, reserving the question whether the holding was agricultural or pastoral in its character, or partly both, within the L. & T. Act, 1870, section 71, so as to entitle the defendant to deduct one-half the Grand Jury cess payable in respect of the premises: —*Held*, that the premises were not agricultural or pastoral within the meaning of that section—*Doyne* v. *Campbell* (Ex.), p. 101, where the arguments and judgments are reported *in extenso*.

12—Improvements, to be registered within section 6 of the Landlord and Tenant Act, 1870, must consist, as defined by section 70, of works which add to the letting value of the holding on which they are executed, and are suitable to such holding. A dwelling-house was erected, at a cost of £1,400, on a farm of 70 acres, held under a lease for lives. Other improvements were also executed, the value of which, taken together with that of the dwelling-house, came to £1,800. Ten years afterwards, the lessee assigned the premises, getting £500 fine, and reserving a profit rent of £40 a year. It appearing that the dwelling-house was rather suited as a villa residence than as a farm-house of the ordinary class on such holdings, and that the increase in the value of the holding would be disproportionate to the expenditure:—*Held*, that a claim under 33 & 34 Vic., c. 46, s. 6, to register the dwelling-house as an improvement should be disallowed.—*Connor* v. *Sweetman* (Cir. C.), p. 103.

13—By a contract in writing, entered into after the passing of the Landlord and Tenant Act, 1870, lands were let "for the term of one year certain, to commence on the 25th March, 1871, and to end on the 25th March, 1872:"—*Held*, affirming the judgment of the Court of Common Pleas (*per* Whiteside, C.J., Palles, C.B., Fitzgerald J., and Fitzgerald, B., *diss.* O'Brien, J., Deasy and Dowse, B.B.), that section 69 of that Act did not apply, and that the tenant was not entitled to notice to quit.—*Wright* v. *Tracey* (Ex. Ch.), p. 142, where the argument of plaintiff's junior counsel, referred to in the judgments of the Court, is reported *in extenso*.—Ir. R. 8 C. L. 478.

14—A landlord, upon his having become purchaser of a property, demanded "a fair increase of rent" from a tenant on the land. The tenant had held under a lease, upon the expiration of which he was left in possession under a yearly tenancy, created after the passing of the L. & T. Act, 1870, at the former rent, which, having regard to the increased value of the holding, was inadequate. But, the landlord did not specify what increase in the rent he would require; and the tenant refused to pay any increase, but insisted on a reduction, and endeavoured to intimidate the landlord. The landlord proposed to leave to arbitration, upon a fair basis, the question by what amount the rent should be increased; but the landlord did not strongly press for arbitration, and the negotiation was broken off by the tenant without sufficient reason. The tenant having been evicted, and claiming compensation for disturbance and improvements:—*Held*, that the conduct of both parties was unreasonable, within 33 & 34 Vic. c. 46, s. 18; and that the tenant should be allowed only the amount of two years' rent as compensation for disturbance, besides £22 10s. for unexhausted manures.—*Leonard* v. *Smith* (unreported) discussed.—*Kinnerk* v. *Hall* (L. S.), p. 150.

15—On March 20th, 1874, a landlord served a yearly tenant with a notice to quit, and subsequently, on March 25th, a year's rent having fallen due, served him with a civil-bill ejectment for non-payment thereof, on which a decree was had, and possession of the holding obtained. On a claim by the tenant under the L. & T. Act (Ir.), 1870, for compensation, by reason of the disturbance in occupancy by means of the service of the notice to quit:—*Held*, that the claimant was not entitled to compensation, as the service of the ejectment for non-payment of rent subsequent to the notice to quit operated as an implied waiver of the notice to quit.—*Flynn* v. *Vernon* (L. S.), p. 184.*

* On app. see 9 Ir. L. T. R. 50.

16—M., whose holding was valued under £10, claimed the maximum amount for disturbance, and also claimed for improvements, other than permanent buildings, and reclamation of waste land:—*Held*, that both claims might be gone into in the first instance, the question as to the right to compensation for improvements to be settled after the case had been heard in its entirety.—*Gordon* v. *Murphy* (Cir. C.), p. 194.

17—Where administration was taken out to a deceased tenant, and the farm of the deceased was ordered to be sold by the Court of Chancery, the landlord of the estate objected to the sale of the tenant's interest, on the ground that the assignment of the tenant's interest, without the consent of the landlord was forbidden by the custom of the estate; but, notwithstanding this, the landlord's agent was himself a bidder for the interest of the deceased, which was finally sold to the claimant under a secret trust for the administrator. The claimant was ejected by the landlord:—*Held*, that the claimant was entitled to no compensation, having purchased as trustee for the administrator, who was still in possession of it. *Semble*, that the custom of the estate could not oust the administrator's right of assigning the farm.—*Parkinson* v. *The Earl of Longford* (L. S.), p. 194.

18—R. held a farm situate a little more than a mile from a town in which he resided. The rent was not above the usual letting value of the land, which was cultivated as an ordinary agricultural farm, but the land had been leased with a dwelling-house in the town of Gorey, for a long term, as had been done in other instances on the estate, as appurtenant to the house, in order to encourage building in the town:—*Held*, that the land was not town-park within the meaning of the 15th section of the Landlord and Tenant (Ireland) Act, 1870.—*Reilly* v. *Doyle* (Cir. C.), p. 209.

19—Lands, anciently subject to the Ulster tenant-right custom—part of an estate on which the custom was denied from 1851 to 1860—were, in the famine years, surrendered by the tenants, who left while owing arrears of rent and were assisted, by the landlords, to emigrate. The lands remained unlet for several years, and were, in 1857, re-let to a tenant who made no in-coming payment, and who afterwards, being in arrear of rent, surrendered the lands to the landlord. They were subsequently, in 1859, re-let by the landlord, who had occupied them in the interval, to a tenant who undertook to erect a dwelling-house on the lands:—*Held*, that the re-letting was subject to the Ulster tenant-right custom.—*Magee* v. *Marquis of Bath* (Cir. C.), p. 219.

20—To determine a tenancy from year to year commencing on 25th March, the landlord served, previously to 25th March, 1872—*i.e.*, six months before the last gale day of the calendar year—a notice to quit and deliver up possession on the 29th September, 1872, but by the notice informed the tenant that he did not require possession on that day unless the tenancy then commenced:—*Held*, that the notice did not determine the tenancy until the 25th of March, 1873, and that an ejectment brought before that day could not be sustained.—*Lord Ashtown* v. *Larke* (6 Ir. L. T. R. 140) distinguished.—*Ferguson* v. *Daly* (Ex.), NOTANDA, 8 I. L. T. & S. J. 501.—Ir. R. 8 C. L. 216.

21—Townparks; notice to quit; stamp.—*Trustees of Lord Kilmorey* v. *Anderson* (L. S.), NOTANDA, 8 I. L. T. & S. J. 109.

22—Compensation for disturbance; Ulster custom; purchaser of tenant's interest, with notice that he would not be accepted.—*Lappin and Little* v. *Coote* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 416.

23—Compensation for disturbance; discretion of Chairman as to amount awarded; reviewing on appeal.—*Lord Mountmorris* v. *Hamilton and Kyne* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 486.

24—Compensation for disturbance; maximum allowance; tenant not in actual occupation.—*M'Neill* v. *Adams* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 501.

25—Compensation for disturbance; townpark, not so named.—*Wilson* v. *Earl of Antrim* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 501.

26—Sec. 59; appointment of administrator for purposes of Act.—*Re Barron* (L. S.), NOTANDA, 8 I. L. T. & S. J. 565.

27—Compensation for disturbance and improvements; tenant under a Chancery letting, pending the cause.—*Rogers* v. *Fitzgibbon* (Cir. C.), 8 I. L. T. & S. J. 297.

LARCENY ACT—[*See* JUSTICE OF THE PEACE, 2.]

LEASE, vesting of, in Assignees of Bankrupt Lessee, p. 98.

LIBEL—[*See* "NO LIBEL"—PRIVILEGED COMMUNICATION.]

To an action of libel, charging that the defendant published in a newspaper a statement that a petition, against the election of the plaintiff to the office of mayor, on the grounds of intimidation and undue influence, was about to be lodged by the defeated candidate for the mayoralty, it is not a justification to plead that the defeated candidate had in fact, and being duly qualified, caused a petition on those grounds to be prepared, which he was about to lodge and present to the proper legal tribunal, for the purpose of having the validity of the plaintiff's election investigated and determined, but not averring that the matters imputed by the petition were in fact true, or that the petition had been made in fact the subject of judicial inquiry and adjudication.—*Cleary* v. *Lenihan* (Q. B.), p. 146.

LICENSING ACT—*Bona fide* traveller; onus of proof.—*Dowling* v. *Cantwell* (M. C.), NOTANDA, 8 I. L. T. & S. J. 167; (Q. B.) *ib.* 577.

LIMITATIONS—[*See* STATUTE OF LIMITATIONS.]

LODGER FRANCHISE—[*See* FRANCHISE 1.]

"LORD CAMPBELL'S ACT" (*See* PLEADING, 1, 2).

LOSS OF GOODS [*See* CARRIER—RAILWAY AND CANAL TRAFFIC ACT.]

MAGISTRATE—[*See* ATTACHMENT—JUSTICE OF THE PEACE.]

MALICE [*See* "NO LIBEL."]

MALICIOUS INJURIES TO PROPERTY ACT—[*See* HOUSE, RIOTOUSLY PULLING DOWN.]

Digitized by Google

MALICIOUS INJURY—[*See* PRESENTMENT.]

MANDAMUS—[*See* JUSTICE OF THE PEACE, 6.]

MANSLAUGHTER—[*See* HOMICIDE.]

MARRIED WOMAN—[*See* PLEADING, 7—CARRIER, 1.]

MASTER AND SERVANT—[*See* NEGLIGENCE, 1.]

MISDIRECTION—[*See* "NO LIBEL," 1—RIGHT OF APPEAL.]

At the trial of an action for personal injuries caused by the defendants' negligence, the defendants' counsel, at the close of the plaintiff's case, called on the judge to nonsuit, which the judge declined to do; the defendants then went into evidence in support of their defence; the judge charged the jury; but the defendants' counsel did not, at any subsequent stage of the trial, repeat his requisition for a nonsuit, or call on the judge to direct a verdict for the defendants, or object to the charge, the Court of Common Pleas having, on the ground of misdirection, set aside the verdict found for the plaintiff:—*Held* (Palles, C.B., Fitzgerald and Dowse, BB., *diss.*), that, having regard to the course of the trial, it was not competent to the defendants to rely upon misdirection, even though the judge ought to have acceded to the requisition to nonsuit at the stage of the trial at which it was made; and that the order of the Common Pleas should be reversed.—*Whelan* v. *City of Cork Steam Packet Co.* (Ex. Ch.), Ir. R. 8 C. L. 383.*

MISREPRESENTATION—[*See* SALE OF CHATTELS, 1—PLEADING, 5, 6.]

MISTAKE OF LAW—[*See* POOR RATE, 1.]

MONEY HAD AND RECEIVED—[*See* HORSE-RACE—OFFICE—APPORTIONMENT ACT.]

MONEY PAID—[*See* PLEADING, 9—STATUTE OF LIMITATIONS.]

MONEY LODGED IN COURT—[*See* PAYING MONEY OUT OF COURT.]

MORTGAGOR, Notice to Quit by—[*See* LANDLORD AND TENANT, 6.]

MUNICIPAL CORPORATIONS ACT, 1840—[*See* BOROUGH FUND]

MUNICIPAL FRANCHISE—[*See* FRANCHISE, 2.]

NEGLIGENCE [*See* HOMICIDE - CARRIER, 1—PLEADING, 1, 2—SETTING ASIDE PLEADINGS, 2.]

1—To render an employer liable for injury to one in his employ, through the negligence of another person also in his employ, it must be shown that the latter was not merely a fellow-workman, but was placed in a position of such authority as fairly to represent the employer himself.† The captain of a merchant-ship, under his control and management, is not a mere fellow-workman of the seamen on board, bound to obey him, but is such an agent or representative of the owner of the vessel that the latter, by whom he has been appointed, will be liable for an injury to a seaman sustained by him through the captain's negligence during the voyage, while the seaman is acting in obedience to an order given by the captain.—*Ramsay* v. *Quinn* (C. P.), p. 149, where see arguments given as to averments of plaint on which Monahan, C.J., rested his judgment.—Ir. R. 8 C. L. 322.

2—The plaintiff's deceased husband went, with some companions, to the defendants' railway station to see an intending passenger off by the train, and he crossed the rails (by a level pathway, used by the public without objection by the defendants) to the rear of an ordinary train then standing at the station; his companions, from where they stood, could see an express train approaching from the opposite direction, but he, from his position behind the stationary train, could not see it, and, upon his attempting to re-cross the rails to his companions, he was killed by the express train; the engine-driver of the express admitted that it was his duty to whistle on approaching that station, and he and other servants of the defendants deposed that he had done so upon that occasion, but the deceased's companions deposed that they did not hear it:—*Held*, that there was evidence of negligence by the defendants proper to be submitted to the jury. On a plea of contributory negligence, if the want of circumspection on the part of the plaintiff was of such a character that a reasonable man could decide it either way, then, upon proof of negligence on the part of the defendants, the question of contributory negligence ought to be submitted to the jury.—*Semble*, *per* Morris, J.—If the negligence and want of care on the part of the plaintiff was so glaring as to be manifestly the obvious, substantial cause of the accident, so that no reasonable man could come to any other conclusion than that the plaintiff had directly contributed, by his own negligence, to the accident, the judge may and ought to withdraw the case from the jury, although there be clear evidence of negligence on the part of the defendants.—*Slattery* v. *Dublin, Wicklow, and Wexford Railway Company* (C. P.), Ir. R. 8 C. L. 531.

NEW TRIAL—[*See* MISDIRECTION—RIGHT OF APPEAL.]

"NO LIBEL"—1—In an action for libel—pleas (amongst others) "no libel" and "fair comment"—the judge, in his charge, instructed the jury fully and accurately as to the law of libel; and the jury having retired and been absent for some time, the judge, upon their return, in answer to their inquiry, "What is a libel?" told them—"Any publication calculated to bring the person reflected upon into contempt or obloquy, or to expose him to obloquy, hatred, ridicule, or contempt, is a libel in point of law; and I have told you that, in my opinion, this publication would be defamatory, provided that you are of opinion that it applied to the plaintiff:"—*Held*, that this did not amount to a direction in favour of the plaintiff; that it was not misdirection for want of adding the words "without a lawful excuse or occasion."—*Per* Barry, J.—The question of "libel or no libel," as determinable exclusively by the jury, is not the same question as "What is the legal definition of an actionable libel?"—*Semble*—*per* Fitzgerald and Barry, JJ.—that "privileged communication" and "fair comment" may, in Ireland, be relied upon under the plea of "no libel;" and that, though a plea of "privileged communication" is specially pleaded, the defendant is entitled to have the same course pursued on the plea of "no libel" as if there were no plea of "privileged communication."—*Per* Barry, J.—The distinction between "malice in law" and "malice in fact" lies in the mode of proof.—*Dixon* v. *Franks* (7 Ir. Jur. O. S. 239, 384) observed upon and disapproved of.—*Stannus* v. *Finlay* (Q. B.), Ir. R. 8 C. L. 264.

2—The publication of a public record (*e.g.*, a judgment) of a court of justice is not, *per se*, an actionable libel; and, in an action for publishing it, the question, whether it was published with "express" malice, ought, under the plea of "no libel," to be submitted to the jury. *Fleming* v. *Newton* (1 H. L. C. 363) applied. *M'Nally* v. *Oldham* (16 Ir. C. L. R. 298) distinguished; and (*per* Fitzgerald and Barry, JJ.) questioned.—Where there are several counts on the same application, each with different innuendos, and to each count a plea traversing the defamatory sense imputed; and the innuendos in some of the counts have not been sustained, or are unsustainable, a general verdict for the plaintiff cannot stand.—*Cosgrave* v. *Trade Aux. Co.* (Q. B.), Ir. R. 8 C. L. 349.

NON-SUIT—[*See* MISDIRECTION.]

NOTICE TO QUIT—[*See* LANDLORD AND TENANT, 5, 6, 7—"LANDLORD AND TENANT ACT, 1870," 10, 13, 15, 20, 21.]

OFFICE—The defendant who had been illegally elected for the office of Surgeon of a County Infirmary, entered into the office, and, though cautioned, kept out the plaintiff, who had been legally elected:—*Held*, (1) that the plaintiff was entitled to recover damages from the defendant for so excluding him from the office: (2) that the plaintiff, as he had not actually discharged the duties of the office, though he had offered and was ready to do so, was not entitled to recover, as money had and received, the salary which the defendant had received under grand jury presentment.—*Lawlor* v. *Alton* (Q. B.), Ir. R. 8 C. L. 160.

PARLIAMENTARY ELECTION—[*See* ELECTION.]

PAWNING GOODS ILLEGALLY—[*See* GUARANTEE.]

PAYING MONEY OUT OF COURT—[*See* GARNISHEE ORDER 3.]

1—The plaintiff, by power of attorney, authorised a firm to draw money lodged in Court by the defendant, and, after the dissolution of the firm had been gazetted, the money was paid by the Master to a member of the former firm, upon a receipt signed by him in his own name only, and certified by the plaintiff's attorney:—*Held*, that, under these circumstances, the money was properly paid out.—*Siebold* v. *Connolly* (C. P.), Ir. R. 8 C. L. 149.*

2—The amount of the verdict and costs, lodged by the defendants to obtain stay of execution, ordered to be paid back to them after the verdict had been set aside and a new trial granted.—*Cosgrave* v. *Trade Auxiliary Co.* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 221—Ir. R. 8 C. L. 161.

PENALTY—[*See* "DOGS REGULATION ACT."]

PERJURY—[*See* "DOGS REGULATION ACT."]

Statutable declaration; 5 & 6 Will. IV., c. 62, s. 18.—*R.* v. *O'Hare* (C. C. R.), NOTANDA, 8 I. L. T. & S J. 220.

PETTY SESSIONS—[*See* JUSTICE OF THE PEACE.]

PLEADING—[*See* AMENDMENT—ARGUMENTATIVE TRAVERSE—"MONEY HAD AND RECEIVED"—"MONEY PAID"—"NO LIBEL"—PRIVILEGED COMMUNICATION—RENT, ACTION FOR—SETTING ASIDE PLEADINGS.]

1—The first count of the summons and plaint averred that Robert Parsons was employed by the defendant, on the terms that the defendant should take due and ordinary care not to expose him to extraordinary danger; yet the defendant did not take due and ordinary care not to expose the said Parsons to extraordinary danger; and through the negligence of the defendant in not having a proper apparatus for securely lighting the room of the defendant, in which said Parsons was engaged, said Parsons was injured, and died. The second count averred that said Parsons became servant to the defendant on the terms that the defendant should provide proper materials and apparatus for lighting the room in which said Parsons should be engaged; yet the defendant negligently provided improper materials, &c., for lighting the room in which said Parsons was working, the dangerous nature of which improper materials was well known to the defendant, and not to the said Parsons; and in consequence of such negligence said Parsons was injured, and died:—*Held*, that both counts were double and embarrassing; and that they should be amended by striking out of both the averments of negligence, and by striking out of the second the averment of defendant's knowledge of the dangerous nature of the materials.—*Parsons* v. *O'Toole* (Q. B.), p. 72.

2—In an action, under Lord Campbell's Act, against the defendant for having by his negligence caused the death of A. B., the defendant pleaded that, admitting the negligence, it was not by reason thereof the said A. B. was injured. And also, a plea of contributory negligence, which contained an averment that, by reason of his want of ordinary care, the said A. B. directly contributed to the misfortune alleged. On motion to set the pleas aside as embarrassing:—*Held*, that the traverse that the negligence was the cause of the injuries should not be set aside; but that the plea of contributory negligence should be amended, by substituting instead of the term "misfortune," the terms, "occurrence of the injuries."—*Weston* v. *Hunt* (C. P.), p. 115.

3—To an action for breach of covenant to pay a sum of money, it is an embarrassing plea that the defendant did not make the covenant as alleged. *Connell* v. *Dillon* (Con. Ch.), p. 115.

4—A summons and plaint in ejectment for non-payment of rent, directed to "W. L. Campion and others, defendants," averred that E. Stack held the lands as tenant to the plaintiff, under a contract of tenancy. W. L. Campion having demurred, on the grounds that no contract of tenancy between him and the plaintiff was disclosed, nor was it alleged in terms that he was a tenant in possession:—*Held*, that the writ was good in law, and complied with the requirements of C. L. P. Act, 1853, s. 195.—*Billing* v. *Arnold*, Ir. R. 7 C. L. 529, NOTANDA, 8 I. L. T. & S. J. 450; *Keens* v. *M'Blaine*, 17 Ir. C. L. 654, commented upon.—*Campion* v. *Campion* (C. P.), p. 147, where the form of plaint is given *in extenso*—Ir. R. 8 C. L. 313.

* See *s.c.* on demurrer, 7 Ir. L. T. R. 168.—E. N. B.

† See the American decision of *Union Pacific Railroad Co.* v. *Fort*, 8 I. L. T. & S. J. 157. And see the recent English case of *Howells* v. *Landore Steel Co.*, L. R. 10 Q. B. 62.—E. N. B.

* See *s.c.* 7 I. L. T. R. 198.

Digitized by Google

5—On motion to set aside paragraphs of a summons and plaint, averring that the defendant, knowing that a horse was unsound, by then fraudulently "concealing from the plaintiff that said horse was unsound," and representing to him that it was sound, induced the plaintiff, who was ignorant of such unsoundness, to buy the horse:—*Held*, that the words "concealing from the plaintiff that said horse was unsound" should be struck out.—*Timpson* v. *Dalton* (Q. B.), p. 184.

6—A count which was uncertain as to whether it was for fraudulent representation or for breach of contract was set aside as embarrassing.—*Riordan* v. *Cooper* (Q. B.), Ir. R. 8 C. L. 539.

7—In an action of ejectment on the title:—*Held*, reversing the decision of the Court of Exchequer (7 Ir. L. T. R. 93)—that a married woman in possession, and, during the absence of her husband abroad, cannot plead her coverture in abatement And (Whiteside, C.J., *diss.*) that the judgment of the Exchequer Chamber should be that the demurrer to the plea be allowed, and that the plaintiff recover possession of the land.—*Riordan* v. *Walsh* (Ex. Ch.), Ir. R. 8 C. L. 4.

8—A plaint in ejectment for non-payment of rent, in which the venue was laid in the county of L., alleged that the defendant held the lands of A. in the county of L. and the lands of B. in the county of R. under a lease at bulk rent, and prayed judgment for recovery of the possession "of the said lands":—*Held*, not open to a demurrer.—*Gray* v. *Lawder* (Q. B.), Ir. R. 8 C. L. 193 (see note to *Campion* v. *Campion*, 8 Ir. L. T. R. 147.)

9—The defendant signed a guarantee upon condition, orally agreed to, that M. should also sign as a co-surety; M. did not sign; and subsequently, without notice of the condition, the guarantee was signed by the plaintiff, who, having been obliged, upon the default of the principal debtor, to pay the whole debt, sought to recover contribution from the defendant on the ordinary count for money paid to his use; to which the defendant pleaded "that no money was paid by the plaintiff for the defendant:—*Held* (reversing the decision of the Court of Common Pleas), that the condition was a good defence to the action, and admissible under the traverse.—*Barry* v. *Moroney* (Ex. Ch.), Ir. R. 8 C. L. 554.

10—Defence relying on proviso of exception to general statutory provision.—*Moore* v. *The Midland Railway Company* (C. P.), p. 165.

11—Ejectment for non-payment of rent; averment that defendant holds as tenant to the plaintiff; meaning and proof of averment.—*Billing* v. *Arnold* (Ex.), NOTANDA, 8 I. L. T. & S. J. 450.

POOR-RATE—1—The defendant had been in the habit for a number of years of deducting, from rent paid by him to the plaintiff, a proportion of Poor-rate calculated under s. 74 of the 1 & 2 Vict. c. 56, instead of s. 75:—*Held*, in an action by the landlord to recover back the excess, that, as both parties had the means of knowing that the deductions ought to have been made under s. 75, and not under s. 74, the deductions were made and allowed through mistake of law, and the plaintiff, therefore, could not recover.—*O'Loghlen* v. *O'Callaghan* (Q. B.), Ir. R. 8 C. L. 116.

2—Exemption from, of building for public purposes; town-hall.—*Sligo Board of Guardians* v. *Wynne* (Q. S.), NOTANDA, 8 Ir. L. T. & S. J., 472.

POSTPONEMENT OF CRIMINAL TRIAL—[*See* ADJOURNMENT.]

PRACTICE—[*See* AFFIDAVIT—AMENDMENT—APPEAL—ATTACHMENT—CERTIORARI—"COMMON LAW PROCEDURE AMENDMENT ACT, 1870"—CONTINUANCE OF PROCEEDINGS—COSTS—"DEBTORS ACT, 1872"—EJECTMENT ON TITLE, 2—ELECTION—GARNISHEE ORDER—JUDGMENT—PAYING MONEY OUT OF COURT—SECURITY FOR COSTS—SETTING ASIDE PLEADINGS, 1—SPECIAL JURY—SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT—TIME, COMPUTATION OF—VENUE—SERVICE OF WRIT OUT OF JURISDICTION.]

PRECEDENTS, Conclusiveness of, in Court where decided, p. 18.

PRESENTMENT—1—It is illegal for the Grand Jury to present sums of money to the county surveyor, to be by him employed in paying for works executed in the county by his direction—Forms of presentments by the Grand Jury, in the respective cases where no tender has been made at the adjourned Presentment Sessions, and where works contracted for have not been executed within the proper time, or according to the terms prescribed.—*Re the North Tipperary Presentments* (Cir. C.), p. 116.

2—A malicious injury having been committed in a parish containing two police stations, H. served and posted, at the nearest station only, a notice of her intention to apply for compensation, omitting to serve and post any formal notice of application:—*Held*, sufficient notice to entitle her to compensation, under the 135th section of the Grand Jury Act.—*In re Herbert's Presentment* (Ir. Rep. 3 C. L., 556), not followed—*In re Hall's Presentment* (Cir. C.), p. 175.*

3—The Grand Jury have no jurisdiction to present for a Chaplain to the County Infirmary.—*In re South Tipperary Presentment, ex parte Quirke* (Cir. C.), p. 194.

4—The Grand Jury have no jurisdiction to present summarily for the cost of repairing the court-house. A presentment for the repair of the court-house at W. had been read and approved of by the Grand Jury, and a plan and specification prepared for the work, but the presentment was rejected at the subsequent Presentment Sessions:—*Held*, that the succeeding Grand Jury was not authorized by the 69th section of the Grand Jury Act to pass the presentment.—*Re the Wicklow Court-House* (Cir. C.), p. 207.

5—The words "other work belonging to any person" in the 135th section of the Grand Jury Act are *ejusdem generis* with those preceding them, and, therefore, the Grand Jury has no jurisdiction to present for compensation for the malicious destruction of vestments and other Church property.—*In re Rev. M. Collier* (Cir. C.), p. 208.

6—Coroner's inquest; death of inmate of workhouse; fee to medical officer.—*Anon.* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 375.

7—County printing; lowest tender; discretion of Grand Jury as to acceptance.—*Anon.* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 376.

8—Maintenance of lunatic asylum.—*Re Limerick Presentments* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 545.

9—Coroner's inquest, fee for; death in hunting-field—*Re Tullamore Presentments, ex parte Gowing* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 545.

10—Agrarian crime; Peace Preservation Act, 1870, s. 39; amount of compensation; alteration of area; costs.—*Killeen* v. *Whiteford* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 574.

11—Costs incurred by governor of gaol in defending action at suit of prisoner; malicious injury to growing trees.—*Re South Tipperary Presentments* (Cir. C.), p. 194, *n.*

PRIVILEGED COMMUNICATION—[*See* "NO LIBEL," 1.]

In an action for writing to the editor of a public newspaper a letter imputing to the plaintiff untruthfulness, inability to discharge his debts, and conduct otherwise discreditable to his position as a poor law guardian, the defendant pleaded that, being medical officer of a dispensary in the poor law union of which the plaintiff was a guardian, and having, in pursuance of his official duties, caused the seizure of unsound meat and the prosecution of a person by whom it had been exposed for sale, he incurred costs in defending an action brought against him for having instituted the prosecution, and that, at a meeting of the board of guardians, subsequently held, the plaintiff, knowing that the proceedings would be reported, and for the purpose of having his statements published in a newspaper circulating in the district, stated that the defendant had acted wrongly and improperly with reference to the seizure of the meat, and in the prosecution, and should have compromised the action which followed, and that his costs therein ought not to be paid by the guardians; that these statements of the plaintiff were afterwards published in the newspaper, and that, in order to prevent credit being given thereto by the public, and in self-defence, the defendant wrote to the editor of the newspaper the alleged libel, *bonâ fide* believing the same to be true, and without malice:—*Held*, on demurrer, that the plea failed to show that the alleged libel was a privileged communication.—*O'Donoghue* v. *Hussey*, I. R. 5 C. L. 124, commented on and distinguished.—*Murphy* v. *Halpin* (Ex.), NOTANDA, 8 I. L. T. & S. J. 511—Ir. R. 8 C. L. 127.

QUASI TAIL—[*See* DEVISE, 3.]

RACE—[*See* HORSE-RACE.]

RAILWAY—[*See* CARRIER—NEGLIGENCE, 2—RAILWAY AND CANAL TRAFFIC ACT, 1854.]

"RAILWAY AND CANAL TRAFFIC ACT, 1854"—1—In an action for loss of and injury to goods, booked at "through" rates, for conveyance by land and by sea, the railway company with whom the contract was made pleaded conditions in the contract, exempting them from liability—firstly, where the loss and injury occurred while shipping, during the voyage, or the landing; and secondly, where it occurred through the default of the master and crew of the vessel by which the goods had been conveyed during a part of the transit. Upon demurrer to the pleas:—*Held*, that the conditions were null and void under the 7th section of the 17 & 18 Vict., c. 31, as limiting the liability of the defendants for the default of them or their servants, no facts appearing on the pleadings to show that the conditions were "just and reasonable, within the concluding proviso of the section."—*Moore* v. *The Midland Railway Co.* (C. P.), p. 165, where the arguments and judgment are reported *in extenso*—Ir. R. 8 C. L. 232.

2—A railway company may, by special contract, signed as required by sec. 7 of the Railway and Canal Traffic Act, 1854, limit their liability for their own neglect or default, and this limitation is subject to but one restriction, that it be adjudged to be just and reasonable. The principle deducible from the authorities is, that a contract of this nature, *primâ facie* unjust and unreasonable, becomes just and reasonable if an alternative is left to the party forwarding or delivering the goods to enter into a contract which is just and reasonable. A railway company had two rates for the carriage of goods—one, the ordinary or higher rate, when they undertook the ordinary liability of the carrier; the other, a reduced rate, when the sender relieved them of all liability from loss, or damage, or delay, except upon proof that such loss, or damage, or delay, arose from wilful misconduct on the part of their servants:—*Held*, the higher rate not being shown to be prohibitive or excessive, that the alternative afforded to the public was just and reasonable, and, therefore, that a contract founded upon the latter branch of it was valid.—*Gallagher* v. *Gt. W. Railway Co.* (Ex.), Ir. R. 8 C. L. 326.

RECITAL IN DEED—[*See* EJECTMENT ON TITLE.]

RENT, action for—[*See* STATUTE OF LIMITATIONS.]

1—To an action of covenant for rent, which accrued due since 28th August, 1860, it is no bar that the lessor continued in possession of part of the demised premises against the will of the lessee. The judgment of the Exchequer Chamber in *Mercer* v. *O'Reilly* (16 Ir. C. L. R. 296, 297, *n.*) followed.—*Simmonds* v. *Farrell* (C. P.), Ir. R. 8 C. L. 1.

2—In an action by a landlord for rent, the tenant pleaded, in substance, that, through the landlord's neglect and default, the house and premises which formed the subject of the letting had become unfit for habitation, in consequence of defects which the tenant was not bound to rectify, and that the landlord having refused to remedy these defects,

* See *In re Herbert's Presentment* also reported 2 Ir. L. T. & S. J. 406; followed, *in re M'Hugh*, 4 ib. 401; and see *Cunningham's Presentment*, 1 ib. 515.—E. N. B.

Digitized by Google

when required to do so, the defendant (the tenant) quitted and gave up to the landlord possession of the house and premises before any of the rent claimed had accrued:—*Held*, on demurrer, a bad plea.—*Sutton* v. *Temple* (12 M. & W. 52), and *Hart* v. *Windsor* (12 M. & W. 68), followed and approved of.—*Murray* v. *Mace* (Ex.), Ir. R. 8 C. L. 396.

RENT, Deduction of County-cess from—[*See* "LANDLORD AND TENANT ACT, 1870," 2, 11.]

RENT, Deduction of Head-rent from—[*See* STATUTE OF LIMITATIONS, 1.]

RENT, deduction of poor-rate from—[*See* POOR-RATE, 1.]

RENT, distress for—A distress by a landlord for rent is unlawful, if the particulars in writing of the rent demanded include rent which became due more than one year before the making of the distress.—*Tracey* v. *Brennan* (Ex.), Ir. R. 8 C. L. 527.*

REMITTAL OF ACTION TO INFERIOR COURT—[*See* COMMON LAW PROCEDURE AMENDMENT ACT, 1870.]

REPRESENTATION OF THE PEOPLE ACT—[*See* FRANCHISE, 1.]

RESCISSION OF CONTRACT—[*See* CONTRACT, 3—BREACH OF CONTRACT—RENT, ACTION FOR, 2.]

REPAIR, covenant to—[*See* DAMAGES.]

RIGHT OF APPEAL—[*See* APPEAL.]

In ejectment a verdict was directed for the plaintiff, which the defendant obtained a conditional order to set aside for misdirection; and the Court of Common Pleas, being of opinion that the plaintiff's title had been determined after the commencement of the action and defence and before the trial, unanimously made an order that the conditional order should be discharged, that the verdict should stand, that the plaintiff should have judgment for his costs, and that no *habere* should issue:—*Held* (Palles, C.B., Fitzgerald and Dowse, BB., *diss.*), that, upon the true construction of s. 41 of the C. L. P. Act, 1856, the plaintiff was not a party "decided against," and that, therefore, he could not appeal against that order; although the Court by the order itself gave him leave to do so.—*Tobin* v. *Cleary* (Ex. Ch.), Ir. R. 8 C. L. 366.

RIOT—[*See* HOUSE, RIOTOUSLY PULLING DOWN.]

SALARY, apportionment of, p. 65.

SALE OF CHATTELS—[*See* CONTRACT, 1, 2.]

1—Misrepresentation of ownership of goods sold; true owner reclaiming; recovery of price from vendor.—*Thompson* v. *Gamble* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 500.

2—Piano hired on "three years' system;" absolute sale, at auction, by hirer, before payment of last instalment due for hire; trover.—*Cramer & Co.* v. *Morton* (M. C.), NOTANDA, 8 I. L. T. & S. J. 503.

SALE OF LANDS—[*See* CONTRACT, 4—DEVISE, 3—EXECUTION.]

SALE, Conditions of—[*See* DEVISE, 3.]

SECRECY OF BALLOT, Violation of, p. 38.

SECRET DISPOSITION OF DEAD BODY OF CHILD—On an indictment for endeavouring to conceal the birth of a child "by a secret disposition of the dead body of the said child," the evidence for the prosecution having failed to prove the death of the child, the conviction was quashed.—*The Queen* v. *Bell* (C. C. R.), Ir. R. 8 C. L. 542.†

SECURITY FOR COSTS—1—The Court refused to order that an execution-creditor, named as defendant in an interpleader issue, should give security for costs.—*Graham* v. *Cavanagh* (Con. Ch.), p. 8.

2—Motion, to compel a plaintiff resident in England to give security for costs, granted, notwithstanding the passing of the Judgments Extension Act, 1868.—*Raeburn* v. *Andrews*, L. R. 9 Q. B. 120, not followed.—*Thomas* v. *Cox* (Con. Ch.), p. 52.

3—In a reply to a preliminary notice by the defendant, requiring the plaintiff to give security for costs, the plaintiff, on January 14, served notice consenting to give security, and to stay proceedings until security given, upon being furnished with an affidavit of merits. The defendant filed a defence on January 16, without prejudice to his right to get security. On January 17 he furnished the affidavit of merits; and, security not being given, on January 20 served notice of motion:—*Held*, that by filing a defence before the service of notice of motion, the defendant had waived his right to obtain security for costs, in the absence of special circumstances within 52 G. O., 1854; and that the plaintiffs having consented to give security on being furnished with an affidavit of merits, which was not furnished until after defence filed, did not constitute a special circumstance within the G. O.—*Spaide* v. *Grainger* (Q. B.), p. 53, where the facts are given fully, and the judgment is reported *in extenso*—Ir. R. 8 C. L. 113.

4—Motion, to compel a plaintiff resident in England to give security for costs, refused, it not appearing that there were any circumstances to render the giving of security necessary notwithstanding the passing of the Judgments Extension Act (1868).—*Raeburn* v. *Andrews*, L. R. 9 Q. B. 118, followed.—*White* v. *Carroll* (Q. B.), p. 63, where the argument and interlocutory *dicta* are given—Ir. R. 8 C. L. 296.

5—Motion, to compel a plaintiff resident in England to give security for costs, refused, as no special circumstances were shown to induce the Court, in its discretion, to grant the order.—*White and Hart* v. *Carroll*, 8 Ir. L. T. R. 63 followed.—*Coleman* v. *Fayle* (Q. B.), p. 88.

6—A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to compel a plaintiff, resident in England, to give security for costs, upon an affidavit showing that the defendant has a good defence to the action on the merits. *White and Hart* v. *Carroll*, 8 Ir. L. T. R. 63. *Raeburn* v. *Andrews*. L. R. 9, Q. B. 180, not followed.—*Clarke* v. *Croker* (C. P.), p. 96, where the arguments and interlocutory *dicta* are given fully—Ir. R. 8 C. L. 318.

7—A plaintiff, resident out of the United Kingdom, will be ordered to give security for costs, notwithstanding that he has property within the jurisdiction adequate to enable the costs of the action to be realised.—*Gaynor* v. *Short* (Con. Ch.), p. 116.*

8—In consequence of the Judgments Extension Act, 1868, a plaintiff resident in England will not be required. by this Court, to give security for costs, unless special circumstances be shown to induce the Court, in its discretion, to order otherwise.—*White and Hart* v. *Carroll*, 8 Ir. L. T. R. 63, followed. *Clarke* v. *Croker*, 8 I. L. T. R. 96; *Hunt* v. *Smyth*, ib. 203, disapproved.—*York* v. *M'Loughlen* (Q. B.), p. 201, where arguments and interlocutory *dicta* are given *in extenso*.—Ir. R. 8 C. L. 547.

9—A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff living in England, until security for costs has been given, where a satisfactory affidavit is made that the defendant has a defence upon the merits. *Clarke* v. *Croker*, 8 Ir. L. T. R. 96, followed. *White* v. *Carroll*, ib. 63, not followed—*Cheesman* v. *Campbell* (C. P.), p. 203.

10—(*a*) When a plaintiff, served with a preliminary notice requiring him to give security for costs, alleging that he resides out of the jurisdiction, does not contradict that statement, and his residence is so described in the summons and plaint, it is not necessary to state that he so resides, in an affidavit to ground a motion for security for costs. (*b*) A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff, resident in Wales, until security for costs has been given, where a satisfactory affidavit is made disclosing that the defendant has a defence upon the merits. *Clarke* v. *Croker*, 8 Ir. L. T. R. 96, approved. *White* v. *Carroll*, 8 Ir. L. T. R. 63; *Raeburn* v. *Andrews*, L. R. 8 Q. B. 118, disapproved.—*Hunt* v. *Smyth* (Ex.), p. 203, where the arguments and interlocutory *dicta* are reported *in extenso*—s.c. *sub nom. Corner* v. *Irwin* (reported merely on the point marked *b*), Ir. R. 8 C. L. 504.

11—Affidavit of merits, what sufficient.—*Chaigneau* v. *O'Gorman* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 179.

12—After defence filed; special circumstances.—*Oates* v. *Caraher* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 64.

13—After extension of time to plead.—*Oates* v. *Culkeen* (Ex.), NOTANDA, 8 I. L. T. & S. J. 64.

SERVICE OF WRIT OUT OF JURISDICTION—[*See* JUDGMENT, SETTING ASIDE, 2.]

1—The Courts of Common Law have jurisdiction to order that service of a writ of summons and plaint by serving the defendant in person, out of the jurisdiction, shall be deemed good service.—*Kelly* v. *Dixon*, Ir. R. 6 C. L. 25, discussed and (*dub.*, Fitzgerald and Barry, JJ.) followed.—*Reeds and Goodman* v. *Pipon* (Q. B.), p. 18.

2—The defendant executed in London, where he resided, a charter party, whereby he contracted with the plaintiffs that his ship Havre should proceed to Santander, load there 300 tons of flour, and deliver the cargo of 300 tons to the plaintiffs in Dublin; and he transmitted the charter party to the plaintiffs in Dublin, with a request that they would sign it, which they did, and returned it to him perfected. The ship was capable of loading 201 tons only, which were delivered to the plaintiffs in Dublin, where they paid the freight to the defendant's agent: *Held*, that the breach in not loading 300 tons in Santander and delivering them in Dublin was a [*portion of a?*] cause of action arising in Ireland (Fitzgerald, J., *diss.*): that a cause of action arose in Ireland for falsely warranting that the ship was capable of carrying 300 tons from Santander to Dublin. for fraudulently and falsely representing that she was capable of doing so: for negligence in not procuring a vessel sufficiently large for that purpose. *Per* Fitzgerald, J.—"Cause of action" means the act or omission constituting the violation of duty complained of, and not any part of the whole cause of action.†—*Macken and Son* v. *Ellis* (Q. B.), NOTANDA, 8 I. L. T. and S. J. 88—Ir. R. 8 C. L. 151.

3—Substitution of service by registered letter.—*Barrett* v. *M'Neight* (C. P.), NOTANDA, 8 I. L. T. & S. J. 64; (Q. B.) *ib.*

4—Substitution of service by registered letter.—*Kelly* v. *Mason* (Q. B.), NOTANDA, 8 I. L. T. & S. J. 472.

SETTING ASIDE JUDGMENT—[*See* JUDGMENT, SETTING ASIDE.]

* In *Byrne on Bills of Sale*, 2nd Ed., 23, a case of *Ross* v. *Atkins* is mentioned as being then *sub judice*, in which the above question arose. The result of that case may here be stated. The action was brought by the plaintiff for recovery of damages for an illegal distress made on certain lands in the county of Monaghan, of which he was tenant. The plaintiff fell into arrears of rent, and his landlord, the defendant, seized for the full amount, two and a-half years, and as the plaintiff was advised this distress was illegal, it being made for more than a year's rent, the distress was replevined and an action was brought for damages. The question came before the Court of Common Pleas, and was argued on a demurrer taken to the plea of the landlord by which the latter justified the seizure. No judgment was pronounced by the Court, but meanwhile the parties entered into a consent whereby it was agreed that the plaintiff should give up possession of the farm to the defendant on or before the 1st of March, 1869, the landlord agreeing to forego £200 of the rent, and to take the bond of the tenant for £100, which was the residue of the rent then due.—E. N. B.

† See *s.c.* 9 Ir. L. T. R. 18, where the arguments, and interlocutory *dicta*, are given *in extenso*.

* See *Benites* v. *The London Banking Association*, 8 I. L. T. & S. J. 118.—E. N. B.

† See *In re M., a Disputed Adjudication* per Lawson, J., as reported 8 Ir. L. T. R. 34, 77.—E. N. B.

Digitized by Google

SETTING ASIDE PLEADINGS—[*See* PLEADING.]

1—Plaint served on the 31st August and filed on the 24th October; motion on the 3rd November to set it aside for irregularity held to be "within a reasonable time" within the 179th General Order, 1854; and that the filing of the writ was not a "fresh step" within the meaning of that Order.—*Gill* v. *Prior* (C. P.), Ir. R. 8 C. L. 476.

2—A plea of contributory negligence averred that the plaintiff, by his own negligence, so far contributed to the *misfortune* complained of, that but for such negligence the said *misfortune* would not have happened, &c.:—*Held*, that the term "*misfortune*" was not ambiguous, and that the plea was not embarrassing.—*Smith* v. *M'Aulay* (C. P.), Ir. R. 8 C. L. 525.*

3—To the ordinary *indebitatus* counts for work, &c., done by an architect, the defendant pleaded, amongst other pleas, that the plans were to be fit for a special purpose, yet that they were negligently done, and of no value:—*Held*, double.—*M'Curdy* v. *Williams* (Ex.), Ir. R. 8 C. L. 177.

4—A count which founds the plaintiff's claim upon an express contract, and also upon a contract implied by law is double, and therefore embarrassing.—*Wardrop* v. *Dublin Distillery Company* (C. P.), Ir. R. 8 C. L. 295.

5—A count which complained that the defendant obstructed and prevented the plaintiff in the removal of certain goods of the plaintiff, set aside as embarrassing.—*Kelly* v. *Wilson* (Ex.), Ir. R. 8 C. L. 336.

SPECIAL JURY, certificate for; delay in application.—*Coote* v. *Meredith* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 449.

SPORTING DOGS, Qualification to keep—[*See* JUSTICE OF THE PEACE, 3.]

STAKEHOLDER—[*See* HORSE-RACE.]

STAMP ON NOTICE TO QUIT—[*See* "LANDLORD AND TENANT ACT, 1870," 3, 21.]

STATUTE OF FRAUDS—[*See* CONTRACT, 2.]

STATUTE OF LIMITATIONS—1—The plaintiff, a sub-tenant—*after* action brought by the mesne-landlord against him for his own rent—voluntarily paid in 1866 to the head-landlord a gale of head-rent then due by the defendant, the mesne-landlord; in 1867 he sought to deduct the sum so paid from the rent payable by him to the defendant, who refused to allow the deduction, and, in a second action for rent brought by him, successfully resisted the effort of the present plaintiff to rely upon that payment either as a set-off or as payment; subsequently, in 1868, the defendant claimed and obtained from the head-landlord credit for that gale of head-rent:—*Held*, in an action brought in 1873, (1) that the plaintiff was entitled to recover the sum so paid as money paid for the defendant at his request; (2) that the cause of action accrued, not in 1866 at the time of the payment, but in 1868 at the time of the adoption of it by the defendant, and, therefore, was not barred by the Statute of Limitations. *Per* Fitzgerald, J.—It may be that a tenant, who is authorised by s. 21 of the Landlord and Tenant Act, 1860 (23 & 24 Vict. c. 154), to pay the head-rent to the head-landlord and to deduct it when paying his rent to his immediate landlord, may maintain an action for its recovery if the deduction is refused.—*Ahearne* v. *M'Swiney* (Q. B.), Ir. R. 8 C. L. 568.*

2—Prior to 1866 a stream was conveyed by the defendants under and across their canal through two wooden tunnels, for which, in 1866, they substituted metal tunnels of less capacity; in consequence of which, after heavy rains, the stream, in 1873, flooded the plaintiff's lands adjacent to the canal:—*Held*, that the substitution of the smaller for the larger tunnels was in its inception an innocent act without either *injuria* or *damnum*, and only became tortious upon the subsequent flooding, and that the Statute of Limitations began to run from the time of the flooding in 1873.—*Whitehouse* v. *Fellowes* (10 C. P. N. S. 765) followed.—*Devery* v. *Grand Canal Co.* (C. P.), Ir. R. 8 C. L. 511.

SUBSTITUTION OF SERVICE—[*See* SERVICE OF WRIT OUT OF JURISDICTION.]

SUMMARY JURISDICTION—[*See* JUSTICE OF THE PEACE, 2, 3, 4, 7.]

SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT.

1—Leave to defend; affidavit in reply showing matter of replication.—*Rowan* v. *White* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 54.

2—Motion, on notice, for leave to defend; defective copy of affidavit served.—*Morrow* v. *Masline* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 554.

3—Motion for leave to defend; copy affidavit not served.—*Dillon* v. *Eastwood* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 448.

SUNDAY—[*See* ELECTION, 4.]

SURRENDER BY OPERATION OF LAW—[*See* LANDLORD AND TENANT, 2.]

"SURVIVOR," meaning of in Will—[*See* DEVISE, 3.]

TEMPORARY BAR—1—Waiver of; jurisdiction to order in Consolidated Chamber.—*Lord Castletown* v. *Wingate* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 179.

2—Waiver of; judge on circuit has jurisdiction to order.—*Comyn* v. *Comyn* (Cir. C.), NOTANDA, 8 I. L. T. & S. J. 375.

TIME, Computation of—[*See* ELECTION, 4.]

TRESPASS—[*See* EJECTMENT ON THE TITLE—GAME.]

VENDOR AND VENDEE—[*See* SALE OF CHATTELS—SALE OF LAND.]

VENUE—1—Change of; delay in moving for.—*Blayney* v. *Kirwan* (Con. Ch.), NOTANDA, 8 I. L. T. & S. J. 137.

2—Change of; county where cause of action arose.—*O'Toole* v. *Mulhall* (Ex.), NOTANDA, 8 I. L. T. & S. J. 375.

VERDICT, setting aside—[*See* MISDIRECTION—PAYING MONEY OUT OF COURT, 2—RIGHT OF APPEAL.]

WAY-BILL—[*See* CARRIER, 6.]

"WEIGHT FOR AGE"—[*See* HORSE-RACE.]

WILL—[*See* DEVISE.—EJECTMENT ON THE TITLE.]

WITNESS—[*See* DOGS REGULATION ACT.—EVIDENCE.—CORONER.—HABEAS CORPUS AD TESTIFICANDUM.]

WORK AND LABOUR—[*See* SETTING ASIDE PLEADINGS, 3.]

* See *s.c.*, 9 Ir. L. T. R. 6, where the *cases cited* are referred to, and the argument distinguishing *Weston* v. *Hunt*, 8 I. L. T. R. 115, is given.

* See *s.c.* 9 Ir. L. T. R. 26.

Digitized by Google

THE IRISH LAW TIMES REPORTS.

VOLUME VIII.

1874.

COURT OF QUEEN'S BENCH.

Reported by S. N. Elrington, Esq., Barrister-at-law.

Re Marshall.

(Before Fitzgerald, J., in Chamber.)

1874, Jan. 6—*Bringing up prisoners before coroners—* Habeas Corpus—*Special circumstances, what constitute—Prisoner desiring to be present at inquest, and to give evidence—Evidence, in criminal cases, of persons accused.*

Where a prisoner in custody under a magistrate's remand, on a charge of homicide, desires to be present at a coroner's inquest upon the body of the deceased, in order to hear the evidence and instruct counsel, or to be tendered as a witness according to circumstances, and it is not shown that the ends of justice would be thereby frustrated, the Court will, on the application of the prisoner or of the Crown, grant a writ of habeas corpus *to have the prisoner in attendance at the inquest, so as to be there examined, and so from day to day until the taking of the inquisition has concluded.*

Under special circumstances, as where the case against the prisoner depends on circumstantial evidence only, and the prisoner desires to be present at the inquest in order to hear the evidence and to instruct counsel or attorney, a writ of habeas corpus *will be issued, on such application, so as to have the prisoner in attendance at the inquest, although it is not sworn that the prisoner intends to be tendered as a witness, unless it is shown that the ends of justice would be thereby frustrated.*

Semble, *that where, without other special circumstances, the prisoner wishes to be present at the inquest, in order to hear the evidence, and to assist counsel or attorney, a writ of* habeas corpus *may be issued, so as to have the prisoner in attendance at the inquest from day to day.*

Re Reardon, 7 *Ir. L. T. R.* 193, *discussed and approved.* *Re* Cooke, 7 *Q. B.* 653, *distinguished.*

Suggestions, as to altering the law excluding the evidence of the accused in criminal cases; and, as to providing a summary mode of bringing before coroners' inquests prisoners who are in custody under magistrates' remands.

Motion on behalf of Anne Wyndford Marshall, a prisoner in custody in Kilmainham gaol, for a writ of *habeas corpus*, in order that she should be in attendance at a coroner's inquest, and so that she might there be examined as a witness, and so from day to day until the taking of the inquest and inquisition should be concluded.

The motion was grounded on an affidavit of the prisoner's attorney, who deposed that the prisoner was confined on a charge of having murdered Colin Donaldson, of the Royal Artillery, by administering poison to him; that on December 29, 1873, she was brought before one of the Divisional Justices for the Dublin Metropolitan District, charged with that offence, and that, some evidence having been given, the deponent applied to the magistrate to have the prisoner transferred to the coroner's court, where an inquest was about being held touching the cause of the death in question and the circumstances attending same, but that the magistrate stated he had no power to grant the application; that the prisoner was then remanded for a week; that, on the same day, one of the coroners for the county of Dublin held a Court, having empannelled a sufficient jury, at Portobello Barracks, for the purpose of inquiring when, how, and by what means Colin Donaldson came by his death; that the deponent, as attorney for the prisoner, attended said court, and, having there informed the coroner that she was suspected of having caused the death in question, made a request that the prisoner should be permitted to be present at the hearing, and asked for an adjournment of the inquest, in order that a writ of *habeas corpus* for the purpose might be applied for; that the coroner, thereupon, intimated that he would grant an adjournment for the purpose of having the prisoner present at the inquest, and accordingly, after some formal evidence had been gone into, the inquest was adjourned until January 7th, 1874, for which day the inquest was still pending; that deponent was advised, and himself verily believed that the presence of the prisoner would be necessary at the inquest, and that she should be so present from day to day until it was concluded, in order and so that the prisoner might be tendered as a witness, by the deponent, in relation to the subject matter of said inquest; that the coroner did not object to the presence of the prisoner, but on the contrary; that the prisoner, still in custody in Kilmainham gaol upon the magistrate's remand on said charge, herself desired to be present at the inquest, in order that she might be tendered as a witness and hear the evidence or make a statement according to circumstances; that the deponent was advised and, from his own knowledge of the circumstances of the case, verily believed that it would in no degree tend to frustrate the ends of justice to have the prisoner present and examined, and that this appeared to be and was, as he believed, also the opinion of the coroner and of the jury, and that nothing whatever to the contrary appeared either upon the hearing before the coroner or upon that before the magistrate. In reply, an affidavit was made by S. L. Anderson, Crown-Solicitor, stating that on January 5, 1874, the prisoner was again brought before the magistrate on remand, and that he had examined several witnesses against her on behalf of the Crown; that he then stated that he had closed his case for the Crown, and applied to have the prisoner committed for trial; that the prisoner's attorney then informed the magistrate, of the proposed application for a writ of *habeas corpus*, and contended that if the prisoner were committed for trial it might prejudice the application, requesting, for that reason, that she should be again remanded; whereupon, the deponent rejoined that he would not object to the remand, if the prisoner's attorney was advised that the final committal of the prisoner would in the slightest degree prejudice such application; that the magistrate, thereupon, said that he was quite ready to commit the prisoner fully for trial, but that, as the Crown did not oppose the application for a remand, he would grant it;

Digitized by Google

that the magistrate then said that the enquiry was practically concluded, and asked the prisoner whether she had any statement to make; whereupon her attorney replied that she would make no statement.

E. N. Blake (*J. O. Byrne* with him), in support of the motion.—We apply to the discretion of the Court for a writ of *habeas corpus* similar to that issued in *re Reardon*, 7 Ir. L. T. R. 193; but, if necessary, we would be entitled to a different form of writ. That was not a mere *habeas corpus ad testificandum;* but the Court would have jurisdiction to grant the writ *ad testificandum*, as the Coroner's Court is a Court of Record, *Thomas* v. *Chirton*, 31 L. J. Q. B. 140; *Garnett* v. *Ferrand*, 9 D. & R. 657. The affidavit here meets all the requirements pointed out in *re Reardon;* and the application comes within the principles there laid down.* The judges of the Court of Queen's Bench are premier coroners of this country, and it rests with them, not only to see that the coroners discharge their duties, but, to aid the Coroners' Courts in so doing. Apart from the consideration that the prisoner may or may not be tendered in evidence, her presence at the inquest should be facilitated. The attendance at the coroner's inquest of all the parties that were present at the death is a legal duty, Freeman 419. The inquisition is traversable, and may be set aside for irregularity, *R.* v. *Hethersall*, 3 Mod. 80, where the Court said that, "upon affidavit that the jury did not go according to the evidence,† or of any indirect proceedings of the coroner, they would grant a *melius inquirendum*." So, inquisitions have been quashed where the evidence was not on oath, *R.* v. *Coroner of Staffordshire*, 10 L. T. N. S. 650; so, on the ground of a juror, sworn after the inquest had commenced, having heard only part of the evidence,‡ *R.* v. *Coroner of Yorkshire*, 9 L. T. N. S 424. It is competent to the coroner to exclude counsel or attorney; and persons implicated should not, by reason of being under legal restraint although presumed to be innocent, be debarred access to the Coroner's Court when, unless present, though chiefly interested, they may never know, or be able to establish or avail themselves of such irregularities which may not appear on the face of the inquisition or proceedings. Witnesses may die before the trial, whose depositions have been taken while the person affected was absent, and precluded from cross-examining; and, since the distinction sometimes suggested, in this respect, between the depositions before a magistrate and those before a coroner is not warranted by the language of the Legislature, and is unfounded in principle, it may, when the question arises, be a matter of very grave and serious consideration whether the depositions before the coroner should be admitted at the trial, 3 Russ. Cr., 4th ed, 478; 2 Stark. Ev. 385; 2 Phil. Ev., 8th ed., 75. Be that as it may, the opportunity for cross-examination should be afforded to the prisoner, and of making suggestions to her advisers (*re Reardon, ante*), and especially so in a case of mere circumstantial evidence. The dead body, its symptoms, position, and the surrounding accessories are a main part of the evidence before the coroner, and a person implicated in causing the death should be present at the inquest *super visum corporis*, in order to become acquainted with and take advantage of this evidence; and besides, important suggestions of guilt or innocence may be derived from the very demeanour of the accused when face to face with the corpse, even without resorting to the obsolete ordeal of touch. Although not formally accused at the inquest, a suspected person is gravely affected by the coroner's inquisition. By it he is rendered "under the spot of delinquency, and meet to be looked upon as under the suspicion of the law, who formerly was but under the suspicion of some particular man," Bacon Treat. Laws and Gov. Eng. 57. Upon it he may be committed to prison, put upon trial, convicted and attainted, or outlawed and his goods forfeited. And, even in a civil case, the finding of a coroner's jury throws the burden of proof on the person implicated, or his representatives or others claiming through him, and alleging contrary to the verdict, *Prince of Wales Assurance Co.* v. *Palmer*, 25 Beav. 605. It is an indispensable requirement of law and natural justice, not only that both sides should be heard, but, that each should have an opportunity of hearing what is urged against him, and especially when the consequences are so vital and affect liberty, *re Brook*, 16 C. B. N. S. 403; *Maubourquet* v. *Wyse*, Ir. R. 1 C. L. 471; *Ex p. Kinning*, 4 C. B. 507. The coroner's inquest ought in all cases to hear the evidence upon oath, as well that which maketh for as that which maketh against the prisoner, and the whole evidence ought to be returned with the inquisition, 2 Hale P. C. 62; *R.* v. *Scorey*, 1 Leach 43; but, if the prisoner is not present to hear the evidence, she cannot know whether it is criminating, and cannot be prepared to answer. Moreover, the prisoner has a right to give evidence personally, *Wakeley* v. *Cooke*, 4 Ex. 616; *R.* v. *Colmer*, 9 C. C. C. 506. On these grounds, the writ should go in the double aspect, in like manner as in *re Reardon, ante*, since it does not appear that the ends of justice would be thereby frustrated.

The Solicitor-General (*Law*), on behalf of the Crown, *contra*.—Uniformity should prevail in the English and Irish practice in relation to this subject. The settled practice in England is that a writ of *habeas corpus* in such cases will not be issued, unless it appears to be substantially necessary to the ends of justice. The report of *re Reardon*, 7 Ir. L. T. R. 193, is manifestly accurate; and it is remarkable that there the writ was not granted upon the materials at first before the Court, and it was held to be necessary to supplement the prisoner's case by a positive affidavit, that it was intended to tender the prisoner as a witness, and to examine him. Notwithstanding this, as a matter of fact, Reardon was not examined afterwards. [*Blake.*—The jury stopped the case before he could be tendered, and acquitted the prisoner on the evidence adduced. He was, subsequently, acquitted before the magistrate.] In *re Cooke*, 7 Q. B. 653, the writ was refused, although the coroner swore that the jury were unanimously of opinion that they could not find a verdict unless the prisoner was produced for two purposes—first, to be identified; next, to be examined. The prisoner, in the present instance, refused to make any statement before the magistrate, and all the probabilities are that she has no *bonâ fide* intention of tendering her evidence at the inquest, and that the suggestion now put forward is merely colorable.

[FITZGERALD, J.—In *Reardon's* case the writ was not merely *ad testificandum*, but was designedly framed with a double aspect, so that the prisoner should also be present at the inquest from day to day until its termination.]

It could only be granted *ad testificandum*, and there

---

* The Solicitor-General was here called upon, as a matter of convenience, to intimate the views of the Crown before the argument proceeded further. But it has been deemed better, in this report, to give the arguments in their natural order.

† *Sed vide R.* v. *Hertford*, 3 E. & E. 135.—[ED. *Ir. L. T. R.*]

‡ See 8 IR. L. T. 18.

Digitized by Google

is no authority for issuing the writ for the collateral purpose of enabling the prisoner to be present. The writ *ad testificandum* would not be granted for the purpose of enabling the defendant in an action to be present, in order to help his legal advisers, or to conduct his own case at Nisi Prius, *Major* v. *Barton*, 1 Ir. Jur. N. S. 468; *ex. p. Cobbett*, 3 H. & N. 155.

[Fitzgerald, J.—Those were civil cases. Is there any recorded case where, when a person had been directly charged, as in this case, an application for a *habeas corpus*, for the purpose of having the accused present at the inquest, has been refused?]

There is no case in which the presence of the prisoner was alleged to be necessary, except the cases of *Re Cooke* and *Re Reardon*.

[Fitzgerald, J.—In *re Cooke* the application was made, not in the prisoner's interest nor with his consent, but, on behalf of the coroner. In *re Reardon* the present contention was not pressed, and it was unnecessay to decide the question here raised.]

The question comes to this: is it desirable that in all cases prisoners should be brought before coroners' juries, and should the writ issue merely in order to satisfy a disposition or desire of the prisoner to be present? If so, that is a fit subject for legislation; but the existing law should not be strained in order to effect that object. The arguments now advanced would apply equally to every case whether the prisoner wished to be examined or not.

[Fitzgerald, J—In what respect would it interfere with the administration of justice to have the accused present at the inquest?]

The question is, not whether or not the prisoner or her advisers consider that the ends of justice would be frustrated, but, whether the writ is required in the interests of justice. Were it so required, it would be the duty of the Crown to apply for it. In this case, a direct personal charge, inculpating the prisoner, has been made and completed before the magistrate, who is now prepared to commit the accused for trial. What object could she gain by going before the coroner? No matter what she did—no matter what case she went into—she would return to the police-court, where the magistrate would, on the informations sworn, send her for trial. What useful end is to be gained in the interests of justice by yielding to this application? She refused to make any statement before the magistrate; and, if tendered as a witness before the coroner, it is improbable that he will allow her to be examined and cross-examined. The mere fact that she desires to hear the evidence is no reason for granting the writ, as there is no doubt that the coroner can carry on his enquiry in her absence. It is said that this would be against natural justice, but that is not more so than the right of the coroner to hold his Court in private. As well might an accused insist that no bill should be found by the grand jury, unless he or she heard the evidence. It is, surely, not for the interests of justice that the prosecutor's case should be heard before a magistrate, and the defence before a coroner, in whose Court every question that was asked should be answered, and where great latitude is allowed.

[Fitzgerald, J.—I have always considered that the more latitude allowed in these preliminary courts the better for the course of justice, as well as for the accused. Could the coroner refuse to receive her evidence if tendered? I should say that, in *Cooke's* case, the coroner would have had no authority to have the accused brought forward to be examined against the wish of the accused himself. But it is a very different case where the accused tenders herself as a witness.]

No person who appears to be implicated by the previous evidence ought to be examined by the coroner on oath; 1 Hayes C. L. 199. Here it is not sworn even that the applicant's evidence would be material. That omission is of itself a substantive objection to granting the writ *ad testificandum;* Corner's Crown Pr. Is it shown to be material for the interests of justice that she should be tendered as a witness? There is no reason why she should be allowed to shift herself from the magistrate's to the coroner's court, merely on the allegation that she might give evidence in the latter; and, no matter what verdict the coroner's jury pronounce, the magistrate, acting on the informations before him, will commit the prisoner.

[Fitzgerald, J.—Has not the prisoner an interest still in the verdict of the coroner's jury? Should the grand jury ignore the bill sent before them from the magistrate's inquiry, she might still be put upon trial on the verdict of the coroner's jury. I, myself, have known a case in which the party was put upon trial on a coroner's inquisition alone.]

On the other hand, your lordship may remember a case which came before you at Downpatrick, in which a man was convicted of murder who had himself sat, as foreman of the jury, upon the coroner's inquest in reference to the murder. Considering the constitution of the coroners' courts, there is frequently but too much probability of error.* The jury can return an open verdict

[Fitzgerald, J.—Is the coroner's court to exist? If it is, I ought to assist its inquiries in every way. I know of no case in which the application of an accused person, saying by her attorney that she desires to be present, has been refused.]

The evidence is already complete before the magistrate; she will be committed and put upon her trial, no matter what may be the finding of the coroner's jury; and to produce her at the inquest would in no degree further the administration of justice. The object of an inquest is to ascertain the cause of death; to affix guilt on any person is not a primary object, but a mere incident, which may or may not become expedient; but, here, there is no necessity for the verdict to proceed to point guilt to the prisoner upon a charge already investigated before the magistrate, and there is no necessity for her presence. In England, as here, an illegal practice was formerly pursued in the metropolitan district, of sending prisoners, when remanded by the magistrates, before the coroner, pending the final decision of the former. But, in 1868, the practice came under the notice of the Privy Council; it was pronounced by the law officers to be wholly illegal, and it was abandoned. Since then, in no case has it been held that the writ of *habeas corpus* was to be had for the mere asking, and to enable the prisoner to look on, as it were, at the Coroner's Court. A like practice until recently existing here has been found unwarranted, and has now been abandoned. If, in a case in which there is direct inculpatory evidence, the police were not to arrest until the coroner had held his inquiry, there would be much difficulty in securing the accused subse-

* See 1 Tay. Med. Jur. 14, 16; and a paper by Dr. Mapother, on "Consolidation of Sanitary and Medico-legal Affairs, and the Abolition of the Coroner's Court." (Statist. Soc., May, 18 8). And note, that the Criminal Law Commissioners (1848) reported in favour of discontinuing the coroners' inquisition as a mode of formal charge.—[Ed. *I. L. T. Rep.*]

Digitized by Google

quently.* If the course here contended for is sanctioned, it will follow that in no case, where the prisoner under a magistrate's remand asks to go before the coroner, can there be a refusal to grant the writ, and that equally in the country as in the city. There is no ground substantially put forward here that would not apply to every case; and the Crown are only anxious to ascertain exactly what course should henceforth be adopted.

E. N. Blake, in reply.—If the office of coroner (not merely inquisitorial, but to a certain extent judicial, *R.* v. *Seager*, 29 L. J. Q. B. 257) is to exist, it ought to be aided, and rendered less liable to error. The magistrate's functions are essentially different. To hold that the coroner's jurisdiction could be practically ousted by an inquiry held in the inferior court of the magistrate, and that the finding of the inquisition should not be aided as a mode of formal charge, would be to hand over the prerogative of the coroner and his jury to a single magistrate or country justice, holding office at the pleasure of the Crown, and removable without a reason assigned. By so doing not only might public interests, in possible cases, be endangered, and the requirements of justice disappointed, but it would work hardly on an accused person to substitute the discretion of a single police magistrate for that of a jury of twelve or twenty-three men. The duty of deciding on the likelihood of the truth of criminal accusations is one of especial gravity, seeing that the intervals between the sittings of the Criminal Courts leads to a lengthened preliminary detention of the accused, who remains subject to the shame and suspense attendant on the imputation; while, if the grand jury throw out the bill sent up on the magistrate's committal, the accused would not have the redress of an acquittal on a public trial, whereas, on a coroner's inquisition, the accused could be put on trial without a finding by the grand jury. Very unfounded charges are sometimes supported by the police with a peculiar *esprit du corps*, and it is the duty of the police magistrate to commit upon a mere *prima facie* case being made out against the accused. Before the coroner a full investigation could be had, and all suspicions dissipated by the verdict of a jury, without subjecting to a formal charge a person incautiously suspected. The suspected person ought, also, to have the opportunity of objecting to particular jurors on the coroner's inquest; and should be entitled to a complete investigation before the jury in the first instance, instead of before a single police magistrate, who must permit the machinery of the criminal law to be put in motion upon mere *prima facie* evidence of guilt. Bringing suspected persons in the first instance before the magistrates defeats these advantages, and is contrary to the spirit of the law. It is not the practice in England. There, in practice, the accused is usually brought before the coroner in the first instance now; and is subsequently brought before the magistrate for a special reason, *R.* v. *Spoor*, 11 C. C. C. 550. Lord Brougham said, "send no party to two Courts, when one can afford the remedy;" here, without any special reason applicable to this country or this case, and although there was *no* "direct inculpatory evidence," the prisoner has been subjected to the vexation and expense of a double inquiry. There is no analogy between the inquiries of the grand jury and of the coroner's jury. The grand jury is a secret tribunal, for charge and not for defence, and the accused would have no right to examine witnesses, or to insist on being present. It is true that the coroner may, upon sufficient reasons, hold the inquest in private; but the person to decide upon this is "the coroner, and the coroner alone," *Garnett* v. *Ferrand*, 9 D. & R. 670. He would, however, have no right to prevent a statement being made, merely because it might criminate the person making it, *Wakeley* v. *Cooke*, 4 Ex. 516. This Court is now asked, in effect, to exclude the prisoner from the Coroner's Court, and to reject her evidence at the coroner's inquest—matters which ought to be left subject to the coroner's discretion, to be exercised upon the full facts before him, and which cannot be now before this Court. In *ex p. Cobbett*, it was merely held that the party was not entitled to the writ as of right.* The application was not for the purpose of enabling the party to give evidence, but for the purpose of identification, in *re Cooke* (*per* Williams, J., 7 Q. B. 660); and there it was made on behalf of the coroner. This application is not made on behalf of the coroner, or in collusion with him as apparently suggested.

[*The Solicitor-General.*—I did not use the word collusion. We owe a great deal to the coroner's tribunal, and I am sincerely anxious that coroners' inquiries should be conducted in a way subservient to the ends of justice. But the applicant refused to make a statement before the magistrate, and it is highly improbable that the coroner will receive her evidence.]

[FITZGERALD, J.—I did not understand that collusion was imputed. But I do understand that you appear with the approval of the coroner.]

Certainly; his Court has been adjourned for the purpose of this application—and his approval brings us within the principles laid down in *re Reardon* and *Garnett* v. *Ferrand*. The prisoner herself wishes to be present, "in order that she may be tendered as a witness, or make a statement according to circumstances." There would be less probability of the coroner's rejecting her evidence were she not, by the course now adopted, presented before him as an accused person, and one whom the magistrate is about to commit for trial. But, apart from that, and whether her evidence be material or not, we mainly rest upon the

* At common law, coroners could inquire of felonies, but they were restrained by Magna Charta from holding pleas of the Crown in which there is both accusation and answer by the accused. Yet, still, a coroner is a conservator of the peace in relation to all felonies, and may arrest, or cause another to arrest any felon, 2 Hale 88; 4 Step. Com. 411, ed. 4; 1 Burns J. 295. "Coroners are conservators of t' e Queen's peace, and become magistrates by virtue of their election and appointment. This privilege, independently of their mere official duties, they are entitled at this day to exercise; and are empowered to cause felons to be apprehended, as well those that have been found guilty after inquisition as those suspected of guilt, or present at the death, and not guilty; as also burglars and robbers, in respect of whom no inquisition can be taken (Mir. c. 1, s. 13; 1 Brit. 8, ed. by Nichols; Lamb. Eiren. 378). And this, says Lord Hale (P. C. 107), appears evidently by the statutes 3 Edw. I., c. 9, and 4 Edw. I., *officium coronatoris*; and with this agrees the common usage at this day; for many times the inquest are long in their inquiry, and the offender may escape if the coroner stay until the inquisition is delivered up. And the coroner may now bind any person to the peace who makes affray in his presence (1 Bac. Abr. 491)" Jervis on Cor. 30, 3rd ed. (*acc.* Sewell on Cor. 23). As to committing after inquisition, see Arch. Cr. Pl. 122, 7th ed ; Jervis on Cor. 303. See, as to the duties of constables and magistrates immediately upon arrest, 1 Burns J. 296, 304; *Wright* v. *Court*, 4 B. & C. 596, 6 D. & R. 623; *Davis* v. *Capper*, 10 B & C. 28, 5 M. & R. 53; *Edwards* v. *Jervis*, 7 C. & P 542.—[ED. *I. L. T. Rep.*]

* See also *Buckeridge* v. *Whalley*, 6 W. R. 180.—[ED. *I. L. T. Rep.*]

Digitized by Google

prisoner's right (subject to the discretion of the Court) to be present, where the coroner does not object, and where the ends of justice would not be frustrated, in order to hear the evidence, and to assist her counsel or attorney, especially as the case against her is one wholly dependent on circumstantial evidence.

FITZGERALD, J.—I quite concur in the statement of the Solicitor-General that, if there is to be a change in the law, it should be made by the Legislature. I confess, I think that the present mode of proceeding presents to the public rather an unseemly aspect, and is liable to be misrepresented; and therefore I have not any hesitation in saying that, in my judgment, some alteration of the law is required, in order to render unnecessary such applications as the present. If the Coroner's Court is to exist as it stood originally, we are all bound to give it every assistance. It is not for me to say whether it should be abolished or amended, or subjected to any, or what regulations. Up to a very recent period, a course had been adopted which, no doubt, was unlawful. The magistrates made an order to take an accused person before the Coroner. The law officers of the Crown expressed the opinion that the proceeding was contrary to law, and no doubt it was so; and, in consequence, the case of *ex-parte Reardon*, 7 IR. L. T. R. 193, came before me. The Coroner's is a very ancient court I believe I may say that it existed before such officers as an Attorney-General or Solicitor-General were known. So long as this ancient court exists, it must hold its inquiries. Its sitting is not merely optional with the Coroner; and the proceedings before police magistrates do not interfere with nor suspend the inquiry of the Coroner. No matter whether the magistrate committed for trial or not, it is the duty of the Coroner to hold an inquest whenever a case of suspicious death occurs, and to inquire whether any person or persons were chargable with the death of the deceased. If a crime is committed, and the party by whom it was alleged to have been committed flies from justice, the police are informed by the authorities of the transaction, a warrant is issued, the police are properly called into requisition, and the accused is intercepted and made amenable to justice. The real question is, whether a short, summary mode should not be adopted, either with the consent of the Attorney-General, or by a warrant issued by the magistrates, or otherwise, by which an accused person, when it happens that he or she is in custody on a magistrate's warrant, could be conveyed before the Coroner's Court, where such a course is proper and desirable.* One of the grounds on which the present application has been made is similar to that which was relied on in *Reardon's* case, upon which I have explained my views. In dealing with this application, I must entirely exclude from consideration what took place before the magistrate. If I were to determine that the jurisdiction of the Coroner could, in the slightest degree, be affected by the proceedings before the magistrate, it would have a tendency to raise an unseemly conflict, and to cause, as it were, a rush between two jurisdictions to determine which of them should have the charge of a case. Besides, I cannot in this case hold that the inquiry of the magistrates has closed. The magistrate has remanded the prisoner, but, though he might have been prepared to pronounce judgment on the last day, it is still quite open to him, on the next day, to hear fresh evidence on the part either of the prosecution or of the accused, and to alter the opinion he had entertained. It is not for me to say, should the prisoner be tendered as a witness before the coroner, whether he should or should not refuse to receive her evidence, nor is it for me to inquire with what object she might be tendered as a witness before the Coroner. It is open to her advisers, should they think fit, to tender her before the Coroner as a witness, and I cannot say, if her evidence is offered, that it will not be material. I, for one, have long entertained the opinion, and have repeatedly expressed it from the Bench, that, at the final trial before the judge and petty jury, prisoners should be allowed to tender themselves and be received as witnesses, if they so desired it; I believe that there is a great defect in the law as it stands at present, and I think that an alteration in the law to that effect should be made, as it would be most conducive to the due administration of criminal justice. The adviser of the prisoner has sworn that it would be necessary for the prisoner to be present at the inquest before the Coroner, in order that she might be tendered as a witness; and I must treat the application, with that view, as *bonâ fide*. That course, if adopted, will be taken at the peril of the party; and if I were sitting as a Coroner, although I would not call upon her to be examined, I should be very slow to refuse to receive her evidence, if it were offered. It might affect her prejudicially, or it might have a contrary effect. I do not know anything of the general facts of the case, except what I have seen in the newspapers, but I understand it to be a case of what is called circumstantial evidence. The charge is one of administering poison. The evidence went to show that the accused purchased the poison—that the deceased met his death by poison of the same description as that which had been purchased—that she had been in his company shortly before the alleged murder, and that she made some misrepresentations when inquiries were made to her. This is a strong circumstantial case, but it is just of such a character that it might be desirable that the prisoner should be present at the investigation before the Coroner, though it might be considered by her legal adviser inexpedient to tender her for examination. Therefore, if the application rested alone on the ground of the prisoner's desire or that of her advisers that she should be tendered as a witness, I should feel very great difficulty in refusing a writ of *habeas corpus ad testificandum*. But the application here is made, also, on other grounds. In *Reardon's* case I expressed an opinion, to which I still adhere, that it was desirable *on all grounds* that the prisoner should be brought before the Coroner's Court, and that I was bound to assist an application for that purpose, if, in point of law, it was competent for me to do so. In the course of the argument in that case, it was admitted by Mr. Johnson, as counsel for the Crown, that the Court could, under special circumstances, issue the writ in aid of the defective powers of an inferior Court. This I regard as a case coming within the principle there admitted. I am of opinion that, in a case where the party accused claims the right to be present at the Coroner's inquiry in order to hear the evidence received against himself or herself, and to assist his or her counsel and attorney, I am bound to grant the application for that purpose. The Solicitor-General has argued that the decision would apply to every case throughout the country—I quite agree with him, and I am not afraid to take that view of it. I have not any doubt that, in every proper case in which the law officers of the Crown should think it right to do so, they would, themselves, take measures to have a prisoner brought before the Coroners' Courts. I am quite sure that, in this particular case, if the Solicitor-General considered it right, he would have advised that the present application should be made at the expense of the Crown. In cases in which the Crown would not make such an application, it would have to be made at the risk and expense of the prisoner, and if I should order the writ in the present case it would be issued at the expense of the party accused. Generally speaking, the very last place in which persons desire to be is in a Coroner's Court—it is the place they most wish to avoid, and if the police would allow them they would keep out of it altogether. So that I do not think it likely to be a matter of frequent occurrence that persons would incur the expense of an application for a *habeas corpus* for the mere pleasure of being present at a Coroner's inquiry. In country cases the expense of transmission, also, would have to be borne by the party seeking the writ. Therefore, I do not think that there could be any danger of abuse resulting from the decision which I am about pronouncing. It

* Compare 14 & 15 Vic 93, 15, enabling justices at Petty Sessions, by warrant, to order prisoners to be taken before a justice of the county in which it is alleged that the offence was committed.—[ED. *I. L. T. R.*]

Digitized by Google

appears to me, upon two grounds, that the present case comes within *Reardon's* case. First, it is a case where the attorney swears in his affidavit that he is advised to tender this woman as a witness——

The *Solicitor-General*.—He does not swear that, or that he *intends* to examine her. He says, "I am advised, and myself verily believe, that the presence of the said Anne Wyndfor Marshall will be necessary at the Coroner's inquest"——

Byrne.—In order that the prisoner may be tendered as a witness.

FITZGERALD, J.—Even upon the statement contained in the affidavit, I would feel great difficulty in refusing the application; and I have already expressed the opinion, in this and other criminal cases that it would be the proper course to enable a prisoner to have the option of tendering herself or himself to be examined; and I, also, think that the special circumstances of this case render it advisable that the prisoner should be present. Her presence might aid in the administration of justice, in enabling the Coroner's jury to find not merely a verdict—for I do not narrow the administration of justice in the Coroner's Court to that—but a *true* verdict, whatever that verdict might be. It is not a case resting upon direct evidence of the crime having been actually seen committed; the evidence is circumstantial, and it is one of those cases in which it is desirable that the party accused should be present at the inquest. I therefore feel bound to grant the writ (to be of the same form and nature as in *Reardon's* case), again expressing the opinion that some alteration in the law is desirable, so as to render unnecessary this very expensive kind of application. Some short and summary process might be devised to meet such cases as the present, and in order to aid in the administration of justice.

Motion granted.

Attorney for the applicant, *P. A. White*.
Attorney for the Crown, *Mathew Anderson*.

COURT OF COMMON PLEAS.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before MONAHAN, C.J., KEOGH, MORRIS, AND LAWSON, J.J.)

WILLIAMS v. HEPENSTALL.

1873, June 7, Nov. 19.—*Action by administratrix—Non-liability of assets of intestate to seizure, on foot of judgment marked against administratrix in her own right.*

The widow of an intestate remained in the possession of his assets for two years without taking out administration, and then took out administration, and revived and continued, as administratrix, an action which had been pending at the death of her husband. She was non-suited in the action, and judgment was marked against her in her own right.

Held, *that the sheriff could not give a good title to a purchaser to a chattel real forming portion of the assets of the intestate, and sold under a* fi fa *issued against her for the costs of the non-suit.*

Ejectment tried before Whiteside, C.J., at the Wicklow spring assizes, 1873, for two houses. John Hepenstall, down to his death, which took place on the 26th of October, 1870, was in possession of these houses, as tenant from year to year to Mr. Gunn Cunningham. The plaintiff, William Williams, had a house next door to John Hepenstall, who was a licensed publican. John Hepenstall was husband of the defendant, Julia Hepenstall. In March, 1870, he commenced an action of trespass against the now plaintiff Williams, and after defence filed took no further steps. His widow remained in possession of his assets. In July, 1872, she took out letters of administration to her deceased husband and revived (by suggestion) and continued the action as administratrix. It came on for trial at the Wicklow summer assizes, 1872, when she was non-suited. Williams obtained judgment against the administratrix *de bonis propriis* for his costs, which amounted to £62 13s. 9d. A writ of *fieri facias* was issued thereon, under which the sheriff seized her interest in the houses in question, and sold and made a conveyance of the same to Williams, on 3rd of Sept., 1872. The writ of *fieri facias* was directed to the sheriff in these words, "That off the goods and chattels of Julia Hepenstall, administratrix of John Hepenstall, deceased, you cause to be levied, &c." Upon the writ was endorsed, that the within named Julia Hepenstall is a shop-keeper and spirit dealer in the town of Wicklow, within your bailiwick, wherein she has goods and chattels sufficient to satisfy the writ. The purchase money, £90, was paid for the houses. The name which was left over the door was the same which was there in the lifetime of John Hepenstall, namely, "J. Hepenstall."

Hemphill, Q.C., called on his Lordship to direct a verdict for the defendant, or for a non-suit, on the ground that the premises which were the subject of this action formed portion of the assets of the late John Hepenstall, and could not have been legally seized or sold under the judgment of non-suit or the *fieri facias*, and that the conveyance of the sheriff to the plaintiff conveyed no title. That the judgment was entered as it alone could be, under the 157th section of the Common Law Procedure Act, 1853, against Julia Hepenstall in her own right, and the *fieri facias* was in conformity therewith, and only authorized a levy off the goods of the said Julia Hepenstall in her own right, and not off those of which she was possessed as administratrix of her deceased husband.

His LORDSHIP declined so to direct; and he directed a verdict for the plaintiff, but reserved leave to have the verdict entered for the defendant in case the Court should be of that opinion. A conditional order having been obtained in pursuance of the leave reserved,

Edward Gibson, Q.C. (with him *John G. Gibson*) for the plaintiff, showed cause.—It has been held that the goods of a testator in the hands of his executor cannot be seized in execution on a judgment against the executor in his own right, but there the goods had not been actually sold: *Farr* v. *Newman*, 4 T. R. 621. But where the goods of the testator, in the hands of an executor, had been actually sold under a *fieri facias* for a debt of the executor, it was held that the property passed by the execution and could not be afterwards seized under a writ sued out by a creditor of the testator: *Whale* v. *Booth*, 4 T. R. 625. Where the executrix used the goods of the testator as her own, and afterwards married and treated them as her husband's, it was held she could not, in an action by the husband and wife *jure uxoris*, object to the same being taken in execution for the husband's debt: *Quick* v. *Staines*, 1 B. & P. 293.

Hemphill, Q.C. (with him *Short*) for defendant contra.—This is a question as to how far the plaintiff has made out a title to the premises. The plaintiff must show that the sheriff seized something which the law enabled him to seize, and to give a title to. By 16 & 17 Vic., c 113, sec. 157, judgment shall follow upon the verdict in favour of, or against the person making such suggestion, as if he were originally the plaintiff. By 3 & 4 Vic., c. 105, sec. 56, in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought, or a judge of any of the

Digitized by Google

Superior Courts shall otherwise order, be liable to pay costs to the defendant in case of being non-suited, or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right, upon a cause of action accruing to himself, and the defendant shall have judgment for such costs, and they shall be recovered in like manner." Therefore, the judgment could only be against the administratrix in her own right. These houses were vested in Julia Hepenstall, as administratrix; the fact of her remaining so long in possession of the houses could not divest her of the character of administratrix by which title she held them. They were the assets of her husband. Under a *fieri facias* against a person in his own right, property cannot be seized which belongs to that person in his administrative capacity. The grant of administration is the foundation of the title. Where the goods of an intestate had been taken possession of, and used by the administrator for three months after the death of the intestate, it was held that they could not be taken in execution for the debt of the executor: *M'Leod* v. *Drummond*, 17 Ves. 168; *Kinderley* v. *Jervis*, 22 Beav. 23. The second marriage made all the difference in *Quirk* v. *Staines*, 1 B. & P. 293. They cited *Foster* v. *Bates*, 12 M. & W. 226; *Thorpe* v. *Stallwood*, 5 M. & Gr. 760; *Gaskell* v. *Marshall*, 1 M. & R. 132; *In re Thomas*, 1 Phill. C. C. 159.

Gibson, in reply.

Cur. adv. vult.

MONAHAN, C.J.—We have here had to consider carefully both the authorities cited, and also the facts of this case. It appears that, prior to 1870, John Hepenstall occupied two houses in Wicklow, as tenant from year to year, to Mr. Gunn Cunningham, and in March, 1870, having had some cause of complaint against William Williams, for an injury done to these premises, he commenced an action against him. In October, 1870, Mr. Hepenstall died, and the action proceeded no further till 1872, when his widow, Mrs. Julia Hepenstall, who had remained in possession of the houses, was anxious to continue the action, and for that purpose she obtained letters of administration and revived the action. She brought her case to trial at the summer assizes, in 1872. She was non-suited, and Williams taxed his costs, and sued out an execution against her, naming her as administratrix of her husband. The sheriff having seized, and advertised for sale, these two houses, sold, and executed a conveyance of them to Williams. Williams then brought an ejectment for them. The widow insisted that the sheriff had no right to sell these two houses.

The question to be decided, which was argued before us at great length, is, whether she had not, by her acts, made the property her own, and if so, whether the sheriff had not a right to sell it. There are two cases expressly in point, which were not cited at the Bar. In *Lyons* v. *Muldarry* (Hayes, 534) trover was brought for oats which had been sold to the intestate to be paid for on delivery; the oats were delivered, but not paid for; the purchaser died; and the defendant, with the consent of the plaintiff—who was the intestate's widow—carried off all the oats found upon the premises, as well that which he had previously sold to the intestate as a quantity which had been purchased from another person. And in that case Joy, C.B., said:—"Every principle of justice is secured by holding that the doctrine of relation prevails for right and not for wrong, and a person cannot dispose of the goods of an intestate and afterwards give validity to his act by taking out administration." In a similar case, which came before myself, I said, "There is no question. The law is perfectly settled that the acts of a party before taking out administration are not binding when he becomes administrator in fact. As to *Whitehall* v. *Squire*, Carth. 104, it is over-ruled in *Lyons* v. *Muldarry*, Hayes' Rep. 530" (*Lysaght* v. *Benison* 8 Ir. Jur. N. S. 368). The present case cannot be distinguished from those two cases, and a verdict must be entered for the defendant.

Cause shown disallowed.

Attorney for plaintiff, *Burkitt*.
Attorney for defendant, *Goff*.

(Before MONAHAN, C.J., KEOGH, AND LAWSON, J.J.

ROCHE v. ROCHE

Nov. 21st, 1873.—*Ejectment on the title—Acceptance of a less rent by the head landlord—Evidence to prove a surrender-in-law—C. L. P. A*, 1853, *sec.* 204.

The plaintiff, in an action of ejectment on the title, produced an old lease of the premises for which the ejectment was brought, to his grandfather under whom he claimed; the plaintiff had left the country, and his mother, who had married the defendant, remained in possession as agent for her son, for a very long period; a lesser rent than that originally reserved had been received by the head landlord.

Held, *that this did not amount to a surrender-in-law of the original lease, and that the plaintiff was, in consequence, entitled to recover.*

This case was tried at the Limerick Assizes, before Deasy, B. The action was an ejectment on the title, brought by the plaintiff, William Roche, against Patrick Roche, to recover part of the Lands of Jamestown, in the county Limerick, comprising 16a. 39p. The facts proved in evidence, as appeared by the learned Judge's report, were as follows:—The plaintiff produced a lease, bearing date 1st of April, 1815, from John Crowe to William Roche and David Roche, of the lands of Jamestown, at a yearly rent of £3 12s. per acre, for three lives. William Roche, mentioned in the lease, was grandfather of the plaintiff. The rent of the land was paid half by William Roche and half by David Roche. On the death of his father, the plaintiff came into possession of a moiety of the lands. The plaintiff left this country for Australia, when only sixteen years of age, leaving his mother in possession of the lands as his agent. She received money from the plaintiff, from time to time, to assist her in carrying on the work of the farm. The plaintiff's mother married the defendant, who lived with her on the land. She paid a rent of £2 per acre to the landlord. It was proved by the agent of the landlord that the larger rent, reserved under the lease of 1815, had not been paid within a very long period. The lives in the lease had expired, subsequently to the service of the writ, but the plaintiff continued the action under 16 & 17 Vic. c. 113, sec. 204 (C. L. P. A., 1853), which provides for cases where the title of the plaintiff appears to have existed at the time of service of the writ, but has expired before the time of trial, and enacts that he shall, notwithstanding, be entitled to a verdict, and to a judgment for his costs. At the trial, the learned judge directed a verdict for the defendant, reserving leave to the plaintiff to have it changed into one for him, if he should have so directed. A conditional order having obtained in pursuance of the leave reserved,

James Murphy, Q.C. (with him *Naish*), for the defendant, showed cause.—There was no evidence that the father of the plaintiff was the eldest son of William Roche, the lessee. The plaintiff has produced no evidence that the lands were held under the lease. It was not proved that the rent reserved in that lease was ever paid, or that the lease was ever acted on. The mode in which the lands were held was of a very exceptional character. All the family lived on the farm, and none

Digitized by Google

of them was more in possession than the others. The payment of £2 per acre was evidence of a tenancy from year to year which subsisted between the plaintiff's mother (who is also wife of the defendant), and the landlord. [MONAHAN, C.J.—But there is no evidence of the surrender of the old lease]. No; for there was no evidence of the payment of the original rent under the lease at all.

O'Riordan, for the plaintiff.—The evidence produced by us was sufficient. We showed who the original lessees were, and we showed that we were in possession for more than thirty years back. The rent paid was a reduction of the rent reserved under the original lease.

MONAHAN, C.J.—We think there was some evidence to go to the jury, and that being so, we think that the plaintiff is entitled to a verdict. We think that the defendant was not entitled to the direction of the learned Baron. The verdict must be entered for the plaintiff.

Cause shown disallowed.

Attorney for the plaintiff, *Moriarty*.
Attorney for defendant, *Ryan*.

CONSOLIDATED CHAMBER.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before KEOGH, J.)

GREHAM v. KAVANAGH.

1873, Dec. 5.—*Practice—Interpleader—Defendant resident out of jurisdiction—Security for costs.*

The Court refused to order that an execution-creditor, named as defendant in an interpleader issue, should give security for costs.

A summoning order having been obtained on behalf of the sheriff, and the parties upon the hearing consenting to take an issue, the claimant to be named plaintiff and the execution creditor defendant,

Monroe, for the plaintiff, who claimed under a bill of sale, applied that the defendant should give security for costs, on the ground that he resided out of the jurisdiction: *Hoban* v. *Munro*, 1 Ir. L. T. 647, Ir. R. 2 C. L. 74.

D. Lynch, for the defendant, *contra*.—The application is unprecedented.* In *Hoban* v. *Munro* the application was, that the claimant, not the defendant, should give security.

KEOGH, J.—No authority is shown for making such an order against the defendant in an interpleader issue. I shall only make the usual order.

Attorney for the plaintiff, *Stephens*.
Attorneys for the defendant, *Casey & Clay*.

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MILLER, J.)

In the matter of an ARRANGING DEBTOR.

1873, Dec. 23.—*Arranging debtor—Payment of costs in full, awarded to a creditor in a suit previous to filing of petition.*

Previous to filing a petition for arrangement with his creditors, a trader had brought a suit in the Court of Admiralty, claiming a cargo of wheat in the defendant's possession; in which suit the defendant succeeded, with costs. At the second composition meeting in the arrangement matter, the defendant, who remained owner and possessed of the wheat, having applied for payment of the costs in full, the Court refused the motion.

Application, on behalf of a creditor of an arranging debtor, for payment in full of costs awarded to him as against the arranging debtor. The facts and arguments appear fully in the judgment of the Court.

G. Perry, in support of the application.
M. Larkin, solicitor for the trader, *contra*.

MILLER, J.—At the second sitting for composition by the arranging trader in this matter, an application was made on behalf of Mr. Robert Shaw, without any previous notice, for payment in full of the sum of £119 6s. for costs awarded to him by the Court of Admiralty in defending a suit brought by the arranging debtor against him, in respect of wheat of which Shaw previously held the possession, and which possession Shaw was by that Court declared entitled to retain. As no notice of such application had been previously given, this Court could not have expected to receive much assistance, either from the agent of the trader or his other creditors, while the claim was pressed (not at all unduly) as if counsel believed that there was some foundation for such a claim; and, as there was but one more public sitting of the Court before the Christmas vacation, upon this day, I let this matter stand until this day, in order that I might have an opportunity of reading the papers, although I then declared a very decided opinion that there was no foundation for the application.

The first ground upon which the claim of Shaw for payment of his demand in full, irrespective of the composition, which had been forced upon all the other creditors, was put forward, was, that the suit brought by the arranging trader against Shaw in the Court of Admiralty, in which Shaw as defendant, was declared entitled to the costs, in respect of the claim thus made, as against the arranging trader, disclosed acts of fraud on the part of the arranging trader, which entitled Shaw to payment of these costs in full. It is enough for me to say that the decree of the Court of Admiralty, upon the face of it, only purports to dismiss the petition of the arranging trader, which sought to recover from Shaw the possession of a cargo of wheat, mentioned therein, with costs against the arranging trader, and that such decree bore date so far back as the 19th of May, 1873, while the petition for arrangement by the trader was not filed until the 11th of November, 1873; and that it is not competent for me, upon this sitting, to go behind the decree of the Court of Admiralty of the 19th May, or into any inquiry as to the evidence on which that decree was pronounced, as affording any ground for placing Shaw in a better position than other creditors of the arranging trader, who might be bound by that composition; but, even if it was competent for me to go into any such inquiry, common

---

* In *Melin* v. *Dumont*, 20 L. T. N. S. 336, the defendant in an interpleader issue was ordered to give security for costs, he being resident out of the jurisdiction. A sum of money was paid into Court by the sheriff to abide the result of the issue. The defendant having delayed giving the security, a rule obtained by the claimant was made absolute, granting the claimant leave to mark judgment for the money in Court unless the defendant found security within a period prescribed, Keating, J., observing, that "with regard to security, the defendant in an interpleader issue is in the same position as the plaintiff in any other action." So, see *Williams* v. *Crossling*, 16 L. J. C. P. 112. So, the insolvency of a defendant in interpleader may afford ground for compelling him to give security (per Wilde, B., *Best* v. *Hayes*, 1 H. & C. 725; *Deller* v. *Prickett*, 15 Q. B. 1082; but, as to the latter case, see *Ridgway* v. *Jones*, 1 L. T. N. S. 368). But see *Quinton* v. *Butt*, 5 Ir Jur. N. S. 130, where, on an application that the execution-creditor should give security, on the ground that he was not possessed of means, the Court said, "We cannot make any such order; you are now asking that a defendant should be compelled to give security for costs." That the plaintiff, out of the jurisdiction or insolvent, may be ordered to give security, see *Webster* v. *Delafield*, 7 C. B. 201; *Benazech* v. *Bessett*, 1 C. B. 313, 2 D. & L. 801; but see *Ridgway* v. *Jones*, *ante*. Under C. L. P. Act, 1860, s. 12 (Eng.), see *Tanner* v. *European Bank*, L. R. 1 Ex. 261.—[ED. *Ir. L. T. Rep.*]

Digitized by Google

sense forbids that I should allow the alleged acts of fraud by the arranging trader, in an unsuccessful attempt to disturb the possesion by Shaw of his property, to form any ground for depriving the trader possibly of the means of paying to the other creditors the amount of their composition, which they were forced to accept, or for diminishing the assets of the trader to that extent, and thereby forcing them to recive a smaller amount of composition upon their respective debts. The second ground could scarcely have been considered by counsel before it was pressed upon the Court, namely—that because this Court does, within limits, pay in full costs of creditors, *boná fide* incurred in enforcing their demands against traders, prior to the time of the petition for arrangement being filed by such trader, therefore, the claim of Shaw, being for costs decreed prior to the date of the petition being filed, should within that rule, be paid in full. The very essence of that rule, is that the creditor is subsequently forced to take a composition upon the debt, for the purpose of enforcing which such costs had been previously incurred. I have failed to discover what resemblance the claim of Shaw—being for costs, in defending a claim by the trader to property, in respect of which he is not required to accept any composition, but of which, on the contrary, he remains absolute owner, and possessed—has to claims for costs by creditors, in recovering their admittedly just demands, and upon which demands such last mentioned creditors are willing or forced, as the case may be, to accept a composition.

Upon both grounds, the application of Mr. Shaw is altogether unsustainable; and, as he is not in a position to outvote the other creditors, he must take his composition with the other creditors, in respect of the taxed costs set forth in his proofs of debt.

COURT OF APPEAL IN CHANCERY.

Reported by MILES V. KEHOE, Esq., Barrister-at-Law.

PAUL AND STOKER v. GILLMAN AND POTTER.

Nov. 11, 12, 13, 1873.—*Specific performance—Parol agreement—Part performance—Weight and admission of evidence.*

Where there was a parol agreement for the letting of the residue of the term of the vendors, without the length of the term having been defined, and the defendants afterwards took possession of the premises, specific performance was decreed.

Specific performance will not be decreed where the evidence so directly conflicts as to leave the mind of the Court in uncertainty as to what are the precise terms of the contract; but, in estimating the testimony, the Court will consider all the corroborating circumstances and probabilities of the case.

Observations on the manner of conducting business of a judicial character depending in the Vice-Chancellor's Court.

Appeal by the defendants from a decree of the Vice-Chancellor, declaring "that the agreement dated the day of March, 1871, in the pleadings mentioned, ought to be specifically performed and carried into execution, in case a good title can be made to the hereditaments comprised therein, or in case the defendants have waived their right to investigate the title;" and ordering that inquiries be made—1. Whether the defendants had waived their right to investigate the plaintiffs' title to the house and premises, and, in case they had not waived same—2. Whether a good title could be made to the house and premises comprised in the said agreement of the day of March, 1871? 3. And in case it should appear that a good title could be made, an inquiry when it was first shown that such good title could be made.

By their bill the plaintiffs stated that, by an indenture of the 14th Sep., 1868, certain premises in the city of Cork were demised for 120 years, and that the interest in the premises under the said indenture had vested in the plaintiffs. The defendants, in March, 1871, entered into negociations for the letting of the premises to them by the plaintiffs. The defendants at first objected to the rent, but ultimately an agreement was come to between the defendant Gillman and the plaintiffs, as to the nature of which John E. Stoker, one of the plaintiffs, swore that "it was by parol, and to the effect that a lease of the premises was to be made by me and the other plaintiffs to the defendants at a yearly rent of £120, for the residue of the term which we then had in the premises, and that, as a further security for the said rent, the premises should be insured against fire in the sum of £1,000." The defendant Gillman denied that any reference whatever was made to a lease during that conversation. Immediately after that conversation, the defendants entered into possession of the premises which they had since occupied. Subsequently, there were various interviews between the plaintiffs and defendants, at one of which, the defendants asserted that, the first mention of a lease was made. They, also, stated that they had, from the beginning, refused to take the premises for any term without the usual clause of surrender. The plaintiffs said, on the other hand, that the first suggestion made to them of that clause was when they received the draft lease hereinafter mentioned. Plaintiff also stated that he called on Gillman, and that Gillman said that he was aware that the clause of surrender was not provided for in the agreement, but that his brother, Mr. Sylvester Gillman, had told him to take care that the lease contained such a clause, and not to take it otherwise. It appeared from other evidence, also, that Daniel Gillman had frequently obtained advice from his brother in reference to the taking of the said premises. Not long after the agreement alleged by the Stokers had been entered into, O'Connor, a clerk of the Stokers, was sent to Gillman with a letter containing the terms of the agreement, as contended for by the Stokers, for Gillman's signature. O'Connor stated that Gillman read this, and then, making some excuse, returned it without signing it. Gillman asserted he returned it without having read it. The letter was destroyed by one of the plaintiffs. In August, 1871, Mr. Franklin, solicitor for the defendants, sent a draft lease to Mr. Foott, plaintiffs' solicitor, which was inaccurate in many respects, and was returned with various alterations. On the 11th September, 1871, Mr. Franklin furnished Mr. Foott with another draft lease, which contained a clause of surrender, but no covenant to insure. This draft was returned on the same day, with the clause of surrender struck out, and a covenant by the lessees to insure against fire inserted, and a memorandum signed by Foott—"We approve of the foregoing draft lease as altered, same being in accordance with the agreement between the parties." The draft was returned by Franklin to Foott with this memorandum—"I cannot consent to the omission of a clause of surrender; it was expressly agreed to; it was not agreed that the lessees should insure, therefore the covenant introduced by the lessor's solicitor must be expunged.—B. Franklin." Foott declined to make these amendments, and on the 9th November, 1871, plaintiffs filed their bill. The plaintiffs alleged that the character of the premises had been greatly altered, and the house injured, owing to the business carried on by the defendants; that partition walls had been taken down, and marble slabs, which had been set up at much expense in the shop, removed. Defendants asserted that these changes were trifling,

Digitized by Google

and did not cost £50. The other material facts in the case sufficiently appear in their lordships' judgment.

Mr. Richey, Q.C., *Mr. Johnson*, Q.C., and *Mr. Ronan*, for the defendants and appellants, referred to Fry on Specific Performance, 185, 188, 189, 384; *Lindsay* v. *Lynch*, 2 Sch. & Lef. 1; *Lehman* v. *M'Arthur*, L. R. 3 Ch. Ap. 503; *Jorden* v. *Money*, 2 D., M'N., & G. 336; *Lady Edward Thynne* v. *Earl of Glengall*, 2 H. L. 131.

Mr. Jellett, Q.C., *Mr. O'Hagan*, Q.C., and *Mr. Hickson*, for the plaintiffs and respondents, cited *Morphett* v. *Jones*, 1 Swan. 172; *Mundy* v. *Jolliffe*, 5 M. & Cr. 177; *Nunn* v. *Fabian*, L. R. 1, Ch. Ap. 39; *Walton* v. *Hobbs*, 2 Atk. 19.

Lord O'HAGAN, C.—In this case I have some difficulty in coming to a conclusion, as on all the material facts the sworn testimony is most contradictory and irreconcilable. Upon the two principal points in the case—whether there was a concluded agreement, and if so, what that agreement was—and upon all the points immediately subsidiary to these the evidence is wholly conflicting. But I am of opinion that the decree of the Vice-Chancellor ought to be affirmed. We have had some observation with reference to the law, but there is in this case no question of law as to which there is any real contention. The legal principles are perfectly plain, and all we have to see is how they may be satisfactorily applied. The plaintiffs here seek enforcement of a parol agreement, on the ground of part performance. We must see if there was an agreement, and if so, whether there was part performance. And then we must see if that part performance had clear reference to the agreement. The burden of proof is on the plaintiffs, but, for the purpose of proving their case, it is competent for them to go into all the evidence before or after the agreement, or the part performance; all these things may be considered when we ask the plaintiffs to prove the allegations on which their case rests. It is perfectly clear that, if there should be on one side the assertion of a certain fact, and on the other the denial of that assertion, pure and simple, if they so stand nakedly against one another, in that case there can be no specific performance. We must then see if, in this case, there is anything to corroborate the plaintiffs. There are two questions—first, whether there is evidence of a concluded agreement; and second, if so, what was it. Upon the second question the testimony is most conflicting. It was asserted, on the one side, that there was a promise to keep the place insured; on the other, that there ought to be a clause of surrender—and each party denied the assertion of the other. It is objected, indeed, that the statements of the plaintiffs are very vague. There is a good deal in that, but on the other side there is, at least, an equal vagueness. The particular agreement, as set forth in the affidavit of Daniel Stoker, is objected to as being merely a statement of the effect of the conversation. [His Lordship here read Stoker's evidence.] No doubt that is a very fair way of putting it, but this matter passed without objection in the Court below, and I must take it as it is before me here. I have no doubt but that the thing might have been better; it does, however, distinctly indicate the premises, the rent, and the term. The defendant's case simply is that there was no agreement of the kind, but merely some talk about their taking the premises; that thereupon Gillman made an agreement for a rent of £120, and there and then got the keys. If the case stood so, it would not be one for the intervention of the Court. It now is to be seen if there are are any probabilities in the case which render the plaintiffs entitled to succeed. As to the first question, it is clear that there was a concluded agreement at some time; there is a dispute as to the time when it was made, and as to the terms of it, but the defendant has in his affidavit shown that there was an agreement. In a case of this sort, we may take every little circumstance into account. Is it probable that the plaintiffs should have sought to let on lease, or merely in a general way from year to year? There is force in the observation that the premises had been made valuable. It appears that the plaintiffs had spent on them nearly £1,000. Again, for what purpose were the premises sought? For a printing office—and the use of any premises for that purpose is attended with injury to their condition. If this was to be a newspaper office, no doubt the use of printing presses would be calculated to do the house substantial injury. Would they not have wished to bind the defendants more than by a tenancy from year to year? On the whole, it seems to me that the matter of the lease is in favour of the plaintiffs. As to the clause of surrender the weight of evidence is against the defendants, for the plaintiffs would not, having in view a deterioration of the premises, have encouraged a man to go in for three years, and then perhaps leave the premises deteriorated, and made useless for the market. There the probabilities are against the defendants, and my mind is impressed by this, that on various other particular points, also, the evidence is greatly against the defendants as to this clause of surrender. Evidence is given by both the plaintiffs, that the defendant in communication with them said, "That he was aware that the said clause of surrender was not provided for in the agreement for the lease." The swearing of the plaintiffs is very clear and positive. Gillman gives his evidence, and says that he did not, distinctly or otherwise, make any such statement to them. That would appear to be a clear contradiction of the bill; but all the facts are stated to the best of Gillman's recollection. We have thus positive statement against the testimony of one who merely states his recollection, which makes the weight of evidence lie with the plaintiffs. Gillman's reliability is thus brought into question, and, if I must on this part of the case disbelieve him, it throws doubt on all the rest of his evidence. It is also stated by the plaintiffs, that an apprentice of theirs named O'Connor was sent with a memorandum about the terms of the letting to the defendants, and Gillman admits that O'Connor did bring the document. O'Connor says that "Gillman, after reading over the same, desired me tell Mr. Stoker that there was no need of an agreement in writing." This statement conveys necessarily that the memorandum was read over by Gillman. But Gillman denies this, and says it is utterly untrue. That is an important circumstance where we have a conflict of evidence between interested parties, for we have here a statement from an independent witness which is most material, and impugns the accuracy of the defendant. It is further proved, that the defendant Gillman had a brother, a most respectable solicitor, Mr. Sylvester Gillman. It was said that Gillman had consulted his brother, and it was commented on that no evidence from him was brought forward. But, what strikes me especially is that the allegation on the plaintiffs' part, that Gillman did so consult his brother, is not met by anything in the answer. When the defendant comes to answer, he says, not that he had not referred to Mr. Sylvester Gillman, but, that he had not employed him. This seems a prevaricaton, and, if the view is set up that Sylvester Gillman could have told something favourable to the plaintiffs, the fact of this prevarication is material. Then there is the evidence of Foott, and, though that evidence is not very conclusive, it is not to be put out of account in estimating probabilities. Foott says that he was present on several occasions when John Stoker asked Gillman to have the draft lease furnished, and that "on no occasion was there any doubt expressed as to the lease being agreed for, or any mention of a clause of surrender." Now, it is a material circumstance that, this solicitor having had several conversations about the lease, there was no doubt as to the agreement for a lease, or as to the absence of a clause of surrender. And this goes some way to corroborate the plaintiffs, and to lead me to believe that this denial of the agreement for the lease and the demand for a clause of surrender were an afterthought. The result is that, not without some hesitation, I have come to the conclusion that the weight of evidence justifies me in saying that the plaintiff's case is the true and the honest case, and that we ought to give a decree for specific performance. The decree should not say that the agreement was dated the day of March; for there was no agreement written. The agreement may be stated to have appeared upon the evidence,

Digitized by Google

and that agreement will be decreed to be specifically performed. There must be a reference as to waiver of title.

CHRISTIAN, L. J.—This case is to be regarded from two points of view, according as we consider the rights of the parties, or the form of the decree which we are asked to substitute for the order of the Court below. First, with respect to the rights of the parties, have the plaintiffs made good their case for specific performance? At the outset, it seems to me strange that there was no *vivâ voce* examination and cross-examination. I have never seen a case more properly calling for that ordeal. I expected that even here the Court would have been asked to allow such an examination, but we have not, and the Court must now only deal with the case on these paper depositions. The way in which the plaintiffs depose is strange—not to facts, but to effects. They do not give the conversation, but the effect of it; they depose not to that which is the province of the witness, but of the Court. But Mr. Jellett answered this, for he said that this was an objection to the admissibility of evidence; and, as no objection was taken to the admissibility of this evidence, we must not now turn the parties round, and we must take it that the plaintiffs have deposed to the true effect of these conversations. We have now to choose between the two conflicting statements. The points on which the parties agree are more numerous, but in one material particular they differ. They agree that early in 1871 the Stokers gave, and Gillman took possession of the house; next, that the coming and taking possession was in reference to an antecedent agreement for a tenancy, in which everything save one was defined, that is, whether there was to be a lease or not. The defendant Gillman says that both parties were silent as to any term, and this the plaintiffs strenuously deny. The plaintiffs rightly say they are not bound to confine themselves to the affidavits with respect to this agreement, but that they may look into the whole transaction—and if they can find anything to support their evidence they are in a commanding position. The circumstances do corroborate the plaintiffs' statement, and not the defendants'. In the first place, the use which the defendants proceeded to make of the premises, once they were in possession, is in favour of the plaintiffs. They used them in a manner consistent with a long term, but inconsistent with a short indefinite term. They took down partitions, they turned the house from an Italian warehouse into a printing office, and they did it all without objection from the Stokers. Reverse the positions of the parties. Suppose it was the Stokers who were insisting that there was only an agreement for a tenancy from year to year, and Gillman was looking for a lease. And suppose Gillman said—"I made all these changes, and then you encounter me by saying that there was no agreement for a term. I call upon the Court, since I did these things before your eyes without your making any objection, to give me a lease." Would not his case be almost irresistible? There are further admissions by the defendants, and inferences to be drawn from their conduct. There is no statement in pleading by the defendants, that after the time they entered into possession there was any agreement; therefore, the case practically pleaded is that there was no agreement whatever for a lease, with or without a clause of surrender. Why then, if we find, either by conduct or by expression, Gillman or Franklin admitting an agreement with a clause of surrender, which is an agreement for a lease, we must carry it back to the ante-possession period, for there is no other agreement alleged by the defendants. But we have the fact of Gillman, through his attorney, furnishing a draft for the same term, which the lessors have—a draft corrected to suit the lessor's terms. If in the original agreement, entered into before possession taken, there was nothing about a lease, and then if there was no agreement after, as they contend, how is the fact of the draft lease having been furnished to be explained? If we say that there was originally an agreement, we must admit that we have in the bare fact of his furnishing the lease, even with a clause of surrender, a corroboration of the plaintiffs' statement, that that agreement was an agreement for a lease. We have, also, the express admission of the defendant Gillman. When he was pressed to give up the clause of surrender he said—"I took the place with a clause of surrender, and I will not change." In the same sense, there is that other statement of his, that the clause to insure was not part of the agreement. Then we have Franklin's affidavit. After the second draft lease was returned by Foott, with the memorandum that he approved of it as altered, "same being in accordance with the agreement between the parties," Franklin would naturally have said it was quite out of place talking of any agreement at all. But, on the contrary, he says that a clause of surrender was expressly agreed on. I think that Gillman has fallen into a mistake, and that he has persuaded himself that this post-possession reluctance of his to take a lease without a clause of surrender was in consequence of its having been a portion of the agreement, originally entered into between the parties. There is no difficulty as to rejecting the clause of surrender. One party asserts that the clause of surrender was no part of the agreement. The other party does not say there was any such clause in any agreement, before or after. I am satisfied that the plaintiffs have proved a parol agreement for a lease, which was part performed, and that they are now entitled to the rest.

Such is the case as regards the rights of the parties. I have now to consider the form of the decree which we have been called on to pronounce. In this respect, the Court is placed in a very peculiar position; and I myself, as I have often said, stand in a very peculiar position. Ordinarily, we have only to affim or reverse the decree of the Court below. Where inquiries are directed in the Court below, no decree is pronounced by this Court as a decree of its own, there is a simple affirmance or reversal. But, in this case, the Court is asked to discharge the decree below, and to substitute one of its own, and then to send the decree back to be executed in the chambers of the Court below. The appeal before the Court is from a decree for the specific performance of an agreement, not one of the terms of which appears on the decree. It is an agreement described as "of the day of March, 1871," and that is the only way it is identified. There is no agreement bearing that date mentioned in the pleadings, and it is admitted on all hands that there never was any such agreement in existence, but that there is an agreement by parol, to be spelled out from various conversations. We must discharge that erroneous decree, and substitute another, ordering that such and such an agreement be specifically performed, and prefix that decree to all the inquiries directed by the Vice-Chancellor, and then return it to his chambers, in order to have it carried out. The decree to be executed in the Vice-Chancellor's chambers will be a decree of this Court, and if so it is our duty to look before us, and to see how those inquiries will be conducted, of which we will have lost all control once they pass into the chambers of the Court below. I think that this is the time for us to give such directions as we may think necessary, in order to ensure a proper execution of our own decree. This Court has judicial knowledge of how, and by whom these inquiries are likely to be carried on; and having that knowledge, it is my opinion that, if the Court desires to retain a due respect for itself and a due regard for the interest of its suitors, it should not pronounce this decree, which one at least of its members knows would make him a participant in certain illegality and probable error. Before I state the form of the clause which I must introduce for the protection of this Court, it is necessary that I should make some remarks on the nature of the inquiries which have been directed in this case, and the way in which I know they will be understood and acted on in the Court below. The inquiries so directed are, in the largest sense, inquiries as to the title of the estate. The question as to waiver of title may be set aside for the present purpose, and this may be looked on as an inquiry, pure and simple, into the title of real estate. The defendants will have a right to call for the lessors' title, and, considering the spirit by which the parties appear to be animated, it is in the last degree improbable that they will forego that right, or that either side will lose an opportunity of embarrassing the other. Thus, then, we will have an inquiry not only into the lease-

Digitized by Google

hold of this house, but into the title to I know not what estate in the county of the city of Cork. How will this inquiry be executed, and into whose hands will it fall? During my professional life, inquiries of this kind formed a very large portion of the duties of the Court of Chancery, that is, before the establishment of the Incumbered Estates Court. Since I came back to this Court as a judge, this is the first case in which I have to deal with a decree directing an inquiry into title, and, therefore, this is the first opportunity I have had of calling attention to the matter. How will this inquiry be conducted? This inquiry, which is calculated to bring into play legal scholarship (if I may use the expression), into whose hands will it fall, if it goes back to the Court below without some instructions, on our part, appearing on the face of the decree? Formerly these inquiries were conducted by the masters in Chancery, and the masters, who were themselves able lawyers, would be attended by eminent counsel. Exceptions were then taken to the master's report; they were argued, in the first instance, before the Master of the Rolls; frequently then, on appeal before the Chancellor. He sent them back to the Master of the Rolls: this process often was repeated, and the title was thoroughly investigated. But this entailed enormous, and, on small proprietors, ruinous expense. Not the least among the benefits of the Incumbered Estates Court was that it rendered these inquiries to a large extent unnecessary. Then the Act of 1867 was passed, with the express object of remedying these evils (which it would have done if its end had not been frustrated), by abolishing these references which ruined estates, and obliging the judge, who was substituted for the master, to take the inquiry in person. The theory of that measure was not that, where an inquiry was ordered, it should pass from the judge's hands into the hands of another judicial officer, and that the judge should never hear of it again till that officer sent back the case to him. The theory was that the inquiry went from open Court to chambers, to be there conducted by the judge himself—with the aid, in purely ministerial matters, of his chief clerk. Suppose the decree was that the inquiry as to title should be referred to So-and-So, Esq., that would be a flagrant illegality, and in that form no Court of Appeal could have allowed the decree to stand for one instant. But that is not the course followed here. The decree is, "that the following inquiries be made;" but it does not say who is to make them, and if the Court knew nothing more it might suppose that all was right. But the Court does, unfortunately, know judicially something more, and, therefore, it must read the decree by the light of its judicial knowledge, that the learned judge has, by an ordinance, prescribed the manner in which all inquiries whatever shall be taken; that all such inquiries have been so conducted in his Court for years past, and that he has been at pains to inform this Court, more than once, that so these inquiries before him shall continue to be conducted. With that knowledge, it would be a shallow affectation to let the inquiry in the present case follow the usual course. We must see the practical drift of these words in the decree. What is this ordinance of the Vice-Chancellor compiled for the guidance of his chief clerk? [His Lordship read the 7th Regulation, 27th Feb., 1868,] There is something charming in the reference there made to the 204th G. O., framed with the sanction of the four equity judges, of whom the Vice-Chancellor himself was one. That order (204th) prescribes, among other things, that "the judge shall give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken." That G. O. follows the Act of Parliament—it directs that these things shall be done by the judge, and yet the Vice-Chancellor coolly refers his chief clerk to this very G. O., and then desires him to act in the teeth of the Act of Parliament. Therefore, I have a right to read into the decree before me the ordinance which I have just read. [His Lordship here read the inquiries 1, 2, and 3, directed by the Vice-Chancellor.] There now is the decree read by the light of the ordinance I have referred to, and reading the decree in that way, I ask is that anything but an order to the chief clerk to report as to the title to real estate. Could any Court escape the necessity of reproving what would be, on that assumption, open, paraded, ostentatious contempt for law?

This is not a mere piece of legal martinetism on my part. Is there no real danger in all these irregularities? Have we not a type and augury of what may be anticipated in this case, in *Howlin* v. *Sheppard*? That case, of which we all heard so much some months ago, showed there was real ground for apprehending the most disastrous consequences from the business of the Vice-Chancellor's Court being conducted as it is. There these inquiries were referred to the chief clerk, and accordingly he took bodily possession of the case. It was only twice referred back to the Vice-Chancellor. What was the consequence? Thirteen months were lost, and hundreds of pounds were expended on inquiries which were afterwards found to be as worthless to that case of *Howlin* v. *Sheppard*, as they are to the title to these premises in the county of the city of Cork. If that took place in the case of *Howlin* v. *Sheppard*, what comedy of blunders are we to expect in this case, where there is to be an inquiry into the title of leasehold and fee-simple estate by the chief clerk, assisted by two country solicitors, or rather by the clerks of their town agents. What course is it the duty of this Court to take? Is it the duty of a Court of Appeal to be always tamely acquiescent, no matter at what sacrifice of dignity? Let any one try to imagine such a state of affairs arising in another part of the United Kingdom. We know why the stringent negative provisions as to the chief clerk's duties had been introduced into the Act of 1867. It was because experience had shown that the English judges, any one of whom has ten times the business of any judge here, yielding to the enormous burthen of that business, had delegated some of that duty to their chief clerks, and the Legislature wished to avoid a repetition of that state of things in this country. But, suppose that, when the Irish Act was passed, occasion was taken to correct the abuses that had sprung up under the English one, and that, as a remedy, a fourth Vice-Chancellor had been created there, and that, when such new judge was hardly warm in his seat, he had promulgated an ordinance substantially directing his chief clerk to disregard the Act. Had any judge in England been guilty of such a piece of arrogant obtuseness, it would not have been there countenanced for one hour. There were influences at work there which did not exist here. There was an impartial public opinion, holding in check both the judges and the bar; there was a press in the true sense, as distinguished from mere newspapers, and there was, lastly, a Court of Appeal worthy of the name. All these influences were potent in England; here, unhappily, they were dead, torpid, or indifferent. Consequently, an abuse has taken root here which I do not hesitate to characterise, as I have done on other occasions, as being beyond comparison the most daring instance of legal malversation which has occurred in modern times, that is, this committal to unlearned clerks, with unlearned assistance, of duties which by law the judge should keep from his chief clerk. The present case presents the evils of this system in a point of view more neat than has any case that has ever yet arisen. These inquiries are judicial, without the smallest alloy of anything that is not judicial. Why, what is the first inquiry? It is as to whether the title has been waived or not, a point on which there is an appeal in the list for this very term from the Lord Chancellor himself. The second inquiry is as to whether a good title could be made to the premises, which, as every lawyer knows, conducts us into the very *arcana* of real property law. And yet, all these matters are embraced within the Vice-Chancellor's ordinance, as much as the simplest clerical duty. The question I have to ask myself is, whether the Court ought to adopt the inquiries of the Court below, or ought not rather give such a direction as would provide for the proper execution of its own decree. I cannot believe that, if there is a clause expressing an opinion in what way its own decree should be executed, the Vice-Chancellor would refuse, from any idea of his own,

Digitized by Google

to act upon it. I think that the clause I am about to read will meet the approval of everyone who has heard this case. After discharging the decree as it stands, and after declaring what the agreement is that is to be specifically performed, I propose that our decree should take up the inquiries as already directed by the Vice-Chancellor, and that then this clause should follow—"And the Court doth further declare that, inasmuch as the inquiries by the said order directed to be made constitute business of a judicial character, the same are not within the legal competency of the chief clerk, but, should be made in person by the judge himself to whose Court the cause is attached." With that clause annexed, I will concur in the view taken by the Lord Chancellor, but as I am aware that clause will not be accepted in the present state of the Court, no judicial action will ensue from the appeal, and the decree of the Vice-Chancellor, with all its imperfections on its head, will stand affirmed by virtue of section 13 of the Chancery Appeal Court Act. One result I am sorry for—I am afraid the plaintiffs must lose their costs of the appeal. The statute says that, when the Court is equally divided, the decree of the Court below shall be deemed to be affirmed; it is silent as to costs of the appeal, and, therefore, where the judges do not agree, the respondent can have no costs without an order of the Court. But I cannot concur in any order, and though I deplore the result, it cannot be avoided, and the plaintiffs must bear their own costs.

Lord O'HAGAN, C.—The Lord Justice has properly anticipated the view which I would take of his extraordinary observations. I am not prepared, sitting in this Court, to be a party to a gross insult to a distinguished judge, who has been charged with flagrant and predetermined illegality, and legal malversation. This is an ordinary case; the right of the plaintiffs is clear and plain; there must be a reference as to title. Unquestionably, that reference involves judicial functions, and, therefore, the inquiries directed by the Vice-Chancellor must be conducted by the judge; and the proposition, that I should direct the Vice-Chancellor to do what he knows to be his duty as well as I do, involves an assumption of non-capacity or malfeasance on the part of the judge to whom that insulting order would be addressed. I know that that judge is willing to do his duty, and I have no doubt of his competency to do it; and I utterly protest against the assumption that we have judicial knowledge that he has not done it—that he has been guilty of flagrant illegality—that he has trampled on the law he is bound to administer. I protest against it, on behalf of an absent man. I am bound to say, after the extraordinary observations we have heard, that the 7th Regulation referred to seems to me not to repeal the statute. That Regulation is, that certain inquiries shall be taken by the chief clerk, *unless* the judge shall otherwise direct. And shall I assume that the Vice-Chancellor will not so direct; that he will not take these inquiries himself; that he will forget his oath, and disobey the law? I thought we had enough of that ancient case of *Howlin* v. *Sheppard*. I have not studied the unhappy controversy it involved; but, so far as I know the facts, I am bound to deny that the Vice-Chancellor flagrantly neglected his duty, as had been charged. When that case came before the Court on appeal, we were informed by a leading counsel that everything judicial in that case was done by the Vice-Chancellor himself; and all that statement was, in my opinion, sustained by the Vice-Chancellor when defending himself in his own Court. I say generally and broadly, so far as I have personal or judicial knowledge of what is charged against the Vice-Chancellor, that the charges are not sustained. Under these circumstances, are we to insult the Vice-Chancellor, by charging that he will not, or cannot do his duty? As to the observation that has been made as to the Court being too soft, and not condemning where it ought, all I can say is, that I think it is not the duty of this Court to make charges of incapacity or malfeasance against judges who do not sit here, who are appointed to dispense justice in a high office under the solemn obligation of an oath, and who are clothed with the high prerogative of their Sovereign. I refuse to join in inserting this clause, and the result will be what the Lord Justice of Appeal pointed out.

CHRISTIAN, L. J.—I do not wish to prolong altercation. But I cannot avoid saying that, upon every occasion when I alluded to the system which is pursued in the offices contrary to the Act, the way I have been met is, that the Lord Chancellor has never stated his own views, but has turned the matter off by resenting it as an attack upon individuals, and by seeming to assume that my remarks were directed against the judge, when in reality they are levelled at the system. It has been said that we are not to assume that the Vice-Chancellor will do anything contrary to law. It is not a question of presuming at all—we know, as well as if the Vice-Chancellor were sitting here himself and telling us, what will be done; we have been told what will be done by himself; we have his ordinance with that clause "unless the judge shall otherwise direct," and we know that that clause is a dead letter. We know, therefore, that this reference will be taken up by the chief clerk, and that it is for him to determine how far he will deal with these very difficult inquiries himself, and how far the judge will deal with them. I will not trouble myself with what the Lord Chancellor thinks as regards matters of propriety; I have my own views as to the duties of a judge of this Court. The case of *Howlin* v. *Sheppard* was most pertinently referred to by me, because it affords an example of what may be expected in this case. The Lord Chancellor proved himself to be wholly ignorant of the facts of that case, in saying that the Vice-Chancellor determined the questions in the case himself. The very fact that the Vice-Chancellor showed that two inquiries were conducted by himself proves that the rest of the proceedings were conducted by the chief clerk, uncontrolled by the judge; and it was in those proceedings that there took place two miscarriages, involving the parties in an utterly worthless investigation, and an expense of hundreds of pounds. It is an abuse of language to call the clause which I proposed to introduce, an insult to any judge. That is not so. I am asked to make a decree, and I know that it will be executed in a manner which the Vice-Chancellor, I am sure, believes to be legal, but which I think is illegal. Having that opinion, that certain inquiries will be made illegally, I have a right to annex to the decree an expression of my opinion as to the way in which I wish these inquiries of mine should be conducted, and it is a simple abuse of language to say that is an insult to the judge, for whom it would be to decide whether he would act on that expression of opinion or not. I shall require my dissent to appear on the face of the order, and also my reasons for it.

Lord O'HAGAN, C.—That will be a question, but not for discussion before this audience.

Solicitor for the appellants, *Benjamin Franklin.*
Solicitor for the respondents, *Alexander P. Foot.*

ROLLS COURT.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before SULLIVAN, M.R.)

STURGEON v. ROBINSON.

1873, Nov. 21.—*Practice — Debtors Act (Ireland)* 1872, *ss.* 4, 6—10, 18, *G. O. April*, 1873—*Debt incurred after passing of Act—Costs—Order for payment by instalments—Proof of means.*

Costs, by the final order in a cause, having been awarded to be paid by the plaintiff to the defendant, and default in payment having been made, the defendant applied, under 35 *&* 36 *Vict., c.* 57, *s.* 6, *for an order for payment by instalments, but without grounding the application on any proof of the plaintiff's means of payments. The Court refused the motion.*

Digitized by Google

Motion, *ex parte*, on behalf of the defendant, under the Debtors Act, (Ireland) 1872, sec. 6, for an order for payment by instalments of the costs, amounting to the sum of £639 12s 1d., which had been ordered to be paid by the plaintiff to the defendant, by the final order made in this cause, 6th of May, 1873. The application was grounded on an affidavit stating the service of the final order, and the subpœna for costs, and that the full amount was unpaid.

Mr. J. T. Andrews in support of the motion.—The interpretation clause (sec. 4) shows that these costs constituted a debt contracted after the passing of the Act, 6th August, 1872; therefore the defendants were deprived of the former remedy by attachment, though the Act did not come into operation until the 1st January, 1873, before which time almost the entire costs had been incurred. The settled practice at common law is to divide the order under this section into an order for payment, and an order for commitment: *Dillon* v. *Cunningham*, L. R. 8 Exch. 23; *Sommet* v. *Dormoy*.* The order for payment may be made without proof of means: *Dillion* v. *Cunningham*, *ante*. Before this branch of the order could be enforced by an order for commitment, the affidavit of means must be made under 10 and 18, G. O. Ch. 10th April. 1873. The application is made in order that the defendant may be enabled to proceed under the 18 G. O., if necessary, and in consequence of its having been decided that there could be no second committal, except when there has been an order for payment by instalments, and therefore successive defaults: *Horsnail* v. *Bruce*, 21 W. R. 597.

SULLIVAN, M.R.—I must refuse to make the order sought, because no affidavit of means has been produced. I am not laying down the rule that I will invariably insist on such proof; but, from my own knowledge of the facts of the case being of opinion that it would be hard on the plaintiff, without showing the existence of any means in this instance to grant the motion, and that it would defeat the policy of the Act to make such an order if there be no means, I refuse to make the order.

Motion refused.

Solicitor, *R. Kelly*.

* In *Sommet* v. *Dormoy* (Con. Ch. August 22, 1873, before DOWSE, B.),

Boyd, on behalf of the plaintiff, moved under the Debtors Act, section 6, for an order that the defendant be committed to prison for a term not exceeding six weeks, or until he should pay to the plaintiff the sum of £95 3s., being the amount due on foot of a judgment for £21 12s. 6d. debt, and £73 10s. 6d. costs, (in an action which had been brought for the price of goods sold and delivered in September, 1872), or that said sums be paid by instalments. Ordered, that the defendant do pay to the plaintiff the amount of said judgment-debt and costs by four equal instalments—the first to be paid within one month after service of the order upon the defendant; the second within three months thereafter; the third within a further period of three months; and the fourth within a further period of three months after the period allowed for the payment of the third instalment.

Subsequently (Q. B. Mich. T., 1873), *Boyd*, moved for an order, under the Debtors Act, section 6, that the defendant be committed to prison for a term not exceeding six weeks, or until he should pay to the plaintiff a sum of £24 due under the foregoing order. The residence of the defendant (who was a military mess-man) was unknown, and there was no appearance for him on this motion. Notice of motion before the full Court had been served, but, as the Act directed the application to be made to "a judge," BARRY, J., was now asked to hear it as if sitting alone. BARRY, J., having heard same, said it would be an unreasonable thing to send the defendant to prison because he did not pay a sum of money which would absorb his means of living for the time being; but a conditional order would be granted, against which he could show cause if any.

In *O'Donnell* v. *Smith* (Con. Ch., before FITZGERALD B., Dec. 12, 1873), *Weir*, on behalf of the plaintiff, in an action in the Queen's Bench (on a notice of motion for an order that the defendant should pay by instalments, and be imprisoned on default), applied for an order only that the defendant should be ordered to pay by instalments. *Teeling*, *contra*. FITZGERALD, B. held that he had no power to make the order.—[ED. *I. L. T. Rep.*]

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

Re KEARSE.

(Before the FULL COURT.)

November 29, 1873.—*Debtors Act (Ireland)*, 1872—*Arrest on civil bill decree for debt contracted after the passing of the Act—Decree mis-stating date when debt accrued—Alteration of decree without sanction of Chairman*—Habeas corpus—*Jurisdiction—Discharge of debtor from custody.*

A civil bill process was brought against a defendant, not specifying the date when the debt accrued, for a debt which in fact accrued after the passing of the Debtors Act (Ireland) 1872; and the defendant not appearing, a decree was granted for the amount. The entry of the decree in the book of the clerk of the peace did not specify the date when the debt accrued, or whether execution was to be against the person or goods of the defendant. The decree was filled up by the clerk of the plaintiff's attorney with an award of execution against the goods; but afterwards the attorney, without any fraudulent intention, inserted in the decree the words "in the year 1871," as being the date when the debt accrued, and induced the clerk of the peace to alter the award of execution, making same against the body. The Chairman, misled by the decree as altered, signed same; and the defendant was arrested on foot of the decree after the coming into operation of the Debtors Act.

Held, *that the debtor was entitled to be discharged from custody on a writ of* habeas corpus.

Motion on behalf of Timothy Kearse, a prisoner in the gaol of Ennis, to make absolute a conditional order obtained for the issuing of a writ of *habeas corpus* to have him discharged. In support of the application, affidavits were made by the prisoner and his attorney, in reply to which an affidavit was made by T. Bunton, the attorney for the plaintiffs in the civil bill proceedings next referred to. It appeared that a decree was obtained before the Chairman of the county of Clare, J. O'Hagan, Q.C., at the Quarter Sessions at Killaloe, on June 25th, 1873, against T. Kearse, for the sum of £14 14s., on a civil bill process, for goods sold and delivered and on an account stated; and the defendant, who did not appear, was arrested on 20th August, 1873, under the decree, and remained since then in custody—the plaintiffs on the civil bill, Trousdell and O'Brien, although required by notice, refusing to have him discharged. The civil bill process did not contain any statement when the debt had accrued, and the bills sent by the plaintiffs showed that the goods had been supplied in September, 1872. But, on the decree signed by the Chairman there was a statement (inserted by the plaintiffs' attorney, in the presence of the clerk of the peace) that the goods were sold in the year 1871. The decree was drawn up against the body of the debtor, and it was thus signed by the Chairman. The further facts of the case sufficiently appear in the judgments delivered.

P. O'Brien, in support of the motion, cited Cop. Co. Court Pr. Johns. ed. 147, 201; Add. Torts, ed. 1870, 714; *in re Everard*, 7 Ir. Jur. N. S. 346; *Govern* v.

Digitized by Google

Rowland, 7 Ir. Com. L. 218, 619; *Duchess of Kingston's Case*, 2 Sm. L. C. 424; 14 & 15 Vict. 57, 133; 35 & 36 Vict. 57.

Cleary, *contra*, cited *Moore* v. *O'Donnell*, 6 Ir. C. L. 46; *Dews* v. *Riley*, 11 C. B. 434; *Page* v. *Williams*, 1 Ir. Com. L. 527; *M'Ambridge* v. *Jellett*, 3 Cr. & D. 18; Cop. Co. Court, ed. Johns., 141, 144, 201, 287; 14 & 15 Vict. 57, 78, 133; 27 & 28 Vict. 99, 57.

WHITESIDE, C. J.—This case is an important one. It has been ably argued, and arose upon a motion to make absolute a conditional order, for a writ of *habeas corpus*, in order to discharge Timothy Kearse from prison. The facts shortly stated are as follows:—The civil bill process, which had been originally served upon him at the suit of Messrs. Trousdell and O'Brien, was brought to recover the sum of £14 14s., for goods sold and delivered and for the balance of an account stated, but it did not appear by it in what year the debt had been incurred. Kearse, the defendant, did not appear at the hearing of the case, so that we have to look closely at the actual facts, and consider what occurred on the occasion. It appears from an inspection of the books of the clerk of the peace—who by the statute law is bound to make the entry made in such cases, and to set out the process correctly (and this entry he has properly made)—that he has entered a sum of £14 14s. for shop goods sold and delivered. Having stated the substance of the decree and the heads of it in due form, he has certified it to be a true copy of the decree—which certificate is itself evidence of the fact. But turning to the decree itself, we find that it improves on the note in the book of the clerk of the peace. It appears from the book of the clerk of the peace that the proceedings were for goods sold and delivered, and for the balance of an account stated, exactly following the process, as it should according to law; but the words "in the year 1871" are added in the decree. The question is, how came these words into the decree? There is not a trace of the record "in the year 1871" in any of the papers or proceedings antecedent to this document. The date of the process was the 24th of May, 1873, and the date of the decree the 25th of June, 1873. There happens to be an Act of Parliament restraining arrest for debt, which was passed on the 6th of August, 1872, and if the shop-goods, as the clerk of the peace expresses it, were sold after the Act had passed, there was not any jurisdiction in any Inferior or Superior Court, after that Act came into operation, to arrest, or issue a decree against the body of any man for goods which had been sold after August, 1872; and if this appeared upon the face of the decree it would be utterly void, having been without any authority, and an excess of the jurisdiction of the Court, and, therefore, it would be the duty of this Court to redress the wrong by discharging from custody the person who had been thus illegally imprisoned. It is obvious why the change was made in the decree. If the goods had been sold in the year 1871, that would have been before the passing of the Act for the abolition of arrest for debt. Before that Act came into operation the body of a debtor might be taken in execution, but after the Act came into operation it would be impossible to do this legally in respect of a debt contracted after the passing of the Act; therefore, we find an entry on the face of the decree itself, for which there is not any foundation in the original entry of that decree in the book of the clerk of the peace. How did this occur? On the facts it is clear that the goods in respect of which the decree was granted were sold and delivered in September, 1872; the amount, £14 14s., is made up of three several items, for goods sold and delivered in September, 1872, stated in the bill furnished by the plaintiffs. The Act for the abolition of debt having passed one month before this, somebody had an interest in putting this untrue entry upon the face of the decree, the object being to seize the body of the debtor for a debt for which be could not be arrested under the Act that had not been passed until August, 1872. The plaintiffs here allowed to pass "the next Assizes," mentioned in the Civil Bill Act, at which the defendant might have appealed, but to which, knowing nothing of what was done, he did not appeal; and the defendant now applies to us to be discharged, and his counsel have produced several documents which establish as clear as light that in point of fact there was no authority whatever to grant a decree against the body. The original entry on the book of the clerk of the peace—which is made by the Act of Parliament evidence of the decree, and no one else has authority to take it down—shows that no decree was given against the body of the defendant, a decree which it would have been illegal to make. It is said that the decree was altered. If it is meant that in the alteration there has been any moral fraud, it does not appear to us that there has been any such. The papers came into the hands of the attorney, who conducted the case for the plaintiffs, and what he says in his affidavit is, that "it is utterly untrue that the word 'body' in the decree, and the words 'in the year 1871' were written after the decree had been signed by the Chairman." I have no doubt, since the gentleman has stated it, that he was under the impression that he was justified in what he had done, and that it was not after the decree was pronounced that the alteration was made. But the failure in his affidavit is in not showing what decree was pronounced, and we have no evidence what it was save the entry in the book of the clerk of the peace. No doubt, the attorney made a memorandum on the original civil bill, as he states—"Decree against body." But what authority had he for doing so? He was not the officer of the Court, nor the Chairman, and he has cautiously abstained from stating that any such decree had been pronounced by the Chairman. I can easily understand that an attorney in large practice might naturally fall into such an error, but how is this to preclude the matter from being taken into consideration by this Court, or to stand explanatory of a decree, when neither the officer of the Court nor the Chairman adopts it, nor is it warranted by the facts. He proceeds in his affidavit to show how the document was altered. As originally drawn, it does appear that it was a correct decree against the goods of the defendant. How, then, comes it to be changed? "My clerk, through mistake, drew it as a decree against the goods, instead of against the body." This is the way in which the matter stood, and the sagacious clerk who drew the decree against the goods is to be commended. The attorney goes on to say—"In checking over my decrees before handing them in to John Henry Harvey, the deputy clerk of the peace, I discovered said mistake, and having called his attention thereto, he, in my presence, erased the word 'goods,' and inserted the word 'body,' in his own handwriting, and the alteration was made before the decree was signed by him or by the Chairman." I do not understand what authority this gentleman had to make the erasure. He does not state that it was pointed out to the Chairman. What power he had to change the decree, from one against the goods into one for the arrest of the body, I cannot comprehend. He does not state by what authority he inserted the words "in the year 1871." In point of fact, the goods were sold in the autumn of of 1872. The thing was innocently done, but the attorney put into the decree what was not in the process, nor on the book of the clerk of the peace, and I cannot discern by whose authority, or upon what evidence this was done. A statement is then made which is wholly immaterial—that the Chairman was applied to for the purpose of liberating the defendant at a subsequent sessions, but that he had held (and correctly so) that he had not any authority to do so; and the defendant still continuing in prison, the question is, whether this Court has any jurisdiction to interfere in the matter. In point of fact and law, this is a clear case to sustain the allegation that the arrest is illegal. The decree is against the body of a person for goods sold and delivered to him after the passing of the Act of Parliament. It is said by the counsel for the plaintiff that the civil bill decree was only issued irregularly, and that if so a *habeas corpus* would not lie in this case. That may be so, though I am not prepared to consent to it, nor do I find that the discharging of the prisoner would be conflicting with the

Digitized by Google

principal case referred to. We are told that we should not meddle in a case in which a party is in gaol under civil process. The matter was brought before the Court of Exchequer in the case of *Page* v. *Williams*, 1 Ir. C. L. 527. With the profoundest respect for that Court, it must be borne in mind that it is not the Court of Queen's Bench; and in that case the authority of the Court was correctly expounded as derived from the *Habeas Corpus* Act only, and it was said that the words of that Act did not give them any authority to interfere with a person who had been arrested under civil process. The Court, having no original authority, very properly refused to grant the writ of *habeas corpus*, although the Chief Baron differed on a very important point. I do not by any means criticise what Judges of so much learning have enunciated, when they held that though the person was arrested under an irregular process, yet as there was a subsequent valid detainer, in which the person was properly named, he could not be discharged from custody. The question here is, whether, independently of a distinction as to the facts, we have jurisdiction to liberate this prisoner? Our jurisdiction, unlike the modified jurisdiction of the Court of Exchequer, is not derived merely from the Act of Parliament, and we have authority to give redress, although the custody be under civil process. The case of *in re Everard* (7 Ir. Jur. N. S. 346), which has been referred to, was not a hasty decision, and it is one that it is impossible to distinguish in principle from the case now before us. In that case my brother Fitzgerald, before whom the motion was made, said:—"The question is, whether the Court of Queen's Bench, or a single Judge of that Court, has in vacation, at common law, jurisdiction to order a writ of *habeas corpus* to issue, to be made returnable before himself, for the purpose of discharging from arrest a party confined under civil process." And he then points out the all-important provision which distinguishes this case from the case that came before the Court of Exchequer *Page* v. *Williams*, (1 Ir. C. L. 527), namely, that the powerof that Court was solely derived from statute (56 Geo. III, ch. 100), which did not include the power of issuing a writ of *habeas corpus* in the case of persons in custody under civil or criminal process. It appeared that before my brother Fitzgerald pronounced the decision in *re Everard*, discharging the prisoner, he had directed a search to be made for precedents in this country, and he found that Lord Chief Justice Blackburne had, in December, 1846, liberated a prisoner who was in custody under civil process. The prisoner claimed exemption from arrest as a soldier in the East India Company's service, inasmuch as he could not be arrested for a debt less than £30. How does the present case differ in principle from that case, for there the prisoner was exempt by statute from arrest if the debt were less than £30? In this case there could not be any legal arrest whatever. There were similar orders made in vacation—one by Judge Crampton, another by Chief Justice Lefroy. The latter case was that of a married woman, who had been induced to join her husband in accepting bills, and a decree had been obtained by some means against her, under which she was arrested, but she was discharged in vacation. There is another case, that of *Peter M'Dona*, who was under arrest in Enniskillen, under a civil bill decree, and my brother O'Brien, in all the plenitude of conscious authority, discharged the prisoner. Those authorities cited in support of a motion for a *habeas corpus* are satisfactory; they in principle apply to the present case, which is an application made in term time to the Court of Queen's Bench, to declare that one of her Majesty's subjects, being illegally incarcerated, should be discharged under a writ of *habeas corpus*. We have perfect authority for liberating the prisoner, not derived alone from statute, but fortified also by the common law. And, therefore, in accordance with the justice of the case, we shall make the order absolute for the issuing of the writ of *habeas corpus*, in order that the prisoner may be discharged.

O'BRIEN, J.—I fully concur in the judgment pronounced by my Lord Chief Justice, and I would suggest, in order to prevent delay and to save expense, that, as on some former similar occasions, we should add to our order that the prisoner be discharged from custody without bringing him up from Ennis gaol for that purpose. It would be quite idle to go in detail through the authorities for the purpose of showing that we have perfect jurisdiction to make the order. As to the facts of the case, it is clear that there was not any power in anyone to alter the decree or make it different from what it was when pronounced. There was no power to amend the civil bill without the order of the Court, much less the decree. The interpolation in the decree consisted of introducing the words "in the year 1871," and substituting the word "body" for "goods." The affidavit of Mr. Bunton, plaintiffs' attorney, makes the case conclusive. He has stated the facts as I believe they occurred, and he has told us that, in the presence of the clerk of the peace, he added to the decree the words "in the year 1871." I infer from this that he was well aware that there could not be any arrest unless the goods had been supplied before the passing of the Act. There is a question which was pressed in argument, whether, under the 133rd section of the Civil Bill Act, there was a right of appeal, and I think there is force in saying that the appeal is not confined to "the next going judge of assize" next after the sessions at which the process was heard. And there is much force in the argument as to the inconvenience that construction would lead to. But I do not consider that the decree was right in substance, and I think that the warrant to arrest the defendant was unauthorized. Although I do not think that there has been any moral fraud in the alteration of the decree, yet it would be a perfect denial of justice were we to hold that the prisoner, who has been arrested under a decree wrongfully made up and wholly illegal and void, should any longer be continued in custody. The order will, therefore, be for his discharge.

FITZGERALD, J.—I concur in the judgment of the Court. If the decree had been the act of the Chairman, *in omnibus*, there would be some difficulty in the case. The defendant is in custody under a warrant of execution against his body, and the decree by means of which he has been arrested is not the act of the Chairman, nor procured by his authority, but by an unauthorized addition to it, which renders the proceeding wholly illegal and void. I feel not alone willing, but coerced to come to this conclusion. If the point urged by Mr. Cleary were well-founded, that we could not go behind the decree, the result would be that the defendant should remain in custody until he paid the debt, and if he brought an action for false imprisonment, the same question would arise. There, surely, must be some way of reaching that which is illegal. Anyone who knows anything about these undefended civil bill cases, will understand what takes place. The plaintiff is called and asked by the Chairman, "How much does the defendant owe you?" and merely formal evidence is given. In this instance, the amount was £14 14s., the decree for that sum was pronounced, and the amount is noted correctly in the book of the Clerk of the Peace, but it shows nothing further and does not state the date of the debt. I suspect that if the real state of facts were brought to light, and if the rejected affidavit had been admitted, it would be found that the suggestion to make the alteration came from the plaintiff in the process, and not from his attorney, for anybody who knows anything about that gentleman knows that he is the last person who would do anything willfully incorrect—but there is no doubt that this was a legal fraud practised on the Chairman. No evidence could have been given before him that any money was due by the defendant to the plaintiff, prior to August, 1872. When the form of the decree has been altered, making it against the body, it suggests itself to the practical mind of the Clerk of the Peace that the proceeding was not right, and that the Chairman would not grant such a decree, unless it appeared that the debt had been contracted before the passing of the Act for the abolition of arrest for debt. Before the passing of that Act the award of execution was not really the act of the Chairman; it was at the option of the plaintiff to have the decree filled up either against the goods or the body of

Digitized by Google

a debtor. But after the Act of 1872 was passed, it became the duty of the Chairman to see that the decree was not issued against the body, and the award of execution became really his act. Here there has been an entirely unauthorized addition to the decree, which is contrary to the facts and the evidence—stating the cause of action to have arisen in the year 1871—and the Chairman had not any discretion, but was bound to sign the decree. Therefore, I take it that the addition in this case has not been the judicial act of the Chairman, but that it has been obtained through a false suggestion which was wholly unauthorized. In such a state of circumstances it would be strange, indeed, if we could not reach the illegality. The conclusion from all this is, that so far as the decree awarded execution against the body it was unauthorized in fact and wholly void in law. We, therefore, declare that the defendant is entitled to his release, and that this is to be accomplished by a writ of *habeas corpus*.

BARRY, J.—I do not entertain the slightest doubt as to the correctness of the judgment of the Court; but as I did not hear the arguments on the case, I am not to be understood as taking any part in the decision.

O'Loghlen, with the permission of the Court, then proceeded to read an affidavit of the plaintiffs' attorney, made on his own behalf, which had been previously objected to and ruled to be inadmissible, as he had no *locus standi*, but which is immaterial for the purposes of this report: and *O'Brien* objecting to give an undertaking not to bring an action, and *Cleary* not opposing the immediate release of the defendant, the Court ordered the discharge of the defendant without a writ issuing, and gave no costs.

*Order accordingly.**

Attorneys, *J. Frost* and *P. S. Connolly*.

ROLLS COURT.

(Before SULLIVAN, M.R.)

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

In re CRAWFORD AND BLAKELY ESTATE.

Jan. 12.—*Practice—Examination of feme covert by a Commissioner*—19 *&* 20 *Vic. c.* 129, *sec.* 37.

Where an application was made that a married woman might be examined by a Commissioner, pursuant to 19 *&* 20 *Vic. c.* 120, *sec.* 37, *it not being shown that the married woman would be put to personal inconvenience by her attendance before the Master of the Rolls, beyond the fact of her having to make the journey from Belfast to Dublin,* Held: *that she should attend before the Master of the Rolls himself.*

Motion, on behalf of the petitioners, that Henry H. Bottomley, one of the solicitors of the Court, be appointed to examine Mrs. Mary E. Crawford, wife of the petitioner, Hugh Crawford, separately and apart from her husband, touching her knowledge of the nature and effect of the petition in this matter, and whether she freely desires and consents to the prayer of the same; the said Henry H. Bottomley to certify the result of the examination to the Court. It appeared that Mrs. Crawford resided at Belfast; and no affidavit was made that she would be put to any special inconvenience by being obliged to attend before the Master of the Rolls in Dublin.

Orr, for petitioners.

SULLIVAN, M.R.—It does not appear that the lady cannot attend here in court without inconvenience to herself. If such a case were made out, I should allow a Commissioner to be appointed, but unless that is proved, I shall take the examination myself. In my opinion, I myself am primarily the proper person to examine a married woman; I have known many cases in which married women, when the matter was explained to them by myself, have been unwilling to do what they had previously agreed to do. If there are any special circumstances in the case, let them be shown to me on affidavit, and if a proper case is made out, I shall allow a Commissioner to be appointed.

(Before same.)

EVANS AND ANOTHER *v.* COOK AND OTHERS.

Affidavit—Death of deponent—Omission of statement of deponent's death in notice served of affidavit having been sworn.

When an affidavit was sworn before issue was joined in the cause, and the deponent died before notice of its being sworn was served upon the opposite party, and such notice did not contain any mention of the death, Held: *that the affidavit could not be used.*

Motion for an order that the affidavit of William Robinson, of Piccadilly, in the County of Middlesex, deceased, might be read and given in evidence on behalf of the defendant on the hearing of the cause, notwithstanding that the same was not in the form required by 30 & 31 Vic., c. 44, sec. 104. For the purpose of this report, the facts are sufficiently stated as follows:—The bill was filed 8th June, 1871, and answer on 11th January, 1872. The affidavit in question was sworn 2nd February, 1872, before issue was joined. The deponent died 14th March, and the defendant did not file the affidavit till 10th October, 1873. The defendant stated in his affidavit that the deponent, William Robinson, was seriously ill at the time his affidavit was sworn; that his affidavit was, in consequence, prepared by the defendant's London solicitor, without communicating with his Irish solicitor, in order that no time might be lost; and that the evidence contained in Robinson's affidavit was material and necessary for the defence.

Price, for defendant.—Where a witness made an affidavit and died four days afterwards, before she could be cross-examined, her evidence was admitted at the hearing, *Davis* v. *Otty*, 35 Beav. 208. The value of the affidavit is a distinct matter from its admissibility; of course it will only be read subject to all the comments which can be made on the fact of there having been no cross-examination.

Macdermot, *contra*.—The whole proceeding was most fraudulent. The defendant, finding Robinson was ill, should have proceeded *de bene esse*. We would then have had an opportunity of cross-examining him. We were never informed that the deponent was dead. The whole of his evidence is impeached.

SULLIVAN, M.R.—If I granted this motion, I would lend countenance to a proceeding which cannot be condemned too strongly. The defendant got the affidavit secretly made, and never apprised his adversary of what he was doing. The 14th of October was the last day on which this affidavit could have been put on the file, and it was only filed four days before that date. Notice was served that the affidavits of several persons would be used, and among them this affidavit, but all notice of the fact of Robinson's death was suppressed. The plaintiff might possibly have omitted to cross-examine Robinson, and, if so, that might have been commented on at the hearing of the cause, as showing that the plaintiff was afraid, and so the affidavit might have been treated as that of a living deponent. The proceeding appears to me to be an outrageous one; and if this motion were carried, it would be a direct premium upon fraud. If I thought that the solicitor for the defendant knew of the fact of the deponent being dead, I would call on him to explain by affidavit why that fact was not mentioned in his notice. But I shall not assume that he, an officer of this

* See *In re Archbold*, 11 Ir. Jur. N. S. 175; *Burness* v. *Guiranovich*, 4 Ex. 520; *In re Madder*, Ir. R. 5 C L 396; *Dowdall* v. *Kelly*, 4 Ir. C. L. 527; *Ochsenbein* v. *Papelier*, 28 L. T. N. S. 58, 459.—[ED. *I. L. T. Rep.*]

Digitized by Google

Court, did knowingly withhold the intimation of the deponent's death. Apart from all merely technical objections to the affidavit under 30 & 31 Vic., c. 44, s. 104, I refuse the motion with costs.

Solicitor for the plaintiff, *Jennings*.
Solicitor for the defendant, *Daniel*.

In re M'Keown, deceased.

Jan. 19th, 1874.—*Practice—Administration Summons—Real Estate—Creditor obtaining Summons in his own name alone without joining the other creditors.*

A creditor may obtain under 30 *&* 31 *Vic.*, c. 44, *sec.* 153, *an order on summons for the administration of the real estate of a deceased person, without joining the other creditors of the deceased.*

In this matter, a summons having been obtained under 30 & 31 Vic., c. 44, secs. 151 & 153, for an order to administer both the real and personal estate of the deceased, on behalf of Messrs. Johnson and Young, creditors of the deceased, and the summons being in their name alone, not joining the other creditors,

Orr, on behalf of summoning creditors, applied to amend the summons by adding the words—"and of all other creditors." Though one creditor may file a bill on his own behalf alone for administration of the personal estate, he cannot have a decree for the administration of the real estate unless he sue on behalf of himself and all other creditors, *Ponsford* v. *Hartley*, 2 T. and H. 736; *Woods* v. *Sowerby*, 14 W. R. 9. "The general rules as to the persons, by and against whom a suit may be instituted, the parties to a suit, &c., apply to suits commenced by summons as well as to suits commenced by bill." Dan. Ch. Pr. 1073, 5 ed.

Sullivan, M. R.—I do not think a question as to a summons is decided by the authorities which refer to a bill. As to the dictum of Mr. Daniel, in his work on Chancery Practice, I decline to act on the authority of a text-book. It is admitted that in case of an application for a summons to administer personal estate, the words proposed to be added would be unnecessary. And the 153rd section says—"It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, *in the manner hereinbefore provided with respect to the personal estate* of the deceased person, an order for the administration of the real estate." I do not think that the Act requires these words to be added. The form of order which is always made here will bring in every creditor as a matter of course.

Solicitors, *Nelson & Gardiner*.

COURT OF QUEEN'S BENCH.

Reported by S. N. Elrington, Esq., Barrister-at-law.

(Before the Full Court.)

Reede and Goodman *v.* Pipon.

4th November, 1873.—*Practice—C. L. P. Act*, 1853, *ss.* 31, 34—*Extra-territorial jurisdiction—Substitution of service—Service on defendant in person, out of the jurisdiction—Conclusiveness of decisions in the Court where made.*

The Courts of Common Law have jurisdiction to order that service of a writ of summons and plaint by serving the defendant in person, out of the jurisdiction, shall be deemed good service.

Kelly *v.* Dixon, *Ir. R.* 6 *C. L.* 25, *discussed; and* (dub., *Fitzgerald and Barry, JJ.*), *followed.*

Cause shown against making absolute a conditional order, obtained by the plaintiffs, that service of the writ of summons and plaint and order upon the defendant in Jersey be deemed good service of the writ.

The action was brought to recover £100 15s. 6d. for work done by the plaintiff, as attorneys for the defendant, and for money paid, and on accounts stated. The order had been obtained upon an affidavit of the plaintiffs, stating that the defendant, Thomas Le Breton Pipon, permanently resided at La Maisonette, St. Peter's, in the island of Jersey, out of the jurisdictition of the Court, and that he was possessed of property in that island; that he had no agent, place of business, or property within the jurisdiction of the Court; that the causes of action arose within the jurisdiction; that part of the services respecting which the action was brought were rendered in defending certain actions brought in Dublin against the defendant's son, while he was a minor, upon the defendant's retainer, and that other part of said services were rendered in defending another action in Dublin against defendant's son after he had come of age, and also for miscellaneous professional services, in reference to his son's affairs, rendered upon the defendant's retainer; that the defendant attended as a witness upon some of the trials; that when the costs were being taxed, the plaintiffs intimated to the defendant the fact, and received from him a communication, forwarding a banker's draft for £55, and requesting to be furnished by them with, as soon as convenient, their account for professional charges; and that the plaintiffs were advised and believed that the recovery of said costs and money would be attended with great difficulty, expense, and delay in Jersey, but that, in the event of procuring a judgment in the Court in Ireland, it could, without difficulty and at a trifling expense, be made available against the property of the defendant in Jersey. The motion stood over from Consolidated Chamber, by direction of Morris, J., and now,

Cleary, on behalf of the defendant, showed cause. The Court has no power to order service to be had upon the defendant in person out of the jurisdiction; but, even if the Court have that power, it is one which should not be exercised, in the discretion of the Court, in this instance. It does not appear that the defendant is a British subject, or that he was ever personally in this country; and he cannot be said to be constructively within or subject to this jurisdiction, since he has no agent, place of business, or property in this country—and, if a judgment were had against him here, there is nothing to show that it could be made to attach either his person or property. Unless, therefore, jurisdiction has been given by the express language of the Legislature, its exercise here would contravene the general principles upon which territorial jurisdiction depends, *Cookney* v. *Anderson*,* 1 De G. J. & S. 365, 379. Morris, J., in Chamber, when directing that the motion should stand over, intimated that his impression had heretofore been that the Irish Courts had no power to effect service of process upon a defendant in person out of the jurisdiction; and in *Knox* v. *Lord Rosehill*, not reported, Dowse, B., questioned whether service could in such case be ordered to be made merely by a registered letter.†

[O'Brien, J.—We decided the contrary in *Kelly* v. *Dixon*, Ir. R. 6 C. L. 25; and, as I have been informed by an officer of the Common Pleas, that Court has

* See as to this decision, *Steele* v. *Stewart*, 33 L. J. Ch. 190; *Foley* v. *Maillardet*, 9 L. T. N. S. 643; *Osborne* v. *Osborne*, 2 Ir. L. T. 58; *Newland* v. *Arthur*, *ib.*, 316; *Frizelle* v. *Cotton*, 4 *ib* 105. In Bankruptcy, see *Re O'Loghlen*, L. R. 6 Ch. Ap. 406; *Re Williams*, 28 L. T. N. S.488; *Re Vaughan*, 3 N. R. 293.—[Ed. *Ir. L. T. Rep.*]

† See reply of Morris, J., to the Eng. and Ir. L. and Ch. Com. (1863), 7 Ir. L. T. 494. See also *Barre* v. *M'Neight*, 8 Ir. L. T. 64, *bis.*; and observations in *Knox* v. *Lord Rosehill*, 7 Ir. L. T. 504.—[Ed. *I. L T. Rep.*]

Digitized by Google

followed our decision. BARRY, J.—It may be said that "substitution of service" is a different thing from an order directing personal service I may mention that, in granting the conditional order in this case, I had regard to section 31 of the C. L. P. Act, 1853. FITZGERALD, J.—The words "or other sufficient grounds," in section 34, seem to mean for substitution of service.]

The Court of Exchequer refuses to grant orders on the authority of *Kelly* v. *Dixon*. In that case *Dixon* v. *Capes*, 11 Ir. C. L. 345, was not cited, where it was held by the Court of Exchequer that the words in section 34, "or on other good and sufficient grounds," mean grounds of the same character as those enumerated.* The preamble of the Act shows that it was passed merely to simplify and amend procedure, and not to enlarge jurisdiction.† It virtually enacts the law previously existing, as declared by judicial decision regarding substitution of service. The terms of 43 Geo. 3, c. 53, s. 8, were most extensive; and yet, it was a matter of controversy whether that provision applied to a person out of the jurisdiction at all—and it was never applied unless the defendant was, at least, constructively within the jurisdiction, as by having an agent here, *Phelan* v. *Johnson*, 7 Ir. L. R. 527.

[FITZGERALD, J.—Your argument goes to this, that, being made without jurisdiction, the order is a nullity; and if so, that there would be no authority to enforce it, or to affect the defendant. BARRY, J.—Do you admit that the defendant has sufficient notice of the proceedings within the principles of natural justice, acording to *Sheehy* v. *The Professional Life Assurance Co.*, 13 C. B. 787?]

That is conceded, and, therefore, there would not be a defence in that regard to an action on the judgment in Jersey. But the notice has been effected by an excess of jurisdiction, to which we are now entitled to except, and which is not cured by our appearing for that purpose, *Cookney* v. *Anderson*, *supra*.

[WHITESIDE, C.J., referred to *Reilly* v. *White*, 11 Ir. C. L. R. 142.]

A defendant may be present by his agent, as well as act by an agent. But, there is no more power to serve him in person out of the jurisdiction than to substitute service on him by serving an agent out of the jurisdiction. Sections 31–33 relate to service within the jurisdiction. Section 34 relates to substitution—1st. Where the defendant is within the jurisdiction, and avoiding service; and 2nd. Where a defendant is without the jurisdiction, and has an agent within it. The words "or on other good and sufficient grounds" may receive application by dealing thereunder with defendants who are within the jurisdiction, but cannot be served under the previous section; thus by serving a prisoner or lunatic by substituting service on the governor of the gaol or keeper of the asylum.‡

[WHITESIDE, C.J.—Must a person who "has removed to avoid service" have an agent here?]

It may be that a person cannot, in the eye of the law, be said to change his domicile within the jurisdiction by absconding, with the intention of defeating process of law;* and if his place of abode is still to be considered as within the jurisdiction, it is unnecessary that he should have an agent here. At all events, it is unnecessary to press this argument to the extent of saying that a person so removing could not be served in person; although probably he should be served by some mode other than by service in person. In this case, there is no reason why the defendant should be deprived of the right of having a suit against him disposed of in his own forum; and the argument on the other side must go to the extent of contending that a defendant may be served by sending a telegram to San Francisco.

[BARRY, J.—The English C. L. P. Act made provision for serving a foreigner in person. The Irish Act is founded on it to a great extent; and may it not be argued that it was intended in the one section of our Act to comprise everything to which the English provisions on the subject extended?]

The powers given by the English Act were carefully defined and limited, not only with a view to secure private rights, but to prevent the sovereignty of the State coming into conflict with others, C. L. P. Act, (Eng.), 1852, s. 18; Day C. L. P. A. 45. It could not have been intended that the provisions contained in three or four special enactments in the English Act were to be spelled out from as many words in the Irish. In the Irish Act no inquiry precedent is enforced as to whether the defendant is a British subject, with a view to prevent a violation of sovereignty; but, if it were intended to confer this jurisdiction, the first care of the Legislature would have been, by enforcing such inquiries, to prevent the civil power of the State from coming into conflict with that of other States. And it is to be observed that the English Act contains provisions of a peculiar character as to the mode of procedure to be subsequently adopted, so that, instead of enabling final judgment to be marked by default in the ordinary way, special safeguards are ordained compensatory to a defendant for the deprivation of his right of being sued in his own forum. Here, if the defendant is to be sued in this country, the plaintiffs can gain nothing thereby; they must seek a remedy by another distinct action in Jersey on the Irish judgment; and the defendant is thus harrassed by a double procedure, while one tribunal would have given the plaintiffs redress.

Holmes, *contra*.—Except from his name and address, there is nothing here to show that the defendant is a foreigner; and he does not suggest even that he has a case on the merits.

[WHITESIDE, C.J.—His letters show that he can write English in the purest vernacular. BARRY, J.—And I may add—for I know something about it—that he has very wisely abstained from going into the merits.]

It has been settled by *Kelly* v. *Dixon* that the jurisdiction here in question exists, and will be exercised in a fitting case. This case was not argued or fully opened before Morris, J., and he expressed nothing

* By inadvertence the reference of Hughes, B., to section 31 was not cited.—[ED. *I. L. T. Rep.*]

† Compare title of C. L. P. A. Act, 1856. And as to construction of the Acts see *Sichel* v. *Borch*, 2 H. & C. 957; *Jackson* v. *Spittal*, L. R. 5, C. P. 550; *Carlisle* v. *Whalley*, L. R. 2, H. L. 416.—[ED. *Ir. L. T. Rep.*]

‡ Compare on the construction of similar words in 13 & 14 Vic., 18, 9, *Sheehy* v. *Professional Life Assurance Co.*, 3 C. B. N. S. 597. As to substitution of service on lunatics, see *Wilmot* v. *Marmion*, 8 Ir. L. R. 224; *Vance* v. *O'Connor*, 11 ib. 60; *Sweeny* v. *Shee*, 2 IR. L. T. 574; *Kimberley* v. *Alleyne*, 2 H. & C. 223, 11 W. R. 757; *Dennison* v. *Harding*, 15 W. R. 346, 2 W. N. 17; *sed vide Ridgeway* v. *Cannon*, 23 L. T. 143, 2 W. R. 473; *Holmes* v. *Sweeny*, 24 L. J. C. P. 24; *Williamson* v. *Maggs*, 28 L. J. Ex. 5, 7 W. R. 50. As to service on defendant in prison, see *Maguire* v. *Gardiner*, 4 Ir. L. R. 310; *Cosby* v. *Robinson*, 5 Ir. Jur. N. S. 87; *Dawson* v. *Le Capelaine*, 21 L. J. Ex. 219.—[ED. *Ir. L. T. Rep.*]

* See *Re Williams*, 28 L. T. N. S. 488.—[ED. *Ir. L. T. Rep.*]

Digitized by Google

approaching to a final opinion upon it. The Court of Common Pleas have made similar orders to that made in *Kelly* v. *Dixon*, as I myself can vouch. The question then is whether this Court will follow its own practice, or permit the same question to be re-argued which was settled in *Kelly* v. *Dixon*.*

He was then stopped by the Court.

WHITESIDE, C.J.—I think that the conditional order in this case should be made absolute. We have before us the case of *Kelly* and *Dixon*, decided in this Court by the full Court—decided consistently with justice, and in furtherance of a beneficial purpose. It does not appear that any case conflicts with the decision there made. The Court of Common Pleas appear to have followed it, and we cannot now review or reconsider our decision. It is as if counsel came in the day after that decision, and asked us to review the very matter we had decided. It is of importance that a rule, once made (even apart from whatever may be its intrinsic value), should be steadily and consistently adherred to;† and though we respect the arguments urged on behalf of the defendant, by his counsel, yet, looking to the words of the Act of Parliament, and the decision in *Kelly* v. *Dixon*, which has been adopted by a Court of co-ordinate jurisdiction and not impunged by any, we cannot proceed further with this motion. I may, however, add that I have been much impressed by what is said by the Chief Baron, in *Reilly* v. *White* (*ante*). The order must be made absolute.

FITZGERALD J.—I shall merely add that, although I was one of the members of the Court by whom the case of *Kelly* v. *Dixon* was decided, and was myself a party to that decision, I would personally desire a reconsideration of the case as I entertain considerable doubts relative to its correctness, but we have decided in that case a point of practice, and when we are now asked not to follow it, it does seem as if the day afterwards another counsel came in and asked us to re-hear the case—and that although followed by another Court. It would be a different thing if that case had been quarrelled with by another Court; and I should then think that it would be desirable to reconsider it fully with a view to uniformity, and to overrule it if it has been incorrectly decided. If the abstract proposition here contended for is well-founded, that the order is an excess of jurisdiction, the defendant may have it in his power to prevent the consequences of it.

BARRY, J.—I entirely concur in opinion with my Lord Chief Justice, that it would be exceedingly inconvenient to re-agitate the question decided, after solemn arguments, in the case of *Kelly* v. *Dixon*, since followed by the Common Pleas. I was not a member of the Court when it was decided; the decision came upon me with surprise. I am not prepared, to say whether I would abide by it. But I think however, that it is not inconsistent with the principles of natural justice.

O'BRIEN, J.—I concur in the opinion pronounced by the other members of the Court. I cannot see the propriety of re-arguing the case of *Kelly* v. *Dixon*, where there has not been any appeal from that decision, and it has not been dissented from by any Court of co-ordinate jurisdiction. The question may come before us again after it has been considered by another Court. I remember a case from the North of Ireland, in which, in like manner, a question arose and the Court made a decision. The same question was brought before us in another case, but as we heard that the principle involved in that case was to be argued in a case that was about being discussed in the Common Pleas, we postponed pronouncing our decision in the case to which I have referred, till we had ascertained how the Common Pleas had determined. If the Common Pleas dissented, we would have re-considered our views; but as the decision to which they came was in conformity with our judgment, we would not permit the question to be re-agitated. But if *Kelly* v. *Dixon* should be dissented from—I do not refer to mere loose expressions of disapprobation—we shall willingly reconsider it.

Order made absolute.

Attorneys for the plaintiffs, *Reede & Goodman.*

Attorney for the defendant, *J. Lawler.*

* See *per* Bushe, C.J, *Sterne* v. *Guthrie*, 1 F. & Sm. 55; *per* Lord Eldon, *Wellesley* v. *Duke of Beaufort*, 2 Russ. 19; *sed vide per* Dallas, C.J., *Smith* v. *Jersey*, 2 Br. & B. 581.—[ED. *I. L. T. Rep.*]

† "Perhaps it is of less importance how the law is determined than that it should be determinate and certain; and such determinations should be adhered to, for then every man may know how the law is;" per Ashhurst, J., 7 T. R. 419. "Uniformity, perhaps, is of more importance than extreme accuracy of construction;" per Pennefather, B., 6 L. R. N. S. 313.—[ED. *Ir. L. T. Rep.*]

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before FITZGERALD, J.)

Re MAGINNIS and CAMPBELL.

January 29th, 1874.—*Bringing up prisoners before coroner*—Habeas corpus, *to enable prisoners to be present and to give evidence at inquest—Affidavit.*

Motion granted for a writ of habeas corpus, *to bring before a coroner's inquest persons who were suspected of having caused the death in question, and who were in custody under a magistrate's remand, so that they should be examined as witnesses at the inquest, and so that they should be there present from day to day.*

Monroe, on behalf of James Maginnis and Joseph Campbell, moved, on notice to the Crown, for a writ of *habeas corpus*, in order that they should be in attendance at a coroner's inquest, so that they might there be examined as witnesses, and so from day to day until the conclusion of the inquest.

The motion was grounded on an affidavit of the attorney of the applicants, who deposed that they were in custody in the bridewell of Newry, county Armagh, charged with the murder of P. M'Conville, on January 22nd, 1874; that, on January 23rd, they were brought before the resident magistrate, and remanded; that, on January 26th, the coroner held a Court, having empanelled a sufficient jury, and the deponent then informed the coroner that the prisoners were suspected, and the deponent requested that they should be present at the inquest, in order to hear the witnesses, and, if necessary, to make a statement, and to give evidence; that the police authorities informed the coroner that the prisoners were in custody on remand; that the inquest was then adjourned by the coroner till January 30th, for the purpose of giving the deponent an opportunity of applying for a writ of *habeas corpus*, in order that they might be present to hear any evidence which might be given against them, and, if necessary, to make a statement and be examined as witnesses; that the deponent, as their attorney, made the affidavit at the request of the said Maginnis and Campbell, who were advised, and believed that it might be necessary, to tender themselves as witnesses.

There was no appearance *contra.*

Motion granted: the writ to go in all respects similar to that issued in *Re Reardon*, 7 IR. L. T. R. 196.

Attorney for the applicants, *Doyle.*

Re CLAFFEY.

(Before FITZGERALD, J., in Chamber.)

Jan 27, 1874.—*Bringing up prisoner before coroner*—Habeas corpus, *to enable prisoner to be present at inquest.*

Motion granted, on the application of the Crown, for a writ of habeas corpus, *so that a prisoner (in custody under a magistrate's remand, on a charge of infanticide) should be*

Digitized by Google

n attendance at a coroner's inquest from day to day, although not in order that the prisoner should be there examined as a witness.

Nash, on behalf of the Crown, moved *ex parte* for a writ of *habeas corpus*, to bring up Eliza Claffey, in order that she should be present before the coroner at an adjourned inquest.

The motion was grounded on an affidavit of Lewis Clare, attorney, principal assistant of the Crown and Treasury Solicitor, stating that the latter had received instructions from the Under-Secretary of the Lord Lieutenant to make the application; that on Jan. 20, 1874, one of the Divisional Justices of the Police district of Dublin metropolis remanded for one week, to the Richmond Penitentiary for Females, Grangegorman, within the said district, Eliza Claffey, charged before him with the crime of infanticide, and accordingly, the said Eliza Claffey was still in custody awaiting further examination in relation to the said charge; that on Jan. 20, one of the coroners for the county of the city of Dublin proceeded to hold an inquest on the body of the infant, whose death was in question, but upon hearing that the said Eliza Claffey was in custody, and charged as aforesaid, the coroner declined to proceed with the inquest in her absence, and adjourned the inquest till Jan. 28, and requested the Lord Lieutenant to direct that the said Eliza Claffey be brought up under a writ of *habeas corpus* from this Court, to be present at the said inquest, and an application for which purpose his Excellency directed accordingly; that it was necessary that a writ of *habeas corpus* should issue to the governor of the Richmond Penitentiary for Females, Grangegorman, within the said district, requiring and commanding him to have before the said coroner of the county of the city of Dublin, at an inquest at the Morgue, in Marlborough-street, in the county of the city of Dublin, at the hour of two o'clock in the afternoon of Jan. 28, 1874, the body of the said Eliza Claffey, in order to her being present at the said inquest.

FITZGERALD, J., granted the motion, and ordered that the writ should go in all respects similar to that issued in *Re Reardon*, 7 Ir. L. T. R. 196, save *omitting* the provision following, viz.—"And in order and so that she may be then and there examined as a witness at and upon the taking of the inquest and inquisition aforesaid."

W. L. Joynt, Crown and Treasury Solicitor.

COURT OF COMMON PLEAS.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before the FULL COURT.)

ARKINS *v.* MAGRATH.

Nov. 11, 1874.—*Practice*—177 *&* 178 *G. O.*, 1854—*Consent for judgment, with date in blank—Contracting to enable proceedings to be had without regard to the General Orders—Proceedings after a year and a day—Debtors Act (Ir.)*, 1872—*Substituted debt—New security—Interest after, on debt contracted before the Act—Interest on interest—Discharge from arrest.*

It is competent to the parties to an action to contract themselves out of the operation of the 178th G. O., 1854, *so that no rule need be entered before proceeding in the action, though no proceeding be taken for a year and a day after defence and before judgment.*

Where, after the passing of the Debtors Act (Ir.), 1872, *an agreement is concluded between a debtor and creditor, by virtue of which a principal debt due before the passing of the Act, and interest computed thereon up to the date of the agreement, are constituted one integral debt, and made a new starting-point as such in the dealings between the parties, bearing interest on the gross amount, it is not competent to the creditor to arrest the debtor under a ca. sa., on foot of a judgment in respect of the liability so incurred.*

Appeal from an order, in Consolidated Chamber, refusing a motion made, on behalf of the defendant, that the judgment in this cause and the writ of *ca. sa.* issued thereon be set aside, and the defendant discharged from custody.

The facts appearing, so far as necessary for the purposes of this report, were as follows:—The action was brought October 29th, 1872, to recover £603 6s. 10d., with accruing interest thereon, on foot of three promissory notes; and for money paid for the defendant's use, and for interest on money due, and on accounts stated. Of two of these notes, dated respectively April 24th, 1869, and April 28th, 1869, for £200 and £300, payable at three months, O'L. was the maker, and Treacy the payee; and they were endorsed by Treacy to the defendant, who endorsed them to the plaintiff. Of the third note, dated May 2nd, 1871, for £40, payable at one month, Mooney was the maker, and B. the payee, by whom it was endorsed to the defendant, who endorsed it to the plaintiff. The particulars endorsed were as follows:—

	£	s.	d.
1869, July 27—To promissory note this day due, - - -	200	0	0
Interest thereon to October 29, 1872, - -	32	11	1
July 31—To promissory note this day due, - - -	300	0	0
Interest thereon to October 29, 1872, - -	48	13	9
1871, June 5—To promissory note this day due, - - -	40	0	0
Interest thereon from June 15, 1871, to February 19, 1872, - - -	1	8	2
Interest on £20, balance of said note, from February 19, 1872, to October 29, 1872, -	0	13	10
	623	6	10
1872, Feb. 19—By cash paid on account,	20	0	0
	603	6	10

With accruing interest on said principal sums until paid or judgment.

After a defence and replication filed, negociations were entered into, which resulted in a compromise, in pursuance of which the following agreement, dated Nov., 18, 1872, was signed by the plaintiff, defendant, and B. (the payee of the third note sued on):—"Minutes of agreement. All proceedings in this case to stop on the carrying out of the following—Mr. Magrath to procure for Mr. Arkins Mr. B.'s acceptance at three months for £256 to the draft of Captain D., and endorsed by Mr. R. B., and also by Mr. Magrath; and also to hand to Mr. Arkins Mr. B.'s acceptance to Mr. Magrath's own draft for £325 18s. 8d. at three months. Mr. Arkins to bind himself to all parties signing these bills not to take any proceedings upon them if £25 is paid on them every three months until the amount of the bills, with interest at 6 per cent., is fully paid off. But Mr. Arkins is to be at liberty to

Digitized by Google

proceed for the entire amount remaining due on default, for a week, in any of the quarterly payments. A consent for judgment to be given in this action, Mr. Arkins undertaking not to move, or register, or in anywise act on it until such default occurs. It is also agreed that Mr. Magrath shall pay in cash the sum of £20 principal, and £1 8s. 2d. interest, and £9 14s. 6d. costs, as agreed upon, said sum of £21 8s. 2d. having been deducted from the amount of debt as endorsed on the summons and plaint, and leaving £581 18s. 8d., the amount of the above two sums of £256 and £325 18s. 8d. due." In pursuance of this agreement the defendant's attorney, on November 20, gave plaintiff's attorney a consent for judgment, "that judgment be forthwith entered for plaintiff for the sum of £581 18s. 8d., and £3 for costs," no date being inserted therein; the plaintiff's attorney, at the same time, giving an undertaking, addressed to the defendant, as follows:—"You having this day given me a consent for judgment for the sums of £581 18s. 8d., and £3 for costs, I undertake not to enter any judgment thereon, or otherwise move thereon until default be made in the payments, as provided for in the minutes of the agreement dated November 18, and I am to be at liberty to date the consent at any time it may be necessary to do so." The defendant on the same day paid plaintiff's attorney, pursuant to the agreement, £21 8s. 2d., on account of the debt, with £9 14s. 6d. for costs, leaving £581 18s. 8d. due. Between the 18th and 20th of November, the defendant procured and handed over the bills mentioned in the agreement, and on the 21st received the first two promissory notes, the third having been previously paid and handed over by the plaintiff. The instalments which fell due February 21, 1873, and May 21, 1873, were duly paid, but, notwithstanding several applications, the third and fourth instalments were not paid, in consequence of which plaintiff's attorney, on September 25, October 16, and December 1, 1873, wrote to the defendant, stating that he would mark judgment, adding in the last letter that he would do so without further notice. Accordingly, on December 12, 1873, without entering any rule, however, under either the 177th or 178th General Orders, the plaintiff marked final judgment upon the consent for judgment, having first, at that time, inserted therein the date thereof as December 12, 1873. The judgment was entered for £567 18s. 6d. debt, and £3 costs. On December 13, 1873, the defendant was arrested under a *ca. sa.* on foot of the judgment, for £570 18s. 6d.

Subsequently, the defendant moved in Consolidated Chamber that the proceedings be set aside, and that he be discharged from custody. FITZGERALD, J., refused the application, from which order the defendant now appealed.*

It now, however, further appeared, as the result of a calculation made on behalf of the plaintiff, that the amount of £570 18s. 6d., for which judgment was marked, was arrived at in this manner—The starting point was the £581 18s. 8d. mentioned in the minutes of agreement, which was composed of the balance of the principal debt and *interest included* up to November, 1872. As against this, credits were given for the subsequent payments on the general account, striking the balances accordingly, but upon such balances (although partly composed of interest upon the original debt) further interest was charged up to 1873. The balance was thus brought out £567 18s. 6d., to which was added the £3 costs given by the consent for judgment, making in all £570 18s. 6d., for which the defendant was arrested.

G. Fitzgibbon, Q.C. (with him *Keogh*), in support of the motion. The agreement and undertaking are to be read in connexion with 177 & 178 G. O., 1854. Either there was a compromise pending, and, if so, a rule should have been entered under the 177th, or, assuming that the transaction did not amount to a compromise, a rule should have been entered under the 178th. A reduction of the amount of the debt was provided for, but a new security was given for the whole. The plaintiff was not to move upon the consent until a particular event should have occurred; but he should, thereupon, move according to the course of law and the practice of the Court. Here after defence and before judgment, no proceeding had been taken for a year and a day by either party. All the proceedings provided for were of a negative character—the plaintiff was not to move, proceed, or act—but there is nothing to show that the General Orders were to be dispensed with. Even if they could be dispensed with, that could only be by express provision. On the contrary, the intention of the parties, as shown by the documents, was not to contract themselves out of the General Orders, for the words "or in anywise move," and "or otherwise move," taken in connexion with the context, can receive no application unless by reference to the Rules. The insertion of the date was a step taken—one without which the judgment could not have been marked, and this should not have been done without a rule entered; and, at all events, the judgment could not have been marked. In the next place, the arrest was contrary to the Debtors Act, 1872. The compromise was entered into after that Act came into operation. The new security (*i.e.*, the consent for judgment, and the agreement, which was signed by a third party, and in pursuance of which the bills were given) merged the original debt, just as if a mortgage or bond had been taken; and the arrest is in respect of default in payment of the instalments on the new security. But the writ itself shows that interest was included after August, 1872; the agreement included interest up to November, 1872; and the judgment has been marked for interest calculated up to 1873.* Even

* The judgment of FITZGERALD, J., was as follows:—This case is one of some difficulty; but the only question is, whether it comes within the 178th General Order, that a rule should have been served on the opposite party, so as to let him in to show whether anything has taken place which could stop the proceedings. But this rule is made for the benefit of both parties, and they can contract themselves out of it. In this case the parties were dealing at arm's length, and the case was in course of being prosecuted when the arrangement was entered into. They entered into a special contract, that the plaintiff should have a consent for judgment, but not proceed until default was made in the payment of the instalments; and the consent was given in blank, to obviate the consequences of the General Order, and to give the plaintiff the benefit of the judgment at once. I shall refuse the motion, with costs, giving liberty to appeal to the full Court.

* By section 90 of the Bankruptcy Act (Eng.), 1861, a judgment-debtor summons must be a summons in respect of a debt contracted, or of a liability incurred after the passing of the Act. In *ex-p. Grey*, 9 L. T. N. S., it appeared that the summoning creditor had recovered judgment in 1844 in Ireland against the judgment debtor in an action upon a bond; the summoning creditor brought an action in England upon the Irish judgment for the amount due, and also for further arrears of interest, and recovered judgment in England on July 11, 1863: Held, that the latter judgment became the debt within the above section, and further, that arrears of interest on the bond sued for and accruing after the passing of the Act constituted a liability incurred after the passing of the Act. In *re a Disputed Adjudication* (Ba. Feb. 6th, 1874), it was held *per* Harrison, J., that, following *ex p. Harding*, L. R. 1 H. L. 9, rent which accrued due after the passing of the B. A. Act, 1872,

Digitized by Google

if the debt is not to be considered as created by the agreement, the £3 costs was certainly so, and was not incidental to the original demand. Costs are regarded as a distinct debt, and are provable as such in bankruptcy, and as such will support a petition in bankruptcy.* The amount ascertained by the agreement comprises two component parts—principal and interest; the latter would not of itself bear interest. But judgment is marked for interest on both of these component parts; and for a portion of that the defendant could not have been arrested. *M'Carthy* v. *M'Carthy*, 7 Ir. L. T. R. 177, is undistinguishable from this case, but was not cited when the motion was before Fitzgerald, J. Before him the entire of these points were not advanced at all; there was only a brief reference to the Debtors Act, as preventing the arrest, because the compromise was entered into after its passing, to which it was replied that the Act did not apply, as the notes were made antecedently. The question was not decided by Fitzgerald, J.

[MORRIS, J.—Your argument goes to this, that if any portion, however small, of the amount for which the defendant was arrested was a debt within that Act, the defendant could not be arrested.]

Certainly; *M'Carthy* v. *M'Carthy*.

[MORRIS, J.—Even if the Act had not passed, how was the plaintiff entitled to charge interest on interest unless by specific agreement?]

In that respect, the judgment was clearly overmarked. The plaintiff seems to have treated the agreement as a new starting point, and to have considered himself entitled to deal with the amount ascertained, as if a judgment had then been marked.

Purcell, Q.C. (with him *Carton*), *contra*.—The parties were entitled to contract themselves out of the operation of the 178th G. O., and did so. Any doubt as to their intention arising on the agreement is removed by the terms of the undertaking of November 20th, and by the fact of the consent having been given without a date, so as to be available at any time. The Rules were intended merely for the benefit of suitors; and suitors may settle their differences without reference to them. So, the parties might agree to extend the time for pleading beyond the statutable period. FITZGERALD, J., during the argument in Chamber, appeared disposed to hold that the defendant might be arrested for interest on the original debt, and directed that we should confine the argument to the question whether a rule should have been entered under 178th G. O. The interest is culated, not on the judgment, but on the existing debt arising upon the promissory notes and ascertained by the agreement. *M'Carthy* v. *M'Carthy* is distinguishable, as there the judgment was entered after the passing of the Act; the simple contract debt was merged in the judgment; and the interest was charged upon the judgment debt. The original liability is the point to be regarded, *Re O'Connell*, 7 Ir. L T. R. 51. That liability was on foot of the notes, and the interest was an accessory incident attached to that liability by operation of law. The agreement did not create the debt, nor was the agreement carried out. Where bills are taken for a debt, and a default takes place, the creditor may fall back on his original rights. The plaintiff was entitled to deal with the agreement, and to charge interest upon the sum thereby ascertained as if judgment had then been marked, in consideration of the forbearance granted.

Keogh, in reply.

MORRIS, J.—Previous to August 6, 1872, the date of the passing of the Debtors Act (Ir.), 1872, the defendant was liable to the plaintiff on three promissory notes, for the aggregate amount of £540. Proceedings were taken against him to recover the amount; and in November, 1872, some months after the passing of the Debtors Act, an agreement was come to between the parties by which, as I read it, the amount due up to that date was ascertained to be £581 18s. 8d. and £3 costs, as due to the plaintiff. A consent for judgment with no date was given to the plaintiff, upon which he was to be at liberty to act at any time he might think proper. The Court are of opinion that, if the motion rested alone upon the first ground upon which it has been based—namely, that before marking judgment the plaintiff should have entered a rule under the 178th General Order—it should fail, because the meaning of the arrangement agreed upon was, that the parties had contracted themselves out of the operation of the 178th General Order, the effect of giving the consent for judgment with a power to insert any date being to make the transaction as it were always a new one. Therefore, if the motion depended on this ground alone, the defendant should fail. But upon the far more serious question involved, the determination of which might affect many other cases, we are of opinion that the defendant is entitled substantially to succeed. The liability on foot of which he has been arrested must be treated in either of two points of view. That liability having been ascertained in November, 1872, to amount to £581 18s. 8d., either that amount must be regarded as the original debt of £540, with the addition of £41 18s. 8d. for interest—and if so the plaintiff would have had no right to charge interest upon interest, and consequently the judgment would be overmarked. Or else, as has been suggested, according to the true meaning of the agreement, the £581 18s. 8d., composed of principal and interest, was made a bulk debt and a new starting-point—and if so, the plaintiff is put out of court by the Debtors Act, because the debt was created after the passing of that Act, and on that debt he has calculated interest until the judgment was marked. The plaintiff, therefore, appears to us to be in this dilemma. If he admits that he is only entitled to charge interest on the original notes, and says that the £581 18s. 8d. is the original debt of £540, plus the interest up to the date of the agreement, in such case the judgment is overmarked, as he has calculated interest upon the gross amount subsequent to November, 1872, and he had clearly no right to charge interest upon interest. If, on the other hand, he says that the £581 18s. 8d., the sum agreed on by the parties in November, 1872, as a bulk debt, was a new debt from that starting-point—which, probably, is the opinion we would be disposed to come to—in such case he would have no right to issue execution against the defendant's person. We shall, therefore, order the defendant to be discharged from custody; but as the judgment appears to have been *bonâ fide*, we shall not set it or the writ aside. He has asked, by his notice, for the costs of the motion, which we will give, putting him on terms to undertake to bring no action.

Order accordingly.

Attorney for the plaintiff, *James Plunkett.*

Attorney for the defendant, *F. G. Tincler.*

on foot of a lease executed and assigned, to the person sought to be made bankrupt, before the passing of that Act, was not a debt contracted after the passing of the Act under section 22; that the Act was to be construed together with the Debtors Act, but that the "liability" in question arose and attached to the alleged bankrupt when he became assignee of the lease, although it was not converted into a debt *in esse* until the breach of covenant took place, and that it was not a sum payable under a "cause of action or suit arisen" after the Act, because the *whole* cause of action (*i.e.* the contract and the breach) should have so arisen, considering the object of the section in the B. A. Act, as explained in *ex p. Harding*, without its being necessary to decide upon the authority of the cases respecting substitution of service under the C. L. P. Acts; and that the cause shown should be allowed accordingly.—REP.

* See *Re an Arranging Debtor*, 8 Ir. L. T. 8; *ib.*, *infra*, 27; cases cited *in notis*, *Johnston* v. *Germaine*, 6 Ir. L. T. R. 122; *Simpson* v. *Mirabita*, L. R. 4. Q. B. 257; *ex p. Curling*, 9 L. T. N. S. 659.—[REP.]

Digitized by Google

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law.

(Before MONAHAN, C.J., KEOGH, AND LAWSON, J.J.)

COLLIER AND WIFE *v.* DUBLIN, WICKLOW, AND WEXFORD RAILWAY COMPANY.

Nov. 24th, 1873.—*Breach of contract to carry within reasonable time—Conveyance of plaintiff's wife—Nominal damages.*

Where a railway company contracted to carry the wife of the plaintiff, but neglected to perform their contract, and the wife of the plaintiff was in consequence detained for a night at the station of the defendants, it was held that the plaintiff could not recover more than nominal damages, he not having been at home, and, in consequence, not having been deprived of his wife's society and companionship on that occasion, and there being no evidence of an injury to his wife depriving him of her services afterwards.

The plaintiffs in this action, William H. Collier, and Mary Collier, his wife, complained, in the first count of the summons and plaint, that the defendants, the Dublin, Wicklow, and Wexford Railway Company, being carriers of passengers, contracted with the plaintiff, William Collier, to carry his wife, the plaintiff, Mary Collier, from Booterstown to Lansdowne Road Station, within a reasonable time, but that they did not do so, whereby the plaintiff, Mary Collier, was obliged to remain during a whole night in a certain station of the defendants, without proper accommodation, and that by reason thereof she became seriously ill, and the plaintiff, William Collier, was deprived of her services. There were four other counts for assaulting and imprisoning the plaintiff, Mary Collier. The defendants pleaded, in addition to ordinary traverses, a special plea that the female plaintiff would not enter the carriage, whereby the defendants were unable to perform their part of the contract. The case came on for trial before Monahan, C.J., and a special jury, on the 19th of July. The facts appearing on his lordship's report were as follows:—The plaintiff, Mary Collier, took a second-class return-ticket from Dublin to Booterstown; she spent the day at her father's house at Booterstown; she returned to the station, at Booterstown, with her daughter, about 11.30, p.m., in time to catch the last train. She and her daughter got into a carriage, but when they had done so they found it was a smoking compartment, and got out in order to enter another compartment. The porter opened the door for them to get in; the daughter got in, but the train went off before Mrs. Collier could get in. After the departure of the train she entered the station-house. and complained to Mahony, the deputy station-master, and asked to have a cab sent for. This was refused. She then sat down in the station. When Mahony was about to lock up the place for the night and go home, he informed her of it. She, nevertheless, remained sitting. He turned out the lights, locked the door, and went away, leaving Mrs. Collier inside, where she was found next morning, when the station was again opened for the day. It was not alleged that she contracted any illness, or sustained any personal injury from what had happened beyond the fact that she had to lie in bed for a time, in consequence of having sat so long upon a hard seat. No medical advice was applied for. The plaintiff, William Collier, was absent from home on the night in question, on his business as a commercial traveller, and did not know of what had happened till afterwards. The defendants contended that they were not liable for the acts of Mahony. In this view his lordship concurred, and directed the jury to find for the defendants on all the counts, except the first. In charging the jury his lordship said that it appeared to him that the guard should not have signalled for starting the train till the lady was provided with a seat, and that, therefore, some damages for a breach of contract should be given. His lordship declined to direct nominal damages, but directed the jury only to give such damages as were sustained by the husband in his own capacity. The jury found for the plaintiff on the first count £50 damages. A conditional order for a new trial having been obtained on the ground of misdirection, and also that the verdict was against the weight of evidence, and that the damages were excessive,

Purcell, Q.C., for the plaintiff, showed cause.—The defendants are liable for the natural results which flow from their breach of contract, *Smeed* v. *Foord*, 1 El. & El. 602. "Each case of this description must be decided with reference to the circumstances peculiar to each," per Pollock, C.B., *Hamlin* v. *Great Northern Railway Company*, 1 H. & N. 408. The natural consequence resulting from her being left behind by the train was, that she had to pass the night in the station in the cold, and she so sustained injury. The damages were not excessive.

Pierce White, Q.C. (with him *Gibson*, Q.C., and *Seeds*), for the defendants, *contra*.—The jury were mainly led, in giving damages, by a consideration of what had taken place at the station-house. There was not a sufficient separation in their minds of the damages which they might have given under the other counts, and damages which it was lawful for them to give on the first count. There is here no question of the damages not being the consequence of the breach, as in *Hadley* v. *Baxendale*, 9 Exch. 341, but here there is no damage done at all. No evidence was given of the plaintiff, William Collier, having incurred any expense in medical attendance on his wife. He was not deprived of his wife's services at the time of the breach of contract, as he was absent from home at the time. If the plaintiff had incurred expense in hiring a conveyance to perform the journey, she might have recovered damages to that extent; but nothing of the sort took place. The contract was to carry, within a reasonable time, and no damages can be recovered which do not flow from that breach. "Generally, in actions upon contracts no damages can be given which cannot be stated specifically. A contract to marry has always been considered an exceptional case, in which the injury to the feelings of the party may be taken into consideration. In actions for breaches of contract the damages must be such as are capable of being appreciated and estimated," *Hamlin* v. *Great Northern Railway Company*, 1 H. & N. 408. Supposing nominal damages had been directed, could a verdict returned in accordance with such damages have been set aside? If this were a contract to carry a servant of the plaintiff, would the plaintiff be listened to if he claimed more than his pecuniary loss? What specific pecuniary loss has been sustained by the plaintiff?

KEOGH, J.—This is a case for nominal damages. The plaintiff did not take a cab, or get a doctor; and no injury has been sustained by the plaintiff upon the first count. We think that the jury should have given nominal damages.

LAWSON, J.—When I look at the only allegation of damage to the plaintiff, William, I cannot see that a deprivation of services has taken place. When the plaintiff was not at home that night, he cannot get damages for his wife being kept out of her house.

MONAHAN, C.J.—I am of opinion that the damages were excessive, but I think that the jury could have considered

Digitized by Google

the circumstances attending the whole case. I think that, if the plaintiff was kept out of the train she was entitled to more than nominal damages.

Cause shown disallowed.

Attorney for plaintiffs, *Langan.*
Attorney for defendants, *Keogh.*

LAND SESSIONS.

Reported by John E. Walsh, Esq., Barrister-at-law.

(Before C. Rolleston Spunner, Esq., Q.C.)

Comerford *v.* Sawrey and Others.

Jan. 23, 1874.—33 & 34 *Vic., c.* 46, *s.* 4—*Lease for lives renewable for ever—Compensation for improvements—Head landlord liable for—Measure of compensation.*

The word "landlord" in the 4th section of the Landlord and Tenant (Ireland) Act, 1870, *is not restricted in its meaning to the immediate landlord; and therefore, where a lessee for lives renewable for ever forfeited his interest by reason of his omitting to renew,*

Held, *that his sub-tenant was entitled to claim compensation for improvements from the head landlord.*

In estimating the measure of improvements, the amount of wear and tear is to be deducted—not from their present cost—but, from the actual outlay by the tenant.

This was a claim, at the Nenagh Land Sessions, for compensation for improvements, consisting of the following items:—

1.	Building a cottage dwelling-house, -	£282
2.	" coach-house and stable, -	215
3.	" cart-shed and store, - -	80
4.	" pig-stye, privy, and haggard,	15
5.	" boundary and dividing walls,	150
6.	Paving yard and making sewers, - -	25
7.	Unexhausted manures, - - -	400
	Total, - - - -	£1,167

The facts of the case, as admitted by both parties, were as follows:—By indenture of the 2nd of October, 1776, John Beckwith leased (amongst others) the lands of Benedine to Henry O'Brien for three lives, the lease containing a covenant for perpetual renewal. This lease was from time to time renewed, and finally the lessee's estate became vested in Henry de Stafford, commonly called Stafford O'Brien, who continued paying the rent reserved up to the 29th of September, 1871. On the 20th of March, 1868, he received a notice on the part of the respondent, H. B. Sawrey (who had become the owner of the reversion), calling on him to pay up the arrears of several fines and to take out fresh renewals. After a considerable correspondence Henry de Stafford, at length, on the 16th of October, 1872, filed a bill in equity, which was, on the 16th of July, 1873, dismissed for want of prosecution, and an ejectment having been brought to recover the lands, an *habere* was issued, giving possession to the respondents. The claimant, her husband, and his father held the lands successively, as tenants from year to year under the O'Brien family, for many years, and she, having been evicted on the 29th of October, 1873, served the above-mentioned notice of claim on the respondents on the 20th of November, 1873, and received in reply a notice disputing the entire of her claim, and calling attention to the fact that the respondents were not the immediate landlords.

Donnell, for the claimant.—This is a claim for improvements only, and is properly made against the superior landlord, who, with the land, has taken possession of these improvements. Whilst, under section 3, compensation for *disturbance* arises, in the case of a tenant under a tenancy existing at the time of the passing of the Act, only when he is disturbed by his "immediate landlord," compensation for *improvements* may be claimed against "the landlord," which word is defined in section 70 as including superior, mesne, or immediate landlord. The limitation to immediate landlord in section 3, and the absence of such limitation in section 4, indicate that the remedy extends to a superior landlord where circumstances point him out as the proper person to pay the compensation. The Act treats improvements as the property of the tenant. A tenant quitting voluntarily is entitled to the same compensation for improvements as one who is disturbed by the landlord. Whether the tenant held under a lease or from year to year, or whether in either case the tenancy was created before or after the passing of the Act, he is entitled to the value of his improvements, subject to a series of exceptions, which may be summed up as enacting that where a tenant has by contract obtained some other form of compensation therefor, he shall not be entitled to claim a second compensation under the Act. The tenant may forfeit his right to compensation for *disturbance* by conduct unauthorized by the Act, such as sub-letting, assigning, or breach of covenant in certain cases, but none of these unauthorized acts works a forfeiture of compensation for *improvements.* Thus, the improvements are made the property of the tenant who made them; and the landlord, superior or immediate, who takes possession of them, must pay for them. If the immediate landlord had made some of the improvements, and the sub-tenant the remainder, then the middleman would have put in his claim, including his sub-tenant's improvements, and the sub-tenant would have claimed against him, when section 20 would have regulated the distribution of the compensation. But here the middleman has no claim, and section 20 does not apply. The remedy is, therefore, directly against the superior landlord. The point has already been decided in *Ward* v. *Walker* (6 Ir. L. T. R. 155), and *Bolland* v. *Domville* (Donnell's Land Act and Rep. 401).

Ryan, Q.C., for the respondents.—This claim should be against the immediate landlord. Section 4 says that a tenant may claim compensation, "subject to the provisions of section 3." These latter words import into section 4 the word "immediate" used in section 3. This is further evident from the provision in section 4, sub-section 4, that "a tenant who is quitting voluntarily shall not be entitled to any compensation, in respect of any improvements, when it appears to the Court that such tenant has been given permission by his landlord to dispose of his interest in his improvements to an incoming tenant, upon such terms as the Court may deem reasonable." This provision could only apply to a tenant claiming against his immediate landlord, and it shows that a claim like the present was not contemplated by the statute. The case of a person holding under a lease for lives renewable for ever is not within the Act. It is a "perpetual interest" according to the Landlord and Tenant Act, 1860. Under section 20 of the Act of 1870, the Court is to determine the whole amount payable, where there are several persons standing to each other in the relation of landlord and tenant, and the circumstance of any such tenant's quitting his holding, by reason of disturbance, or otherwise, involves the interest of any such persons other than the tenant quitting, and it contemplates a case where tenant and middleman can both claim. The present case is a *casus omissus.*

Digitized by Google

Donnell withdrew the portion of the claim with reference to unexhausted manures, the holding being entirely pasture farm, on no part of which cattle were folded.

Evidence was then gone into on both sides as to the value of the improvements.

Ryan, Q.C.—The measure of compensation is the money actually expended on these erections, less what they have lost by wear and tear. Some of them were erected forty years ago. The tenant had the benefit of their enjoyment all that time, and, on this account, reduction should be made from any value they now possess.

Donnell.—The measure of compensation should be what it would cost the landlord now to erect them, subject to deduction for wear and tear. The law of compensation for improvements is an extension of the law of fixtures, and, if these were fixtures, they would be valued on the basis of the present cost of labour and materials.* The value of money has, since 1847, fallen 100 per cent., and it would be unjust to compensate the outlay of a period antecedent to that by values calculated in the present time, where money has fallen in value. Suppose, for argument sake, a building erected forty years ago has not deteriorated. If it cost £200 then, £200 would not now represent that outlay. The real value of money has fallen, and therefore the basis should be present prices, subject to deduction for wear and tear. There should be no reduction for time of enjoyment in the case of buildings, for, unlike improvements of the soil, they give no return in themselves, and they constantly demand repair.

The CHAIRMAN.—In my opinion, this case comes within the words of the 4th section of the Land Act. The 20th section has no application to this case, and that section being out of the way, I see nothing in the statute to prevent this claim from being entertained. The word "landlord" is defined in the glossary of the Act as including a superior landlord. Mr. O'Brien could not have sustained a claim. His case may be a *casus omissus*, but there is nothing to prevent the sub-tenant, the present claimant, from obtaining the value of his permanent improvements from the superior landlord who gets the benefit of them. The statute has made the tenant's improvements his own property. It is very difficult to ascertain the present value of buildings so long erected; but I am of opinion that the compensation should be determined by the amount of the tenants' outlay, if ascertainable, reduced by the wear and tear during the period of their existence. The original cost of putting up these improvements—the house forty years ago, and the walls and offices twenty years ago—I estimate at £404, and allowing 2½ per cent. for wear and tear, and tenant's enjoyment of them for twenty years, this reduces the value to £202. There is another test of the value—viz., to what extent the value of the farm is increased by them as they now stand, and I take £10 a year to represent the present increased value of the land, as shown by the agreement of 1873 (between the tenant and landlord); and, assuming forty years as the fair term at which to rate such improvements, claimant and her predecessor having enjoyed them for twenty years, I consider an assessment of the £10 for twenty years would be, in that view of the case, the proper estimate as against the landlord; and this agreeing exactly with the result of the first test of value I applied shows that I must be right in giving claimant £202 and the costs of the proceedings.

Decree for the claimant.

Attorney for the claimant, *J. F. Magrath.*
Attorney for the respondents, *J. Ogle.*

* See *M'Gregor* v. *High*, 21 L. T. N. S. 808; *Thompson* v. *Pettitt*, 10 Q. B., 101.—[ED. *Ir. L. T. Rep.*]

QUARTER SESSIONS.

Reported by JOHN EDWARD WALSH, Esq., Barrister-at-law.

HELY v. KENNEDY.

(Before THOMAS DE MOLEYNS, Esq. Q.C.)

Oct. 8, Dec. 31, 1873.—33 & 34 *Vic.*, c. 46, s. 65—*Lease executed after the passing of the Act—Covenant to pay rent "over and above all taxes, charges, and impositions whatsoever"—Effect of on liability to county cess.*

A reservation of rent "over and above all taxes, charges, and impositions whatsoever," with a corresponding covenant to pay it, in a lease executed since the passing of the Landlord and Tenant (Ireland) Act, 1870, *deprives the tenant of the right to deduct a moiety of the grand jury cess, under the 65th section of that Act.*

This was a process, at Kilkenny Q. S., for rent payable under a lease executed subsequently to the passing of the Landlord and Tenant (Ireland) Act, 1870. The defence was that the sum sought to be recovered was the amount which the tenant was entitled to deduct under the 65th section, being a moiety of the grand jury cess, the entire of which is, under the 153rd section of the Grand Jury Act (6 & 7 Will. IV., c. 116), payable in the first instance by the tenant. The lease contained a reservation of rent "over and above all taxes, charges, and impositions whatsoever," and a corresponding covenant to pay it.

Lyster, for the plaintiff.—There is nothing in the Land Act to hinder the tenant from contracting himself out of the operation of the 65th section. The tenant, then, having the power, the question is, have the reservation and covenant in this case such an effect. They practically amount to a contract, by the tenant, to pay the rent, over and above all taxes, charges, and impositions whatsoever which may be charged, or chargeable, on *the land*, as distinguished from taxes, &c., such as poor-rate, which are charged on the *occupiers* of the land, *Palmer* v. *Power* (4 Ir. C. L R. 191). Now, by the 153rd section of the Grand Jury Act, county cess is made a charge upon the *land*, and it is, therefore, included in this contract. In construing deeds it is proper, as much as possible, to give every word its full operation; and if county cess be held to be excluded, these clauses will be practically nugatory, there being no other taxes, charges, or impositions on which they can operate.

Lowe, attorney for the defendant, *contra.*

Judgment reserved.

The CHAIRMAN—In this case a question of some general importance arises, which has not yet received judicial consideration—namely, whether, in a lease executed since the passing of the Land Act, a reservation of the rent "over and above all taxes, charges, and impositions whatsoever," with a corresponding covenant to pay it, deprives the tenant of the right of deducting a moiety of the grand jury cess under the 65th section of that Act. The statute regulates the incidence of this tax in the absence of any agreement. The tenant "may deduct"—a personal benefit which he may waive, there being no provisions such as existed in the original Poor Law Act, avoiding such a contract. There is nothing, therefore, to prevent the landlord from contracting with his tenant, that the tenant should pay the whole rate, and that the landlord should receive his rent clear of all deductions. Is this covenant such a contract as will have that effect? The case of *Palmer* v. *Power* (4 Ir. C. L. R. 191) would, at first sight, appear an authority in favour of the tenant here. It was decided in that case that a similar covenant did not render the lessee exclusively liable to poor rate; but the principle on which the case was decided deprives it of any analogy

Digitized by Google

to the present one. In the judgment of Lefroy, C. J., will be found this passage:—"The stipulation in this lease has received a well-known and long-established construction, but was it ever applied to poor rate? It applies to things naturally proceeding out of, and *charges* on the land; the stipulation is as to charges on the *land*, not charges on the *occupier;* and, if the principle contended for were carried out, it would throw the payment of income tax on the tenant—a mere personal tax, which poor rate is. *Lally* v. *Concannon* (3 Ir. C. L. R. 557) is quite in point, establishing that the poor rate is not a charge on land. We are, therefore, of opinion that this covenant is not a contract rendering the lessee liable exclusively to poor rate." That is an authority as to poor rate, but grand jury cess differs in all respects from poor rate. Poor rate is a personal tax—a rate struck on the occupiers of rateable hereditaments, and not in strictness a charge on the land—a rate struck on the rateable hereditaments themselves, and, as such, always, up to the passing of the Land Act, held to be payable by the tenant alone. Within the very words of the judgment referred to, this covenant would, therefore, apply to grand jury cess as a rate actually "proceeding out of, and a charge on the land." In England there are many decisions establishing that a similar covenant includes the English land tax, and deprives the tenant of his statutable right of deduction. So, also, it is said in 2 *Platt on Leases* 171):—"It is now settled, though the point was once doubtful that the term *taxes* in a general covenant to pay all taxes, or to pay rent without deduction for any taxes, will include the land tax, and indeed all future taxes of a nature and for a purpose similar to those in existence at the time of the demise." What, then, is the nature of the English land tax? Is it analogous to the grand jury cess in its incidence on the land and the tenant? By the 153rd section of the Grand Jury Act (6 & 7 Will. IV., c. 116), the grand jury cess is to be a charge on the lands mentioned in the warrant and applotment, to be paid and payable by the person occupying the same, at the time such cess is levied. And the subsequent statute, passed before the date of this lease, gives the tenant the right to deduct a moiety of it. The land tax in England, first imposed by the 4th Will. III., and then voted annually, was made permanent by 38 Geo. III., c. 60. The nature of the charge will be found in the 17th section of 38 Geo. III, c. 5. The lands are charged, and all persons holding the same, with a poundage rate, to be equally assessed, and commissioners are appointed to applot it. [His Worship read ss. 9, 17, 35.] The latest English decision to be found on this subject appears to be *Parish* v. *Sleeman* (1 D. G. F. & J. 326; 29 L. J. Ch. 96, 6 Jur. N. S. 385) on the construction of an agreement between landlord and tenant for the lease of a farm, at a rent "free of all out-goings." It was there held by the Lord Chancellor, reversing the decision of Vice-Chancellor Stuart, that the word "out goings" included the land tax. In his judgment Lord Hatherley says—(His Worship read Lord Hatherley's judgment, commencing at p. 331 of D. G. F. & J.) It has been argued before me, as it appears to have been in the English case just cited, that the words in the covenant were "mere words of form." I cannot so consider them, having to decide the case on legal principles. The tenant was free to contract; he has contracted—and, looking to the terms of his contract, I think the landlord is entitled to receive, and the tenant bound to pay, the reserved rent, "over and above all taxes, charges, and impositions whatsoever," and, therefore, free from any deductions for grand jury cess.

Decree for the plaintiff.

Attorney for the plaintiff, *A. J. Boyd*.
Attorney for the defendant, *G. H. Lowe*.

(Before same.)

SPUNHAM *v.* WALSH.

Jan. 7, 1874.—33 & 34 *Vic.*, c. 46, *ss.* 57, 71—*Agricultural or pastoral tenancy—Notice to quit—Stamp.*

A public-house situated in a village, with an acre of land attached, held at an annual rent of £17, of which from £1 to £1 5s. represents the letting value of the land, is not "agricultural or pastoral" in its character, so as to come within the provisions of the Landlord and Tenant (Ireland) Act, 1870; *and a notice to quit such tenancy need not be stamped.*

Ejectment on a notice to quit; at Thomastown, Q.S. The holding, situate in the village of Bennetsbridge, consisted of a public-house to which an acre of land was attached, let at the annual rent of £17. It was proved that the letting value of the acre of land was from £1 to £1 5s., and that the value of the house equalled the residue of the rent. The notice to quit had not been stamped.

Hartford, attorney for the defendant.—The holding is "agricultural or pastoral" in its character within the meaning of the L. and T. Act, 1870, p. 71; and being so, the notice to quit should, by the s. 57, have been stamped.

M'Mahon, attorney for the plaintiff, *contra*.

The CHAIRMAN held that, having regard to the nature and value of the holding, it could not be considered as agricultural and pastoral in its character; and that, therefore, no stamp was necessary.

Decree for the plaintiff.

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MILLER, J.)

In the matter of an ARRANGING DEBTOR.

January 16, 20, 1874.—*Arrangement—Judgment against arranging debtor—Payment to creditor of costs in full incurred in legal proceedings—Cheque received prior to judgment.*

Subsequent to the service of a summons and plaint the defendant's attorney wrote, November 11, 1873, *to the plaintiff's attorney, asking the latter to take £*10 *in part payment of the debt, and to give the defendant a week for payment of the balance; to which a reply was written, November* 12, *offering to give the time required if a security was given for payment of the balance. On November* 14 *judgment by default was marked for the full amount of the debt and costs, the £*10 *or the security not having received. On that same day, the defendant telegraphed that he would comply with the terms proposed, and wrote, enclosing a cheque for £*10, *adding that he would send the security; after receipt and in consequence of which the plaintiff's attorney wrote, November* 15, *stating that although judgment had been marked, it would not be entered, or execution issued; but the defendant, before the receipt of this letter, consulted his attorney, by whom proceedings were taken, for the purpose of effecting a composition with the defendant's creditors, and, upon a petition for arrangement filed, accordingly, by the debtor, a protection order was made on November* 18. *The cheque given was dishonoured for want of funds.*

Held, *that the judgment-creditor was not entitled to payment in full of the amount of his demand, or of £*10 *thereof, or of the costs of the proceedings up to and including the marking of the judgment.*

Application, on behalf of a judgment-creditor of an arranging debtor, for payment in full of a claim for debt and costs. The facts and arguments are fully given in the judgment of the Court.

M'Gough, solicitor for the judgment-creditor, in support of the application.

Larkin, solicitor for the arranging debtor, *contra.*

Digitized by Google

MILLER, J.—An application has been made in this matter by a creditor upon a state of facts, the determination of the question arising upon which must regulate the practice of this Court in other similar cases of not unfrequent occurrence. Prior to the 11th of November, 1873, Messrs. Bell & Co., of Glasgow, caused the arranging trader to be served with a summons and plaint, and upon that same 11th of November the attorney for the trader addressed a letter of that date, at Dundalk, to the attorney of Bell & Co. in Dublin, asking him to accept £10 in part payment, and to give to the trader a week for the payment of the balance of the debt due to Bell & Co. Upon the 12th of November, 1873, the attorney for Bell & Co. addressed a letter of that date at Dublin to the attorney for the trader at Dundalk, stating in substance, that if any of the three persons whom he named would give their personal undertaking to pay the balance, he would take upon himself to give the time required. Nothing appears to have been done on the 13th of November. Upon the 14th of November a telegram would appear to have been forwarded by the arranging trader, from Carrickmacross, to the attorney of Bell & Co. in Dublin, in these terms:—"Your favour, through the attorney of the trader [naming him who was at Dundalk], received; I will comply with your request to-morrow," *i.e.*, upon the 14th of November. Upon that same 14th of November, the arranging trader followed up his telegram, and addressed a letter from Carrickmacross of that date, enclosing a cheque of that date upon the National Bank at Carrickmacross, for £10, stating in substance—That he had enclosed the cheque, and would send the security required, if not by that night, on the following day; stating that the account of Bell & Co. was quite safe, and expressing a hope that he would not be harsh with him. That letter of the trader of the 14th of November could not have reached Dublin until the 15th of November. Upon the morning of the 14th of November, the attorney for Bell & Co., not having received either the £10 or the security as required by him, and notwithstanding the telegram of the trader of the 14th of November, (if he had previously received it which does not appear) marked judgment by default for the full amount of the demand of Bell & Co. Upon the 15th of November, the attorney for Bell & Co., having received the letter of the trader of the 14th of November enclosing the cheque for £10, addressed a letter, at Dublin, to the trader, at Carrickmacross, as follows: - "As you had not complied with the requirements of our letter to your attorney, we marked judgment against you yesterday morning, but on receipt of your telegram gave directions it should not be registered, or execution issued. The judgment will not appear in the black list, and so far you have been saved. We must, however, have the matter arranged in the course of next week. Your cheque for £10 has been received." It appears from the evidence of the trader, that upon the 14th of November he, or his wife, consulted his present attorney, under whose advice the trader sought for and obtained the protection of the Court, upon the 18th of November. The cheque for £10 by the trader was returned to the attorney of Bell & Co. dishonoured, for which circumstance the explanation given on the part of the trader was that, although there were no funds in the bank at the time at which it was given to meet it, yet that a market day at Carrickmacross would have intervened before it could be presented, and the expectation was thereby to obtain the means of meeting it.

Upon that state of facts, the Court is called upon to pay Bell & Co. the whole amount of their demand, and if not that demand, at all events the full amount of the costs incurred by them, up to and including the cost of marking the judgment on the 14th of November. In every case where a trader gives to his creditor a cheque payable on demand, and thereby gains an advantage as sought, this Court struggles to sustain a cheque thus given, but in the present case the dishonoured cheque was given under the circumstances I have stated, in part performance of a treaty, prior to the judgment being marked upon the 14th of November, and plainly for the purpose, on the trader's part, of preventing that judgment being marked, and that treaty was neutralised and put an end to by the marking of the judgment on the 14th of November. The amount for which the cheque for £10 was given was included in, and formed part of the judgment thus marked upon the 14th of November, and the entire judgment-debt, including the sum for which the cheque was given, thus became a debt provable under the arrangement matter. But it was further contended by the attorney for Bell & Co., that not having received the cheque upon the 15th of November, after the judgment had been marked on the 14th, and having on the 15th volunteered to write to the trader a letter of the same date, which could not have reached the trader until the 16th, stating that in consequence of receiving the cheque he had not registered the judgment, and would not issue execution, he was, upon that ground, entitled to be paid the full amount of the cheque. It is, however, sufficient to observe that it does not appear that the trader, after judgment was marked by Bell & Co., accepted, or even acted upon any such proposition as that contained in the letter of the attorney of Bell & Co. of the 15th of November, but, on the contrary, upon that same 15th of November consulted his present attorney, by whom the present proceedings were taken. I cannot, therefore, see any grounds for placing Bell & Co., even to the extent to which the cheque was given, in a better position than the other creditors in this case. But it has been further contended, on the part of Bell & Co., that although they might be forced to accept the composition upon the amount of their demand, they are nevertheless entitled to receive payment in full of their costs, incurred by them in endeavouring to recover the amount of their demand prior to notice of the arrangement proceedings being served, and necessarily including in this case the costs of marking the judgment A practice has long existed, and is still continued, of allowing to creditors, within certain limits the costs in full of proceedings fairly taken by such creditors for enforcing payment of their demands up to the time at which they have received notice of proceedings having been taken by the trader to effect a composition with his creditors, upon the confirmation by the Court of such composition. I have always understood the principle upon which that practice was founded to be, that in cases where proceedings have been *bonâ fide* taken for the recovery of a debt, and the debtor comes into this Court and alleges his inability to pay that debt in full, and asks this Court to stop such proceedings, and force that creditor, in common with all his other creditors, to accept a composition of lesser amount than the full amount upon his debt, this Court, when confirming such composition, from which all creditors will derive equal benefit, by a trader unable further to carry on his occupation or trade, should compel the trader to do equity, and pay to those creditors, who have fairly been the means by which such composition has been brought about by a trader unable to proceed with his trade or business, their costs in full of bringing about such arrangement, exclusive of the composition upon their debt in common with the other creditors. But, the case is wholly different when the creditor has carried on the proceedings taken for the recovery of his debt up to the entering of a judgment, which carries with it remedies of an especial and exclusive nature, for enforcing the payment, not only of the original debt, but also of the costs incurred in respect of such judgment. The judgment, in the present case, being marked by default, carried with it by statute certain clearly defined costs, and from the time at which such judgment was marked the original claim, together with such costs, formed one and the same debt, recoverable by execution, if no proceedings for arrangement had been taken, and, therefore, provable under the arrangement in this matter, which did not commence until four days subsequent to the marking of the judgment. If the costs in cases where judgment had been marked, should be held by this Court as falling within the rule of giving costs to active creditors, within the limits which I have stated, the result would be, that this Court would thus separate what even up to and for the purposes of execution constitutes but one debt, and the creditor would receive the full amount of the costs which formed a part of that entire debt, and also a compo-

Digitized by Google

sition upon the entire judgment debt, including such costs.

I may add that Mr. Blake has referred me to a decision of my own (*Re an Arranging Debtor*, 8 Ir. L. T. R. 8), which is, I am glad to find, in conformity with what I have stated, although it was not upon that occasion necessary to enter so fully into the practice, as it exists as regards allowing payment of costs in full in arrangement matters.

LANDED ESTATES COURT.

Reported by W. H. Kisbey, Esq., Barrister-at-law.

Re Tierney's Estate.

(Before Judge Flanagan.)

1873, *Nov.* 25; 1874, *Jan.* 7, 19—*Building Society—Reasonable Fines*—6 & 7 *Will. IV.*, c. 32, s. 1—*Laches.*

A Building Society, under one of its rules, charged fines against a borrower for non-payment of monthly instalments of loans in such a manner that they were cumulative, and increased in arithmetical progression. The rule was ambiguous in its terms and admitted of several constructions.

Held, *that the rule being ambiguous, must be construed strictly against the Society which sought to enforce it.*

A puisne incumbrancer had notice of all the proceedings in the matter. Some months after the schedule of incumbrances had been ruled, he sought to re-open the accounts of the petitioner, a Building Society, on the ground that they were inequitable, unwarranted by the rules, and illegal. A portion of the funds sufficient to meet his claims remained in Court.

Held, *that notwithstanding his laches, the accounts might be re-opened on payment of costs by the puisne incumbrancer, it appearing that part of the proceeds of the sale remained in Court, and that the account itself could not be sustained.*

Motion on behalf of Charles Noab Davis, a puisne incumbrancer, that the amount of the claims of the trustees of the Belfast Equitable Building and Investment Society, the petitioner, might be referred back to the Examiner to inquire and take an account of the amount of fines properly chargeable by the Society against the estate of the owner, in respect of instalments in arrear; said inquiry to be taken subject to the direction of the learned Judge. The following facts appeared from the affidavits and documents:—The petition was filed on the 14th December, 1868, and the sale took place on the 2nd and 9th November, 1872. There were 7 lots, of which lot 1 was comprised in one mortgage, lots 2, 3, 4, and 5 in a second mortgage, lot 6 in a third, and lot 7 in a fourth mortgage. These mortgages were given to secure the repayment of loans made to the owner by the Building Society, from time to time, with interest on the loans according to a scale fixed by the Society's rules, and fines for non-payment of the monthly instalments, by which it was provided that the loans and interest should be repaid. The schedule of incumbrances was filed in May, 1873; the last day for filing objections to it was 4th July, 1873, and the schedule was ruled on the 8th July, 1873. At that time, however, some lots had not been sold; and at the time of serving notice of the motion, on the 25th November, 1873, a fund remained in Court. It was admitted that Davis had full notice of all the proceedings, though he made an affidavit in which he stated that it was not until immediately before the notice of motion, when apprised by counsel of his rights, that he was aware that he could question the legality of the account passed by the petitioner. The account which it was now sought to re-open showed, as to each of the mortgages, the amount claimed for fines, and was made up in this way—the mortgage on lot 1 was to secure a loan of £300, and interest to be repaid by 120 monthly instalments of £3 10s. each. The company, under their rules, claimed to charge for non-payment of these instalments 3s. for the first month, 6s. for the second, 9s. for the third, and so on, adding on 3s. for each month. The loan upon lots 2, 3, 4, and 5 was to secure a loan of £1,500 and interest, to be repaid in 120 monthly instalments of £13 8s. 4d. each; and the company claimed to charge for the first instalment in arrear 11s. 6d., for the second £1 3s., for the third £1 14s. 6d., and so on in arithmetical progression. In the latter case, as an example of the working of the rule, the account showed that the 8th and following instalments, down to the filing of the petition, were left in arrear; and the fine on the non-payment of the 27th instalment of £13 8s. 4d. was £11 10s. A new rule was then adopted by the society, after which the future fines were 13s. 5d. for the first month, and £1 6s. 10d. for every following month. To make the rule intelligible it should be stated that loans were made by the Society on what were called "shares" of £25 each. The rule under which the cumulative progressive fines were charged was as follows:—"Mortgagors neglecting to pay their monthly repayments will be subject to fines at the rate of threepence per share for the first month, and for each and every succeeding month threepence per share additional on such repayments." As repayments were to be made at the rate of 5s. 10d. per share per month, the fine amounted to threepence on each 5s. 10d. of the monthly instalment.

Kisbey, in support of the motion:—It is conceded that Davis comes late before the Court; but though the schedule has been ruled, there is a fund in Court more than sufficient to make good the over-charges. Only certain lots are affected, as some of the lots did not bring the principal sum due, and therefore as to these there is no question. But other lots did produce more than enough to pay these heavy fines, and leave a surplus for the puisne incumbrancer. The rule is ambiguous, but no reading of it could justify the Society in putting on cumulative fines in arithmetical progression, as was done here. If such a thing were tolerated it would work a forfeiture. On one lot, the repayment being £13 8s. 4d. per month, the fine at last amounted up to £13 4s. 6d. in a month; and if the rule had not then been relaxed, it was plain that it would have been larger than the instalment the next month. No court of equity would put a construction on an ambiguous rule which would amount to a forfeiture of a man's estate. The construction that might be put upon it most favourable to the company is that the first fine should be 3d. per share, and one additional 3d. for every succeeding share—that is, 6d. for the second, 6d. for the third, and so on. Even if the Court should think that, on the construction of the rule, the Society might charge cumulative and progressive fines, the Court should not tolerate it. The rules of Building Societies are formed pursuant to the 6 & 7 Wm. IV., cap. 32, and the first section of that statute empowers the Societies to charge "reasonable fines." The statute is expressly adverse to everything which would work a forfeiture; and it has been expressly decided that the certificate of the Registrar of Friendly Societies is not conclusive as to the legality of a rule (*Laing* v. *Reed*, L. R. 5 Ch. 4). The reasonableness of fines charged by such a Society came before Lord Romilly, M.R., in *Parker* v. *Butcher*, L. R. 3 Eq. 762, who, though he upheld the fines in that case, said—"The Court will

Digitized by Google

not allow a person to contract to receive a given rate of interest, and to stipulate that, if not paid, the rate of interest shall be increased." Anything in the nature of compound interest is contrary to the rules and principles adopted by courts of equity. But the fines in this case are infinitely more oppressive than compound interest could possibly be, and no Court of Equity could permit them to be levied.

W. D. Andrews, Q C., for the petitioners:—The fines complained of were levied under a rule which, though not very clearly worded, authorized the Society to charge at least as much as they have done in this instance. A reading of it even more adverse to the owners might be contended for, for the words are—"Threepence per share for the first month, and for each and every succeeding month threepence per share additional on such repayments." This might be read so that a fine of threepence per month per share would be levied for the first month, and sixpence per share per month for the second and every succeeding month. If so, the fine for the first default would be 3d., for the second 9d., for the third 1s. 3d., and so on. The Society have put a construction upon the rule not so harsh, and the borrower contracted with the rule before him, and never made any objection to what had, in fact, been the ordinary practice up to the time the rule was changed. The rules have been regularly certified; and though the case cited shows that the certificate is not conclusive as to the legality of the rules, it lends them a sanction which the Court should not lightly disregard. In any case, the application comes too late. Davis and the owner had notice of all the proceedings; and the schedule which has been ruled shows in the fullest way how the fines were charged.

Kisbey, in reply.

Judgment deferred.

FLANAGAN, J.—This is an application on behalf of Mr. Davis, who is a creditor on the schedule of incumbrances, that the vouching of petitioner's account should be referred back to the Examiner. It is admitted that there is money in Court, the produce of the lots which are alone in question here, and this relieves me from some difficulty. Upon the facts there is, practically, no controversy. It is admitted that Mr. Davis had notice of all the proceedings, and though it was at one time said that he had been actually present at the vouching, with his solicitor, this turned out to be a mistake. But the dates show that in July the schedule was ruled, and his motion is not heard until November. *Primâ facie*, the motion is untenable; for the creditor was served with notice of every step, and filed his objection, but allowed the schedule to be vouched without saying one word to put the Court in motion. His attention was called to the way in which the fines were made up and computed by the schedule itself; though, no doubt, he swears that he was not aware of his right to question the mode of computation, until advised by counsel just before the notice of motion was served. As there is money in Court, I am unwilling, where there is a substantial case, to shut a party out, and this is a case in which, imposing terms upon Mr. Davis, I am willing to consider his objection, late though it is. Now the substantial question, and a very important question, is whether the mode of computing fines is legal or illegal? What then is the true construction of the 17th rule? I confess that I have felt considerable difficulty in putting a construction upon it. The Society consists of members and borrowers; and the latter may be third parties. The borrowed money ought to be repaid by monthly instalments—so much for principal, and so much for interest. The owner of the estate, after some months, ceased to pay the instalments, and then the Society put their rule in in force. The rule is as follows: [His lordship read same.] They construed this to mean that they might multiply these fines in arithmetical progression month after month, and then add them all together. It is enough to say that after about 20 months, the fines amounted each month to nearly as much as the instalments, and, if the rule had not been changed, would have largely exceeded the instalment itself. It is manifest that the effect of such a rule might be to absorb a man's whole estate in fines. *Mr. Kisbey* argued first that, if this was justified by the construction of the rule, it was void in point of law, having regard to the words of the statute; and secondly, that it was not justified by the true costruction of the rule. He said that the words, "threepence per share additional," in the rule, might receive a fair construction by allowing for the second of every succeeding month a fine of sixpence per share. I think that the rule admits of three constructions—the one contended for by the Society, the other suggested by Mr. Kisbey, and a third, more favourable to his client, which I think the right construction, and that is, that the Society are only to be allowed one fine of three pence on each share. The 35th rule deals with subscribing members, and helps to get rid of the ambiguity. The fines chargeable in these cases are thus stated:—"For first non payment of monthly subscription for each subscribing share, one penny; second, in succession, additional twopence; third, in succession, additional threepence; every other in succession, additional fourpence." But this same rule, dealing with non-payments of monthly instalments of borrowed shares, says:—"For first non payment of monthly repayment of each borrowed share, threepence; every succeeding month in addition, per share, threepence." If counsel for Mr. Davis had not suggested that the word additional might give a fine of 6d. for the second and succeeding months, I should have directed that one fine of three pence only per share was to be allowed on each default.

[*Mr. Kisbey*.—I suggested the sixpenny fine as the most favourable that the Society could insist on; but I ask your lordship to rule according to your own construction.]

FLANAGAN, J.—Very well. That will accord with the proper principle of construction, which will read an ambiguous clause, most strongly against the party who seeks to enforce it. Let the accounts as regards lots 2, 4, and 8, be sent back to the Examiner to vouch the amount properly chargeable for fines, with the direction that one fine of three pence per share only is to be allowed as to each instalment in arrears; and let Mr. Davis pay to the petitioners all costs properly and necessarily incurred, by reason of his delay in bringing the matter under the notice of the Court.

Solicitor for the petitioners, *W. E. Armstrong*.
Solicitor for Mr. Davis, *R. Dawson Bates*.

In the matter of NIXON'S ESTATE.

Reported by R. D. MURRAY, Esq., Barrister-at-law.

February 6th, 1874.—*Practice—60th G. R., 1859—Affidavit taken abroad before commissioner—Insufficient description of commissioner—Single jurat in joint affidavit.*

Order made that an affidavit be received and filed, which was sworn by two deponents, but contained only one jurat, and in the jurat of which, though the affidavit was, in fact, made before a commissioner in Canada, the place of swearing did not appear.

In this matter, objections had been taken to the final schedule. The objectors, James Kerr, and Harriet Kerr, his wife, resided in Canada, and the affidavits verifying the objections had to be sworn there. There were two defects in the affidavit—first, that it was a joint affidavit, yet contained only a single jurat; and second, that the person before whom the affidavit was sworn styled himself "The Commissioner for taking Affidavits in Chancery," without adding "in Canada." The officer having refused, on these grounds, to file the affidavit,

Digitized by Google

Mr. Tracey now moved for an order to have the affidavit received and filed. He cited the 60th G. R., 1859; *Anon.* 1 W. R. 186; *Meek* v. *Ward*, 10 Hare App., p. 1; *Gates* v. *Buckland*, 13 W. R. 67.

Flanagan, J.—As to the first point, I think that the objection ought to be waived; but as to the second objection, I thought, at first sight, that the description was not a sufficient identification of the commissioner. On the authorities quoted, I shall, however, make the order that the affidavit be received and filed.

Order accordingly.

COURT OF QUEEN'S BENCH.

Reported by S. N. Elrington, Esq., Barrister-at-law.

M'Blain v. Weir.

Nov. 25, 1874.—*Practice—Debtors Act (Ir.)*, 1872, *sec.* 7—*Defendant about to quit Ireland—Prejudice to plaintiff in prosecution of action—Arrest of defendant.*

An order will not be made under 35 *&* 36 *Vict.*, *c.* 57, *sec.* 7, *to arrest a defendant about to quit Ireland, unless it is shown that his absence would materially prejudice the plaintiff, in relation to the steps necessary to be taken in the prosecution of his action before final judgment.*

Motion for an order that the defendant be arrested and imprisoned, unless he give security that he will not leave Ireland without the leave of the Court.

The motion was grounded on a joint affidavit of the plaintiff and of S. Taylor, his manager, the former of whom deposed that the defendant was justly and truly indebted to the plaintiff in £33 11s. 11d. for goods sold and delivered by the plaintiff to defendant within the two months previous; that, on Nov. 20, plaintiff issued a summons and plaint against defendant for recovery of said debt, which debt had not been paid or tendered to the plaintiff by defendant, or any person on his behalf, either in gold or notes of the Banks of England or Ireland, or in any other manner whatsoever, and same remained justly due and owing by the defendant to plaintiff, over and above all just and fair allowances; that plaintiff had been informed by S. Taylor, his said manager, and which plaintiff believed to be true, that the defendant had sold his stock-in-trade and all his effects, and closed his door, and was "on his keeping" in the house of a friend, and that he intended forthwith to quit the country and emigrate to America, where plaintiff was informed and believed his (defendant's) wife and family then resided; that the defendant had no property, goods, or chattels in this country whereof he (plaintiff) could levy the amount of said debt, and that, should the defendant be allowed to depart without being held to bail by the fiat of the Court, plaintiff would be materially prejudiced in the prosecution of his action, inasmuch as he would have to abandon the further prosecution of same, and would in consequence wholly lose his said debt; and plaintiff believed that, if a fiat were granted, he would be paid the amount of said demand. S. Taylor added that, having been informed that the defendant had sold out his stock-in-trade and effects, he, on November 19, proceeded to Rathfriland, and went to the place of business of the defendant, for the purpose of seeing him and getting paid the amount of said debt, but that he found defendant's place of business closed, and could not obtain an entrance; that he then proceeded to the house where he had been informed the defendant was, but that defendant was denied to him, and he was not allowed to enter; that he believed the defendant was within said house, and that it was his intention forthwith to leave the country and go to America, where his wife and family were. An additional affidavit was made by plaintiff's attorney, corroborating the statement of defendant's intention to leave the country.

M'Blaine in support of the motion:—It may seem that the application can only be dealt with by "a judge;" but having been opened by Barry, J., he directed that it should be mentioned at the sitting of the Court. Two difficulties had been suggested—one, that it was not sufficiently shown that the plaintiff had probable cause for believing that the defendant was about to quit Ireland; and the other, that it was not shown that the plaintiff would be materially prejudiced in the prosecution of the action. The first difficulty has been removed by the further facts now appearing. The question then turns upon the construction of the requirements imposed by the Debtors Act, 1872, sec. 7, in addition to those contained in 3 & 4 Vic., c. 105, s. 2, that it must be proved that the defendant's absence will materially prejudice the plaintiff in the prosecution of his action. The defendant has sold all his effects, and has no property remaining here available for the purpose of enabling the plaintiff to prosecute his action with effect, so as to realize the debt due.

[O'Brien, J.—Then you contend that wherever a plaintiff pledges his oath that a defendant is about to leave the country, he may be arrested, if he have no goods or property here against which the debt may be levied. That interpretation of the Act has been already ruled to be erroneous by the full Court of Common Pleas.]

On the special facts of this case, the order should go. The defendant, having disposed of his effects so as to defeat the law, should be required to give security that he will not leave Ireland; and if he does so his imprisonment would cease.

[Barry, J.—It has been held that the object of the corresponding section in the English Act was merely to secure the presence of a defendant until final judgment has been obtained, and that upon the judgment having been signed the order would be annulled: *Yorkshire Engine Company* v. *Wright*, 21 W. R. 15. The construction of the analogous words of section 6 in the Debtors Act, 1869, was there under consideration, but the result of that case is hardly favourable to your contention.]

I concede the doctrine established in that case, which has been followed in *Hume* v. *Druyff*, L. R. 8 Ex. 214. The same point was ruled under 3 & 4 Vic., c. 105,* which statute did not contain the words in question. But if the defendant is allowed to abscond before judgment, he will remove the proceeds of the property he has disposed of, instead of paying the debt, or lodging money into Court, or giving security that he will be present up to final judgment.

[Fitzgerald, J.—If your contention holds, why was it necessary to repeal Pigot's Act? Some other meaning must be given to the requirement introduced by the Debtors Act. It must be shown how the plaintiff would be prejudiced in prosecuting his action. I observe that it is not stated in his affidavit that he requires the defendant's presence for the purpose of giving evidence, whether by way of answering interrogatories or otherwise, whatever effect that might have.]

We admit that we can prove our case without the defendant, but it is sworn that the plaintiff would have to abandon the further prosecution of the action if the

* See *Doyle* v. *Sinnott*, 6 Ir. L. T. R. 81.—[Ed. *Ir. L. T. R.*]

Digitized by Google

defendant is allowed to leave, whereas, if arrested, he would pay the debt.

BARRY, J.—It does not appear that the plaintiff cannot establish his claim without the presence of the defendant for that purpose, and it is not sufficient to show merely that his absence might affect the realization of the fruits of a judgment. Unless it appear that the defendant would be materially prejudiced in the prosecution of his action—that is to say, before and not after final judgment (*The Yorkshire Engine Company* v. *Wright, ante*)—the section of the Act of Parliament has no application.

No rule.

Attorney for the plaintiff, *Carey.*

CONSOLIDATED CHAMBER.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

O'DONNELL v. SMITH.

(Before FITZGERALD, B.)

Dec. 12, 1873.—*Practice—Jurisdiction—Debtors Act (Ireland)*, 1872, *sec.* 6—1 *G. O.*, 1872—*Order for payment.*

A motion for an order, under the Debtors Act (Ireland), 1872, *sec.* 6, 1 *G. O.*, 1873, *against a defendant, for payment, should be made to a judge sitting* in camerâ.

Weir, on behalf of the plaintiff, moved for an order that the defendant should pay to him the amount of the judgment-debt and costs in this action, together with a sum to be fixed by the judge for costs of the order, and that same should be paid either in one sum or by instalments, as to the judge might seem fit; and that, on default being made in the payment of said sum or of any of the instalments thereof, the defendant should be committed to prison for a term, not exceeding six weeks, to be fixed by said judge, or until he should pay said sum or an instalment thereof, and the sheriff's fees for the execution thereof.

The motion was grounded on the certificate of the judgment, and an affidavit made by the plaintiff's attorney, who deposed that the summons and plaint was issued July 18, 1873, for £25, the amount of the acceptance of R. Barklie's draft, at (*sic.*) months from March 8, 1873, which was endorsed by the defendant to the plaintiff; that judgment by default in the said action was marked on August 12, 1873, for £25 3s. 1d., exclusive of costs; that on August 12, 1873, a writ of *fi. fa.* against the defendant's goods was issued and lodged with the sheriff of the county of Dublin, for £25 3s. 1d. debt, and £7 4s. 11d. costs, but the sheriff returned the writ without having been able to levy the amount or any part thereof; that the judgment was still in full force and effect, and the debt and costs remained due by defendant to plaintiff; that, as the deponent was informed and believed, the defendant was a second-class clerk in a certain office [stated], and that the salaries of such clerks ranged from £180 to £280 per annum; that, as the deponent believed, the defendant had received part of the said salary since judgment was recovered against him, but had neglected and refused to pay the amount of the judgment or any part thereof; that the debt in respect of which the judgment was recovered was contracted after August 6, 1872.

Teeling, on behalf of the defendant, *contra.*—The copy of the affidavit furnished along with the notice of motion is not a true copy, and does not comply with the G. O., 1854, as the jurat is omitted: *Synan* v. *Moriarty*, 1 Ir. C. L. 496; *Birch* v. *Somerville* 2 *ib.* 67.*

* See *O'Byrne* v. *Marquis of Hartington*, 5 Ir. L. T. R.—[REP].

Further, a judge sitting in Consolidated Chamber has no jurisdiction to grant this order. The 6th section of the Debtors Act, by enacting that the jurisdiction to commit to prison shall, in the case of any court *other* than the Superior Courts of Law and Equity, be exercised in open court, contemplates that when the application is made to a Superior Court, it shall be made *in camerâ.* It should, therefore, not be made to a judge sitting in Consolidated Chamber, who, in practice, always sits in open court. The policy of the Act was that as little publicity as possible should be given to such applications, as such publicity would seriously affect the credit and reputation of parties, and proceedings in the Superior Courts, attracted greater public attention than those of the inferior tribunals. Besides, the Act requires that the application should be made to *a* judge sitting in Chambers, and it is submitted that *a* judge sitting in Consolidated Chamber, and exercising the various jurisdictions of all the Superior Courts of Common Law, is not a single judge within the strict meaning of the Act and Rules, which it is submitted refer to a judge sitting in Chamber for the sole purpose of hearing an application under the section in question.

Weir, in reply.—The defect in the copy of the affidavit does not render the affidavit inadmissible, as the jurat might be subsequently inserted, *Alexander* v. *Alexander*, 2 Ir. Jur. N. S. 493. The objection has been removed, because a copy of the affidavit, with the jurat, has since been furnished.

[FITZGERALD, B.—But, have I any jurisdiction to hear the motion at all? My strong impression is that I have no power.]

That might be so if the application were for a fiat under section 7. But by section 6 "a judge sitting in chambers" is expressly given jurisdiction to make orders for payment or committal.

[FITZGERALD, B.—It is one question, whether the motion is for the Court. My impression is that I am not a judge in chambers for the purposes of such an application. The motion is before me identically as if I were in Court.]

I shall now ask only an order for payment by instalments. A similar order has been made in Consolidated Chamber, *Sommet* v. *Dormoy.** It might be said that an order for committal should be made in private, as publicity might militate in favour of a debtor who might abscond.

[FITZGERALD, B.—I do not see how that would affect it—the motion must be on notice.]

A judge in Consolidated Chamber may do business depending in any of the Courts, C. L. P. Act, 1853, section 238. The judge, therefore, represents all the Courts, and may act for the Court under the Debtors Act, section 6.

[FITZGERALD, B.—Section 238 refers to business which may be so transacted according to the course and practice of the Courts, and as to such business, no matter what Court it is depending in, I can dispose of it. We have made rules auxiliary to the Debtors Act. My difficulty arises more particularly from reference to the bye-laws so made, not in regard to the Act itself. By the 1st G. O., 1873, the motion should be made before a judge. It is not made before me in Consolidated Chamber, "according to the course and practice of the Courts," any more than an application for a fiat could be so made.]

There are two orders to be made under the Act—1st, for payment; 2nd, for committal. I only ask for the

* See 8 IR. L. T. R. 14.—[REP.]

Digitized by Google

first order, and the General Rule referred to applies only to the second order.

[FITZGERALD, B.—That very argument was pressed in two cases before us in the Exchequer, and over-ruled. We held that, under the General Rule, the motion should be made to a judge in the first instance. The order is an order under section 6, and as such comes within the General Rules.]

Here the application is to a single judge, and empowered to act, as if a judge of the Queen's Bench, "in Chamber or elsewhere."

FITZGERALD, B.—The motion must be refused. It should be made to a judge sitting *in camerâ*. Sitting in Consolidated Chamber, I have no jurisdiction in the matter.

Teeling applied for costs.

Weir.—If there is no jurisdiction to hear the motion, costs cannot be given.*

FITZGERALD, B.—I say nothing about that. But at all events, I think that, under the circumstances of the case, costs should not be given.

Motion refused.

LAND SESSIONS.

Reported by JOHN E. WALSH, Esq., Barrister-at-law.

(Before HENRY WEST, Esq., Q.C.)

KAVANAGH v. POWER.

Jan. 8th, 1874.—33 & 34 *Vict. c.* 46, *sec.* 59—*Administration limited to the purposes of the Act—Appointment of administratrix—Practice.*

A claimant having died subsequently to his claim being lodged, the Court at the hearing, and without requiring a notice of motion to be served, nominated his widow as his administratrix for the purposes of the Landlord and Tenant (Ireland) Act, 1870. *The consideration of the claim having been then adjourned to the next ensuing Land Sessions,*

Held, *that the respondent was not entitled to receive a notice of the appointment of such administratrix.*

This was a claim in respect of part of the lands of Churchtown, in the barony of Spelbane, and county of Wexford, for £79 2s., as compensation for disturbance, and for £107 2s., as compensation for improvements. The respondent disputed the entire claim, and also relied upon items of set-off to the amount of £74 16s. Subsequently to the lodgment of the claim for hearing at the New Ross Land Sessions, the claimant died intestate. On the case coming on for hearing on the 22nd of October, 1873,

Hinson, attorney for the respondent, submitted that an adjournment was necessary in order to allow the requisite steps to be taken for the appointment of an administrator.

The CHAIRMAN stated that in his opinion no adjournment was necessary, and he at once appointed Johanna Kavanagh, the widow of the deceased, as his administratrix for the purposes of the Act, acting under the 59th section of the Landlord and Tenant (Ireland) Act, 1870.

Hinson having then stated that he was not prepared to go into evidence on behalf of the respondent, the case was adjourned to the Wexford Land Sessions to be held in January, 1874.

On the case being called on, no one appeared for the respondent, but a letter was read from Hinson, protesting against the claim being heard, on the ground that he should have received formal notice of the appointment of an administratrix, but had not.

The CHAIRMAN ruled that no such notice was necessary, and stated that he would proceed to dispose of the case. He, accordingly, allowed the claimant's representative £56 10s. as compensation for disturbance. As to the claim for improvements, it was disallowed; and although there was no evidence of the items of set-off, the claimant's attorney admitted some of them to the amount of £24 16s. 6d.; £3 6s. also was allowed to the claimant's representative for the expenses of the two hearings, and she was given her costs.

Attorneys for the claimant, *Boyd* and *Taylor*.
Attorney for the respondent, *Hinson*.

(Before the same.)

CHEEVERS v. The Hon. Mrs. DEANE MORGAN.

Jan. 9th., 1874.—33 & 34 *Vict.* c. 46—*Stranger treated as tenant—Compensation for disturbance—Amount lodged in Court—Estoppel.*

On the death of a tenant from year to year intestate, C., who derived no title from him, entered into possession and management of his property without taking out administration. A notice to quit having been served on C. personally, and a decree on an ejectment obtained against him, he claimed compensation for disturbance. The respondent disputed the claim, but, at the same time, lodged the amount in Court.

Held, *that C. was entitled to the amount of compensation so lodged.*

This was a claim, at Wexford Land Sessions, for £8 15s. as compensation for disturbance. James Breen held part of the lands of Heaths or Bennetstown, in the county of Wexford, under the respondent, as tenant from year to year, at the annual rent of £1 5s. He died, in 1871, intestate, his only next of kin being a minor residing in South America. On his death, Thomas Cheevers entered into possession of the farm and management of his property, but he never took out administration to him. He also paid the rent due in September, 1871, getting a receipt as from "the representatives of James Breen, by the hands of Thomas Cheevers." He was served with a notice to quit on the 19th of March, 1872, and the respondent obtained a decree for possession at the Wexford Hilary Session, 1873. In consequence of his not having taken out administration, this notice to quit was directed to him personally, and the ejectment was in the usual form against overholding tenants. Accordingly, on the 1st of March, 1873, he served a notice of claim for compensation for disturbance, on the ground that he was treated as, and was tenant from year to year. And on the 5th of March, 1873, the respondent served the following notice in reply:—"Take notice that I, the said Elizabeth Geraldine Deane Morgan, the respondent, dispute the claim made by the said Thomas Cheevers, the claimant, for compensation in respect of the lands of Heaths, otherwise Bennetstown, in the barony of Forth, and county of Wexford, on the grounds that Mr. James Breen, who at the time of the passing of the Landlord and Tenant (Ireland) Act, 1870, was the tenant from year to year of the said lands, died intestate, and that the said Thomas Cheevers, the claimant, is not his legal personal representarive, nor is he within the degree of relationship to the said James Breen, to entitle him to succeed as tenant for the said lands. That, nevertheless, the

---

* See cases cited in *Burke* v. *Twinam*, 7 IR. L. T. R. 200.—[REP.]

Digitized by Google

respondent being willing to pay compensation, to which a relative within such degree of relationship would have been entitled under the said Act, and there being no such person in this country, to respondent's knowledge, she has lodged in Court, with the Chairman's approval, the amount of such compensation, less by one year's rent of the said lands due to respondent up to the last gale day previous to her obtaining her ejectment decree."

On the case coming on for hearing,

P. J. O'Flaherty appeared as attorney for the claimant.

Little and Elgee, attorneys for the respondent.

The CHAIRMAN held that the respondent was estopped from denying that the claimant was entitled to compensation, and gave the latter the amount of compensation lodged in Court.

Decree for the claimant.

QUARTER SESSIONS.

(Before CHARLES KELLY, Esq., Q.C.)

RANAHAN *v.* THE MIDLAND GREAT WESTERN (OF IRELAND) RAILWAY CO.

Oct., Dec., 1873.—*Railway Company.—Acceptance of goods to be carried beyond limits of line—Condition exonerating from liability for loss occurring on another line.*

Where goods are consigned to a railway company for carriage, to be continued, beyond the limits of their own line of railroad, over another line not worked by them, subject to a condition printed on a consignment receipt accepted (though not signed) by the consignor, that the Company will only be accountable for loss occurring on their own line, and not for any occurring beyond the line as worked by themselves, the Company will not be liable for loss or damage occurring, during transit, upon another line not worked by them.

Action by the plaintiff, a dealer in eggs, against the defendants, for damage sustained by reason of the defendants not having delivered at Belfast, in good order and condition, a crate of eggs, the property of the plaintiff.

The case was heard at Longford Quarter Sessions. The plaintiff had delivered to the servants of the defendants at Longford station, on their railway, a crate of eggs in good order and condition; and had, by his carman, accepted a "consignment receipt," acknowledging the receipt of the crate in good order at Longford, on the back of which receipt was printed a condition, that the defendants would only be accountable for loss occurring on their own line, but not beyond the line as worked by themselves.

The defendants had delivered the crate, in good order and condition as received, to the Irish North Western Railway Company at Cavan; and the defendants did not work the railway from Cavan to Belfast, and had no control over it. The crate was opened, and a quantity of the eggs abstracted, after the crate had been transferred by the defendants to the Irish North Western Railway Co.

Wilson, attorney for the plaintiff.—The defendants are bound by the Railway and Canal Traffic Act, (17 & 18 Vic., c. 31); and there was no special contract between the plaintiff and the defendants which would release the defendants from liability, inasmuch as to make the "consignment receipt" binding on the plaintiff, it ought to have been signed by him, as provided by the Railway and Canal Traffic Act, which he had not done; Roscoe on Ev.

Reynolds, attorney for the defendants.—The "consignment receipt" binds the plaintiff as to every condition printed on the back of it, and, therefore, the defendants are not liable.

The CHAIRMAN said that, in his opinion, the defendants were bound by 17 & 18 Vic., c. 31, and that, Ranahan not having signed the "consignment receipt," the defendants were liable for the loss; but stated he would hear any further argument at the next Sessions.

December, 1873.—*Buchanan*, on behalf of the defendants.—It is conceded that the defendants are bound by the 17 & 18 Vic., c. 31, as regards all lines which are worked by themselves; and if goods were delivered at Galway, Westport, or Sligo, or any other station on their own lines, to be delivered at some other station on their own lines, the conditions printed on the back of the "consignment receipt," if unreasonable, would not protect them, and if goods were lost or damaged by negligence under such circumstances, the defendants would be clearly liable. But it is a wholly different case if goods were delivered at Longford to be delivered at Belfast, or Birmingham, or London, for in the case of Belfast the liability of the defendants ended at Cavan, and in the other cases their liability ended at the North Wall, provided the consignor accepted the "consignment receipt" without objection, and in that case it was not necessary that the consignor should sign that receipt, or sign anything;* *Zunz* v. *The South Eastern Railway Company*, L. R. 4 Q. B., 536.

The CHAIRMAN.—The case of *Zunz* v. *The South Eastern Railway Co.* was not brought under my notice at the first hearing. On that authority, I dismiss the case on the merits.

Like rulings were made in two other cases in which the facts were similar.

Attorney for the plaintiff, *Wilson*.

Attorney for the defendants, *Reynolds*.

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before HARRISON, J.)

In Re M., a Disputed Adjudication.

Jan. 9, Feb. 6, 1874.—*35 & 36 Vic. ch. 58, s. 22—35 & 36 Vic. ch. 57, s. 4—Petitioning creditor—Debt of Non-trader contracted after the passing of the B. A. Act, 1872—Rent accruing after, on lease executed before the passing of the Act.*

The Bankruptcy (Ir.) Amendment Act, 1872, and the Debtors Act (Ir.), 1872, are to be construed as conjoint portions of the one code.

The 22nd section of the Bankruptcy (Ir.) Amendment Act, 1872, is to be construed as a remedial enactment.

Rent accruing due and payable after the passing of the Bankruptcy (Ir.) Amendment Act, 1872, by a lessee or assignee of a lease executed or assigned before the passing of the Act, will be held to be a debt contracted by the lessee or assignee before the passing of the Act, and therefore not to constitute a good petitioning-creditor's debt within section 22.

Cause shown against adjudication of bankruptcy.

The facts sufficiently appear in the judgment of the Court.

Perry, on behalf of the alleged bankrupt, showing cause, cited *ex p. Williams, re Harding*, 33 L. J. Ba.,

* See *Stewart* v. *L. & N. W. R. Co.*, 3 H. & C. 135.—[ED. *I. L. T. Rep.*]

Digitized by Google

26, L. R. 1 H. L. 29; 35 & 36 Vict. ch. 58, s. 22; 24 & 25 Vict. ch. 129, s. 90.

Purcell, Q.C. (with him *Nash*), in support of the adjudication, cited *re Galls, Minors*, 7 Ir. L. T. R. 29; 35 & 36 Vict. ch. 57, ss. 3, 4.

Amicus curiæ referred to *Re O'Connell*, 7 Ir. L. T. R. 51; *Re Dempsey*, 21 W. R. 523, on app. 28 L. T. N. S. 860; *ex p. Grey*, 9 L. T. N. S. 121; *M'Carthy* v. *M'Carthy*, 7 Ir. L. T. R. 51.

Judgment reserved.

HARRISON, J.—An adjudication of bankruptcy in this matter took place upon the 30th day of December, 1873. The alleged bankrupt is a non-trader, and the debt relied upon as constituting a good petitioning creditor's debt is the amount of a judgment for the sum of £107 2s. 9d., for debt and costs, recovered in the Court of Exchequer, on the 8th day of July, 1873, by the executors of Thomas Power, deceased, against the alleged bankrupt.

Cause was shown against this adjudication on the 9th day of January, 1874, the objection relied upon being that the debt in question was not a debt contracted after the passing of the Bankruptcy (Ireland) Amendment Act, 1872, and that, consequently, as the alleged bankrupt was not a trader, and not a prisoner as defined by the Act, said debt could not, under the 22nd section of that Act, constitute a good petitioning creditor's debt. At the argument, certain facts were admitted on both sides—viz., that the alleged bankrupt is not a trader; that the debt in question was incurred for two gales of rent under a lease which bears date the 23rd day of March, 1865, and which lease was assigned to the alleged bankrupt by deed dated the 31st May, 1870, and before the passing of the Bankruptcy (Ireland) Amendment Act, 1872; that two half yearly gales of this rent having accrued due after the passing of said Act, an action was commenced by the present petitioners against the alleged bankrupt, and that the judgment in question was marked in said action.

These admissions having been made, the question resolved itself into one purely of law—viz., whether rent which accrues due after the passing of the Bankruptcy Act of 1872, on foot of a lease executed and assigned, to the person sought to be made bankrupt, before the passing of that Act is a debt contracted after the passing of the Bankruptcy Act of 1872, the alleged bankrupt not being a trader.

I must admit that, when the case was first opened, and indeed during the argument, my impression was that the objection was not a valid one, my opinion leaning to the view, that, as there was no debt until the respective gales of rent in question fell due, which they admittedly did after the passing of the Act of 1872, it must be considered that the debt was then contracted, and was a good debt to support an adjudication against a non-trader. I am satisfied, however, from the fuller consideration I have been able to give to the case since the argument, that this view is not correct, and that, upon the true construction of the 22nd section of the Bankruptcy Act of 1872, a debt such as that relied on here cannot be said to have been contracted after the passing of that Act. The case of *ex parte Harding, in re Williams*, reported 33 L. J. Ba., 22, before Lord Westbury, and which was taken by appeal to the House of Lords, reported in 1 L. R., H. L., 9, is, I conceive, a conclusive authority in favour of the alleged bankrupt's contention, unless the words "debt contracted after the passing of the Act" are to receive a different construction from the corresponding words in the English Bankruptcy Act of 1861, section 90, in consequence of the interpretation clause in the Debtors Act, Ireland, 1872, which it is contended must be read along with the Bankruptcy (Ireland) Amendment Act, 1872, and as if it formed portion of same. In the case of *ex parte Harding* it was held by Lord Westbury, on appeal from Mr. Commissioner Goulburn, that a call ordered to be made after the passing of the Bankruptcy Act, 1861, on the winding-up of a joint-stock company, whose deed of settlement bore date the 15th March, 1847, was a debt contracted after the passing of the Bankruptcy Act of 1861, on which the official manager could present a petition in bankruptcy, on which a valid adjudication could be made against the party, who made default in payment of such call. The decision of Lord Westbury was reversed by the House of Lords, by Lords Cranworth, Chelmsford, and Kingsdown. In the judgment pronounced by Lord Westbury, as reported in the *Law Journal*, he gives his reasons at length for holding that no debt existed until after the passing of the Act of 1861, being of opinion that the obligation to contribute to the debts of the partnership only arose as between the parties themselves when the amount of their debts had been ascertained, and the call made, although existing, as he says, *in posse* beforehand, and that the official manager was clothed by the statute relatively to the shareholders named in the order of call with all the rights of a legal creditor, one of which was the right to an adjudication in bankruptcy. Before coming to this conclusion, his lordship expresses his view of the true construction of the words "debt contracted after the passing of the Act," contained in the 90th section of the Bankruptcy Act of 1861. [His Lordship read the judgment of Lord Westbury from "The words are very few, and apparently very plain," p. 28, to the words "after the passing of the Act of 1861," first par. p. 29.] Now, the petitioning creditor's debt in the present case clearly is not a debt arising under a contract made after the passing of the Act of 1872. The lease under which the liability arose was executed in 1865, and the assignment to the alleged bankrupt was made in 1870, and although no actual debt existed until the breach of the covenant for payment of the rent reserved by the lease took place, which was after the passing of the Act, the debt could not, according to Lord Westbury's definition, be said to be "contracted" after that date. In the House of Lords, Lord Cranworth held that the order making the call was only a mode of enforcing the performance of the original contract, into which Mr. Williams had entered in 1849 (the date of the deed of settlement), and that the obligation to make this payment to the official manager did not constitute a debt contracted after 1861. [His Lordship read the judgment of Lord Cranworth from "The question on the 90th section turned, it will be observed, on the point," p. 21, to the words "and so converted into a judgment debt after 1861," p. 23]. Lord Cranworth then touches slightly on the other objection which had been argued, that the official manager was not a creditor at whose instance the person liable to pay the amount of the calls could be adjudicated a bankrupt, and says he does not feel bound to give an opinion on this point, having already stated grounds sufficient to dispose of the case. Lord Chelmsford, in his judgment, relies altogether on this latter ground—viz., that the official manager could not be a good petitioning creditor. His lordship, however, at p. 24 of the report, expresses his concurrence with Lord Cranworth's views on the other ground of objection. [His Lordship read Lord Chelmsford's judgment from "There can be no doubt that, as a proprietor, the appellant," to the end of the paragraph.] Lord Kingsdown gives judgment on both points against the adjudication, and at p. 29 uses these words:—"The Act here has provided that the debt upon which a petition for an adjudication in bankruptcy may be founded, against a non-trader, must be one contracted after the Bankruptcy Act of 1861 was passed. The object was to protect persons from the consequences of *ex post facto* legislation. The debt, I think, must arise from some act or default of the debtor after that time." Now, when the alleged bankrupt here took the assignment of the lease, and made himself liable for payment of the rent thereby reserved, so long as he continued assignee, he was not subject to the bankrupt laws, not being a trader, and it would certainly subject him to a fresh liability, entailing in some respects almost penal consequences, as Lord Westbury observes, which he never could have contemplated when he so became assignee, if he could now be adjudicated bankrupt for non-payment of the rent reserved by that lease, to which he, in 1870, made himself liable. The language of Lord Cranworth, as already read, is still more explicit. The statute, he says, "is to be construed as a

remedial enactment, and all Courts are bound, on general principles, to put on it such a construction as will best give effect to the remedy contemplated. Looking then to the section in this spirit, I am prepared to say that, in my opinion, no debt founded on contract is sufficient to warrant an adjudication of bankruptcy against a person not a trader, unless it was contracted by him at a time when he knew, or might have known, that he thereby made himself liable to the Bankruptcy Laws, and this must have been after the passing of the Act of 1861." Again, "the calls constitute an obligation cast upon him by law" (in the present case the obligation is cast by contract, viz., the lease) "after the passing of the Act, in consequence of engagements which he had entered into long previously. This obligation must, I think, in construing the 90th section, be referred back to the year 1849, when he became a shareholder, and executed the deed. By what he then did he knew that he might become liable to pay such calls as are now imposed on him. But he did not, and could not know that he was incurring a liability which might end in his being made a bankrupt. And it was to protect him against that unanticipated consequence that the 90th section was passed." According to this reasoning, it is clear, I think, that in the present case, where the debt has arisen from an obligation entered into in 1865, and the liability to perform which attached upon the alleged bankrupt in 1870, the petitioning creditor's debt must be held to have been contracted before, and not after, the passing of the Bankruptcy Amendment (Ireland) Act, 1872.

The question then remains, whether a different construction is to be put upon the words "debt contracted after the passing of this Act," in consequence of the meaning attached to those words in the interpretation clause of the Debtors Act (Ireland), 1872. And I am of opinion that no different construction is to be put upon these words on this account. The Debtors Act was passed at the same time, and received the Royal assent on the same day as the Bankruptcy (Ireland) Amendment Act, 1872. Both acts form portions of the same code, and should, I think, be construed together. Indeed, this was almost admitted in the argument, and my colleague, Judge Miller, in the case of *re O'Connell*, 7 IR. L. T. R., 5, so held and relied on the interpretation clause of the Debtors Act, as fixing the meaning of the words "debt contracted before the passing of this Act," occurring in the 26th clause of the Bankruptcy Amendment Act, 1872. Section 4 (the interpretation clause) of the Debtors Act is as follows:—[His Lordship read the section.] Now, the words "debt contracted after the passing of this Act" are declared to cover three classes of debts, viz.:—

"Any sum of money due or payable under or in respect of—

1st. Any contract or obligation made or entered into; or,

"2nd. Any liability incurred; or,

"3rd. Any cause of action or suit arisen after the passing of this Act."

As regards the first of these classes of debts, the present debt is clearly not within it, as the contract or obligation was made or entered into, so far as the alleged bankrupt is concerned, when he became assignee of the lease in question. As regards the second class—viz., "any liability incurred after the passing of the Act," I am of opinion that the liability in question arose and attached to the defendant when he became such assignee, although, no doubt, that liability was not converted into a debt "*in esse*," to use the expression of Lords Westbury and Cranworth, until the breach of the covenant took place. The only difficulty arises from the third head of the definition; but upon this point, also, I am of opinion that the debt in question does not come within that category, and that it is not "a sum of money due or payable under or in respect of *a cause of action or suit, arisen* after the passing of the Act." When did the cause of action, on which the judgment in the present case was eventually obtained, *arise?* Is it sufficient that the breach of the contract merely should have taken place after the passing of the Bankruptcy Amendment Act, 1872, or should the contract, as well as the breach, have arisen before, or, in other words, should the *whole cause* of action have so arisen? I am of opinion that it should, looking at the object of the Legislature in introducing these words, as explained by Lord Westbury in the case of *ex parte Harding*, already referred to. "The feeling that introduced those words," says his lordship, "was a great feeling of alarm at non-traders being made subject to the operation of the Bankrupt Law. There was naturally a strong impression that it would be unjust to subject men to the almost penal consequences of contracts which did not by the law attach to their engagements at the time when they entered into them. There was, therefore, a most anxious desire to prevent the Act of Parliament having any retrospective operation." And again—"I certainly must expand the words according to the meaning which they were obviously selected for the purpose of conveying, and according to the meaning which, in a somewhat popular sense of the words, they certainly do convey, that it must be a debt arising under a contract, which itself is made or arises, that is, either results from the act of the party or the operation of the law, after the passing of the Act of 1861." Lord Cranworth, in his judgment in the House of Lords, lays down the same principle as the guide to be followed in construing these words. "The motive of the Legislature," says his lordship, at p. 21 of the report, "in introducing the 90th section, evidently was the hardship which the new Act would inflict on persons not in trade, who, having contracted debts before the passing of the Act, might by its operation be subject to penal and other consequences, to which they had not by the mere contracting of the debts exposed themselves. It is impossible to mistake the object, or not to feel the justice of the enactment; and in determining in any particular case whether the debt on which it is sought to make a non-trader bankrupt, is, or is not a debt contracted after the passing of the Act of 1861, the grounds on which the section in question rests must be steadily kept in view. It is to be construed as a remedial enactment, and all courts are bound on general principles to put on it such a construction as will best give effect to the remedy contemplated."

Taking this principle of construction as the guide, we are relieved from any embarrassment which might arise from the conflict of decisions in the English Common Law Courts, and to some extent in the Irish Common Law Courts, as to the meaning of the words "cause of action arisen within the jurisdiction," which occur in the English Common Law Procedure Act of 1852, and in the Irish Common Law Procedure Act of 1853. In England the Court of Queen's Bench hold that, in order to enable service of a writ to be substituted or deemed good in respect of a cause of action arising within the jurisdiction, the whole cause of action, "contract as well as breach," must have so arisen *Cherry* v. *Thompson*, L. R. 7 Q. B. 573. The English Court of Common Pleas, on the other hand, hold that it is sufficient that part of the cause of action should have so arisen: *Jackson* v. *Spittal*, L. R. 5 C. P. 542; whilst the Court of Exchequer in England appear to be divided in opinion as to the true construction of these words: *Durham* v. *Spence*, L. R. 6 Ex. 46. In this country, the Irish judges have generally adopted the construction put upon the words by the English Court of Common Pleas in preference to that adopted by the Queen's Bench: *Mathews* v. *Alexander*, Ir. R., 7 C. L. 575. This conflict of opinion need not, however, as I have said, embarrass us in construing these words in the Debtors (Ireland) Act and Bankruptcy (Ireland) Amendment Act, 1872, guided, as I conceive we are bound to be, by the consideration of the object of the Legislature in their introduction, as explained by the high authorities I have referred to, and construing the statutes as remedial acts in a liberal sense, so as to carry out that object. It was pointed out during the argument that, to adopt any other construction would entail the absurdity of holding that this debt was both a debt "contracted after the passing of the Act," and also a debt "contracted before the passing of the Act," as the second head of the interpretation clause of the Debtors Act gives a definition

Digitized by Google

of this latter phrase, which would clearly cover the present debt, it being "a sum of money due or payable under or in respect of a contract or obligation made or entered into, &c., before the passing of this Act."

Since the argument I have been referred to the case of *Arkins* v. *Magrath*, 8 Ir. L. T. R. 21, decided by the Court of Common Pleas on the 12th of January, three days after this case was before me. I do not think, however, that that case, or that of *M'Carthy* v. *M'Carthy*, 7 Ir. L. T. R. 177, decided by Dowse, B., have any material bearing on the present case. The case of *in re Galls, Minors*, 7 Ir. L. T. R., 29, before the Lord Chancellor, was, however, relied upon as an authority in favour of the validity of the adjudication, and opposed to the construction that I have given to the words "debt contracted after the passing of this Act" in the Bankruptcy (Ireland) Amendment Act, 1872. There an *ex parte* application was made to the Lord Chancellor, to direct an attachment to issue against a tenant, for non-payment of rent which accrued due after the passing of the Debtors (Ireland) Act, 1872, under a lease executed before that date. The Lord Chancellor asked for authorities under the English Act, and was told by counsel that there was none in point; and although his lordship does appear, from his observations, to have been disposed to hold that the rent in question was "a liability incurred after the passing of the Act," all he actually did was to decide that he was not satisfied, in the absence of authorities, that the order ought to issue. I cannot hold this expression of opinion on an *ex parte* application—when counsel did not fully argue the case, or refer his lordship to the case of *ex parte Harding*, before Lord Westbury and the House of Lords—as an authority which ought to bind me in deciding the very important principle which is involved in the present case. I shall be only too happy to have my decision and its reasons fully canvassed before the Appellate Court, and I hope, if the parties against whom I feel bound to decide are not fully satisfied with my judgment, that they will take the case to the Court of Appeal for its decision; but I am satisfied that, no matter what may be the result of an appeal if brought, the head of that Court will not for a moment think me failing in deference, or due respect to his high authority, when I hold myself free to decide this case as I have done, notwithstanding the expression of opinion of the Lord Chancellor in *re Galls, Minors*.

For the reasons I have given, I am of opinion that the cause shown against the adjudication should be allowed. Costs, according to the usual rule, follow the result, and must be paid by the petitioning creditors to the alleged bankrupt.

*Cause shown allowed.**

Solicitors for the alleged bankrupt, *Oldham & Eaton.*

Solicitors for the petitioning creditor, *Perry & Crosskerry.*

VICE-CHANCELLOR'S COURT.

Reported by E. F. Beatty, Esq., Barrister-at-law.

(Before Chatterton, V.C.)

In the Matter of the Renewable Leasehold Conversion Act; *ex parte* Walsh.

Jan. 27, 1874.—*Practice—Renewable Leasehold Conversion Act—Owner of reversion residing abroad—Neglect of, to execute fee-farm grant—Execution of the grant by the Master.*

The owner of the reversion being abroad, and neglecting to comply with an order directing him to execute a fee-farm grant under the Renewable Leasehold Conversion Act, the Court ordered that the grant should be executed by one of the Masters (Ex p. Guerin, 4 Ir. L. T. 562, *followed.).*

---

* The petitioning-creditor has appealed.

Application for an order directing the proper officer to execute to the petitioner, on behalf of the respondent, a fee-farm grant of a house and 23 acres of land attached thereto, situated in Baltinglass, in the county of Wicklow. By indenture of the 7th of August, 1779, the premises were devised by Edward Stratford, Earl of Aldborough, to William Johnson, senior, for three lives, the lease containing a covenant for perpetual renewal. This lease was from time to time renewed, and William Johnson, senior, having devised the premises to his son William Johnson, junior, the latter, on the 22nd October, 1852, sold his interest to the Right Hon. John Edward Walsh, who, having died intestate on the 20th October, 1869, the petitioner, the Rev. Robert Walsh, became entitled as his heir-at-law. In November, 1869, the petitioner wrote to the owner of the reversion, Benjamin, Earl of Aldborough, for a fee-farm grant of the premises, and after a considerable correspondence, a petition was presented on the 24th of November, 1871. This petition having been directed to stand over until a bill should be filed to establish the petitioner's right to the grant sought, such bill was accordingly filed on the 1st May, 1872, and after a number of proceedings in the cause, unimportant so far as the present case is concerned, a decree was at length made in the petitioner's favour on the 18th April, 1873, and an order was made on the petition on the 9th June, 1873. This order omitting to name a time within which the acts therein directed should be performed, a supplemental order was, on the 18th November, 1873, obtained, that the respondent should execute such grant on or before the 1st January, 1874, and also directing that the petitioner should be at liberty to set-off as against the costs of the bill and petition due to him, the amount of renewal and septennial fines, &c., due to the respondent. The respondent resided altogether abroad, and he having failed to comply with this order,

Mr. John Edward Walsh now appeared to support the application. An order has been made, in a similar case, directing the senior Master of the Court to execute the grant (*Ex p. Guerin*, 4 Ir. L. T. 562; Ir. R. 4 Eq. 467). The Masters were the persons empowered by the 23rd section of the Renewable Leasehold Conversion Act to execute the grant, in certain cases in the section mentioned. However, although the right to have the grant executed by some one is clear, it seems very doubtful whether the Masters have power now to do so. By the 27th section of the Chancery (Ireland) Act, 1867, the office of Master was abolished, and the 39th section directs that no further references are to be made to them except in cases pending at the time of the passing of the Act, or in cases in some manner connected therewith. These sections are sufficient to repeal the 23rd section of the Renewable Leasehold Conversion Act: Dwarris on Stat. 530. The Master of the Rolls and the Vice-Chancellor, respectively, seem to be now the proper persons to execute such grants, as appear from section 143, or they may direct their Chief Clerks to do so by section 137.

The Vice-Chancellor stated that, in his opinion, he was the proper person to execute the grant, but that he felt bound by the decision of the Master of the Rolls in *Ex p Guerin*; and, accordingly, made an order that the grant should be executed by one of the Masters.

Solicitors, *Keane & Tweedy.*

Digitized by Google

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J.; O'BRIEN, FITZGERALD, and BARRY, JJ.)

THE QUEEN *v.* UNKLES.

Nov. 5, 6, 1873.—14 & 15 *Vict.*, c. 93—35 & 36 *Vict.*, c. 33, *s.* 4.—*Summary jurisdiction—Dismiss without prejudice—Violation of secrecy of Ballot—Evidence.*

A person accused under the Ballot Act, 1872, *section* 4, *of violating the secrecy of the Ballot, may be convicted upon his own admission, if satisfactorily proved.*

The 21*st section of the Petty Sessions Act,* 1851, *is prospective, and applies to the offences created by section* 4 *of the Ballot Act,* 1872.

Whiteside, C.J., DISS.

Case stated by the justices of the borough of Cork, under 20 & 21 Vict., c. 43, for the opinion of the Court upon a conviction under the Ballot Act, 1872, s. 4.

The proceeding, the subject of this statement, came before the justices at petty sessions, on the 10th April, 1873 upon a summons (at the prosecution of the Attorney-General) to H. Unkles, Esq., J.P., dated March 25, 1873:—"That after the passing of the Ballot Act, 1872, an election was, according to law, held at and in the borough of Cork, to return one member to serve in Parliament for the said borough, in the place of John Francis Maguire, deceased, and that Joseph Philip Ronayne, and Jas. Edwin Pim, respectively were the only candidates respectively nominated at the same election, which was a contested election, to serve in Parliament as such member as aforesaid, and that during the taking of the poll for the said election, on the 5th day of December, 1872, you, the said Henry Unkles, were in attendance as agent for Mr. James Edwin Pim, at and in a certain polling station in that behalf provided, according to law, and for the said borough, and known as No. 1 polling station, N.E. ward, and that you, the said H. Unkles, on the day appointed, and in the said borough unlawfully and contrary to the statute, communicated to one Patrick O'Connell, solicitor, certain informatinn obtained by you as such agent, in the said polling station, as to the candidate for whom one Michael Delea, Knocknahorgan, had voted, at the said elections and in the said polling station, to wit that the said Michael Delea had voted at the said election, and in the said polling station, for the said Joseph Philip Ronayne, the said Michael Delea being then unable to read, and having at and in the said polling station made, as by law required, a declaration in the said Act referred to as the declaratiou of inability to read, and then and there being entitled to vote, and having on the day aforesaid, and before the said information was communicated by you, the said Henry Unkles, to the said Patrick O'Connell, lawfully voted at the said election, and in the said polling station, for one of the candidates. This is to command you to appear," &c.

Evidence for the prosecution was given as to the Speaker's warrant and writ to hold the election; of the return; the nomination of Pim and Ronayne as candidates; the holding of the election; the appointment of presiding officers; the declaration of secrecy made by the defendant, as personation agent for Pim, at one of the polling stations; the declaration made by the voter Delea as to his inability to read; and the register and list of voters for the polling station in question.

Mr. N. Webb Ware deposed that he was the presiding officer at the last election. He remembered a man coming to vote, on the day of the election, as Michael Delea; he said he was unable to read, and he (witness) then read for him the declaration of inability, to which Delea put his mark. Mr. Unkles, who was acting as agent for Mr. Pim, was present. Mr. Unkles saw Delea put his mark to the voting paper. Mr. Unkles saw the voting paper; he believed that he saw the mark, and heard him (witness) ask for whom he intended to vote? Before Delea came to vote, he (witness) told Mr. Unkles that Mr. Patrick O'Connell was one of the agents of Mr. Ronayne.

Michael Delea deposed that he polled at the election. A gentleman asked him could he read or write. He (witness) put his mark to a paper in a box. He put his hand to the pen, the pen on the paper, and made his cross. He turned out, and the gentleman kept the paper.

Mr. Patrick O'Connell, solicitor, deposed that he acted at the election as the friend of Mr. Ronayne. Saw the voter, Michael Delea, there. Took him to the polling place. Took him to Mr. Ware's table. Mr. Unkles was there at the time. Delea went to the polling box. Unkles, Ware, and Forrest (agent for Ronayne) went to the box to vote. Walked towards the door, and was two or three yards away when Delea went in to vote. Unkles followed him out, put his hand on his (witness's) shoulder, and said, "What made you bring that man (or that fellow) back?" He said, "Why?" Unkles replied, "He voted against us." Witness said, "Against whom?" He said, "Against Pim." Mr. Daniel O'Sullivan was standing within about a yard of him. In about an hour afterwards, in the room, he met Mr. Unkles. He (witness) was speaking to Mr. O'Sullivan. Spoke to Mr. Unkles, and said, "It was a foolish thing of you to tell me how that man voted, or to tell me whom the man voted for." Told him that he was an agent, and made a declaration, and he ought not to tell him how the man voted. He replied that he did not say for whom the man voted; he merely said, "He voted against us." Witness said, "You told me he voted against Pim." On cross-examination, witness said that when he asked Mr. Unkles, "Whom do you mean by us?" he had not any intention of getting information from him. He did not know whether he meant to get an answer from him or not. He obtained information from Mr. Unkles.

Joseph Forrest, who was the agent of Mr. Ronayne, said he saw Delea put his mark on the paper in the presence of himself and Mr. Unkles, and saw Mr. Ware fold it up.

Mr. Daniel O'Sullivan deposed that he heard Mr. Unkles aud Mr. O'Connell talking together. Mr. Unkles was coming into the booth. Mr. O'Connell accosted him, and said, "'Twas very wrong to divulge the way that man voted," or words to that effect. Mr. O'Connell charged him with saying, "He voted against Pim." "No," said Unkles—"I said, 'Voted against us.'"

No evidence was given on behalf of the defendant.

The following is the sentence pronounced by the magistrates:—"We have weighed and considered the evidence given in this case, and everything urged on behalf of the defendant. We find that the holding of the recent election, the appointment of the defendant, Mr. Unkles, as agent for Mr. Pim, one of the candidates, and the other preliminary matters, have, in our judgment, been satisfactorily established; subject, of course, to the objections made by defendant's counsel. On the evidence of Mr. O'Connell the whole case turns, and this evidence receives a slight confirmation from that given by Mr. Daniel O'Sullivan. We cannot

Digitized by Google

discredit this testimony, and we have come to the conclusion that such a communication as that made was a contravention of the 4th section of the Ballot Act, 1872. We allow, and are free to record, that the conversation between Mr Unkles and Mr. O'Connell was, according to the evidence, intended by the defendant to be confidential; that the remark made was made inadvertently; and that the provisions of the Ballot Act had, in the hurry and confusion, escaped at the time from the defendant's memory. We readily allow and admit that the defendant had not been actuated by any criminal intent or malicious motive. All these circumstances we have taken into our consideration when measuring punishment. We consider that a lenient sentence, not altogether a nominal one, will amply vindicate the law and satisfy the ends of justice. We, therefore, order and direct that the defendant, Henry Unkles, be imprisoned in the gaol of the borough of Cork for one week."

It further appeared, by the case stated, although not by any evidence given at the hearing below, that the defendant had previously been summoned for the same offence before another bench of magistrates, the complainant being J. P. Ronayne, M.P. He had appeared on both occasions, December 10th and 31st, 1872, but on the latter occasion the complainant did not appear; and, in each instance, the order made was, "dismissed without prejudice."

The Solicitor-General, *Law* (with him *Molloy*), in support of the conviction. The course of procedure prescribed by the Petty Sessions Act, 14 & 15 Vic., c. 93, s. 21, is either to dismiss the case upon the merits, or dismiss it without prejudice to its being brought forward again. The magistrates had a general power under that Act, and the circumstance that such a power was not incorporated in the Ballot Act, would not deprive them of their jurisdiction under the Petty Sessions Act. But that power should be held to be incorporated in the Ballot Act by implication. A previous dismissal of a case, "without prejudice," is no bar to a future proceeding in the same case. It was not necessary to show that the voting paper had been put into the balloting box. Even if the presiding officer had put the voting paper in his pocket, the voter had duly voted.

G. Fitzgibbon, Q.C. (*Ronan* with him), on behalf of the appellant. There was no evidence that Messrs. Pim and Ronayne had been nominated, as the signatures affixed to the alleged nomination were not proved. The ballot paper not having been produced, secondary evidence of the fact of voting by Delea could not be admitted. There was no evidence of the fact of Delea having voted; he could not have voted unless the ballot paper had been put into the ballot box, and no one proved that the ballot paper ever reached the ballot box. Mr. O'Connell, on his own evidence, had committed an offence under the Act, by asking Mr. Unkles "whom he meant by us?" therefore, being *particeps criminis*, his uncorroborated evidence, as an informer, was not sufficient in a criminal case. It was not proved that the statement of Mr. Unkles to Mr. O'Connell was "information derived by him in the polling place." His statement alone would not be sufficient to prove the *corpus delicti*. There was no deliberate disclosure, such as was necessary to constitute an offence, but a mere inadvertent statement of an agent on one side to a person who was bringing up voters on the other, and who was, in the opinion of Mr. Unkles, as well as of the presiding officer, an agent for Mr. Ronayne. The evidence did not establish that Mr. Unkles had disclosed the name of the candidate for whom Delea had voted. The magistrates might have adjourned the case, but could not re-hear a case in which there had been a previous acquittal. No such power as dismissing without prejudice and re-hearing the same case is extended to the magistrates, and the Petty Sessions Act would not apply to the Ballot Act unless it were incorporated in it. The summons was tantamount to an indictment. [BARRY, J.—But could you plead *autre fois acquit*, in respect of this sentence—"dismissed without prejudice"?] The original summons had been finally disposed of, and could not be again brought forward. The contention at the other side should amount to this—that the case could be again and again brought on. [WHITESIDE, C. J.—Is there any evidence to show that the paper was actually put into the box?] There is not; but if the Crown considered it to be material to prove this, they should have proved it; not having done so, the Court should not allow them now to remedy the defect. The Act creates a new and very penal offence, and the punishment imposed—imprisonment—was greater than any fine, especially to a gentleman of the age of Mr. Unkles. It was necessary to prove that the statement, attributed to the defendant as having been made outside the voting place, referred to what had occurred inside the place. Communicating information about what had occurred in the polling station constituted the offence, and it did not appear that the defendant had made any such communication to the witness.

Judgment reserved.

BARRY, J.—I am of opinion that the conviction should be maintained. I have entertained considerable doubts on one of the points argued before us—namely, whether, assuming that the "dismiss without prejudice" of the previous summons must be regarded as an adjudication properly so-called, it is not a bar to a subsequent proceeding for the same offence. On this point the contention of the counsel for Mr. Unkles was, that the 21st section of the Petty Sessions Act of 1851 does not apply to cases of summary jurisdiction under statutes passed subsequently to that Act, and not expressly incorporating its provisions; and it was conceded that, if the Petty Sessions Act was prospective, this objection to the conviction should fail. I have, however, arrived at the conclusion that the provision of the Petty Sessions Act is prospective, and, without express incorporation, applies to an offence created by a subsequent statute. The reasons which have led my mind, upon that and other points involved, to the conclusion that the conviction should be affirmed, will fully appear in the judgment of my brother Fitzgerald, and I do not therefore deem it expedient or reasonable to occupy time in a mere attempt to anticipate what will be stated by him so much more clearly, and with so much greater authority.

FITZGERALD, J.—I concur in the judgment expressed by my brother Barry, and which will be, I believe, the judgment of the majority of the Court. The evidence in the special case discloses that a voter went into the polling station, put his mark to the voting paper, and afterwards Mr. Unkles came to where Mr. O'Connell, the agent of Mr. Ronayne, was standing at the door, and used the words that the voter had voted against them. Mr. O'Connell asked against whom had he voted, and the other gentleman replied, "Against Pim," and Mr. O'Connell remarked that it was a foolish thing for an agent to speak in that way. The magistrates, however, in their observations on the case, held that the remark was made by Mr. Unkles inadvertently, and without any criminal intent, and not having the Ballot Act in his mind at the moment, and so appeared to regard a nominal punishment as sufficient for the offence. Three objections have been taken to the conviction—first, that

Digitized by Google

the defendant had been acquitted of the same charge upon two previous occasions; second, that the evidence did not establish that any crime had been committed, as it was not proved that Delea had, in fact, voted, and inasmuch as the statement made by the defendant could not be relied on to establish the crime; third, that the statement by Mr. Unkles was one made inadvertently, and that there was not any deliberate disclosure of the way in which the elector had voted, so as to constitute an offence under the Ballot Act. The proceedings under the statute were by a summary proceeding before two magistrates; and a question of very general importance arose as to whether the 13th and 14th of Victoria, chap. 93, was one under which such a prosecution could be instituted. The Ballot Act applied to the whole of the United Kingdom, and the question was, whether the statute of 1851, by which the summary procedure of justices was regulated, applied to a statute subsequently passed, when no mention was made in the later Act of the earlier Act. It was relied upon as against the conviction that, when referring to Scotland, the Ballot Act provided that the proceedings should be before the sheriff; but that was because he acted as judge in cases which, in Ireland and England, would be determined by the justices. If the 13th and 14th Victoria does not apply, the result will be that the magistrates might get rid of publicity, and prevent all publicity, which, I think, would be one of the greatest evils. The conclusion at which I have arrived on this point is that in summary proceedings before justices, under the 4th section of the Ballot Act, the provisions of the Act of 1851 are applicable, and that the justices had authority to dismiss the earlier summons "without prejudice," according to s. 21 of that Act. It is not necessary for me, having come to that conclusion, to consider whether, if the justices had no lawful authority to dismiss without prejudice, their unlawful act should be considered as equivalent to an acquittal, or as acting as a bar to a future proceeding. As to the second point, it is clear law that an accused party may be convicted, even in capital cases, on his own statement, if it be satisfactorily proved. In *Stone's* case, Dyer 214, the accused had confessed the murder; the body was found, but there was no other evidence of the murder. A man may be convicted on his own confession without any corroboration (*Fisher's* case, 1 L. Cr. Cas., 311, n.) We were pressed by an argument that, where the charge is murder the prisoner could not be convicted upon confession unless the body was found. Lord Hales states the rule as follows:—"I would never convict any person of murder or manslaughter unless the fact were proved to be done, *or at least the body found dead.*" This rule, which is one rather of judicial practice than part of the law of evidence, seems to have had its origin in cases where the charge of murder depended on the fact of the disappearance of the party alleged to have been murdered, such as that mentioned in 1 Leach, 264, n. But it is to be observed, that here the *corpus delicti* is proved independently of the confession. There is proof that the election was held; that Delea was a voter, and that he voted; and that the defendant communicated to Mr. O'Connell that Delea had voted for Mr. Ronayne. It has been said that the ballot paper was not produced. It could not be produced, except under the 40th rule of the Ballot Act. There was evidence of Delea having voted, but not evidence as to the person for whom he voted. There was sufficient proof of his having voted in the statement of the defendant, which he did not controvert. I, therefore, think that the objection as to the absence of proof and the insufficiency of evidence entirely fails. It has been argued that the Ballot Act is highly penal, and that we should construe it strictly. It is a new Act, providing a new procedure. With its policy we have no concern. The vital principle of the Act is secrecy, to maintain which a form of prosecution has been attached by the Legislature. The case before us is one in which the whole public has an interest, and it is our duty to give effect to the Act. By that Act each agent in attendance at a polling station is required to observe the strictest secrecy. The defendant, as one of such agents, made a statutable declaration to maintain secrecy. The question is whether the evidence shows that the defendant violated that duty. I have come to the conclusion that he has done so; but, considering his age, I would wish him to be spared from undergoing the sentence imposed upon him.

O'Brien, J.—It is unnecessary for me to do more than to say that I concur in the judgment pronounced by my brother Fitzgerald, and in the reasons upon which it is founded. The question is of much importance, not merely from the circumstances of the case before us, but from the three great considerations that have been involved in it. First, as to the incorporation of section 21 of the Petty Sessions Act into the Ballot Act, it is enough to say that it would be productive of the greatest inconvenience and confusion in the administration of justice, if this were held as only applicable to offences created by Acts of Parliament which by express words incorporate that section. As to the allegation that the offence has been proved only by the admission of the party who has been charged, the *corpus delicti* is the offence of telling the party what had taken place inside the voting place, and I concur in the conclusions at which my brother Fitzgerald has arrived. As to the third objection, namely—that the information to be given must be information as to how the person actually voted, I do not think that the construction insisted upon on behalf of the defendant can be put upon the Ballot Act. The object of the Legislature was to secure secrecy; the provision of the Act of Parliament renders it penal for a party to give any information as to the manner in which a person has voted, and it would be only frittering away the provisions of the statute to hold that information so given must be true in point of fact, and it would be waste of time in me to do more than to say I concur in the judgment of my brother Fitzgerald, and that I also concur in the observations made by him, that the age of the defendant should be taken into consideration by the Crown in determining whether the sentence that has been pronounced should be carried into effect.

Whiteside, C.J.—I am of opinion that the conviction is unmaintainable and should be quashed. The magistrates at petty sessions, for the borough of Cork, were called on to submit a case after summary conviction, for violation of the 4th section of the 35th & 36th Vict., c. 33, the Ballot Act of 1872. The question was whether, upon the case stated, the conviction should be quashed. [His Lordship read section 4.] It is upon the latter words of this section the conviction has been had in the present case. The penalty affixed to the commission of the offence is contained in the latter part of the same section, and in the words following:—"Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour." The first question is, by what particular procedure the offence is to be prosecuted. The Ballot Act applies to England, Ireland, and Scotland, generally. As to Scotland, we find in the second clause of the 16th section, the mode of procedure distinctly prescribed. The reference to the Summary Procedure Act for Scotland, of 1864, is clear. No such clause in reference to our petty sessions is framed for Ireland. As to England, the special Act giving no procedure by express enactment or by particular reference, the prosecution will be conducted as usual in cases before magistrates, but modified as may be necessary in accordance with the express provisions of the Ballot Act. I understand that to be by summons, hearing, adjournment if necessary, final hearing, followed by conviction or acquittal. The Scotch Act, the 27 & 28 Vic. c. 53, for regulating summary procedure, is sensibly framed, provides simple forms and procedure, and enables the justices to hear the cases on summons, to adjourn if required, to convict or dismiss. There is no provision enabling them to "dismiss without prejudice." Such a proceeding is not known either in England or Scotland. In the 11 & 12 Vic., c. 43, s. 16, power has been conferred on the justices to adjourn a case at their discretion. And by s. 17 it is enacted. [His Lord-

Digitized by Google

ship read the section.] It is to be observed that, although there is no difficulty in drawing up a dismiss or a conviction under the Ballot Act, and although the section might be useful to apply to all subsequent Acts, yet, so far as express terms, it applies only to statutes hitherto passed, there is no direct enactment applying these forms to all statutes subsequently passed, and the justices would not be bound in England to follow literally the forms here given. Upon examination of the forms in the schedule to the 11 & 12 Vic., c. 43, I find none such as "dismiss without prejudice." Where the special Act gives the forms of procedure, the justices might frame their forms and orders according to the effect of any of the forms applicable thereto—they might use these forms without being obliged blindly to apply to one case what was properly only applicable to another. It is taken for granted that when, in England or Scotland, a case has been brought regularly to a hearing before the appointed judicial tribunal, and that no application is made for an adjournment, the case shall be heard and concluded either by a conviction or acquittal. There is nothing in our Petty Sessions Act applying all its powers to all offences subsequently arising; above all, such a provision is not made as one enabling a *dismiss without prejudice*, when no case is made for it on the facts; and I think to drop into the habit of giving such a dismiss is a bad practice, and might lead to many evils; and I think that when the parties, with their respective counsel, attorneys, and witnesses, are in attendance, the cause should be heard and decided either by a conviction or acquittal. No greater mischief can exist in the local courts than protracted or reiterated petty suits—there, even more than in the superior courts, the maxim applies, *Expedit reipublicæ ut sit finis litium;* and I am of opinion that in such case where there is no fatality, no keeping back of witnesses, or case for adjournment, the party brought to trial has a right to a judgment of acquittal if the case fails against him at the hearing.

Many statutes have been passed in England since the 11 & 12 Vic., c. 43, imposing penalties, of which the Marine Mutiny Act, 12 Vic., c. 12, is one, which, by clause 86, directly enacts that the penalties may be recovered under the provisions of the 11 & 12 Vic. c. 43, in England and under the Petty Sessions Ireland Act, 1851, in Ireland. No such reference is made in the Ballot Act of 1872; but we are asked to give, by implication, to the magistrates the powers which, in the cases instanced, were thought to require express words. Looking at sections 20 and 21 of the 14 & 15 Vic., c. 93, it appears that the justices, when the party summoned does not appear, and no case is made, may either proceed *ex parte* or adjourn; and where the defendant shall appear under the summons, if the complainant shall not appear by himself or his agent, the justices may do either of two things—either hear and dismiss the case, but not "without prejudice," or adjourn the hearing to a future day. By section 21, when the justices hear both sides and all the evidence has been given, they may make the order authorized, or dismiss the complaint, either upon the merits, or without prejudice to its being made again. Comparing p. 14 of the case with the language of section 21 of the Petty Sessions Act, what have we? It is a case in which the justices heard not one word of the evidence adduced for anybody. There was no hearing, and section 21 did not apply, as is perfectly clear; then the case falls under sub-section 3 of section 20, by which, when the complainant does not appear, the justices cannot dismiss without prejudice, but may adjourn, which they did not do. Therefore, the judgment must be considered as one of absolute dismissal, and consequently this conviction, which subsequently took place for the same offence, is bad, and should be quashed. In the same well-known English statute, 11 & 12 Vic., c. 43, by section 11 the time limited for complaints under that Act is six months from the time when the matter of the complaint arose; and the case *in re Edmundson*, 17 Q.B. 73, is an authority to show that when justices are required under Railway Acts to make an order for payment of money, being compensation for injury to lands under £50, and the procedure being according to the 1st section of the 11 & 12 Vic., c. 43, the order of the Court below was held to be bad, because the matter in dispute arose more than six months before the order of the justices. The limitation was held to apply retrospectively as well as prospectively in the case of the *Queen* v. *Leeds and Bradford Railway Company*, 18 Q.B. 343. By the Ballot Act, 1872, no time is limited within which complaints of its violation must be made. The fourth section forbids all persons to communicate information obtained in a polling-station at "any time." The latter statute must be complied with, because it is the special statute constituting the offence, and, moreover, the later Act. It does not seem to me possible to introduce or incorporate in the Ballot Act the limitation as to time of prosecution, wisely provided for trivial offences under the Petty Sessions Act. I do not, therefore, think that, without express words of reference, the power of dismissing without prejudice is necessarily incorporated in this highly penal statute, creating a new offence before unknown to the criminal law. It is a maxim of our law, especially of our criminal law, *Nemo debet vis vexeri pro eâdem causâ.*

Upon reference to the statement of this case by the magistrates, I find that the defendant's counsel contended that the defendant had been already tried and acquitted of the same offence. The magistrates inform the court, in reference to this allegation, that "what appears to be the same offence, came before another bench of magistrates in this Petty Sessions, on the 10th of December, 1872, on which occasion the order was dismissed without prejudice; and that on the 3rd of December, 1872, the same case came before another bench of magistrates, on which occasion the order made was 'complainant did not appear, defendant appeared in person and by his counsel, complaint dismissed without prejudice.'" It is added, that on the two occasions referred to, the complainant named in the summons was Joseph Philip Ronayne, M.P. It then appears that on this third prosecution, at the suit of the Attorney-General, the case was heard and the former judgment was changed into a conviction on the 16th of April, 1873, and that the objection was formally made—that the defendant had been before summoned for the same offence, and acquitted. I am alarmed at this doctrine, unheard of in our criminal law, that the same, and a novel offence, regularly investigated and disposed of by a legal tribunal, can be prosecuted again and again; it might be, by a score of different prosecutions, under a system of what I can only describe as legal torture, and that thus at last a conviction can be obtained, and upon the same proof presented at the first hearing. There is no limit of time for these multiplied prosecutions under the special Act. Evidence may be destroyed, witnesses may absent themselves or be tampered with, great expense incurred by the accused person in providing himself with counsel and attorney; and these possible mischiefs are all to be incurred, where there are no words in the special Act creating the offences, to warrant this strong procedure of "dismissal without prejudice," being adopted—where there are no words of reference, so usual and essential in legislation, when it is meant to incorporate into a later statute the provisions of a former statute—and while we are forbidden to make implications to increase the severity of a novel and highly penal enactment. Six months imprisonment with hard labour might cause the death of an elderly or infirm person. If the Legislature, in its wisdom, vouchsafed to confer upon two justices, without a jury, the power of inflicting for this or any other offence penal servitude, be it so, but I will not add to it the cruelty of the absurdity that the victim of such a despotic law may be tried and the case dismissed without prejudice again and again, until he be at last secured and convicted. Such a mode of introducing implications into highly penal statutes, I refuse to sanction. There is another great mischief to be apprehended, that witnesses might be induced, especially in cases of a political character, to vary or add to their former evidence, and, although no such thing has happened here, "to swear up to the mark;" and again, the worst evil, that magistrates who refused to convict may be succeeded by a more pliable bench, not such as the

Digitized by Google

bench whose judgment is before me, who will, and on the same doubtful proof on which their predecessors have declined to convict, pronounce a conviction. In the case of *Proctor* v. *Manwaring*, 3 B. & Ald. 146, Abbot, C.J., said:—"This being a penal clause in this Act of Parliament, must not be extended by construction, and though there may be cases suggested, falling within the mischief intended to be prevented by the Legislature, yet, if they have not used proper words, so as to include them within the prohibition, it is not competent for the court to extend the Act of Parliament to them by construction." This dictum was followed by Lord Abinger in *Henderson* v. *Sherborne*, 2 M. & W. 239:—"The principle adopted by Lord Tenterden, that a penal law ought to be construed strictly, is not only a sound one, but the only one consistent with our free institutions. The interpretation of statutes has always, in modern times, been highly favourable to the personal liberty of the subject, and I hope will always remain so."

The main question argued was that the *corpus delicti* charged should have been distinctly proved. I think that, for the purpose of proving the offence charged, it was necessary to prove, as a fact, that the voter had voted for the candidate for whom the defendant said he (the voter) had voted. The object of the 4th clause of the Ballot Act was to prevent agents, who had opportunities of acquiring information as to a vote, from communicating that information to any person. It must be true information; the clause does not say, information as to any candidate, but "as to *the* candidate for whom the voter voted." It is, therefore, necessary to prove that the voter actually voted for the candidate concerning whom the information is communicated. If the information was not true, it was not information as to the candidate for whom the voter voted, but as to a different candidate for whom he did not vote. It is, therefore, essential, in my opinion, to prove the fact of voting, and for whom. No witnesses, as a matter of fact, prove that the voter actually voted at all. What remains?—the admission of the defendant; but the statement of the defendant is not proof of this as an admission. It is the very offence itself—if true it is not an admission of having committed any offence. It is only a loose statement, which may or may not be true, and therefore may or may not be an offence within the Act. If the statement is, of itself, sufficient proof as an admission, it follows that such a statement will always be sufficient to procure a conviction, although no offence may have been committed, according to the Act, because no vote, as matter of fact, has been given. Whether an admission merely, without any other proof of the *corpus delicti*, would be sufficient to justify a conviction in an ordinary indictment for felony or misdemeanour, has been gravely doubted (1 Tay. Ev. 774). All the cases, I believe, on this point will be found in the very elaborate note in 3rd Russell on Crimes, 4th ed., pp. 365–7. Taylor's book was founded mainly on the American writer, Greenleaf's book on Evidence, and from that work Mr. Greaves, in his note on Russell, cites this passage:—"In each of the English cases usually cited in favour of the insufficiency of this evidence, there was some corroborating circumstance. *Wheeling's* case, 1. Leach Cr. Cas. 349, n., seems to be an exception, but it is too briefly reported to be relied on. In the United States the prisoner's confession, when the *corpus delicti* is not otherwise proved, has been held insufficient for his conviction; and this opinion certainly best accords with the humanity of the criminal code, and with the great degree of caution applied in reviewing and weighing the evidence of confessions in other cases; and it seems countenanced by approved writers on this branch of the law." This passage is followed by a lengthened examination of the English cases decided apparently on the naked admissions, to prove that there were corroborating circumstances in all but one case; and at the end of the note the case of *The King* v. *Edgar*, before Mr. Justice Pattison, is cited—in which case, when the doctrine that upon the prisoner's admissions alone he might be convicted, was put forward, that accurate and learned Judge said, "Could a man be convicted of murder on his confession alone, without any proof of the person being killed? I doubt whether he could." Mr. Best, in his excellent book, puts it that a party might be convicted, perhaps, by a clear and unsuspected confession, as before a magistrate, but not by vague and hasty expressions. A greater authority than any of these—Lord Hale—in his Pleas of the Crown, records his weighty opinion thus, "I would never convict any person for stealing the goods *cujusdam ignoti*, merely because he would not give an account how he came by them, unless there were due proof made that a felony was committed of these goods" (2 P. C. 290). Again, he writes—"I would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead." For these reasons, being of opinion that the *corpus delicti* was not proved in this case, and being also of opinion that, as Mr. Best expressed it in his excellent book on evidence, a conviction for an imaginary offence is a scandal to the administration of justice, my judgment is that the conviction in this case should be quashed.

Attorneys for the defendant, *Babington and Son.*
Crown Solicitor, *W. Lane Joynt.*

COURT OF COMMON PLEAS.

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law

(Before DOWSE, B., in Chamber.)

O'DONEL v. TIGHE AND ANOTHER.—SHIEL v. ENNIS AND ANOTHER.

Feb. 28, 1874.—*31 & 32 Vic., c. 125, sec.* 11, *cl.* 16—*37 G. R.*, 1868—*Jurisdiction of Judge on the* rota, *not being a Judge of the Common Pleas.*

Motion to have the case raised by a Parliamentary Election Petition stated as a special case refused—the motion being made to a Judge on the rota *as Election Judge who was not a Judge of the Court of Common Pleas, instead of being made to the Court of Common Pleas, or to a Judge of that Court on the* rota *in chamber.*

Applications, on behalf of the petitioners in the Mayo County and Athlone County Election Petitions respectively, to have special cases stated pursuant to the provisions of 31 & 32 Vic., c. 125, sec. 11, cl. 16, which provides:—"Where, upon the application of any party to a petition made in the prescribed manner to the Court, it appears to the Court that the case raised by the petition can be conveniently stated as a special case, the Court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the Court, and the decision of the Court shall be final, and the Court shall certify to the speaker its determination in reference to such special case." The same point arising in both applications, they were, at the request of the Court, argued together by the respective counsel.

Armstrong, Serjeant, for petitioners in the Mayo case, and (with him *David Fitzgerald*) for petitioners in the Athlone case.—By 44th G. O., it is provided that "all interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under the Parliamentary Elections Act, 1868, as a Judge at Chambers in the ordinary proceedings of the Superior Courts, and such questions and matters shall be heard and disposed of by one of the Judges upon the *rota*, if practicable, and if not, then by any Judge at Chambers." By 37th G. O., it is provided that "the application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a

Judge at Chambers, upon hearing the parties." Reading the 37th and 44th General Orders together, the intention appears to have been to meet the very exigency that has arisen. The 37th G. O. may be said to refer to such a Judge as is pointed out by 44th Rule, that is to say, a Judge of the *rota*. [Dowse, B.—The rule is constructed in a rather slipshod manner; and there is no precedent to go by, as there has been only one similar application made since the passing of the Act, and that was made before Keogh, J., who was also a judge of the Common Pleas.] He acted in his capacity as one of the judges on the *rota*. The Order does not say that the application shall be made to "the Common Pleas, or to any Judge thereof." The words are "a Judge," which must mean any Judge; the other construction would be a narrow one. If all the Judges of the Court of Common Pleas were out of town, great delay and inconvenience would arise, unless it were held that a judge of another court on the *rota* could entertain the application.

Purcell, Q.C., with him *Costello*, for respondents in the Athlone case.—This application can only be made to the full Court of Common Pleas, or to a member of that Court. The Act confers this power upon the "*Court*." By sec. 2 that word is defined to mean the Court of Common Pleas at Westminster or Dublin respectively. It is, therefore, plain that, unless there is some alteration caused by the Rules which the Judges are authorized to make by sec. 25, there is no jurisdiction, except in the Court of Common Pleas. Rule 37 only says such application shall be made to the Court of Common Pleas when sitting, or to a Judge in Chambers; and such a Judge in Chambers must manifestly mean a Judge of the same Court.

Sheridan, for respondents in the Mayo case.

Dowse, B.—The way the matter stands is this:—This application is made to me under sub-section 16 of the 11th section of the Parliamentary Elections Act, 1868. The 11th section of that Act deals with the trial of election petitions, and the 16th clause provides that if, upon the application of any party, it appears to the Court that the case raised can be conveniently stated as a special case, the Court may direct it to be stated, and any such special case may be heard by the Court, and the decision of the Court shall be final, and the Court is to certify its determination to the speaker of the House of Commons. The Judges upon the *rota* are to hear and try the petition; but the present motion is to take the case out of the order of hearing before a Judge in the country, and to make it, as it were, a question for demurrer, as contradistinguished from a case at Nisi Prius, and there is every reason why that application should be in strictness heard and decided by a judge of the Court of Common Pleas, and even by the full Court. I have no jurisdiction except that conferred by the statute. The Court that directs the case to be stated is the Court that finally decides the case; and on referring to the interpretation clause of the Act, the word "Court" is defined to mean the Court of Common Pleas at Dublin. Under the provisions of the Common Law Procedure Act this word Court generally means the full Court, though there are cases where it has been held to be applicable to a Judge.* The Parliamentary Elections Act, 1868, gives the Judges full power to make General Orders, which are to have a statutory force. These Rules so made are copied *totidem verbis* from the English Rules, the Judges wisely doing so for the sake of uniformity. Rule 37 prescribes that the application is to be made to the Court of Common Pleas when sitting, which I take to mean the full Court; but, considering that election petitions arise suddenly, and that the Court of Common Pleas only sits *in banco* for about twelve weeks in the year, the Rule then provides that, if not before the Court—that is, supposing the full Court not to be available—the application may be made before a judge in Chamber. But it seems to me that the words "a judge" there mean a judge of the Court of Common Pleas in Chamber; and I think that the three learned judges who drew up the rule so intended. I am strengthened in that opinion because the 44th G. O, in providing for interlocutory motions, prescribes that they may be dealt with before a judge of the *rota* "if practicable, and if not, before *any* judge at Chamber." There the word "any" is used. Another difficulty I feel is, that supposing I were to entertain the application, has the party against whom I would in such case decide the opportunity of controlling my decision? There is no appeal given. So that if, on the present application, I were to make an order to state a case, and if, when it came before the Court, it were contended that I had no jurisdiction to make the order, and if the Court were to allow that objection, what would be the result? I am not ambitious to undertake duties not imposed upon me by the terms of the statute, whilst at the same time I am willing to do whatever is imposed on me. There being no appeal if I were to grant the order, and entertaining as I do, not indeed a positive opinion, but a grave doubt as to my jurisdiction, I shall make no rule on these applications, saying nothing as to costs.

No rule.

Attorney for petitioners in both cases, *Dillon*.

Attorneys for respondents in Mayo case, *Griffin and Plunkett*.

Attorney for respondents in Athlone case, *Costello*.

* See *Walker* v. *Hanbidge*, 7 Ir. L. T. R., 191; Com. 7 Ir. L. T., 513; *O'Donnell* v. *Smith*, 8 Ir. L. T. R., 82.—[Ed. *I. L. T. Rep.*]

COURT OF BANKRUPTCY.

Reported by E. N. Blake, Esq., Barrister-at-law.

(Before Harrison, J.)

In re S., an Alleged Bankrupt.

November 28, December 5, 1873.—*Act of Bankruptcy—Assignment of all a debtor's property in trust for all his creditors—Assent, petitioning creditor estopped by—Acts of agent.*

A creditor who is present, either in person or by an authorized agent, at a meeting of creditors, when the execution of an assignment by the debtor of all his estate and effects for the benefit of all his creditors is sanctioned and directed, and who does nothing to signify dissent on his part, will be held to be estopped, as a privy thereto, from taking advantage of the deed as an act of bankruptcy.

Petition for adjudication. The petition was opened on a former day, when, by consent, it was arranged that notice should be given to the alleged bankrupt, in order to enable him to resist the adjudication without putting the parties to the expense of a motion to show cause. The facts are fully stated in the judgment.

Carton, for the alleged bankrupt.—The deed was not an act of bankruptcy. The alleged bankrupt had ceased to carry on his trade of butcher; therefore, it cannot be said that the effect of the execution of the deed was to disable him from carrying on his trade.

[Harrison, J.—That is not the test. Both traders and non-traders are now amenable to be made bankrupt, and I apprehend that the question is rather whether the necessary effect of the deed is to prevent the creditors being paid.*]

Even if the execution of the deed amounted to an act of bankruptcy, the execution creditor is estopped from

* See 6 Ir. L. T. 504.

Digitized by Google

relying on it. It is not necessary that he should have executed the deed, or assented to it by express statement, as his acts and conduct are equivalent to acquiescence, *Re Smart*, 9 Ir. Jur. N. S. 194; *ex parte Stray*, L. R. 2 Ch. 374; *re Wynne*, 5 Ir. L. T. R. 24.

Houston, contra.—*Re Smart* is an authority in favour of the adjudication, because it shows that the deed should be treated as an act of bankruptcy, as there is a proviso that the trusts are in favour of those creditors only who should execute the deed within two months. It was not advertised under B. A. Act, 1857, s. 93; and is an assignment of all the grantor's property. The petitioning creditor is not estopped by acquiescence, because if he assented at all, it was to a deed of trust to be for all the creditors, whereas that executed excludes a portion of them by the proviso in question; nor was the proposal carried out in other respects, inasmuch as Mrs. S. did not execute the deed, and the assignment is to one trustee only. The execution of the deed by Mrs. S. would have been valuable, as binding her in relation to her separate property under the Married Women's Property Act, 1870; namely, as to her interest in carrying on the asylum at Woodley Park. John Dobson had no authority to bind his brother by his acts. Mere silence is insufficient to estop the brother, the petitioning creditor, and there was no act by him, or by his authority, sufficient to cause such estoppel.

Carton, in reply.—It appears, from the report of the argument in *re Smart*, that it was there also urged, that because the creditor had agreed to execute only a deed for all the creditors, he was not estopped from relying on a deed which did not carry out that agreement. Any creditors not executing the deed within the period provided might afterwards assent, so as to become entitled to a dividend. As to the other objections, Mr. S. alone could legally execute the deed, and it was agreed at the meeting that the assignment should be to one trustee only. The silence of the petitioning creditor, with knowledge of what was going on, is of itself sufficient to estop him. He lay by ever since, allowing all parties to act in the belief that he had acquiesced.

Judgment deferred.

HARRISON, J.—In this case a petition for adjudication against J. S., the alleged bankrupt, was presented by Mr. James Dobson, trading as J. Dobson & Co., on the 5th day of December, 1878.

It was moved before me on the 9th inst., when the petitioner's debt was proved, the act of bankruptcy relied on being the execution by the alleged bankrupt of a trust deed bearing date the 27th of November last. The deed was produced by Mr. Larkin, solicitor for the trustee thereunder. I expressed my opinion that the execution of the deed in question was an act of bankruptcy, although the alleged bankrupt, had given up trade before its execution, but Mr. Carton, who appeared as counsel (I presume for the alleged bankrupt), and Mr. Larkin, stated that in any case Mr. Dobson, the petitioning creditor, could not avail himself of it, as he had assented to its execution. Mr. Dobson was not then present in Court, the proceeding being, as usual, *ex-parte*; but his solicitor agreed to allow the matter to stand until the following Court day, when evidence should be taken on both sides, and the Court should pronounce its judgment, whether this deed could be relied upon by the petitioning creditor as a valid act of bankruptcy. Accordingly, on Friday last, the case was fully heard, evidence was taken, and the case argued by counsel on both sides.

It appeared from the evidence that the alleged bankrupt, being in difficulties, a meeting of his creditors was held on the 13th October last, at the office of Mr. Donnelly, his solicitor. Amongst others, Mr. Dobson, the petitioning creditor, was present, and Mr. Larkin, who acted for the principal creditor, Mr. Walsh (of the firm of Aungier & Co.). That meeting was adjourned for a week, in order that a proper statement of affairs should be made out. The adjourned meeting took place on the 20th October, but in the meantime Mr. Dobson, the petitioning creditor, issued a summons and plaint against the alleged bankrupt, for the amount of the debt due to him. The copy of the writ was brought to Mr. Donnelly by the alleged bankrupt's wife, her husband being at the time absent from the country. The petitioning creditor attended the adjourned meeting on the 20th October, when Mr. Donnelly mentioned to the other creditors the fact of the issuing of the writ, and complained of it as a breach of what he stated had been understood at the first meeting, viz., that matters should remain in *statu quo* until the statement was submitted. The statement was then discussed by the creditors, and Mr. Donnelly stated, in his evidence, that a resolution was agreed to, although not signed by any creditor. He stated its effect to be, that Mr. Larkin had considered the estate should pay 10s. in the £1; that this should be offered, and that certain property mentioned should be assigned to Messrs. Heeny and Walsh, as trustees for the creditors, as security for the ultimate payment of the composition, and further, that security should be given for such deficiency in the payment of 10s. as might arise after the realization of the property agreed to be assigned. A valuation of the furniture at the premises where the alleged bankrupt had opened a private lunatic asylum was to be made in the meantime by Mr. Strahan, one of the creditors. Mr. Larkin, in his evidence deposed that when it was stated, at the meeting of the 20th October, that Mr. Dobson had issued a writ after the first meeting, and that he declined to come into the arrangement proposed to the creditors of 10s. in the £1, he (Mr. Larkin) was then instructed, and stated publicly, "that if he did not come into the arrangement to make (viz., that he, Mr. Larkin, would make) Mr. S. a bankrupt, as he would not give Mr. Dobson any priority." Mr. Dobson says that at this meeting he opposed the resolution agreed to by the creditors.

It appears that after this meeting the proposed trustees, Messrs. Walsh and Heeny, to whom it would seem the meeting had referred the statement of affairs for investigation, met the alleged bankrupt's wife and Mr. Donnelly at Mr. Larkin's office. This lady, it appears, stated that she was unable to procure the security of any third person for the difference between the assets when realized and 10s. in the £1; and Mr. Donnelly, in the circular issued for the final meeting, held on the 10th November, states that the trustees agreed to the proposal then submitted, which is embodied in that circular, and the effect of which Mr. Donnelly appears to have communicated to Mr. Dobson on the 30th October, as set out in his answer to Qs. 30 to 39. Mr. James Dobson's statement of what occurred at that interview is embodied in his answers to Qs. 96 and 97. He was examined after Mr. Donnelly, and I do not find that he contradicts him in any material particular as to what occurred at that interview, the substance of it being this, that he, Mr. Donnelly, had informed Mr. Dobson of what occurred with the trustees since the 20th October, and the terms which they had agreed to, and that Mr. Dobson did not consent to stop the proceedings upon the writ he had already issued. Mr. Donnelly, being aware that if the proceedings on this writ were carried on, the arrangement proposed could not be carried out, had addressed letters to Mr. Dobson, and to Mr. Bloomfield, his attorney, on the 27th October, pointing out, amongst other things, a defect in the service, which he warned them would prevent judgment being marked. And on the 30th, after the interview with Mr. Dobson referred to, he again wrote to that gentleman a letter to the same effect. On the following day Mr. John Dobson, a brother of the petitioning creditor, with whom Mr. Donnelly had previously had an interview on the subject in question, and who, at the petitioning creditor's establishment as stated by the petitioning creditor, acts for him when away, holding a confidential position—not a mere clerk—

Digitized by Google

called on Mr. Donnelly. What then occurred, according to Mr. Donnelly, is stated in his answer to Q. 34, viz.:—"That [the interview already referred to] was on the 30th. and the next day Mr. Dobson was entitled to judgment, and on the morning of that day his brother called on me, and said *they had considered the matter, and would come in with the other creditors.*" Mr. Donnelly produced his day-book, containing an entry to the effect stated, and being required to search for and bring the sheet of paper on which he stated he had made the original entry, he went to his office and produced it. The entry is in these words:—"J. S.—attending Mr. Dobson, who called on me, and stated he would come in with the other creditors—6s. 8d."

Mr. John Dobson gives a different version of what occurred at this interview. It appears that, on receiving Mr. Donnelly's letter of the 30th October, the petitioning creditor sent his brother with the letter to Mr. Bloomfield, his attorney. At Q. 124 he states he directed his brother to go to Mr. Bloomfield, "and receive instructions whether we would answer it or not." At Q. 134 he says:—"I merely handed him (my brother) the letter, and told him to get instructions." Q. 135.—"And to take his advice?" A.—"To take his instructions." Mr. John Dobson's evidence as to what occurred is contained in his answers to Qs. 196–208. Q. "Do you recollect, on the 31st, getting a letter of the 30th, from your brother, and bringing it over to Mr. Bloomfield?"—A. "I do." Q. "On the morning of the 31st you got it from your brother, with directions to go to Mr. Bloomfield?"—A. "I did." Q. "I suppose that was to get Mr. Bloomfield's directions?" A. "I went there with the letter and gave it to Mr. Bloomfield." Q. "What did Mr. Bloomfield say to you when he read the letter?"—A. "He asked me what we were going to do, and I understand from the conversation I had with my brother——" Q. "Just state what you said to Mr. Bloomfield in reply to that?"—A. "I said my brother had agreed to accept 10s. in the £1, provided it was secured and the costs paid, and Mr. Bloomfield said, 'go in and tell that to Mr. Donnelly,' which I did." Q. "What did you state to Mr. Donnelly?"—A. "I said we had come to the conclusion that Mr. Dobson would accept the 10s. in the pound, provided his costs were paid. Mr. Donnelly said, as a matter of course the costs would not be objected to, but he could not see how Mrs. S. would see her way to pay 10s. in the £1."

Now, I may observe, in the conflict of evidence as to what actually occurred on this occasion, that Mr John Dobson does not say that he informed Mr. Donnelly that additional security was insisted on by his brother. Q. "What did you state to Mr. Donnelly?"—A. "I said we had come to the conclusion that Mr. Dobson would accept 10s. in the £1, provided his costs were paid." Q. 206. "What did Mr. Donnelly say in reply to that?"—A. "Mr. Donnelly said, as a matter of course the costs would not be objected to, but he could not see how Mrs. S. could see her way to pay 10s. in the £1." The important matter, however, then to be ascertained was not small points, such as this, about the costs of serving a writ, but whether Mr. Dobson would stand aloof, and dissent from what the other creditors had agreed to, or would come in with them; and my opinion is, on this point, that Mr. John Dobson on that occasion did lead Mr. Donnelly to believe that his brother would come in with the other creditors, and be an assenting party to what they agreed to. I can have no doubt that Mr. Donnelly did so construe what occurred. His contemporaneous entry is precise as to his impression of what took place. The circular calling the final meeting for the 10th November is silent as to any creditor holding out as a dissentient from the others, although he knew, as he himself says, that "this was the hinge of the whole thing," and his conversation with Mr. Larkin at that meeting shows that he had no doubt on his own mind that he had so agreed. Having regard to what was the material point in dispute, and to the clear evidence given by Mr. Donnelly's contemporaneous entry, I am of opinion that Mr. Donnelly's memorandum correctly embodies the result of what passed on the occasion in question.

It is argued, however, that Mr. John Dobson had no authority to make such a statement as that memorandum contains. Had the matter rested there, and not been followed by the circular and meeting of the 10th November, it might be difficult to hold Mr. Dobson precluded from objecting to a deed executed on the faith of this conversation; but what afterwards occurred, in my opinion, concludes the matter. Mr. Donnelly having had this interview with Mr. John Dobson on the 6th November, issues the circular convening the meeting of the 10th November. That document, after reciting that Mr. Donnelly had conferred with Messrs. Walsh and Heney, at Mr. Larkin's office, states the arrangement proposed at the meeting as follows:—"That Mrs. S. should assign to Messrs. Walsh and Heney, as trustees for themselves and the other creditors, the debts due to Mr. S., and that same should be at once collected by Mr. Larkin; that she should also assign the equity of redemption in the mortgaged premises at Rathgar, and the furniture at Woodley Park. That out of the proceeds of the debts and equity of the redemption, the trustees should pay [certain costs of preparing assignment, valuation fees, and rent], and divide the residue amongst the creditors. That within four months from date of deed Mrs. S. should pay as much as should be necessary to make up the dividend so paid to 10s. in the £1, with power to the trustees in their discretion to extend the time to six months; and that in default the furniture should be taken possession of by the trustees, and sold, and that any surplus of the proceeds, after payment of the 10s. should be paid to Mrs. S. This proposition was accepted by Messrs. Walsh and Heney, subject to the approval of the creditors, and they recommended its acceptance by the creditors." Mr. Dobson received that circular. It expresses fully what the trustees who had been appointed by the creditors were prepared to submit as the result of their investigation, viz:—10s. in the £1, secured by an assignment of certain property and effects therein specified; power to the trustees to defer realizing the furniture for four months, or, in their discretion, six; any surplus after 10s. to be paid to the alleged bankrupt's wife; and the necessary particulars to be furnished to Mr. Larkin to prepare the necessary assignment. The circular concludes as follows:—"It is confidently expected that these include all demands on the estate, but it is for the creditors to say whether, under all the circumstances, they will insist on a composition of 10s. in the £1. I shall be obliged by your attendance here at a final meeting on Monday next, the 10th inst., at 3 o'clock p.m.—Thomas Donnelly, solicitor, No. 57, Dame street, Dublin."

The meeting took place at the time and place appointed, and the result arrived at is thus expressed by Mr. Larkin in his re-examination:—Q. "Was any formal resolution passed at the meeting?"—A. "No formal resolution was passed. The only matter discussed was whether the composition should be ten shillings or eight shillings, and it was resolved the composition should not be altered from ten shillings. That was at the meeting of the 10th November. It was assented to by everybody there. There was no dissent; and Mr. Donnelly got instructions to send me the necessary papers to prepare the assignment, and he did so subsequently, and I prepared the assignment." The evidence of Mr. Donnelly, in answer to Mr. Dobson's counsel, is as follows:—Q. "What was the original proposal?"—A. "Ten shillings; and agreed to at the meeting of the 20th." Q. "I thought at the meeting of the 20th there was something said about security?"—A. "The meeting of the 20th left the matter entirely in the hands of Messrs. Heney and Walsh." Q. "What is that entry you have?"—A. "'Attending meeting of creditors this day, when resolved that original proposal should be carried out, but that if a dividend to a fair amount paid, the creditors should be asked to reduce the amount hereafter from ten shillings.' That is, that it would be open to me afterwards to try to get the creditors, if necessary, to accept less."

Now, Mr. Dobson, although not present at that meeting, was in my opinion as much bound by what took place at it as if he had been present and expressly assented. His evidence as to what he did on receiving the circular, is

Digitized by Google

contained in Qs. 136-144, from which it appears that having that circular in his possession, knowing what was the opinion arrived at by the trustees appointed by the creditors, and that no security could be offered save that of the assignment of the property and effects referred to—knowing also that he had, at all events until the 31st October, refused to be a party to those terms, and that a *final* meeting on the subject would be held on the 10th November—it appears that he handed the circular to Mr. Bloomfield, and told him or instructed him to *do "whatever he thought best,"* (Q. 143); and he admits that if Mr. Bloomfield attended the meetings he did so as his *Plenipotentiary* (Q. 144). Now, Mr. Bloomfield did not in person attend, but he sent to the meeting Mr. Oliver Power Murphy, an apprentice of four years' standing, who states that, on coming in, he stated that he "attended for Mr. Bloomfield on behalf of Messrs. Dobson," Q. 155. He further states that Mr. Bloomfield gave him the circular of the 6th November, *as instructions*, Q. 179; and he admits that he knew, and so informed Mr. Bloomfield that the creditors agreed that Mr. Larkin should be instructed to prepare a deed to carry out the arrangement, but he states that he said nothing either for or against, as his instructions were merely to report. Mr. Larkin's evidence, as to what occurred at the meeting of the 10th November, is contained in Qs. 81 to 85, and on re-examination, Q. 220-227. He says, "The first thing I asked was, 'Has Mr. Dobson agreed, for there is no use in going on unless he has.' Mr. Donnelly said, 'He has agreed; there is his representative;' and he pointed to either of those gentlemen which I don't recollect." On Mr. Murphy being produced, Mr. Larkin identified him as the person pointed out. Q. "And nothing was said by the gentleman pointed to?"—A. "Nothing; it was sufficiently loud for him to hear it. If he had not agreed, I would have made the trader bankrupt at once." At first, Mr. Donnelly did not recollect clearly what had taken place, but on re-examination he fully corroborated Mr. Larkin, Q. 211-216; and he explains the meaning of the term "original proposal" in the entry in his book of the resolutions arrived at at the meeting, to be a proposal to pay 10s. in the £1, he having tried to induce the creditors to accept 8s.

Now, I think it is quite immaterial what Mr. Bloomfield told his apprentice to do when he sent him to that meeting. He (Mr. Bloomfield) had full authority from Mr. Dobson his client to "*do whatever he thought best.*" He gave Mr. Murphy the circular as instructions; that gentleman attended the meeting and announced himself as "attending for Mr. Bloomfield *on behalf of Mr. Dobson,*" and he sits silent and allows the creditors unanimously to pass a resolution to accept certain terms and to have the estate assigned, as proposed—Mr. Larkin to prepare the deed. Can Mr. Dobson now be permitted to turn round and rely on the execution of that very deed as an act of bankruptcy, as being a fraudulent transfer of his property? I am clearly of opinion that he cannot, and that although a creditor not a party or privy to that deed, or who has assented to its provisions might rely upon it as an act of bankruptcy, Mr. Dobson is estopped from doing so. The principle which precludes him, and its reason, is thus clearly expressed by the Lord Chancellor, Lord Cairns, in the case of *Ex parte Stray*, L. R. 2 Ch. 378:—"It is well settled by a series of authorities, of which the case of *ex parte Alsop* (1 D. F. & Y. 289) may be mentioned as the last, that a creditor who is a party or privy to a deed of the description mentioned in the statute, or who has acted in any way which would be equivalent to an assent, recognition or approval of the deed, cannot allege that the execution of the deed is an act of bankruptcy. I apprehend that the principle upon which those cases (the authority of which cannot now be questioned) have gone is this—that, inasmuch as under the statute the petitioning creditor is obliged to allege that the act in question is a fraudulent act, any person who has been a participator or sharer in the fraud cannot be heard to claim any benefit or advantage from the Act." It is unnecessary to quote the earlier authorities upon the subject commencing with *Bamford* v. *Brown*, 2 T. R. 504. These cases clearly establish that a person to be so estopped need not have executed the deed. In *ex parte Harcourt*, 2 Rose 213, Lord Eldon says:—"It is now clearly established law, and I well remember the earliest case upon this subject that he who is a party to the deed of assignment of all his effects is precluded by the circumstance from proceeding upon it as an act of bankruptcy." And I think that a person who is present at a meeting of creditors, either in person or by a duly authorized agent (as I hold Mr. Murphy to have been on this occasion), cannot be heard to say that he is not privy and assenting to a deed which he allows others to sanction and direct without a single expression of dissent on his part. The ordinary business of life could not be safely conducted if a person so acting was not precluded from saying afterwards that he was not bound by what then took place. On the faith of the unanimous consent of the creditors having been given, the deed is prepared and the property assigned, expense is incurred, and the trustee undertakes the trust. That deed, I repeat, cannot be relied on as a fraudulent deed, by Mr. Dobson. See the observations of Lord Justice Turner at p. 118 of 8 De Gex M. & G. in the case of *Oliver* v. *King*—viz.:—"The cases in this Conrt are abundantly strong upon this point that parties who, by their silence, have led others to act in opposition to their rights, cannot afterwards set up those rights against those whom they have induced to act in opposition to them." See, also, the case of *Ex parte Tealdi*, 1 Mon. Dea & De Gex, 210, where an authority. not more extensive than Mr. Dobson admits giving in this case, was given, by the persons who afterwards issued a fiat to a solicitor, which stated "We will leave our interests in your hands," and where Sir Geo. Rose observes in his judgment:—"They (the petitioning creditors) say they did not know of any deed being actually executed by the bankrupt. But they had the means of knowing, from the solicitors they employed, whether there was such a deed, and what were the terms of it, and they cannot now be heard for a moment to say that they were not acquainted with every tittle of the deed." And Sir J. Cross says:—"What construction are we to put on this passage in the letter of the petitioning creditors to their solicitor? [Reads as above.] That is a pretty large authority, but we do not stop there," &c.

Some objections were raised as to the terms of the deed here in question, but I am of opinion those objections cannot prevail. It is objected that the alleged bankrupt, and not his wife, executed it. That is explained by the fact that the alleged bankrupt, who appears to have been keeping out of the country at the time of the preliminary proceedings, his wife acting as his agent, returned after the meeting of the 10th November; and he, the only person who could legally do so, executed the deed. It is further objected that the assignment is to one trustee merely, Mr. Walsh, whereas two were contemplated by the circular. Mr. Larkin, however, states that this point was discussed at the meeting, and that it was agreed that Mr. Walsh should be the sole trustee. Again it is said that the deed does not declare a trust for all the creditors, but merely for those who should execute it within two months. The case of *Re Smart*, 9 Ir. Jur. N. S. p. 194, before Judge Berwick, is an authority against this objection; and the case of *Babers Trusts*, L. R. 10 Eq. 554, shows that any creditor assenting to such a deed as this is entitled to a dividend thereunder at any time, although he may not have executed the deed within the prescribed time.

I accordingly rule that, as regards Messrs. Dobson & Co., the petitioning creditors, no valid act of Bankruptcy has been commmitted by the alleged bankrupt, and I refuse the application of the petitioning creditor to adjudicate upon the present petition. The costs must follow the result, viz., be paid by Mr. Dobson to the alleged bankrupt.

Attorney for the alleged bankrupt, *Donnelly*.

Attorneys for the petitioning creditors, *Bloomfield & Benner*.

Digitized by Google

COURT OF APPEAL IN CHANCERY.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

CARROLL v. KEAYS.

KEAYS v. CARROLL.

Nov. 17 to 21, Dec. 1, 1873.—*Vendor and purchaser—Specific performance—Constructive notice to purchaser of tenancy—Compensation—Abatement.*

Notice of the occupation by a tenant, from year to year, is notice between vendor and purchaser, that the occupation is under the terms of a tenancy from year to year. James v. Lichfield, *L. R.* 9 *Eq.* 51, *followed.*

Appeal by the plaintiffs in the case of *Carroll* v. *Keays*, and by the defendant in the case of *Keays* v. *Carroll*, from the decrees of the Vice-Chancellor in the respective suits.

The facts, so far as material for the purpose of this report, are contained in the judgment of the Court, and in the following agreement which was signed by all the parties thereto:—"Memorandum of agreement, made and entered into this 6th day of March, 1872, between Thomas Carroll and Helena Dundon, spinster, executor and executrix of Thomas Dundon, deceased, of the one part, and Thomas Keays, of the other part. Whereas the said Thomas Dundon, deceased, held under indenture of lease of the 23rd September, 1867, made to him by Charles J. Henry, Esq., that part of the town and lands of Annaholty, containing 129 acres, together with the dwelling-house and offices thereon, situate in the parish of Kilcomenty, barony of Owney and Arra, for the term of 21 years, from the 1st May, 1866, subject to the yearly rent of £150, payable as therein mentioned. And whereas the said Thomas Carroll and Helena Dundon, as such executor and executrix, have agreed with the said Thomas Keays for the absolute sale to him of their interest in the said lands for the sum of £1,700. Now this agreement witnesseth, that in consideration of said sum of £1,700 they, the said Thomas Carroll and Helena Dundon, as such executor and executrix as aforesaid, do hereby agree to make and execute unto the said Thomas Keays, whenever required to do so, a proper deed of conveyance of the said lands and premises, with the appurtenances, in as full, large, and ample a manner as the said Thomas Dundon held and enjoyed the same under said lease, said conveyance to be prepared by the solicitor for the said Thomas Keays, and at his expense. The said Thomas Keays hereby agrees to take said assignment on the terms aforesaid, and to pay the said sum of £1,700 on the execution by the said Thomas Carroll and Helena Dundon, and all other necessary parties of said conveyance, on getting possession of said lands and premises." Connor Ryan was yearly tenant of a house, garden, and turf bank, at a rent of £3 8s. 3d., and Michael Lacy was a yearly tenant of a house, two gardens, and a turf bank, at a rent of £5 8s. 3d. Both tenants paid their rent in labour, and both had been in possession long prior to the making of the lease to Thomas Dundon. On the 6th May Thomas Carroll attended on the lands to give possession to Thomas Keays, but the latter insisted on getting the clear possession of the portion occupied by Ryan and Lacy. Carroll's solicitors then served notice on Keays' solicitor, requiring him to carry out the agreement, and stating that Carroll would attend on the lands on the 18th May, to give possession to Keays. Notice was then given on behalf of Keays, that he would attend on that day, to accept a clear possession of the lands. The notice also stated:—"He will be satisfied, as he was on the 7th instant, by the proper and sufficient attornment of any labourer or herdsman on the lands, and will, on obtaining such possession and such attornment, pay to your clients the purchase money of said lands forthwith, and execute the necessary conveyance." Carroll, Keays, Ryan, and Lacy met on the lands on the 18th May. Ryan and Lacy were willing to attorn to Keays. The latter declined to accept their attornment, as they would not agree to bind themselves to cut only one hundred of turf, and claimed, as Keays alleged, an indefinite right of cutting turf. The purchase, accordingly, was not completed, and on the 29th May, 1872, Thomas Carroll and Helena Dundon filed a bill to compel the specific performance of the agreement of the 6th March. On the 12th July, 1872, Thomas Keays likewise filed his bill for the specific performance of the same agreement, but claiming, moreover, compensation in respect of the occupancies of Ryan and Lacey.

These bills came on for hearing before the Vice-Chancellor on the 11th February, 1873, and on the 10th March his Lordship made his decree, granting the prayer of the cross bill, and dismissing the original bill, with costs. From these decrees Carroll and Miss Dundon appealed.

Mr. Walsh, Q.C. (with him *Mr. Fitzgibbon*, Q.C., and *Mr. O'Loghlen*), for the appellants, referred to the following authorities:—*Harnett* v. *Yielding*, 2 Sch. & Lef. 554; *Taylor* v. *Stibber*, 2 Ves. Jun. 440; *Hierne* v. *Mill*, 13 Ves. 121; *Allen* v. *Anthony*, 1 Mer. 282; *Lake* v. *Deane*, 28 Beav. 607; *Daniels* v. *Davison*, 16 Ves. 249; *James* v. *Lichfield*, L. R. 9 Eq. 51; *Monro* v. *Taylor*, 8 Hare 58; *Gillman* v. *Murphy*, Ir. R. 6 C. L. 34; *Manser* v. *Back*, 6 Hare 443; *Watson* v. *Marston*, 4 De G. M. & G. 230; *Wood* v. *Scarth*, 2 K. & John 42; *Lehman* v. *M'Arthur*, L. R. 3, Ch. App. 503; *Townshend* v. *Stangroom*, 6 Ves. 328; *Dart's Vendors and Purchasers*, 118, 791.

Mr. Jellett, Q.C (with him *Mr. O'Hagan*, Q.C., and *Mr. Blackall*), for the respondent, cited the following cases:—*Leatham* v. *Allen*, 1 Ir. Ch. R. 683; *Fennelly* v. *Anderson*, 1 Ir. Ch. R. 706; *Martin* v. *Cotter*, 7 Ir Eq. 176; *Lachlan* v. *Reynolds*, Kay's Rep. 52; *Daniels* v. *Davison*, 17 Ves. 443; *Nelthorpe* v. *Holgate*, 1 Coll 203; *Hall* v. *Smith*, 14 Ves. 426; *Clive* v. *Beaumont*, 1 De G. & Sm. 397; *Gaston* v. *Frankum*, 2 De G. & Sm. 561; *Spunner* v. *Walsh*, 10 Ir. Eq. R. 386; *Pope* v. *Garland*, 4 Y. & Coll. 394; *Vignolles* v. *Bowen*, 12 Ir. Eq. 194; *Hughes* v. *Jones*, 3 De G. F. & J. 307; *Parker* v. *Taswell*, 2 De G. & J. 559; *Chinnock* v. *Marchioness of Ely*, 11 Jur. N. S. 32; *Gray* v. *Turnbull*, 2 L. R. Sc. App. 54; *Sugden's Vendors and Purchasers*, 342, 627, 764; *Dart's Vendors and Purchasers* 983.

Lord O'HAGAN, C.—Although the arguments have been protracted, the questions arising are very few. The first requires us to consider whether Keays was aware of the fact of these persons, Ryan and Lacy, being tenants from year to year; and then we must consider the effect of that knowledge on the rights of Keays. We have, for convenience, taken the two causes together. In *Carroll and Dundon* v. *Keays* it is sought to compel the specific performance of an agreement for the sale of the lands of Annaholty, made in March, 1872, and duly signed by the defendant. It was to this effect. [His Lordship here read the agreement]. The bill then goes on to say that Keays was aware that a portion of the lands were in the possession of the tenants named in the bill. It states the preparation of the agreement, that in May there was a meeting on the lands for the purpose of giving and taking possession, and that Keays required clear possession, although (the plaintiffs say) he had notice of the tenant's possession before the execution of the agreement. Various notices from the solicitors followed,

Digitized by Google

and, on the 17th May, a notice from Keay's solicitor requiring clear possession of the land, but offering to accept a proper attornment from the tenants. The bill then states that on the following day Carroll attended on the lands, and offered that the tenants would attorn to Keays, but that Keays refused possession, and would not complete the purchase. Then the bill in this cause was filed. Of the Answer, the 4th and 14th paragraphs are mainly material for the judgment of the court. They aver a total want of knowledge, on the part of Keays, of the possession of these tenants. There is, in the 4th paragraph, a distinct denial that he had any knowledge or suspicion that any persons were in possession of a portion of the lands. In the 14th paragraph he repeats that he went to the inspection of the lands after the agreement, never having previously heard that any persons were in possession of a portion of the lands. The 15th paragraph of his answer is to the same effect. He then makes a case of concealment, and urges, that owing to the default of the plaintiffs they cannot compel him to carry out the agreement. The plaintiff in the second cause of *Keays* v. *Carroll* filed his bill on the 12th July, 1872. It seeks specific performance of the same agreement which, in the answer in the first cause was alleged to be broken, and compensation for the loss and damage incurred by reason of the non-performance of the agreement. The learned Vice-Chancellor dismissed the bill in the first cause with costs, as the plaintiff would not accept such terms as he thought just. Then, in the second cause, enquiries were directed as to the amount of compensation in respect of the tenancies and of any special damage; and the agreement was decreed to be specifically performed. The question of costs was adjourned. There is no dispute as to the agreement, for both parties require the specific performance of it; and the decision of the Vice-Chancellor, in brief, is that the possession of the tenants warrants a claim for compensation on the part of the purchaser. The main facts are clear. Both parties rely on the agreement, and both agree as to fact of the tenancies, but the question is as to what effect these tenancies ought to have as regards the decree. There is here an absolute contradiction between the parties. The plaintiffs say that the defendant was aware of the actual occupation, and his denial does not rely on his ignorance of the character of the tenancies, but on this, that he did not know at all of the tenancies. There is proof conclusive that in 1871 Keays was upon the land, and became more or less acquainted with it and with its occupants. He represented himself to Carroll as being perfectly acquainted with the lands, and as having frequently shot over them. Connor Ryan says that Keays visited the land several times in 1871, and that on one occasion he accompanied Keays over them. He says he told Keays he had a garden and turf bank, and that he pointed out the other occupations. Keays made in his answer no reference to these transactions. He broadly denied his knowledge of the tenancies; and if that denial had been maintained there would have been an end of the case. But the evidence of Keays is at total variance with that statement. He admits that he did visit Annaholty in 1871, he admits that Connor Ryan did point out certain houses on the lands, and he nowhere denies Lacy's statement, that he often inspected the lands.

The weight of evidence is strongly against Keays. I cannot reconcile the statement in his answer with the affidavits; I cannot understand how he denied all knowledge of the tenancies. And when I find him in conflict with other witnesses who are presumably truthful in their evidence, I cannot put out of sight that answer of his which was calculated entirely to mislead the Court. There are circumstances of corroboration of the plaintiff's case which cannot be put out of sight. Miss Dundon states that he informed her of his inspection of the new bounds ditch, and that that bounds ditch runs into the ditch which fences one side of Lacey's holding, and that he could not have examined the bounds ditch without seeing Lacey's garden. This comes strongly in aid of the plaintiff's contention that he was put on enquiry, and that there was notice to him of these tenancies. Keays acknowledges that he made reference to the gate on the day of the date of the agreement, but not at the time the plaintiffs assert. It may fairly be remarked that this incident was not very conclusive, and I do not rely upon it much, but. taken in connexion with the statement about the bounds ditch, it is in aid of the plaintiff's contention. As to the transactions which took place after the agreement, they are of value only as they cast a reflected light on the antecedent dealings. I shall not occupy time by dwelling largely on them, but they do not indicate a clear and consistent objection on the part of Keays to the possession of these tenants, and they show that the bargain was not broken off in consequence of it. If he was willing to take the attornment of the tenants, the fact of the readiness or not of the tenants to attorn is of little account; but the effect of it all is that he did not consider the occupation of the tenants inconsistent with the contract. The letter of Ryan, the solicitor of Keays, to Fitzgerald, manifests no great surprise at the occupation of these tenants, it rather shows that the bargain was broken off not because of the tenancies, but because of the tenants not being ready to attorn. He made no claim inconsistent with the knowledge of the tenancies now insisted on. The controversy seems to have been, not as to the tenancies being there, but, as to whether the tenants would do certain acts or not. I feel myself bound to agree with the contention of the plaintiffs as to knowledge of these tenancies, and I am not prepared to throw over the testimony of one of those tenants—above all when that testimony is made powerful by the purchaser's self-contradiction and by the impossibility of believing him when he says he did not know the lands.

There remain the questions of law. The first of these was as to the form of the agreement. The words "interest" and "possession" were the words in it in dispute. The vendee's solicitor drew up the agreement, and the sale was absolute. For the vendors, it was shown that the interest intended to be assigned was the lease burthened with the tenancies. The description in the agreement of the interest to be conveyed was favourable to the plaintiff's contention. It does not necessarily imply possession without any tenancy. The word is equivocal, and we must interpret it in the light of the evidence, and it may be presumed, too, that Keays was not to take more than the vendors had. The second point is cognate. It has been urged that this was a case of mistake. In *Harnett* v. *Yeilding* (*supra*), Lord Redesdale said:—"There is another ground on which courts of Equity refuse to enforce specific execution of an agreement, that is, when from the circumstances it is doubtful whether the party meant to contract, to the extent that he is sought to be charged." That principle has been repeatedly acted on, and no doubt the extraordinary action of equity ought not to be exercised to compel the performance of a doubtful agreement. But this does not apply here. In the case of the *Marquis of Townshend* v. *Stangroom* (*supra*), Lord Eldon said:—"It is competent to this court, at least for the purpose of enabling it to determine whether it will specifically execute an agreement, to receive evidence of the circumstances under which it was obtained; and I will not say, there are not cases in which it may be received to enable the court to rectify a written agreement, upon surprise and mistake, as well as fraud; proper, irrefragable evidence, as clearly satisfactory, that there has been mistake or surprise, as in the other case that there has been fraud. I agree, those producing evidence of mistake or surprise, either to rectify an agreement, or calling upon the court to refuse a specific performance, undertake a case of great difficulty." And in *Watson* v. *Marston* (*supra*), Lord Justice Turner said:—"The Court does not refuse a specific performance on the arbitrary discretion of the judge. It must be satisfied that the agreement would not have been entered into if its true effect had been understood." Applying these principles to the case, I do not think there is "proper, irrefragable evidence," that Keays would not have entered into this contract if the fact of these tenancies had been known of by him. The vendors could not, knowing the estate exactly which they had received from the testator, have ever intended to give that possession for which it is alleged that they powerlessly and improvidently contracted. The vendee

Digitized by Google

had the instrument prepared by his own solicitor and he should have secured himself then by the instructions which he gave. He found his claim to the clear possession steadily resisted all through by the vendors, whilst he himself professed that he would be content with the possession incumbered by two attorning tenants. I am unsatisfied that Keays would not have entered into this agreement if he had known of the existence of the tenancies.

I now come to consider the legal consequences of the knowledge of Keays that these tenancies existed. One of the grounds for applying the doctrine of constructive notice is that of negligence on the part of the vendee, and his not acquiring a due knowledge of his purchase. It is unreasonable that purchasers should be encouraged to make objections to small cottier tenancies, where they could easily have ascertained the truth by enquiring at the proper time. It is clear beyond all dispute that, as between purchaser and tenant, notice of the occupation is notice of the terms of the occupation, and that he is bound by all the terms of the tenancy. This has been laid down in a series of decisions, culminating in *Daniels* v. *Davison* (*supra*), and has ever been recognised since. In *Allen* v. *Anthony* (*supra*), the mere possession of a tenant was held to be notice to the vendee of his whole actual interest, even of a right to cut timber which he acquired subsequently to his title to possession. These doctrines are approved of by Lord St. Leonards in his book on "Vendors and Purchasers," and they fully establish that notice of the possession of Ryan and Lacy, was notice of all their rights. Is there any substantial difference between the case of vendee and tenant, and vendee and vendor, as to this question of notice? The point is decided in *James* v. *Lichfield* (*supra*). There Lord Romilly said:—"The case of *Daniels* v. *Davison* determined that as between the tenant himself and the purchaser, the purchaser was bound to enquire, and could not dispute the tenant's right. Does that duty apply to the case between vendor and purchaser, as well as between purchaser and tenant? I have found no case exactly in point, but the principle appears to me to be the same, and to be applicable to both cases. Why is the purchaser bound to enquire as regards the tenant, and yet not bound to enquire as regards his rights against the vendee? I am unable to see any ground for a technical and, as it appears to me, an arbitrary distinction, which should limit the application of the rule to one person, when the reason of it extends to all persons whatsoever." The case before us is substantially the same, for here the vendee had knowledge of the possession of the tenants. In *James* v. *Lichfield* there was notice of a lease; here, there is notice of a tenancy from year to year. The purchaser is not entitled to compensation if Lord Romilly's proposition is to be upheld, for there is no substantial distinction between the cases. The purchaser may often be hardly dealt with, but how is he more hardly dealt with than if it was the tenant who had asserted his right? Why should the knowledge be more insufficient in one case than in the other? Lord Romilly has observed that he found no case in point; but it is to be said there is no case against, if there is no case in support of his judgment. That as between purchaser and vendor notice of a lease is notice of its contents, was held in *Hall* v. *Smith* (*supra*). Is there any real difference between a purchaser who knows of a lease, but does not know its terms, and a purchaser who knows of a tenancy from year to year, but does not know the conditions of it? *Nelthorpe* v. *Holgate* (*supra*), was very much pressed upon us by counsel for the respondent. With reference to that case, it must be remarked, that the Vice Chancellor decided it on the particular circumstances of the case, and laid down no general principle. On the other hand, we have *James* v. *Lichfield* expressly in point, and neither reversed or disapproved of. The result is that the purchaser is held to be fixed with notice of the tenancies, that we declare him bound to carry the agreement into execution without compensation, and that the appeal in *Keays* v. *Carroll* must be dismissed with costs.

CHRISTIAN, L.J.—It is necessary not only that the strange injustice of the Court below should be undone, but that the precise and exact character of the issue which is involved should be defined. We must examine what is the difference between the written instrument and the extrinsic circumstances. Each of the bills has for its object the specific performance of the same contract of sale, embodied in the same agreement. There is no ambiguity patent on the face of the instrument. But there is an ambiguity raised from without. Was the subject matter of the sale that which is in the original bill alleged? Was it what the plaintiffs say—a sale of the lands, subject to such rights as these tenants had? Or, was the subject matter of the sale what is alleged in the cross bill? Was it a sale of what the defendants never had—the possession, by their own actual occupation, throughout the whole of the lands? To which of these two subject matters was this agreement to be applied? Three conclusions might be drawn from the external evidence—first, that the parties meant to contract for the same thing, and that that was what the plaintiffs in the original bill alleged; secondly, that they meant to contract for the same thing, but not for what was in the original bill but in the cross bill alleged; thirdly, that the contracting parties misunderstood each other—the one believing that he was selling what is contended for in the first bill, and the other that he was buying what he alleges in his cross bill. In that last case, probably, both bills would be dismissed without costs. The real struggle, under these circumstances, must take place outside the writing, for we want to know what was the subject matter of the writing. That knowledge can only be supplied by parol evidence; for where, as in *Lake* v. *Deane* (*supra*), the terms of the writing are flexible, or capable of indicating more than one subject matter, where there are more subjects than one to which the agreement will lend itself, then there is an *ambiguitas latens*, and you must have recourse to parol evidence. The case of *Hughes* v. *Jones* (*supra*) lays down that a bare agreement to sell the possession of land, means the fee simple in possession, but that, if the purchaser has been previously acquainted with the material facts as to the vendor's interest, and if that interest supplies enough to satisfy the terms of the writing, he must be content with the particular interest which the evidence *dehors* identifies as the subject matter for which he dealt. So, if in that case the agreement had been to sell the lands of Annaholty for £1,800, the vendor would have been bound to give the purchaser the fee simple in possession, but it could have been shown that the real thing contracted for was the lease with its burthens. And here it is open to the plaintiffs to prove that the real sale was of the property in its existing state of possession by them, and their servants and tenants. Therefore, in this case the writing is neutral, and the controversy lies outside it. I call in aid, now, the external evidence, to see if the parties were contracting *ad idem*, and, if so, whether the contract was for what is alleged in the cross bill or in the original bill. It is plain that what Carroll and Miss Dundon meant to sell was the interest which the testator had left them in the lands. The agreement says—"They, the said Thomas Carroll and Helena Dundon, as such executrix and executor as aforesaid, do hereby agree to make and execute unto the said Thomas Keays a deed of conveyance of the said lands and premises, in as full, large, and ample a manner as the said Thomas Dundon held and enjoyed the same under said lease." This, at all events, proves that what the executors offered for sale was what had vested in them under the lease; but the testator had himself taken the lease subject to these tenancies. What is the subsequent conduct of the parties? Keays requires the tenants to be removed, and Miss Dundon at once says she will not remove them on any terms whatever. Whatever Keays thought, Carroll and Miss Dundon never thought of selling anything but what the testator left; and the Court would not oblige them to perform this agreement as contended for by Keays. The bill in his suit ought therefore to have been dismissed with costs. But the defendants in Keays' cause say that they are entitled to specific performance of the agreement. To support this contention they must prove that Keays agreed to buy what they agreed to sell. This is the only difficulty in the case. If, at a time previous to the

Digitized by Google

execution of the agreement, Keays had knowledge, whether by express communication or by legal implication, that these tenants held their holdings from year to year, and if being fixed with that knowledge he made no objection, then, upon this supposition, I think it is certain that it must be held that what he meant to take was the property in its existing state, and not in another state in which the plaintiffs would never have agreed to give it. But, has he been fixed with that knowledge? Not by any information received from the vendors themselves. Neither party ever alluded to these tenancies. But there were other sources of information—the communications of the tenants themselves, the evidence of the senses. Just twelve months before, he had actually concluded an agreement for the purchase of these lands, which was afterwards broken off. He had, between the 2nd and 6th of March, visited and inspected the premises, and he went there with the suspicious scrutiny of an intending purchaser about to make a large investment. What must he have seen? Three cottier residences, each inhabited by a man and his family—turf banks, which must have been cut by the inhabitants of these houses. Was he struck with blindness, this practical farmer? Counsel, knowing the vital importance of his not being fixed with knowledge of these tenancies, has pleaded a flat denial in the fourth paragraph of his answer, stating "that the fact was entirely unknown to and unsuspected by the defendant, till he went to inspect the lands" after the agreement was concluded; and again, in the fourteenth paragraph, "never having previously heard that persons were in possession of any portion whatever of said lands." The knowledge denied was said to be that he had any information of them except as labourers, and that he did not know of them as tenants from year to year. This is a mere gloss. What was meant by the pleader was that the defendant had no knowledge of the tenancies whatever; and the defendant, when he came to verify his answer, proved himself equal to the occasion. But, suppose there was no other evidence, is the Court bound to give a defendant the benefit of such astounding blindness as the defendant has shown in this case? In *Bowles* v. *Round*, 5 Ves. 508, Lord Loughborough said—"Certainly, the meadow is very much the worse for a road going through it; but I cannot help the carelessness of the purchaser, who does not choose to inquire. It is not a latent defect." It was remarked that in *Ellard* v. *Lord Landaff*, 1 B. & B. 249, Lord Manners expressed dissatisfaction with that decision; but to this depreciation I can oppose a greater authority. In *Martin* v. *Cotter*, 3 J. & Lat. 506, Lord St. Leonards said:—"In *Bowles* v. *Round* the premises were described as a meadow, and no notice was taken of a path across it. That was an object of sense which any one could discover; and every person must be supposed to know what he is bidding for. If the purchaser had seen the meadow he could not avoid seeing the way across it, and therefore he was held bound by his purchase." Were three cottier tenancies and a cut turf bank, more or less evident than a path through a meadow? Lord Loughborough's decision must rule this case: these are no latent defects. But we are not left to such inferences; we have the affidavits of Ryan and Lacy, which show that these things were actually pointed out to Keays. [His Lordship here read Connor Ryan's evidence, in which he stated that he had himself pointed out the turf bank and the different holdings on the farm to Keays.] Now, is Connor Ryan worthy of credence? It was stated that the Vice-Chancellor did refuse to credit him. But, unless we are prepared to say that such persons are never to be believed at all, this man's evidence can never be lost sight of. He is taking the side of the party going out, when he knows that his fate is in the hands of the incoming landlord. Surely, the instincts of the Irish tenant are selfish enough to make him turn to the rising, rather than to the setting sun. The contradiction of Mr. Keays is of weight against no man, when he contradicts his own answer. Verifying his answer, he dared to swear that he had no knowledge of these occupancies; now he is compelled to the admission that in March, 1871, he did see these cottages and the bog. After that, his denial of Ryan's evidence, even if true, would be wholly immaterial. In order to get rid of the effect of notice of possession, "True," they said, "he knew they were in possession, but not except as servants or caretakers." To give any weight to that contention would be to take a wholly improper view of the doctrine of constructive notice. But it is proved that he had knowledge that these men held as tenants, and under rent. Subsequently to the signing of the agreement he went on the lands, and he found the persons on them very shy of giving any information; and, among other questions, he asked them this:—"Did they ever settle accounts?" Now, if he thought they were labourers, there was no reason for asking such a question, but if they were tenants he had an interest in inquiring, lest they might have paid rent on account. This was the first occasion after the agreement on which he had any communication with the vendors or the tenants, and yet we find him in possession of the knowledge that rent was paid. Next, there is the letter from Miss Dundon's solicitor. That is as distinct an intimation as could be, that the tenants could not be disturbed without notice to quit. In fact, it was a revelation, according to counsel for the defendant, that they were tenants from year to year. But Keay's solicitor, in his reply, clearly accepts it as a thing already known. If they knew that then, how could they have acquired that knowledge unless before the agreement was signed. In *Jones* v. *Smith*, 1 Hare 55, Vice-Chancellor Wigram, in a dissertation on constructive notice, classified the cases. He says they resolve themselves into two classes—"First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, incumbered, or in some way affected, and the Court has thereupon bound him with constructive notice of facts and instruments to which he would have been led by an inquiry after the charges, incumbrances, or other circumstances affecting the property of which he had actual notice; and secondly, cases in which the Court has been satisfied from the evidence before it, that the party charged had designedly abstained from an inquiry for the very purpose of avoiding notice." And further down he ranks *Allen* v. *Anthony*, *Daniels* v. *Davison*, and *Taylor* v. *Stibber*, not under the second, but under the first head. It is evident from this, that in the process of fixing with notice there are two distinct elements—actual knowledge of some things, and, flowing from that, constructive knowledge of other things. Actual knowledge, in this case, went the full length of knowledge that yearly rents were paid. But it was said that he believed the occupation of the parties was not their own occupation, but as servants of their masters. But, if he knew that, he did not say anything about it to the vendors; the purchaser asked for no explanation of the fact of the occupation, the vendors made no representation which would relieve him from the duty of inquiry. The amount of actual knowledge is enough to fix him with constructive knowledge of everything that lay behind. The bare fact of possession is sufficient to make it necessary for the purchaser to inquire.* For the bare fact of possession tells nothing of its own origin, and the purchaser must make inquiries, in order to satisfy himself what kind the possession is. He cannot satisfy himself in his own mind that all is right, and then turn round on the vendor, and say, "I must have an abatement." In the same case of *Jones* v. *Smith*, Vice-Chancellor Wigram says, "If a person purchases an estate which he knows to be in the occupation of another than the vendor, he is bound by all the equities which the party in such occupation may have in the land. I do not dispute this proposition, for possession is *primâ facie* evidence of a seisin in fee. But this case is strictly within the principle upon which I am proceeding. The purchaser has actual notice of a fact by which the property is affected, and he is bound to ascertain the truth." He purchases on the legal presumption, that the tenant has the fee, when he does not inquire about his occupation.

* But see *Caballero* v. *Henty*, W. N. 1874, p. 67.—[ED. *I. L. T. Rep.*]

Digitized by Google

If that would be so as against the purchaser in the case of a tenant, does it make the whole difference that the contention has arisen between vendor and vendee? This is the only point admitting of grave dispute, and it has been recently decided. In *James* v. *Lichfield* (*supra*) Lord Romilly denies that there is any such distinction. One of the learned counsel for the defendant calmly asked us to overrule that decision, as we have power to do so. No doubt we are not bound by the decision of a Court of First Instance as much as by that of a Court of Appeal. But, it must be remembered that there are Courts of Appeal and Courts of Appeal. And, situated as I am here, I must decline the function which is offered to me, and I thankfully accept the guidance of Lord Romilly's decision, particularly as there has been no argument at the bar which at all shook it. As between the purchaser and the tenant, the bare fact that the tenant was in possession is notice of his rights to the purchaser. Why should not the same actual notice carry with it the same consequences as between vendor and purchaser? The only ground of distinction is that there is a duty on the vendor to disclose all latent defects, and that there is no such duty on the part of the tenant. But if both parties to the agreement are silent, the purchaser must, surely, be held to have taken subject to all existing rights. Suppose for an instant that he had proceeded to turn out these tenants, and that they said they had a lease, and filed a bill to prevent him; and suppose they proved that he had notice of their possession—he would be beaten. Suppose, then, he turned round on the vendors with a claim for compensation, the vendors would offer the very same proofs of notice. Would the same evidence which was offered with success, on behalf of the tenant, be utterly worthless for the protection of the landlord? *Nelthorpe* v. *Holgate* is at worst overruled by *James* v. *Lichfield*, which is a later case. But it is not necessary to contend that. The circumstances of that case were very peculiar. It was cited for this passage:—"Mrs. Holgate's residence" (not possession) "on the farm may well, as between herself, Sir John Nelthorpe, and Mr. Holmes, have carried with it constructive notice of her rights, supposing that material to her; but it does not follow that it was notice, as between Mr. Holgate in his character of vendor, and Sir John Nelthorpe or Mr. Holmes in the character of purchaser." But, to that very passage follows a minute investigation of the special circumstances of the case, and although it did not necessarily follow that Sir John Nelthorpe's knowledge of Mrs. Holgate's residence would have been fatal to his case, neither did it follow that anything but the special circumstances of the case could have relieved him. There were very special circumstances in that case; but *James* v. *Lichfield* is very strong and definite. [His Lordship here stated the facts of *James* v. *Lichfield*.] That case is actually startling from the length to which it goes. So clearly was it taken that the knowledge of the tenant's possession carried with it knowledge of the agreement about the house itself, that the prayer of the bill was confined to a claim for compensation for that portion of the premises of which he was not in actual possession at all—the vacant land. If, then, that authority has established that constructive notice, springing from actual possession, closes the mouth of the purchaser against the landlord as it does against the tenant, what was bought on the 6th March, 1872, was the farm with the tenancies, and not the farm without the tenancies. Consequently, the decrees in both the causes were exactly what they ought not to have been. The farm which was agreed to be purchased was one of 129 acres. Keays knew the lands very well, and upon them are two miserable cottier holdings. He knows they are there. He asks no question. He does not think them worthy of controversy, of a single observation; but hardly is the ink dry on the agreement, when he, and his attorney who is always with him, go open-mouthed to the vendors and say, "O! they are tenants from year to year, I am entitled to be discharged." But he did not want to be discharged—what he wanted was, to make a better bargain by making use of this little miserable point. He was fortunate enough to get a decree, and the vendors might have been obliged to pay whatever sum the Chief Clerk, in the exercise of his delegated judicial functions, would think it right to give, together with the costs of the two Equity suits. A more mischievous encouragement to crafty purchasers, to keep alive small objections for the purpose of getting after advantages, could not well be imagined. I am happy, however, to know that, in this case, the lot has fallen on the side of justice.

Solicitors for the appellants, *Doyle & Dundon*.
Solicitor for the respondent, *John Ryan*.

ROLLS COURT.

(Before SULLIVAN, M.R.)

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

In re W., A SOLICITOR.

March 4, 1874.—*Attachment—Debtors Act (Ireland)*, 1872, *sec.* 5, *sub-sec.* 4—*Non-payment of money due by a solicitor to client.*

A solicitor who, acting under a power of attorney, receives money for a client, and neglects to pay it over, when ordered by the Court to pay the same in his character of solicitor, is guilty of misconduct in respect of which an attachment may be issued against him within the 35 & 36 Vic., c. 65, sec. 5, sub-sec. 4, although his default may be occasioned by inability to pay.

Application for an attachment against W., a solicitor, for non-payment of money ordered by the Court to be paid. W. was solicitor for Mrs. Bird, and, acting under a power of attorney to draw an annuity to which she was entitled, he had received a portion of the annuity, but not having paid it over to Mrs. Bird, a petition was, in consequence, filed by her against him as her solicitor. Upon the hearing of this petition January, 1873, it was ordered by SULLIVAN, M.R., with the consent of W., that within ten days the gale due, amounting to £100, should be paid to Mrs. Bird; but an affidavit of credits due from Mrs. Bird to W. was to be furnished to her by W., and she was to pay the amount of the credits found due. On foot of this order W. paid over £40. In June, 1873, a notice was served on him to pay the £60 still remaining due by him, or that an application would be made to the Court for an attachment against him. As he did not comply with that notice, the application was made accordingly; and it then appeared to the Court that he was entitled to credit for £1 13s. 4d., and it was ordered by the Court (June 30, 1873), that he should pay the balance remaining due, £58 6s. 8d., within one month from the date of the order. That sum not having been paid,

Mr. Carton, on behalf of Mrs. Bird, now moved for an attachment, referring to 35 & 36 Vic., c. 57, sec. 5, sub-sec. 4.

Mr. Walsh, Q.C., *contra*.—A sum of £22 10s. 5d. is due by Mrs. Bird personally to W. for costs, and should be set-off. There is also a sum of £81 due for costs incurred by her husband. Mrs. Bird, as executrix to the will of her husband, received £500 belonging to him, out of which the debt due to W. should have been paid. She has not paid the amount, and she has now left this country. Under this state of facts the Court should not, in the exercise of its discretion, issue an attachment.

Mr. Carton, in reply.—At the time of making the former order. credit was given to W. for all sums that were fairly due. These costs were never presented

Digitized by Google

to us till the present moment. Costs due in an executory capacity cannot be set off against a sum due to the executrix in a personal capacity.

SULLIVAN, M.R.—This is a motion of a very serious character. The principles which govern the case are laid down by James, L.J. :—"The meaning of the Act (32 & 33 Vict., c. 62 sec. 4 sub-sec. 4) is clear, its object was to relieve from imprisonment any one, whose default in payment of a sum of money arose from poverty. Therefore, certain cases were exempted from the operation of the Act, in which imprisonment was a punishment for misconduct. It is not in every case in which a solicitor is ordered to pay a sum of money that he is liable to imprisonment for not paying it, but if he has received money of his client he is guilty of a breach of duty unless he has it ready when it is called for, and if he makes default the Court always considers him liable to punishment. That was the case in *Re Rush*, L. R. 9 Eq. 147." (*In re Hope*, 7 Ch. Ap. 523). There is no doubt there cannot be a more serious breach of duty than for a solicitor to receive money for a client and not pay it. This lady filed a petition, which came before me in January 1873. It was ordered, with the consent of Mr. W., that within ten days the gale due should be paid. On that occasion it was ordered that a list of all credits due to Mr. W. should be furnished to the petitioner, and that the petitioner should undertake to pay the amount so found due. That order having been made on consent, Mr. W. cannot get out of it; but if the Court sees there was some error, it has perfect power to say, "take the order, but you shall not have the attachment." £40 was offered to the petitioner on foot of that order, and accepted by her. I must say that great forbearance was shown to Mr. W., and there is no reason to think that undue pressure was put upon him. No further payment having been made, a notice, in June, 1873, was served on Mr. W. by the petitioner, to pay the £60 remaining due, or that she would apply for an attachment. If there had been any hurry on the former occasion, there was now plenty of time. The only substantial matter, which turned out to be a matter of fair dispute, was an item of £10. I came to the conclusion that I should not allow that, but I gave him credit for £1 13s. 4d. That left a balance of £58 6s. 8d. It was ordered that he should pay that sum within one month. It has not been paid, and that is a sum in respect of the non-payment of which, if rightly due, Mr. W. is answerable for misconduct. By misconduct I mean holding the money of a client, and not being able to pay it. It has been said that there are credits, but I cannot see it. The matter has been discussed here twice; he gave a consent once; every precaution was taken to do him justice. He never made an affidavit as to the credits, as he was required to do by the order. There is no excuse for a solicitor who applies to another purpose money which belongs to his client. It should be a golden rule to all solicitors, that the money of a client should be regarded as sacred. I will make an order for the attachment, but I will give Mr. W. a fair time. The attachment shall not issue, if within one month he pays half the money, and if within two months from that time he pays the rest. The costs of this motion are given, but do not form part of the money for which the attachment is ordered.

Order accordingly.

Solicitor for petitioner, *Clay*.

CONSOLIDATED CHAMBER.

(Before FITZGERALD, B.)

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law.

THOMAS AND ANOTHER *v.* COX.

March 17, 1874.—*Practice—Security for costs—Plaintiff resident out of the jurisdiction — Judgments Extension Act*, 1868 (31 & 32 *Vic.*, c. 54).

Motion, to compel a plaintiff resident in England to give security for costs, granted, notwithstanding the passing of the Judgments Extension Act, 1868.

Raeburn *v.* Andrews, L. R 9, Q. B. 120, *not followed.*

Kenny, on behalf of the defendant, moved that the plaintiffs be restrained from taking any further proceedings in the cause until they should give security for costs, inasmuch as they resided out of the jurisdiction of the Court. The action was for goods sold and delivered. The affidavit of the defendants, who were merchants resident in the city of Waterford, stated that the plaintiffs resided at Cardiff, in Glamorganshire, in Wales, out of the jurisdiction of the Court.

Foley, for plaintiffs, *contra.*—The right to security for costs, in cases where the plaintiff is resident out of the jurisdiction, is given, provided there be an affidavit of a good defence upon the merits, by the C. L. P. Act, 1853, sec. 52. By the passing of the Judgments Extension Act the foundation for this enactment has been removed. "When we look at the origin of the practice of calling on a plaintiff resident abroad to give security for costs, as established in *Pray* v. *Edie*, 1 T. R. 237, the point becomes quite clear. In that case, the plaintiff being a foreigner residing abroad, the Court stayed proceedings till he gave security for costs, and Buller, J., said:—'For this reason, that if a verdict be given against the plaintiff, he is not within the reach of our law to have process served upon him for costs.' The same point was afterwards, for the same reasons, decided in *Fitzgerald* v. *Whitmore*, 1 T. R. 362, in the case of a plaintiff residing in Ireland, and the rule was afterwards extended to a plaintiff resident in Scotland. But since the passing of the Judgments Extension Act, 1868 (31 & 32 Vic., c. 54), that reason has completely ceased. The effect of that enactment is that, when a judgment has been obtained in England, a certificate of such judgment can be registered in the proper office in Scotland, and the Court in Scotland can issue process on such judgment. It is true that the process in Scotland, perhaps, may not be like the process of our Courts, but we must take it that it is as effective as our own. In Ireland, if the writ of *ca. sa.* be not taken away, an execution under this Act would be more effective than in England. The reason, therefore, for compelling a plaintiff resident in Scotland having ceased, this rule must be refused."—*Raeburn* v. *Andrews*,, L. R. 9, Q. B. 120, *per* Blackburn, J. This decision was concurred in by the rest of the Court of Queen's Bench in England.

FITZGERALD, B.—I shall adhere to the practice that has been established here.

*Motion granted.**

Attorney for plaintiffs, *Davis.*
Attorneys for defendants, *O'Brien & Howard.*

---

* In *Murley & Co.* v. *Catherine and Thomas Keating* (Con. Ch., Feb. 27, 1874, before PALLES, C.B.), *Harris*, Q.C., on behalf of the defendants, moving for security for costs, as the plaintiffs resided abroad, *Ferguson*, Q.C., opposed upon the ground (amongst others) urged in the principal case, and referred to *Raeburn* v. *Andrews*. PALLES, C.B., refused the motion, on the ground that the affidavit of merits was defective, and added that he would not, sitting in Chamber, determine whether the prevailing practice should be altered in conformity with the decision in *Raeburn* v. *Andrews*.

See the subject fully discussed, and other grounds and cases referred to, 5 IR L. T. 611.—[ED. *I. L. T. Rep.*]

Digitized by Google

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

SPAIDE v. GRAINGER.

(Before the FULL COURT.)

Jan. 28, 1874.—*Practice—C. L. P. Act*, 1853, *s.* 52—*Security for costs*—52 *G. O.*, 1854—*Defence filed without prejudice—Special circumstances.*

In reply to a preliminary notice by the defendant, requiring the plaintiff to give security for costs, the plaintiff, on January 14, *served notice consenting to give security, and to stay proceedings until security given, upon being furnished with an affidavit of merits. The defendant filed a defence on January* 16, *without prejudice to his right to get security. On January* 17 *he furnished the affidavit of merits; and, security not being given, on January* 20 *served notice of motion.*

Held, *that by filing a defence before the service of notice of motion, the defendant had waived his right to obtain security for costs, in the absence of special circumstances within* 52 *G. O.*, 1854; *and that the plaintiffs having consented to give security on being furnished with an affidavit of merits, which was not furnished until after defence filed, did not constitute a special circumstance within the G. O.*

Motion that the plaintiff be compelled to give security for costs. The summons and plaint was issued December 24, 1873. A preliminary notice, requiring the plaintiff to give security for costs, as he was resident out of the jurisdiction, was served on January 13, when the defendant's time for pleading had nearly expired. By a notice in reply, dated January 14, the plaintiff consented to give security, and stay proceedings until security was given, upon being furnished by the defendant with a sufficient affidavit of merits. Three days afterwards, on the 17th of January, that affidavit was filed, and notice thereof was served on the defendant. The defendant filed a defence on the 16th of January, without prejudice to the defendant's right to get security for costs; and on January 20 notice of motion was served.

Robertson, in support of the motion.

Boyd, contra.

WHITESIDE, C.J.—The question in this case is whether or not the defendant has lapsed his time. The section of the Act of Parliament is in these terms:—[His Lordship read C. L. P. Act, 1853, sec. 52.] It is impossible for a defendant to enforce that provision, unless with an affidavit of merits. The only other thing to be considered is the General Rule of the Court. The 52nd Rule says:—"Where a defendant served with a summons and plaint shall require security for costs from the plaintiff, he shall be at liberty to apply by notice to the plaintiff for such security, and in case the plaintiff shall not, within twenty-four hours after service thereof, undertake by notice to comply therewith, the defendant shall be at liberty to apply to the Court, or a Judge, for such security by motion on notice, grounded upon affidavit, and every such application shall be made before defence filed, unless the Court shall, under special circumstances, think fit to make such order after defence filed." Now, here is an application made after the defence had been filed. We think that the words, "and every such application shall be made before defence filed," override the preceding part of this General Order. It is true, there are cases in which special circumstances might warrant the Court in not enforcing this proviso, and accordingly the concluding words are:—"Unless the Court shall, under special circumstances, think fit to make such order after defence filed." But, we do not think that there are any special circumstances in this case—none whatever. The letter of the Rule and the terms of the Act of Parliament are to be complied with. The defendant's first step was to serve a preliminary notice, requiring the plaintiff to give security for costs, who was to signify his intention of so doing within twenty-four hours from the service of the notice. The plaintiff replied that he would comply with the notice on being furnished with a proper and sufficient affidavit of merits. That seems to me an exception to the practice. Once the plaintiff gave that notice, which the defendant received on the 14th, it was irregular for the defendant to say:—"It is time enough for me to furnish my affidavit of merits, and I will file my defence without prejudice to my right to get security for costs." That was clearly a departure from the Act of Parliament, and the General Rule which requires the application to be made before defence is filed, unless under special circumstances; and we think that in this case there are not any special facts to warrant us in granting the application.

*Motion refused.**

Attorney for plaintiff, *Allen.*
Attorneys for defendant, *D. & T. Fitzgerald.*

CONSOLIDATED CHAMBER.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before DOWSE, B.)

HESTER AND CO. v. BYRNE.

Feb. 17, 1874.—*Practice—Debtors Act* (*Ir.*), 1872, *sec.* 7—6 *G. R.*, 1873—*Defendant about quitting Ireland—Prejudice to plaintiff in prosecution of action—Arrest of defendant—Delay in marking judgment against defendant—Varying order, by reducing period of imprisonment.*

Where a defendant had removed all his effects, and was about quitting Ireland, and it was sworn, on behalf of the plaintiff, that efforts made to discover the place to which the effects were removed had failed, but that, if the defendant were arrested, it could be discovered, and that, if he were permitted to leave Ireland, there would be no use in proceeding with the action,

Held, *that it was sufficiently shown that the absence of the defendant would materially prejudice the plaintiff in the prosecution of his action, for the purpose of an order under* 35 *&* 36 *Vict.*, *c.* 57, *s.* 7, *to have the defendant arrested.*

Where, after the defendant had been arrested under 35 *&* 36 *Vict.*, *c.* 57, *s.* 7, *the plaintiff delayed marking judgment beyond the time when he could and reasonably ought to have marked it, admitting that nothing was to be obtained by marking it, and avowing that he would not mark it, and required the defendant to be detained in custody merely for the purpose of putting pressure on him,*

Held, *that the order for the defendant's imprisonment should be varied, under* 6 *G. R.* 1873, *by reducing the period within which he was to be imprisoned.*

The object of the seventh section of the Debtors Act (*Ir.*), 1872, *is to secure the presence of the defendant within the jurisdiction, so that the proceedings of the plaintiff, in prosecuting his action, may be rendered of avail up to the marking of final judgment. Upon final judgment being marked, the order for the defendant's arrest would be annulled. And it would be expedient that orders under that section should provide, that upon the marking of final judgment the defendant should be discharged from custody.*

Motion for an order that the defendant be discharged

* See *Oates* v. *Caraher*, and *Oates* v. *Culkeen*, 8 Ir. L. T., 64.—[ED. *I. L. T. Rep.*]

Digitized by Google

from custody; or for such other order as should be deemed fit.

On January 13, 1874, two writs of summons and plaint were issued at the plaintiffs' suit against the defendant, under the Summary Procedure on Bills of Exchange Act, one of them in the Court of Common Pleas, and the other in the Exchequer, for £76 12s. 8d., and £83 14s. 3d. respectively, on foot of defendant's acceptances. On the same day, applications were made to Dowse, B., and to Lawson, J., respectively, for orders under the Debtors Act (Ir.), 1872, sec. 7, to arrest the defendant, grounded on affidavits made by A. Wilson, the plaintiffs' agent, stating the debts so due, and proceeding as follows:—On January 10 I called on said defendant, saw him, and demanded payment, and he told me he had not the money, although his brother said in my hearing, on January 9, that the defendant had £200 in his possession; I am aware of my own knowledge that the defendant has removed all his stock-in-trade from his late residence in Belfast, in which place he carried on business as a wholesale and general dealer, but I am not aware of the place to which the stock was removed, although I have made attempts to find out; I saw the stock packed up in the said shop on January 10, and when I went to the shop at two o'clock on said day I found the stock removed and the shop empty; if the defendant is arrested, I could find out where his stock is, but, if he is permitted to leave Ireland, there will be no use in proceeding with this action; for the above reasons, I say that the absence of the defendant from Ireland will most materially prejudice the plaintiffs in their prosecution of this suit; I was told a few days ago, by his traveller, R. Hinchey, that the defendant was about leaving Ireland to avoid paying his debts, and that if I wished for payment I should detain the defendant. The defendant was, thereupon, ordered by Dowse, B., to be arrested and imprisoned for six weeks, and by Lawson, J., for two months.

In support of the present motion, P. Byrne, the defendant, deposed that, on January 13, he was arrested and lodged in the gaol of Belfast, under the fiat granted by Lawson, J., ordering that he should be imprisoned for two months from the date of his arrest, unless and until he should sooner deposit in court a sum of £76 12s. 8d. by way of security, or give plaintiffs a bond, to be executed by himself and two sureties, in that amount; that, on the same day, he was served with a summons and plaint for said sum, and that the plaintiffs were entitled to judgment on January 28, following; that, on January 16, he executed to Messrs. D. Corbett, H. Lilburn, and H. V. Byrne, a deed of trust of all his estate whatsoever for the benefit of themselves and all other creditors of his; that, notwithstanding the affidavit made by A. Wilson, upon which the fiat was obtained, he had no intention of leaving the country; that he had not retained or concealed any property whatsoever, but had assigned all to said trustees; and that, if his imprisonment were continued longer, his health would materially suffer. A. Wilson, in reply, deposed that he had heard defendant's brother say that defendant had £200 in his possession; that up to the present he was kept entirely ignorant as to the assets of the defendant, or as to what he had done with any portion of the property stated to have been assigned; that he was quite ignorant of the means or assets of the defendant, but was led to believe, from accurate information, that H. V. Byrne, who was a creditor on the estate for about £125, was not a fit and proper person to be a trustee, and that he (deponent), was therefore of opinion that, should the plaintiffs consent to come in and rank under the deed, no funds would be made available to meet the debts due by defendant, and that, from what he (deponent) heard and believed, said sum of £200, or great portion thereof, had been disposed of by undue preference to some other creditors, with a view to fraudulently depriving plaintiffs of the amount due, and that therefore, under all the circumstances, he (deponent) did not think he could advise his principals to release the defendant from gaol, until all the matters referred to were satisfactorily explained to him or to the plaintiffs' attorney, and the costs of said arrest satisfied.

Weir, in support of the motion. Either the plaintiffs should be ordered forthwith to mark judgment, or else the immediate release of the defendant should be ordered. The plaintiffs were entitled to judgment on January 28; and the defendant cannot now plead, as the action is under the Summary Procedure on Bills of Exchange Act. Judgment, however, has not been marked; and the affidavit made to oppose the motion shows that the motive for not marking judgment is an indirect one. It would be an abuse of the process of the Court, to permit the fiat to be used for a purpose wholly different from that for which it was granted. The object of granting it is to ensure the presence of the defendant up to the marking of final judgment according to the ordinary course of procedure, and once final judgment is marked the defendant would be entitled to his discharge;* *Yorkshire Engine Co.* v. *Wright*, 21 W. R. 15; *Hume* v. *Druyff*, L. R. 8, Ex. 214. The object of imprisoning the defendant under the Debtors Act (Ir.) sec. 7, is, therefore, not merely to enable the fruits of the judgment to be realized.

[Dowse, B.—No authority is needed to show that upon final judgment being signed the order would be annulled. Orders made under the section ought, properly, to be framed in an alternative, for imprisonment up to the time named, "or until final judgment marked." The object is to cover the period up to judgment; and the principle upon which we act, in fixing a time certain, is to cover a period up to the time when the plaintiff ought to, and reasonably could obtain judgment. But, while I agree that the judgment should govern the case so far as the time of imprisonment is concerned, I have been disposed, myself, to give a much more elastic construction to the Act, than is given by other judges, so far as regards the interpretation of the words "will materially prejudice the plaintiff in the prosecution of his action;"† and I believe that, in consequence, I have been more frequently applied to for those orders. Successfully prosecuting the action means, within the Act, something more than marking judgment and registering it, though still stopping short of the realization of the judgment. Carrying out what I conceived to be the policy of the law, and to prevent its being a dead letter, I have, over and over, granted orders to arrest defendants when they had sold all their effects, put the proceeds in their pockets, and were about absconding from the country with all they possessed. Other judges thought such cases not within the statute; and, in the present case, so much influenced was I by what other judges had said, that I consulted my learned brethren before making the order. The plaintiff was, in my opinion, entitled to have his proceedings rendered of avail during the interval covered before final judgment.]

* See *M'Blain* v. *Weir*, 8 Ir. L. T. R. 31.—[Rep.]

† See *M'Blain* v. *Weir*, 8 Ir. L. T. R. 31; see, also, 6 Ir. L. T. 599.—[Rep.]

Digitized by Google

The order was, at first, refused by Lawson, J., but was finally granted as it was sworn that if the defendant were arrested it would be found out where his stock was; and it being stated that a like order had been made in the Exchequer case. It is now shown that the defendant has assigned all his property for the benefit of all his creditors. And it is by reason of a number of other circumstances, as sworn by Wilson, that it is now sought to detain the defendant. The defendant is, for those reasons, entitled to relief under 6 G. O., 1873, providing that "the defendant shall be at liberty, at any time after the arrest, to apply to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just."

Seeds, contra.—The fiat was granted because of the removal and concealment of the stock. It is now admitted that the stock has been assigned away, and it is sworn that the plaintiffs are still unable to find out where that stock is. The defendant does not disclose what stock he assigned, or to what amount, or where it is; and the trustees have made no affidavit as to it. The deed is irrevocable as it is executed by the trustees, one of whom is the defendant's brother. It is sworn that he is not a fit person to act as trustee under the deed. It is not a *bona fide* dealing with his creditors, but got up for the purpose of defeating them. There is no power to compel judgment to be marked, and the marking of it would, under the circumstances, be a fruitless expense. Even if the defendant had the £200 in his pocket the sheriff could not seize it.

[DOWSE, B.—It appears to be so stated in Ch. Arch. Pr. At all events, the plaintiffs would be in no worse position by marking judgment; and if nothing could be obtained by that, why keep the defendant in custody?]

Our only mode of successfully prosecuting our action, for a debt admittedly due, is by putting pressure upon the defendant and keeping him in custody, which we would not do if he dealt *bona fide* with his creditors; but, as it is, he deserves no commiseration. No grounds for the motion are stated in the notice. It cannot be considered that there was no intention of leaving the country; and, after what has now been stated to have occurred as regards the granting of the order, it cannot now be said that it was granted improvidently.

[DOWSE, B.—Those grounds are not open. This is, perhaps, the strongest case I have seen made for granting the order.]

It lay with the defendant, at his option, to give bail, and then he would have been at once released. The only cases in which he would be entitled to his release as of right are, if final judgment were marked, or if he had given bail. And there is no reason shown to induce the Court, in its discretion, to grant his discharge.

DOWSE, B.—I have come to the conclusion that this motion should be granted, by ordering the defendant's discharge within a reduced period. The Debtors Act introduced a change in the law of very grave import. Its policy was to abolish imprisonment for debt; but whether the policy of the law be wise or otherwise, it is not for the judge to be wiser than the law. The seventh section declares that "a person shall not be arrested upon mesne process, in any action brought for the recovery of a debt contracted after the passing of this Act;" *but* (for so I read it), "where the plaintiff, in any of Her Majesty's Superior Courts of Law at Dublin, in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of one of those courts, that the plaintiff has good cause of action against the defendant to the amount of twenty pounds or upwards, or has sustained damage" (that is in an action of tort) "to that amount, and that there is probable cause for believing that the defendant is about to quit Ireland unless he is apprehended, and that the absence of the defendant will materially prejudice the plaintiff in the prosecution of his action, such judge may, in the prescribed manner, order the defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of Ireland without the leave of the Court." The object was to provide a substitute for the old arrest upon mesne process. But, not only must it appear that the plaintiff has a probably good cause of action, it must also be shown that in the prosecution of it he would be materially prejudiced by the absence of the defendant from Ireland. It is difficult to apprehend and define exactly the meaning intended by the words "materially prejudiced," in such a case; but the motive was to add something—be it what it may—more or less, according to the circumstances in each case, to what was previously required to be shown under Pigot's Act. What that something is, is a matter upon which a difference of opinion exists, and, taking my own view of it, I have felt justified in granting fiats which would have been refused by other judges. In my opinion, the application for a fiat in the present case came clearly within the seventh section, and I was myself satisfied as to all the requirements imposed by that section. But then, the commitment is to be up to final judgment, and after that a writ of *ca. sa.* must be substituted if the case admits of it. I have been always influenced, in fixing the period of the commitment, by the consideration of the time when the plaintiff would, in the ordinary course, be entitled to final judgment. In vacation I have always fixed a longer period, save in actions under the Summary Procedure on Bills of Exchange Act. In the present case, I made an order for imprisonment for six weeks; but by the order of Lawson, J., under which the defendant has been arrested, two months was fixed so as to leave a margin. But now a time has elapsed within which the plaintiff could, and reasonably ought to have marked judgment—upon the marking of which it would have followed that the defendant would be entitled to obtain his discharge. If judgment were marked, *cadit questio;* and, practically, I think the defendant is now, in like manner, entitled to relief in the exercise of my discretion. Are the plaintiffs to be entitled to detain the defendant while they refuse to mark judgment, openly declare that nothing is to be obtained by marking judgment, and avow that the detention is merely for the purpose of putting pressure on the defendant, and because it would be a satisfaction to keep him in custody? I shall be no party to that. I have full power to give relief under the 6th General Order, 1873, made under the statute—a most wise rule, enabling me, if the period of the commitment, as ordered, be too long, to vary the order. Let the defendant be discharged from custody on this day week; and in case final judgment shall be marked in the meantime (as, without this, it might be necessary for him to apply to the court for his discharge), let the said defendant on the marking of such judgment be thereupon discharged; no costs to either party of this motion.

Order accordingly.

Attorneys, *P. Sheals* and *D. Leonard.*

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MILLER, J.)

In re JAMES NOLAN, a Bankrupt.

1873, December 16.—*Voluntary Conveyance—Setting aside as fraudulent, as against assignees in bankruptcy and creditors of assignor*—10 *Car.* 1, *sess.* 2, *cap.* 3—35 & 36 *Vict., cap.* 57, *s.* 66—*Evidence—Costs.*

Digitized by Google

James Nolan, while indebted to Hugh Nolan, and others, executed an indenture demising to John Nolan 86 acres of land, at an annual rent of £137 1s. 2d.; and absolutely assigning to him chattels of the value of over £800. The lands were subject to a head-rent of £99—for payment of which John Nolan did not expressly covenant—leaving a profit-rent payable to James Nolan. James Nolan, at the same time, transferred certain Bank-shares to John Nolan. He was possessed of no other property; and the reason influencing him was, that litigation was depending between him and Hugh Nolan, and that John Nolan said that, if the deed were not executed, all would go to Hugh. James Nolan in his own name, within three weeks after, sold the chattels by public auction, and subsequently obtained a civil bill decree against a purchaser, on which occasion, though John Nolan was a witness, no reference was made to the deed. Nearly the entire proceeds of the auction were received by John Nolan, and by him applied, under James Nolan's direction, in discharge of liabilities of the latter. James Nolan, continuing indebted as aforesaid, was afterwards adjudicated bankrupt on his own petition.

Held, *that the deed was void as against the assignees in bankruptcy of the bankrupt, under* 10 *Car.* 1, *sess.* 2, *cap.* 3, *and that the possession of the lands should be delivered up to the assignees.*

Motion* on behalf of L. H. Deering, C. H. James, and Hugh Nolan, the official and creditors' assignees of James Nolan, the bankrupt, that a deed of assignment, bearing date the 19th of January, 1871, from the bankrupt to John Nolan, of the lands of Myshall, and the farming stock and other effects in said deed mentioned, be declared fraudulent and void as against the creditors of the said James Nolan, who are delayed, hindered, or defrauded by said deed of their just and lawful rights, same having been executed by the bankrupt without receiving any consideration, and for the purpose of delaying, hindering, and defrauding his creditors of their just and lawful rights, actions, suits, and debts; and that such steps as the Court may direct may be taken against the said John Nolan to recover the proceeds of the sale of the goods of the bankrupt, unless the said John Nolan shall lodge with the official assignee, within a time to be named by the Court, the proceeds of the sale of the said stock, and other effects mentioned in said deed, or so much thereof as the Court may direct; or for such other order as the Court shall be pleased to make.

By the assignment in question, James Nolan (the bankrupt) demised to John Nolan part of the town and lands of Myshall, containing about 86 acres (Irish), in the county of Carlow, to hold for the life of said James Nolan, at the yearly rent of £137 1s. 2d., covenanted to be paid half-yearly, over and above all taxes; and further assigned, absolutely, the household goods and furniture, farming stock, crop, and implements of husbandry, and all other the goods and chattels specified in the schedule, and all other (if any) the goods and chattels of or belonging or usually held or enjoyed with said lands. The schedule, after enumerating certain chattels, added—"and all other goods and chattels of the said James Nolan, on or upon or usually held with the said lands of Myshall." The deed was purported to be made in consideration of the yearly rent and covenant to pay same, "and for other good and valuable considerations." James Nolan was on February 7, 1873, adjudicated a bankrupt, on his own petition; and Hugh Nolan, a creditor, was appointed creditors' assignee.

The bankrupt, in an affidavit in support of the motion, stated that he had, without consideration, assigned all his lands and property mentioned in the said deed, and also certain bank shares, of which half was the property of the bankrupt and half of the children of Bernard Nolan; and from his *viva voce* evidence it appeared that he and his late brother, Bernard Nolan, had lived at Myshall, on the farms mentioned in said deed, up to the death of the said Bernard Nolan; that the leases of the farms which he held—one at £1 6s. per acre, and the other at £1 per acre—had run out; that he, the bankrupt, had signed the deed of 19th January, 1871, being then possessed of the farms and the chattels mentioned therein, and in reply to the question by Harrison, J., "Why did you give John all those things?" he replied, "There was a dispute between Hugh Nolan and me, and he was threatening to take all, and John said all would go to him if I did not execute the deed," and he further said "that he, like a fool, gave it all to John Nolan to keep for him," and that he, the bankrupt, told John Nolan that half of the bank shares were for the children of Bernard Nolan; that all John Nolan gave him for the goods was a suit of clothes, and taking him to live with him, John Nolan, until he, the bankrupt, was arrested, and that during the last six months he was in prison John Nolan never gave him anything at all. The bankrupt also stated, in his evidence, that he did not owe any thing at the time the deed was executed; that after the deed was executed, an auction was held at the farm by Thomas Pierce, as auctioneer; that the bankrupt sent Thomas Pierce word to hold the auction, and he did so, and that he paid the money he received for the sale, except a small part, to John Nolan, although the bankrupt wanted him to put it in the bank for the children of the said Bernard Nolan, and that he, the bankrupt, was promised £40 a year while the lease lasted, when he signed the deed. Andrew Morris made an affidavit stating that he had acted at the auction as check clerk, on behalf of the bankrupt and his brother, John Nolan, and that he entered down at the time in a book the price of the things sold, in all amounting to £878 10s. 7d., and of that goods to the value of £102 3s. 11d. were purchased by Richard Peirce, a brother of the auctioneer; that, at the bankrupt's request, the deponent went to Richard Peirce's house and met the bankrupt there, and that the account of what was then due by Thomas Peirce was made up and found to be £99, of which sum Thomas Peirce agreed to pay £60, and Richard Peirce agreed to pay £39; that Richard Peirce afterwards refused to pay it, and

* The motion was first brought forward in the name of Hugh Nolan alone, November 28th, 1873; on which day it was adjourned, on the application of John Nolan's counsel, for the purpose of filing answering affidavits, an undertaking being given that the property assigned was to remain in *statu quo*, &c. On December 9th, it again came on for hearing, when, John Nolan's counsel objecting to the non-rejoinder of the official assignees, Miller, J., said:—If the motion is to be sustained by the creditor in his individual capacity, notice should have been served on the official assignees. Otherwise, they should have been joined, with their permission, on being indemnified. The point ought to have been intimated by the case made on the answering affidavits. If it were desired, I would have allowed the notice of motion, &c., to stand as a charge, and directed a discharge to be filed; but the practice as to deciding such applications on a motion is the same as that prevailing in England. But, where this summary jurisdiction is appealed to, the official assignees ought to have been placed in a position to satisfy themselves as to such a matter; and, as that has not been done, I shall give the costs of the day.

The applicant having obtained liberty to amend, then served notice amended as above.

Digitized by Google

at the October Quarter Sessions of 1872, at Tullow, in the County of Carlow, the bankrupt obtained a decree against the said Richard Peirce for said sum, and that the said John Nolan had told the deponent that Richard Peirce had since paid the said sum to the bankrupt; that John Nolan was present at the hearing of the case, and gave evidence on behalf of the said James Nolan. Hugh Nolan made an affidavit stating that he was present at the hearing of the process at the Tullow Quarter Sessions, in October, 1872, and that John Nolan, was present at the hearing, and gave evidence on behalf of the bankrupt, and that nothing was stated at the hearing in reference to the deed of the 19th January, 1871, and that same was kept secret. But, as regards this matter, John Nolan, in an affidavit made in reply, stated, that, when examined at the sessions, "it would not have been proper, as I believe, to embarrass the case of the plaintiff in the civil bill mentioned in one of the said Hugh Nolan's affidavits herein, by referring to said deed, and it was wholly unnecessary to mention it on the hearing of the said civil bill." Hugh Nolan's affidavit also stated that Bernard Nolan, a brother of the Bankrupt, by his will, dated June 13th, 1868, bequeathed all his property to the bankrupt upon trust for the testator's wife, Matilda Nolan, and their children, and appointed Hugh Nolan executor, who proved the will, Sept. 10, 1869; that on May 10, 1870, the deponent married said Matilda Nolan, and that previous to the marriage an agreement was entered into between the bankrupt and him, that he (the deponent) was to have the farms at Myshall after the death of the bankrupt, until the eldest son of Bernard Nolan should attain the age of twenty-one, after which the farms were to go to said eldest son, and that during the life of the bankrupt he (the deponent) was to assist him in the management of the farms, and that he (the deponent) was to be provided with food and lodging in the dwelling-house upon the lands; that the deponent continued to assist the bankrupt in the management of his own farms and those he held as trustee, until Jan., 1871, when John Nolan came to see the bankrupt, and influenced him to treat the deponent, his wife and the children of Bernard Nolan harshly and unjustly, prevented the deponent from continuing to manage the farms, and threatened to put them out of the house at Myshall; that on the 6th of May, 1871, the deponent brought an action against James Nolan, the bankrupt, for £40 10s. 0d., the price of bullocks sold to the bankrupt in the month of November, 1869; that the said money was due and owing from November, 1869, and that no agreement had been made to postpone payment thereof, and same continued owing up to and at the time of the execution of the deed of the 19th January, 1871, sought to be set aside, and to the time of swearing said affidavit; that the bankrupt took defence to said action, and brought a cross action for £243 10s. 0d. against the deponent for money alleged to have been received by deponent in the management of the farms, for cattle sold and not accounted for by him; that said actions were referred to arbitration, and the arbitrators found for the said deponent, and awarded him £24, and also £13 1s. 9d. as the balance due to him on all said accounts, and that same, with the costs, was then still due; that the bankrupt was arrested on foot of the sum awarded in the first action; that the children of Bernard Nolan filed a Bill against the deponent and the bankrupt for an account of the assets of their father, and that the Chief Clerk by his certificate, July 11, 1873, found that £547 18s. 9d. was due by the bankrupt in respect of the aforesaid trusts, the account being taken for sums received and disbursed by the bankrupt, from the death of Bernard Nolan up to Feb. 8, 1871. Attested copies of the Chief Clerk's certificate and the decree confirming same were given in evidence, and the two proofs of debt made in this matter were relied on, one filed on the 10th October, 1873, for £48 13s. 4d., being the sum ascertained by the said arbitrators to be due, with costs, and the other filed 10th of November, 1873, for £834 13s. 4d., £547 18s. 9d., whereof was the said balance found to be due by the bankrupt, by the said certificate, the remainder of the said sum of £834 13s. 4d., being the estimated value of the said National Bank Shares, which belonged to the assets of the said Bernard Nolan.

On behalf of John Nolan, an affidavit by him was relied on in opposing the motion, in which he stated that he was a brother of the bankrupt, whom he found prior to the execution of the deed in question, living unhappily with Hugh Nolan and wife, who were managing the farm for him; that the bankrupt proposed to the deponent to take the two farms at a bulk rent of £137 1s. 2d., with an option for the bankrupt, in lieu of the profit rent thus arising, to be supported, maintained, and clothed by the deponent, to which deponent agreed; that the deponent did accordingly support and clothe the bankrupt, except when lying in prison at the suit of Hugh Nolan; that the deponent did not get any of the chattels mentioned in the deed, as originally intended, but same were sold by public auction by the bankrupt, and the proceeds at his request received by the deponent and applied in payment of costs and other debts due by the bankrupt to his solicitor, and the deponent and others; that the transaction was not kept secret, and that as far as the deponent was concerned it was *bonâ fide*.

P. Law, in support of the motion. The deed is void under 10 Car. 1, sess. 2, ch. 3, sec. 10, as against the applicants. James Nolan was indebted at the time of the execution of the deed, and by it disposed of all his property without consideration. The debt owing to Hugh Nolan (proved in the matter, and on which he was appointed creditors' assignee) was due before the execution of the deed, as was also the debt owing to the minors. After the execution of the deed James Nolan, in Feb. 1873, became bankrupt; and it appeared by his schedule, as sworn to, that he had no other property. The bankrupt has himself admitted that his intention in executing the deed was to defeat Hugh Nolan's demand. But it is unnecessary to establish an express intention to defeat creditors by a voluntary deed under the circumstances appearing, as it is *prima facie* fraudulent under the statute; *Holmes* v. *Penney*, 3 K. & J. 90, 3 Jur. N. S. 80; *Spirrett* v. *Willows*, 34 L. J. Ch. 367, 11 Jur. N. S. 70; *Freeman* v. *Pope*, L. R. 5 Ch. Ap 538; *Mackay* v. *Douglas*, L. R. 14 Eq. 107, 119. The *onus* of proof being shifted to the person deriving under the deed, he has failed to show that it was a *bonâ fide* deed for valuable consideration. No mention is made in the deed of the alleged option given to the bankrupt to live with and be maintained by John Nolan. There is no covenant by John Nolan to pay the head-rent; but, even if there were, that would not be *per se* a sufficient consideration. There was no valuable consideration for the assignment of the goods, which by auction realised about £800. John Nolan gave no consideration in money for the assignment; and the bankrupt has sworn that he owed nothing to him. John Nolan gives no particulars of the debt he says was due to him, and it does not appear that there was any interest paid on it, or that any acknowledgement

Digitized by Google

of it was given. The transaction itself is branded with nearly every badge of fraud defined in *Twine's case*, 1 Sm. L. C. 10. And the parties themselves, by their acts, treated the deed as a mere cover and pocket instrument. It was not registered as a deed affecting lands. The bankrupt remained in possession; and, in three weeks after, called an auction of the goods in his own name, and in his own name sued for some of the purchase money, John Nolan himself being a witness but nothing being said about the deed, which he says John Nolan got him like a fool to sign.

Houston, for John Nolan, *contra*.—The Chief Clerk's certificate and the decree should not be received in evidence, as the Bill of Complaint in the cause is not put in evidence. The probate of the will of Bernard Nolan should not be received, as it is not mentioned in the notice of motion. The affidavit of Hugh Nolan should not be received, as it does not state the grounds of his knowledge of the facts deposed to; 76 and 78 G. O. 1872.

[Miller, J.—It is not necessary to state, as in Chancery, the grounds of the deponent's knowledge. There are very sufficient reasons for the rule being different here.]

That affidavit not only states matters of mere hearsay and belief, but it is also conversant with matters *inter alias acta*, and with matters of record or reduced to writing and only provable by the records themselves or attested copies of such writings.

[Miller, J.—I shall not, at present, decide upon those objections; but, when giving judgment, I shall state the evidence upon which I rely. It would protract proceedings considerably and lead to great confusion, otherwise. Meantime, you can deal with the matters deposed to, in the double aspect, as being and as not being evidence. Some of them, if not all, as it seems to me however, are unnecessary to the decision of the case.] [*Law*, that is the practice adopted by the Master of the Rolls.]

The deed was not an assignment of the lands, but a lease at a profit rent—

[Miller, J.—Which does not appear ever to have been paid. You only allege even having paid two sums of £5.]

The rent reserved was a sufficient consideration. If the deed had not been executed, the bankrupt's interest, being only a chattel interest, might have been sold under an execution. As he was giving up the lands he had no occasion to retain the stock. Everything is set out in the schedule, thus differing from *Twine's case*.

[Miller, J.—And everything is sold, and the proceeds traced to your hands. You get all under color of the deed, you pay yourself and you exclude the other creditors. Are you willing to go before the officer and to establish your claims? Evidence of a more general nature I never heard, than what is here put forward, on John Nolan's own statement, when he comes to discharge himself of several hundred pounds. I do not direct a general reference; but I will give you the opportunity of having it by consent. You seek to get from me a declaration which is at variance with what appears under your hand on the deed; and I should wish to have some more specific evidence.]

It appears on the face of the deed that there was a valuable consideration, as the bankrupt was to receive a profit-rent. Everything was done openly; and the sale of which we received the produce was by public auction.

[Miller, J.—Is that sort of publicity also to bind the rights of the minor children? I have heard in the Ecclesiastical Courts of "*fama clamosa*," and its consequences; but I have heard of it in no other court.]

The minors were represented by Hugh Nolan.

[Miller, J.—So little that he was sued, and an adverse decree obtained against him.]

If, as alleged at the bar, John Nolan made away with the bank shares, he can be compelled to replace them with interest. The proceeds of the auction were applied as directed. A garnishee order against the auctioneer might have been obtained.

[Miller, J.—And have had the deed set up. Besides, it has been stated here, and not contradicted, that the auctioneer was a bankrupt, and that the judgment was not until Dec. 1872.]

At all events, there being a clear profit-rent of £37, it cannot be held that the demise of the lands and assignment of the stock was without any consideration. And it is not alleged that the lands were demised at an under-value. The deed was not executed for the purpose of defeating the bankrupt's creditors; and the possession of the lands should not be directed to be delivered up.

Law, in reply.

Judgment reserved.

Jan. 13. Miller, J.—No case could better than the present illustrate the wisdom of the extended jurisdiction conferred upon this Court by the 66th section of the late Irish Bankruptcy Act—a case in which all parties affected by the questions now under consideration are either themselves, or represent those who had been, by occupation, in the humble position of small tenant-farmers.

Bernard Nolan appears to have died previous to the year 1869, then possessed of some property, leaving a widow and some young children surviving him, and appears to have made a will leaving all his property to the bankrupt, who was his brother, in trust for his widow and children, and appointed Hugh Nolan executor of his will, who as such proved that will, and shortly afterwards married the widow of his testator, Bernard Nolan. Hugh Nolan, together with his wife and the children of Bernard Nolan, went to reside with the bankrupt, thus appointed as trustee as above stated, at the residence of the bankrupt, upon his the bankrupt's farm at Myshall, in the county of Carlow, and continued to reside there for some time. At this period the bankrupt was an aged man, and would appear, from his demeanour while in attendance upon this Court, a very ready instrument for any contrivance. The position of the bankrupt at that time, and up to the commencement of the year 1871, would appear to have been that he was the absolute owner of 10 shares in the National Bank of Ireland, of considerable value; he was also owner of farms at Myshall, in the county of Carlow, consisting in the whole of about 86 acres, subject to an annual rent of £99; and he was also absolutely entitled as owner of moveable goods and chattels of the value of about £1000. While the bankrupt was in the full possession of that property he was indebted to Hugh Nolan, above named, in a sum at all events of £24, as has been clearly established. He was also, as trustee under the will of his deceased brother Bernard Nolan, as has been since ascertained, largely indebted to the minor children of Bernard Nolan, either singly or jointly with Hugh Nolan, as may eventually be decided. And the bankrupt was at the same time (if the allegations of John Nolan, the brother of the bankrupt, to whom I shall presently refer, be true) considerably indebted to John Nolan himself, on his own personal account. While the bankrupt was thus circumstanced he executed a deed, bearing date the 19th of January, 1871, between himself, therein described as of Myshall aforesaid, farmer, of the one part, and his brother John Nolan, above named, who was therein described as of Old Ross, in the county of Wexford, farmer, of the other part; and the only recital which that deed purported to contain was that he,

Digitized by Google

the bankrupt, had agreed with that John Nolan to demise to him the lands thereinafter described, for his life, at the yearly rent of £137 1s. 2d., and to assign and make over to him the household goods, farming stock, crops, and implements of husbandry, and all other the goods and chattels specified in the schedule thereunder written; and that deed then purported to make over by way of demise to John Nolan, all the lands and premises of which he was possessed, consisting of his farm of 86 acres, at Myshall, at an annual rent of £137 1s. 2d., and also purported to assign to the same John Nolan all the goods and chattels of which the bankrupt was possessed, as set forth in the schedule thereunto annexed, and the schedule therein referred to enumerated all the personal property of the bankrupt, and concluded with a comprehensive residuary clause—"*of all other the goods and chattels of the said bankrupt, in or upon or usually held with the lands of Myshall.*" Shortly previous to the execution of that instrument of the 19th of January 1871, the bankrupt denuded himself of his 10 shares in the National Bank, by transfer to the same John Nolan, who thereby stood in the books of that Bank as the absolute owner thereof; and it does not appear how said shares, or the proceeds thereof, have been since disposed of. The best interpreters of, or commentators on such an instrument as that of the 19th of January, 1871, executed by the bankrupt under such circumstances as I have stated, are the parties to that instrument itself, as evidenced by their manner of dealing with it. Thus, notwithstanding the execution of that instrument of the 19th of January, 1871, by which the bankrupt purported at once to divest himself altogether of all the goods and chattels he possessed, he, the bankrupt, within three weeks from its date, caused a public auction in his, the bankrupt's own name, to be held on the following 7th of February, 1871, at which he, the bankrupt, caused to be sold, in his own name, every article thus purported to be assigned to John Nolan by the previous deed of the 19th of January, 1871, and thereby realized a sum of about £800. And it further appears that so little reality was attributed by the parties to that instrument of the 19th of January, 1871, that so lately as at the Quarter Sessions held at Tullow, on the 11th day of October, 1872, as distinctly charged by the affidavit of Hugh Nolan, of the 17th November, 1873, the bankrupt, in his own person and in his own name, obtained a decree for £39 against one Richard Pierce, in respect of articles purchased by him at the auction of the bankrupt's goods, as above stated; and further, that the same John Nolan, the assignee in the deed of the 19th of January, 1871, was not only present, but examined as a witness on that occasion, and as may be assumed, upon his oath, in support of that claim of the bankrupt, which was thus established; and further, that John Nolan, although thus examined, did not upon that occasion make any disclosure of, or reference to any such instrument as that of the 19th of January, 1871. On the contrary, when John Nolan, thus challenged, purports to reply to that allegation of Hugh Nolan, by the 5th paragraph of his affidavit, filed on the 5th of December, 1873, he merely states "That it would not have been proper, as he believed, to embarrass the case of the plaintiff in the Civil Bill mentioned in one of Hugh Nolan's affidavits, by referring to that deed, and that it was wholly unnecessary to mention it on the Civil Bill." But still further, when the manner of dealing with the proceeds of the goods of the bankrupt, as thus sold by auction, by the parties to the deed of the 19th January, 1871, is examined, it would appear altogether irreconcilable with any portion of that instrument, as, although John Nolan, the assignee under that instrument, admits that a sum of £788 10s. 0d., as portion of the proceeds of that auction, reached his hands, he does not attempt to discharge himself of that portion of the bankrupt's property by any allegation of any such title as assignee under the deed of the 19th of January, 1871, of the chattels which produced that sum, and which chattels, upon the face of that instrument, would be made to appear as part of the consideration of that instrument, but on the contrary, by an allegation "That he, John Nolan, by the express directions of the bankrupt, made payments as far as the funds would go, in discharge of alleged liabilities of the bankrupt," of which the deed of the 19th of January, 1871, was utterly silent, but which he, John Nolan, purports to set forth in his affidavit. As might have been expected, no such instrument as that of the 19th of January, 1871, was to be found upon the register for registering deeds affecting lands in Ireland. Litigation in various forms closely followed, as the natural fruits produced by the feelings and motives which suggested such a deed as that of the 19th of January, 1871. Upon the 5th of May, 1871, the children of Bernard Nolan, as minors, are made to take proceedings in the Court of Chancery, by John Nolan as their next friend, against the bankrupt, who purported to be the assignor in that deed of the 19th of January, 1871, as being the trustee under the will of Bernard Nolan, and against their step-father, Hugh Nolan, as being the executor under the same will, for the purpose of compelling them to account in those capacities for the property of their deceased father, although that John Nolan must have perfectly well known, if that deed of the 19th of January, 1871, had or was intended to have any vitality whatever, that the bankrupt, from whom he sought such an account, had stripped himself by that deed of the 19th of January, 1871, of the means of satisfying any liability in respect of such account; and further that he, John Nolan, was in possession of the only property of the bankrupt, in respect of which any account that might be directed could have been in any manner made available as regarded the bankrupt. Hugh Nolan, thus practically made the principal defendant in the Chancery proceedings, as the executor of Bernard Nolan, commenced an action at law against the bankrupt upon the day next following the institution of said Chancery proceedings, namely, on the 6th of May, 1871, whereupon the bankrupt, upon the 17th of June, 1871, commenced a cross action against that same Hugh Nolan, and the subject matter of both such actions having been referred to the arbitration of the same persons, an award was made upon the 6th of April, 1872, by which Hugh Nolan was declared to be entitled as against the bankrupt to a balance of a principal sum of £24 in the first action in respect of a debt which had existed at the date of the alleged assignment of the 19th January, 1871, and to a sum of £13 1s. 9d. in the second action, exclusive of costs. Upon the 23rd of January, 1873, the bankrupt was arrested and committed to prison at the suit of Hugh Nolan for £35 7s. 7d., in respect of the sum to which he was declared entitled by the above reward.

Upon the 6th of February, 1873, the bankrupt, describing himself as formerly of Myshall, farmer, but then of no occupation, petitioned this Court, as being a prisoner confined in gaol in Carlow, to have himself adjudicated a bankrupt, and the bankrupt who, in January, 1871, was the absolute owner of ten shares in the National Bank, who was also in actual possession of a farm of 86 acres, out of which he purported to reserve a profit rent of about £40 yearly, and was also possessed of other personal property of the value of about £1,000, in the manner as stated, without having disposed of any portion of that property otherwise than I have stated, made an affidavit upon that same 6th of February, 1873, in support of his application to this Court, in which he alleged that he "was not possessed of any goods and chattels, and that he was supported by his brother, John Nolan, and was depending on him." Upon that application thus made *ex parte*, an adjudication was pronounced on the 9th February, 1873. Upon the 11th of February, 1873, notice of an application for the discharge of the bankrupt from custody was served, according to the practice of the Court, upon the official assignee and upon the creditor, at whose suit he was detained in custody; and before any order for such discharge would have been pronounced, a certificate from the official assignee, as the result of his investigation into the affairs of the bankrupt, must have been produced to the effect either that the bankrupt was not possessed of any goods and chattels as alleged by his affidavit, or that he, the bankrupt, had delivered up to the official assignee all such property of which he was then possessed. It was upon the notice of such application being

Digitized by Google

given that the deed of the 19th January, 1871, would appear, as far as can be collected from the evidence, for the first time to have been brought to light by the affidavits filed in relation to it. Hugh Nolan, as the creditor of the bankrupt for a sum of £48 13s. 4d., was, on the 14th of October, 1873, appointed creditors' assignee in the matter. A notice of application, as amended, was served, on the part of the official and creditors' assignees, upon the bankrupt and upon John Nolan, named as the assignee in the deed of the 19th January, 1871, that said assignment of the 19th of January, 1871, might be declared fraudulent and void as against the creditors of the bankrupt, who are delayed, hindered, or defrauded by the said deed of their just and lawful rights, and that John Nolan should deliver up the proceeds of certain chattels as belonging to the bankrupt. That application is not encountered by any evidence or opposition on the part of the bankrupt, who purported to be the assignee in that deed of the 19th January, 1871, but, on the contrary, the bankrupt, when examined before this Court, and asked, by the 33rd and 34th interrogatories, his reason for thus making over all his property to John Nolan, replied—"That there was a dispute between Hugh Nolan and him, and he was threatening to take all, and John said that all would go to him if he did not execute the deed—he gave it like a fool. He, John, got him, the bankrupt, to sign it like a fool." And in answer to the 39th interrogatory, as to whether the bankrupt owed John Nolan, named as the assignee in the deed of the 19th of January, 1871, anything at the time the deed was executed, he replied—"Not a ha'porth." That application is, however, encountered by John Nolan, who purports to be assignee under the deed of the 19th January, 1871, and now claims to be entitled to all the property of which the bankrupt was possessed, as stated, without having paid any money whatever, as the alleged owner of such property, and denied any right of the assignees to interfere with that deed of the 19th January, 1871.

Having already so fully detailed all the circumstances connected with the execution of the deed of the 19th of January, 1871, it is only necessary here to deal with the only argument offered by counsel on the part of John Nolan, in support of that instrument, namely, that such deed having been executed by way of demise, reserving to the bankrupt out of his own 86 acres, which were subject to the payment of an annual rent of £99, a larger gross rent, although such deed did not contain any express covenant on the part of John Nolan to pay that chief rent of £99 for which the bankrupt was liable, such an instrument operated as an assignment for valuable consideration, and that no such intent was proved as could bring that deed within the mischiefs intended to be provided against by the 10th, Charles I., sess. 2, chap. 3. I may summarise the law, as has been done before in respect of the operation of the corresponding statute of Elizabeth in England, upon instruments of assignment, such as the present, thus—"That there is one class of cases in which an actual and express intent to defeat or delay, &c., creditors is necessary to be proved, where the instruments sought to be set aside were founded on valuable consideration, and that there is another class of cases where the settlements are voluntary in which the necessary intent may be, and often must be unavoidably inferred." If the Irish statute of Charles was not calculated to frustrate such an instrument as the deed of 19th of January, 1871, presented in the manner referred to before this Court, I could not well understand for what purpose that statute was passed, or why it has been permitted to remain so long upon the statute roll. I shall, therefore, not hesitate to put out of the way of the assignees the instrument of the 19th of January, 1871—by which the bankrupt, in the manner as stated, purported to create a larger rent, by way of demise out of his own farm of 86 acres, subject already to an annual rent of £99, and other charges, without any express covenant on the part of the lessee named therein to pay such head rent and other charges for which the bankrupt was responsible, while it at the same time purported to assign over to the same person all the chattel property of which the bankrupt was then possessed of the value of about £1,000—as being under the circumstances referred to a mere sham, cover, and in all other respects a voluntary deed within the mischiefs intended to be provided against by that statute of Charles, and there being in this case before the Court abundant materials from which the necessary intent to bring that deed within the scope of that statute must be unavoidably inferred; but, I will go further and state that, even if the deed of the 19th January, 1871, could, under the circumstances, be held to have been executed for valuable consideration, sufficient evidence of the actual and express intent to defeat or delay creditors, &c., within the scope of the statute, as above, has been furnished by the evidence already detailed, and other evidence in the case to which I do not think it necessary here more particularly to advert.

I may here, further, observe that the evidence in this matter would appear to me to have fully warranted the assignees in seeking relief in another form, wholly irrespective of the statute referred to, but I have dealt with the cause as presented.

There can be no difficulty in making the necessary order as to the bringing into Court the deed of the 19th January, 1871, and declaring it void against the assignees, in the usual form, or as to the delivery of the possession of the lands of Myshall, within a proper time, or in directing that John Nolan should, within a limited time, bring in an account before the Chief Registrar, in respect of the sum of £788 10s. 0d., as the portion of the proceeds of the bankrupt's property included in the deed of the 19th of January, 1871, which he, John Nolan, admits to have come to his hands, and to proceed forthwith to pass such account—upon which enquiry if John Nolan can satisfy the Chief Registrar as to the proper application of that sum, or any portion of it, he should receive full credit in that respect; but I could not make any general order in the terms of the notice of motion, in the face of an affidavit by John Nolan, that he had properly applied the proceeds of the bankrupt's property thus acquired by him, under the specified directions of the bankrupt himself, although at variance with and irrespective of the deed of the 19th of January, 1871, until John Nolan had first an opportunity of establishing such his allegation.

I was not by the notice of motion called upon, and I am not in a position to make any order as to the shares in the National Bank, the property of the bankrupt.

Law asked for costs.

Houston—Costs are not asked by the notice of motion.

Law—Where a motion is resisted, every court has inherent power to deal with the costs. The application was an adjourned one, and should be treated as if the affidavit and notice of motion had been directed to stand as a charge to be discharged. If costs were asked it might be a reason for coming in to oppose, though on no other ground.

MILLER, J.—I shall make the order as stated in my judgment as of this date, and I think the applicant is fairly entitled to the costs of the motion which I will give. John Nolan can apply, if he thinks he can put forward any fair grounds for so doing, to vary the order in this respect—which I have power to amend under the Act of Parliament, within any reasonable time.

Solicitors, *T. C. Butler* and *W. K. Tully*.

In re DE SERANCOURT, a Bankrupt.

1874, Jan. 23, 30.—*Adjudication—Time for showing cause against validity of—Petition to annul, by bankrupt who has not surrendered—Varying and rescinding orders*—20 & 21 *Vict.* c. 60, *ss.* 29, 129, 358—35 & 36 *Vict.* c. 58, *s.* 6—50 *G.O.* 1872.

A person adjudicated a bankrupt, desiring to annul the adjudication, must proceed under the 129th section of the

Digitized by Google

20 & 21 *Vict. c.* 60. *If he omits to do so, he must proceed by petition of appeal before the Court of Appeal. Where the bankrupt does not contest the validity of the adjudication within the period prescribed by the Act, the Court of Bankruptcy has no jurisdiction afterwards to entertain an application to review the adjudication, either under sections* 129 *or* 358 *of* 20 & 21 *Vict. c.* 60, *or section* 6 *of* 35 & 36 *Vict., c.* 58.

Carter v. *Dimmock*, 4 *H. L. C.* 337, *followed.*

Petition to have adjudication annulled.

For the purposes of the present Report, the facts sufficiently appear in the judgment of the Court.

Houston, in support of the petition.—The Court has power to annul the adjudication under B. A. Act, 1872, section 6. The adjudication is an "order" within that section. We seek to have it reviewed and rescinded, on the grounds that the petitioner was not a trader within the meaning of the bankruptcy code, and that he had not committed an act of bankruptcy, as alleged. The B. & I. Act, 1857, section 129, while it allows a bankrupt three days to show cause against the adjudication upon those grounds, does not declare that if cause be not shown within that time the adjudication shall be final, but merely, that in such case the adjudication is to be gazetted. And by section 358 of the Act of 1857 additional time for showing cause is given. By the latter section it is provided that the *Gazette* is to be conclusive evidence of the bankruptcy, if the bankrupt (having been in the United Kingdom at the date of the adjudication) shall not, within one month after the gazetting, have commenced a suit to annul the adjudication; or (if he had been in any other part of Europe), within three months after the advertisement. This is a *suit* within that section. But, while the Act is precise in limiting the period of appeal, no time is limited for the Court itself to review its order; it rests with the Court, in its discretion, to allow the matter to be re-opened, where there has not been laches, and where the omission to show cause prior has been occasioned by a fatality, or when the bankrupt had been absent from the Kingdom.

Purcell, Q.C. (with him *Carton*), *contra.*—According to the petitioner's contention, a jurisdiction is claimed for this Court which no other Court in the Kingdom possesses; and it would thence follow that, after the property of the bankrupt has been administered, and the rights of creditors dealt with, on the assumption of the adjudication being binding and final, the entire proceedings might be re-opened by the Court, it may be after twenty years. There would be no such thing as a final order; and every conditional order, after having been made absolute without cause shown, might be rescinded upon a petition such as this. But, even the literal terms of B. A. Act, 1872, section 6, show that something else is intended. To "review, rescind, or vary any order" does not include the power to annul; and an adjudication is not an order properly so called, but in its application throughout the Acts has a specific, technical meaning. Had it been intended to confer the power as now claimed, the 6th section of the Act of 1872 should have done so in specific terms, and in such case the 129th section of the Act of 1857 would have been repealed. The sections in question are to be construed together; and the 6th section in the Act of 1872 should not be so read as to nullify or set at nought the others in the previous Act. But, by the petitioner's contention, the 129th section would be rendered insensible. By it a statutable jurisdiction during a certain period is given, and it is necessarily implied that once that period has elapsed the matter is concluded. Even the additional time which may be accorded thereunder, in the discretion of the Court, is limited to a certain number of days. The bankrupt is "allowed" a certain time to show cause, which means that he has no authority or right to show cause, save within that time. And the power given by the Act of 1872, section 6, is to rescind in accordance with the other provisions of the code, and where by no other provision that power is limited or restrained. Section 358 refers altogether to proceedings wholly independent of proceedings by way of showing cause under section 129. One of the alternatives to which the words of section 358 are applicable is the bringing of an action by the bankrupt, in order to dispute the adjudication; and another alternative is an appeal; pending either of which the *Gazette* notice is not conclusive. But, while the 6th section of the Act of 1872 does not apply, and the bankrupt must resort to the special mode of annulling the adjudication prescribed by the Act of 1857, he has here failed to do so in due course. His petition to annul the adjudication is not a "suit" within section 358, and he is not now entitled to the relief asked; *Carter* v. *Dimmock*, 4 H. L. 351. Moreover, not having surrendered, the bankrupt is in contempt, and, according to the practice of the Court, is, therefore, not in a position to make any application, *ex p. Wilkinson*, 1 Gl. & J. 387; *ex p. Jones*, 11 Ves. 409.

Houston, in reply.—When *Carter* v. *Dimmock* was decided, the English Court of Bankruptcy possessed no power corresponding to that given by the B. A. Act (Ir.), 1872, section 6. Unless that section applies to a case like the present, it is difficult to see what application it could have.

[MILLER, J.—An order might, for instance, have passed the Registrar, which the Court would have had no power to review, rescind, or vary, though not meeting the views of the Court, and operating injuriously. It might not be in substance defective, but some supplemental relief might be required.]

It is not confined to remedying such cases. In *Gregg's* case an application was made to rescind an order passing a sitting in composition after bankruptcy under section 149, and the order was rescinded. As regards the non-surrender of the bankrupt, the rule referred to was never intended to apply where the bankrupt seeks to dispute the legal requisites of the adjudication, 2 Gr. & H. Ba. 795.

[MILLER, J.—That bears against you in another way. If your contention is right, it shows most forcibly that an application circumstanced like the present should have been made by way of appeal.]

That which we are doing is something equivalent to purging our contempt, and the bankrupt may still surrender.

Judgment deferred.

MILLER, J.—A notice of application has been served in this matter on behalf of the bankrupt, dated the 9th of January, 1874, for an order, in the terms of the prayer of his petition of the same date, "that the adjudication had in this matter on the 2nd of December, 1873, and all proceedings thereunder, be annulled, and that Thomas Blackwell, the petitioning creditor, do pay to the alleged bankrupt the costs of that petition, and of all necessary proceedings consequent thereon, including the costs of that application."

The adjudication was pronounced on the 2nd of December, 1873. Under the 129th section of the 20 & 21 Vic., chap. 60, which corresponds in substance with the 12 & 13 Vic., chap. 106, section 104, before notice of an adjudication can be published in the '*Gazette*,' a duplicate of such adjudication must be served personally, or at the last known place of business or abode of the person adjudicated, who shall be

Digitized by Google

allowed three days, or such extended time, *not exceeding seven days in the whole,* from the service of such duplicate, to show cause to the Court against the validity of such adjudication. It then provides, as was the case in this matter:—that "if, at the expiration of the said time [*i.e,* three days, or such further time, not exceeding seven days in the whole], no cause shall have been shown to the satisfaction of the Court for the annulling of such adjudication, the Court shall *forthwith* cause notice of such adjudication to be given to the '*Dublin Gazette.*'" No cause having been shown against the adjudication in this matter, it was formally gazetted on the 12th of December, 1873. According to the 29th section of the 20 & 21 Vic., chap. 60. it is provided:—that every order, or decision, of this Court [such as the order in this case] shall be subject to appeal to the Court of Appeal in Chancery, provided it is entered within thirty days from the date of the decision, or order, or such further time as the Court shall by special leave allow. The time for proceeding by appeal from any order, or decision, of this Court is thus expressly limited, and, as regards the order sought to be set aside in this matter, expired after thirty days from the 2nd of December, 1873. The petition to annul the adjudication, as thus pronounced, on the 2nd of December, 1873, was not filed until the 9th of January, 1874, which was after the expiration of the limited time, within which that order could be appealed from. However, by the 358th section of the same 20 & 21 Vic., chap. 60, which corresponds in substance with the 233rd section of the same 12 & 13 Vic., chap. 106, it is provided:—that if the bankrupt shall not (if he were within the United Kingdom at the date of the adjudication) within one month after the advertisement of the bankruptcy, have commenced a suit to dismiss the petition, or to dispute, or annul the adjudication, and shall not have prosecuted the same with due diligence and with effect, the *Gazette* shall be conclusive evidence in all cases as against such bankrupt, and as therein. If the 35 & 36 Vic., chap. 58, had not been passed the case of *Carter* v. *Dimmock and others,* 4 H.L. 337, would be a conclusive and binding authority against this Court entertaining any such application upon a petition addressed by the bankrupt to this Court, under the circumstances as stated. But it has been contended on the part of the bankrupt, as against the effect of that authority, that when that decision was pronounced no power was vested in the Court of Bankruptcy in England such as has been conferred upon this Court by the 6th section of the above-mentioned Act of the 35 & 36 Vic., chap. 58, which is as follows:—"The Court of Bankruptcy in Ireland shall continue to be a Court of Law and Equity, and a principal Court of Record, and may review, rescind, or vary any order made by it, in pursuance of the said Act." I am now, under that section, called upon, on the part of the bankrupt, to hold, notwithstanding that the petitioning creditor had, at the time of the petition being filed and notice given by the bankrupt, the protection of his order, against which no appeal had been lodged within the time limited by the unrepealed 129th section of the 20 & 21 Vic., chap. 60, that, by virtue of the power conferred upon this Court by the 6th section of 35 & 36 Vic., chap. 58, a construction has been thereby necessarily given to the unrepealed 358th section of the 20 & 21 Vic., chap. 60, different from what *Carter* v. *Dimmock* pronounced as the true construction of it, which would render a petition to this Court "*a suit,*" within the meaning of that section, or that an absolute authority is, by that 6th section of the 35 & 36 Vic., chap. 58. vested in this Court, of varying or rescinding orders, uncontrolled by any limitations as to time, which is of the very essence of the bankrupt code, or by any of the other provisions in the 20 & 21 Vic., chap. 60. I cannot, however, give any such extended construction to that 6th section of 20 & 21 Vic., chap. 60, which was introduced to remedy an inconvenience sometimes felt, arising from the fact that an order once passed from this Court could alone be varied in any particular, however desirable, through the expensive process of an appeal, and which applies to orders made in the progress of the proceedings, not to the rescinding of the entire proceedings in bankruptcy, without the bankrupt having satisfied a single requirement of his position as an adjudicated bankrupt. The Acts of the 20 & 21 Vic., chap. 60, and the 35 & 36 Vic., chap. 58, must be read together, and any powers, however extensive, conferred by the 35 & 36 Vic., chap. 58, must be regulated so as not to conflict with the unrepealed section of the 20 & 21 Vic., chap. 58. It is plain, therefore, that this Court cannot, in the exercise of the powers conferred upon it by the 6th section of the 35 & 36 Vic., chap. 58, hold, in opposition to the decision in *Carter* v. *Dimmock,* above referred to, that *the suit* mentioned in the 358th section of the 20 & 21 Vic., chap. 60, embraced a petition to annul, addressed to this Court, under the circumstances of this case, or that this Court could disregard the 29th, 129th, and 358th sections of the 20 & 21 Vic., chap. 60, and entertain the present petition and application to annul, on the part of the bankrupt, irrespective of these sections, under the circumstances referred to.

In this view of the Acts of Parliament referred to, it is unnecessary for me to deal with the further objection to the present application—namely, that the bankrupt, by not having surrendered, is in contempt, and that, under such circumstances, he was not in a position to make any application to this Court; but if it had become necessary to consider what would be a very serious objection, I would have made an effort to relieve him in that respect, as it is stated by the Registrar that no summons by, or on the part of, the petitioning creditor to the bankrupt, specifying the two public sittings at which he might surrender, has been issued under the 50th General Order.

The application of the bankrupt must be dismissed, and as I cannot give costs against a bankrupt, the petitioning creditor must have his costs in the matter.

Solicitor for the petitioning creditor, *J. L. Scallan.*
Solicitor for the bankrupt, *Bloomfield & Benner.*

LANDED ESTATES' COURT.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Flanagan, J.)

In the Matter of the Estate of S. Teirney and T. N. Teirney, or one of them, Owners; and J. Shaw and Others, Petitioners.

Feb. 2, 1874.—*Fraudulent conveyance—Bill in Chancery to set aside—*10 *Car.* 1, *sess.* 2, *ch.* 3.

Where there are circumstances tending prima facie *to show conveyances to be fraudulent, under* 10 *Car.* 1, *sess.* 2, *ch.* 3, *the Court will retain the moneys due under them to an incumbrancer, pending a suit in Chancery, to set the conveyances aside, and this too although the creditor, asking to have the money retained, have no charging order, or lien on the property comprised in the conveyances.*

Application on behalf of E. M'Hugh, a judgment-creditor of one of the owners, for an order to restrain the payment of the money in Court in this matter, he undertaking to file a bill to set aside certain deeds by reason of fraud.

On the 2nd July, 1873, Mr. M'Hugh got a verdict against Mr. S. Teirney, for £480 8s. 8d., the amount of a penal sum in a bond, on which he sued, with costs. Execution was stayed by Dowse, B., till the 4th Nov. Teirney next made an application to the Court to have the verdict had for M'Hugh changed into a verdict for him. This application was refused. On the 11th July, 1873, Mr. M'Hugh applied to a Judge in Chamber for a charging order, but this motion was refused. On the final schedule of incumbrances there was returned, No. 13, a sum of upwards of £500, as a lien for unpaid purchase-money, Mr. C. N. Davis, of Belfast, being the incumbrancer. It appeared that by indenture of the 12th March, 1866, Mr. S. Teirney

Digitized by Google

conveyed all the property in the estate in this matter to Mr. C. N. Davis for £400. By indenture of 3rd April, 1866, the month after, the first incumbrance to the petitioner was put on the property, and shortly afterwards, in March, 1867, some other incumbrances were effected. So that from March, 1866, Mr. Teirney dealt with the property as absolutely his own. The deed of March, 1866, was not registered till the 14th Dec., 1867.

Bruce, in support of the motion.—The deeds are fraudulent, and payment ought, therefore, to be stopped till a bill can be filed to set the deeds aside. In *Reese River Silver Mining Company* v. *Attwell*, L. R. 7 Eq. 347, it was held that, in order to entitle a creditor of a living debtor to set aside a fraudulent conveyance, under the 13 Eliz., c. 5, it is not necessary that the creditor should have any lien, or charging order, on the property comprised in the conveyance; but in the absence of such lien the Court will not apply the property in satisfaction of the creditor's claim.

[Flanagan, J.—That is a case of putting property into settlement. The Court acted there to protect the rights of third parties.]

W. H. Kisbey, *contra*.—This motion should be dismissed with costs, as Mr. M'Hugh has no *locus standi*. In March, 1866, a conveyance was made from S. Teirney to C. N. Davis, for £400, *bona fide* and upon valuable consideration. In July, 1867, Davis reconveyed to J. N. Teirney nominally for £400, but, in reality, the money was never paid at all, and Mr. J. N. Teirney, was, in all probability, merely a trustee for his father. Davis is a man of substance, holding an office which is worth over £300 a-year. The properties, which are embraced in the deeds which are alleged to be fraudulent, are all freehold, and, therefore, it will be impossible to get a charging order against them. Mr. M'Hugh has no judgment mortgage, and, therefore, he has no *locus standi*, even supposing that the whole of the deeds were fraudulent. The sum due to Mr. M'Hugh is not so large as he seeks to represent. He got a verdict for £480, and entered judgment for the penal sum. The real debt on the bond amounted to £240 only. He has no charging order, or judgment mortgage. His proper course would have been to have filed a bill in Chancery, praying to set aside the deeds, and praying for an injunction. The bond was subject to conditions set out in a contemporaneous letter, and there has been no assignment of breaches.

Flanagan, J.—Mr. M'Hugh has, in his affidavits, shown such a case as to entitle him to file a bill in equity to set the deeds aside. In March, 1866, S. Teirney purported to convey to Davis, in consideration of £400, all the property comprised in the rental. But S. Teirney deals with that property as his own, by mortgaging it, again and again, to the trustees of the Belfast Equitable Building and Investment Society. On 14th Dec., 1867, Mr. S. Teirney registers his deed, and on the 9th July, 1867, Davis reconveys to J. N. Teirney, in consideration of £400, which was not paid, and that £400 is the sum for which Davis claims as incumbrancer on the property. Now, the dates of the several registrations are of importance. Mr. Davis registers the original deed of the 12th March, 1866, on the 14th Dec., 1867, and on the 5th January, 1869, the deed of 9th July, 1867, is registered. Now, these very dates, if unexplained, are sufficient to justify the supposition that the original transactions of 1866 and of July, 1867, were not *bona fide*. It was urged by *Mr. Kisbey*, that the affidavits ought to have been more certain and distinct, but the affidavits of Mr. M'Hugh could only contain statements on belief. Mr. S. Teirney, too, it is to be observed, is one of the owners in the matter, and Mr. J. N. Teirney the other, the ownership being put in the alternative. The only doubt there is in the matter is as to what is the advantage of this whole proceeding to Mr. M'Hugh? For, if he even got an order to set aside the deeds to-morrow, he could not prevent Davis coming in at any time to get the funds paid out. He has no lien, no charging order. The order will be, that payment of the funds be stayed for one month, Mr. M'Hugh undertaking to file a bill within that time to set aside the deeds; and, in default of Mr. M'Hugh filing a bill, he must pay the costs of this motion, and the funds will be liberated. If the bill be filed, reserve the question as to costs.

COURT OF QUEEN'S BENCH.

Reported by S. N. Elrington, Esq., Barrister-at-law.

(Before Whiteside, C.J., O'Brien and Fitzgerald, JJ.)

White and Hart v. Carroll.

April 16, 1874.—*Practice—Security for costs—Plaintiff resident in England—Judgments Extension Act*, 1868 (31 *& 32 Vict. ch.* 54, *ss.* 1, 5)—*Common Law Procedure Act*, 1853, *sec.* 52.

Motion, to compel a plaintiff resident in England to give security for costs, refused, it not appearing that there were any circumstances to render the giving of security necessary notwithstanding the passing of the Judgments Extension Act (1868).

Raeburn v. Andrews, L. R. 9 Q. B. 118 *followed.*

Motion on behalf of the defendant, that the plaintiffs, residing in England, out of the jurisdiction, be compelled to give security for costs. The action was brought to recover a sum of £23, for goods bargained and sold, and for money lent and paid for defendant's use. The defendant had made an affidavit that no goods had been sold to him by the plaintiff; no money had been lent by the plaintiff to him; no money paid for him; and that he (defendant) had a just, true, legal, and valid defence to the action.

Jordan, in support of the motion.—We are entitled to security for costs under C. L. P. Act, 1853, s. 52.

[Fitzgerald, J.—What do you say about the English case *Raeburn* v. *Andrews*, L. R. 9 Q.B. 118, holding that since the passing of the Judgments Extension Act, 1868, security for costs has become unnecessary. Fitzgerald, B., sitting in Chamber, has, I understand, refused to follow that decision in *Thomas* v. *Cox* (8 Ir. L. T. R. 52); and it appears that Palles, C.B., also declined, sitting in Chamber, to disturb the present practice.]

It would be a hardship that a defendant, sued by a plaintiff who was resident in London, should be obliged to register his judgment there, and put to the expense of employing a solicitor there. There is no cause of action against the defendant, and he has sworn to a defence on the merits. The Court should not alter the settled practice, while there is a possibility of doing injustice to the defendant.

[Whiteside, C.J.—The old practice is in favour of the defendant, but the Judgments Extension Act, and the decision of the English Queen's Bench, should be taken into consideration. There will be no difficulty in the way of the defendant, for if he obtain judgment, it can be registered in London.]

The Court should not, upon the strength of an English authority, overrule the Irish authorities, and subvert the practice that has so long prevailed in Ireland.

[Fitzgerald. J.—What injustice could be done by obliging a person who has obtained a verdict in Ireland, to register his judgment in England? The money need not be brought in—security by recognizance may be

Digitized by Google

given. O'BRIEN, J.—And unless special grounds be laid, the fact of a plaintiff being resident in England does not impose upon him the necessity of giving security for costs.]

There was no appearance *contra.*

WHITESIDE, C.J.—The question in this case is of importance. It is an application to compel the plaintiffs to give security for costs. The plaintiffs are merchants, living in England, and the defendant lives in Ireland. The action was brought to recover the amount of goods which the plaintiffs say they delivered to the defendant, and the question in the case is whether the present state of the law requires the plaintiffs to give security for costs as required by defendant. I make this observation in reference to what defendant's counsel has said, that he was correct in stating that the old practice, founded upon the 52nd section of the Common Law Procedure Act of 1853, gave a defendant a right to the order for which he applied. It is to be observed that there are many decisions limiting the universal operation of this 52nd section. If, for instance, a man has any property in this country,* though he does not reside there, or if he is resident here for temporary purposes, the Court will refuse to grant an order to compel the plaintiff to give security for costs. But we are called upon to consider another Act of Parliament, the Judgments Extension Act of 1868, an Act which was passed five or six years ago. The language of the 1st section of that Act is as follows:—"Where judgment shall hereafter be obtained or entered up in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively for any debt, damages, or costs, on production to the Master of the Court of Common Pleas at Dublin where such judgment shall have been obtained or entered up in any of the said courts in England, or to the senior master of the Court of Common Pleas at Westminster where such judgment shall have been obtained or entered up in any of the said courts in Ireland, of a certificate of such judgment in one of the forms contained in the schedule hereto annexed, as the case may be, purporting to be signed by the proper officer of the court where such judgment has been obtained or entered up, such certificate shall be registered by such master in a register to be kept in the Court of Common Pleas at Dublin and at Westminster respectively for that purpose, and to be called in the Court of Common Pleas at Dublin 'The Register for English Judgments,' and to be called in the Court of Common Pleas at Westminster the Register for Irish Judgments, and shall from the date of such registration be of the same force and effect, and all proceedings shall and may be had and taken on such certificate, as if the judgment of which it is a certificate had been a judgment originally obtained or entered up on the date of such registration as aforesaid in the Court in which it is so registered, and all the reasonable costs and charges attendant upon the obtaining and registering such certificate shall be recovered in like manner as if the same were part of the original judgment; provided always, that no certificate of any such judgment shall be registered as aforesaid more than twelve months after the date of such judgment, unless application shall have been first made to and leave obtained from the court or a judge of the court in which it is sought so to register such certificate." The terms of section 5 are these:—"It shall not be necessary for any plaintiff in any of the aforesaid Courts in England resident in Ireland or Scotland, or any plaintiff in any of the aforesaid Courts in Ireland resident in England or Scotland, in any proceeding had and taken on such certificate, to find security for costs in respect of such residence, unless, on special grounds, a Judge or the Court shall otherwise order; nor shall it be necessary for any party to such proceeding in Scotland, resident in England or Ireland, to sist a mandatory, or otherwise to find security for expenses in respect of such residence, unless, on special grounds, the Court shall otherwise order." According to the Act of Parliament, a defendant who has obtained a judgment for costs in an Irish Court, though the plaintiff against whom it has been recovered is resident in England, may go before the proper officer in England, and get the certificate of such judgment registered, and this judgment shall have the same force and effect as if it had been a judgment "originally obtained or entered up in the Court in which it was so registered." It is the same as if the case were tried in England, and the judgment were given there. Does this Judgments Extension Act remove altogether the law as it previously existed, according to which a judgment obtained in Ireland could not be rendered effective in England? Now, pursuant to the terms of the Extension Act, the certificate of judgment is dealt with as if it were a judgment entered in the Court in which the case was tried. And, in the name of common sense, what distinction is there between a judgment obtained in this country and in Westminster Hall? The case of *Raeburn* v. *Andrews* (Law R. 9 Q. B. 118) decides the question in this case. In that case, as in this, the application was made that the plaintiff should give security for costs, and the Judges who presided delivered their opinions as follows:—Blackburn, J., says: "I think that there ought to be no rule. When we look at the origin of the practice of calling on a plaintiff resident abroad to give security for costs, as established in *Pray* v. *Edie* (1 T. R. 267), the point becomes quite clear. In that case, the plaintiff being a foreigner, residing abroad, the Court stayed proceedings till he gave security for costs, and Buller, J., said: "For this reason, that if a verdict be given against the plaintiff, he is not within the reach of our law, so as to have process served upon him for the costs." The same point was afterwards, for the same reasons described, decided in *Fitzgerald* v. *Whitmore* (1 T. R. 362), in the case of a plaintiff residing in Ireland, and the rule was afterwards extended to a plaintiff resident in Scotland. But since the passing of the Judgments Extension Act, 1868 (31 & 32 Vic., ch. 54), that reason has completely ceased. The effect of that enactment is that when a judgment has been obtained in England, a certificate of such judgment can be registered in the proper office in Scotland, and the Court in Scotland can issue process on such judgment. It is true that the process in Scotland may, perhaps, be not like the process of our Courts, but we must take it that it is as effective as our own. In Ireland, if the writ of *ca. sa.* be not taken away, an execution under this Act would be more effective than in England. The reason, therefore, for compelling a plaintiff resident in Scotland to give security for costs having ceased, this rule must be refused. An argument was founded on section 5 of 31 & 32 Vic., ch. 54. It was said that that section having expressly enacted that there shall be no security for costs on proceedings taken on the certificate, and having made no similar provision with regard to security for costs in the case of persons resident in Ireland and Scotland, it was the intention of the Legislature that the old practice in this respect should continue, but we do not think that argument tenable." Quain, J., said that he entertained the same opinion. Archibald, J., then said: "I am also of the same opinion. The rule requiring security for costs to be given by a plaintiff has but recently grown into practice. The history of it is given in Tidd's Practice, Vol. i., page 534—"It was not formerly usual to require security for costs where the plaintiff resided abroad, for it was considered that such a proceeding might have affected trade, by excluding foreigners from our Courts, and would be a means of clogging justice; but now, although a plaintiff is not compelled to give security for costs, merely as a foreigner, if he reside in this country, yet, whether he be a foreigner or native, if he reside abroad, out of the reach of the process of the Court, the proceedings may, in general, be stayed till security be given for the payment of costs. And upon this ground proceedings have been stayed when the plaintiff has been resident in Scotland or Ireland. The Judgments Extension Act, 1868, now gives an effectual remedy to a defendant for his costs. The reason for requiring such security ceases, and, therefore, there is no necessity to compel a plaintiff to give security. If section 5 is read

* But see cases referred to in 5 IR. L. T., 611.—[ED. *Ir. L. T. Rep.*]

Digitized by Google

with the proviso at the end of section 1, it is in favour of the same view, for the intention is against requiring security for costs, even in that case. I agree that the plaintiff ought not to be required to give security, and the rule ought to be refused." Accordingly, the rule was refused.

Although this is the first occasion upon which the question has come before us in a formal way, yet, having a case well considered by the Queen's Bench in England—although we find that Fitzgerald, B.,* sitting in Chamber, did not think fit to interfere with the practice that has prevailed in this country—and having regard to the origin and history of the last Act affecting the subject, and the judgment of the Court of Queen's Bench in England, which we have considered, we are of opinion that we should follow that decision, and refuse the application in this case to oblige the plaintiffs to give security for costs.

O'BRIEN, J.—I concur in the judgment of my Lord Chief Justice. The case of *Raeburn* v. *Andrews* is an authority which we should follow. The 5th section of the Judgments Extension Act of 1868 shows that a discretion has been left to the judge to require a plaintiff to give security for costs, in proceedings taken on certificates of judgments, if an occasion for it should arise. In the present case, I do not think that any ground for a special order has been made, but I do not deny that if the circumstances of the case warranted it, the Court could stay further proceedings till security for costs was given by the plaintiff.

FITZGERALD, J.—I also concur in the judgment of my Lord Chief Justice, and I am glad that we are likely to see an end put, once and for all, to such motions as these, to oblige plaintiffs resident in England and Scotland to give security for costs. If the person resided in a foreign country the old law might prevail, but the case is different as regards these countries. This can, indeed, scarcely be called a branch of law, but a practice which was originated and established by the judges, not founded on any statute—a practice which has been acted on for the protection of defendants when they are sued in our Courts by foreigners. When this practice was first established, England and Scotland were more or less independent States, and regarded as foreign countries for the purposes of the practice in question, and there might have been sound reasons at that time for the adoption of that practice, such as the difficulty of enforcing a judgment in England or Scotland, and the great expense attendant upon it. The Act of 1868 has made the change. It was introduced as a bill some years before it became law. As a bill it was brought forward in 1855; it was referred to a select committee; it met with opposition, but justice and good sense ultimately prevailed. It was shown that the new practice that was proposed, would be made ancillary to the better enforcing of judgments in England. The members of the house listened to the proposition, and in the year 1868 it became law. The reason for requiring security for costs from a plaintiff residing in England and Scotland, or, on the other hand, a plaintiff in Ireland suing in England or Scotland, no longer exists, because a judgment obtained in either country can now be enforced in the others by a very short remedy. I do not know whether the delay in thus carrying the Act into effect has arisen from our want of vigilance or from the fault of the Bar, but frequently when motions to give security for costs have been debated here, I have referred to this statute, yet there was not a counsel at the Irish Bar by whom the question was raised;† and it was not until the recent case of *Raeburn* v. *Andrews* was decided in England, that the question, there very properly raised, was definitively settled. The reason for the remedy is so very plain that no answer can be given as against the decision in that case; and I rejoice that we have disposed, once and for all, of a practice which, since the year 1868 was a disgrace to our law.

No rule.

Attorneys for plaintiff, *D'Alton & Smith.*
Attorney for defendant, *J. Burke.*

* It should be observed that Fitzgerald, B., assigned no reasons for his decision. "It is always useful to state the reasons which influence the mind of the Judge in giving judgment," remarks Lord Eldon (2 Dow. 383); and in the words of Best, C.J. (4 Bing. 241), "If our predecessors have given no reasons for their judgment, we are to put that construction on the statute which our own unfettered judgment induces us to think the Legislature intended should be put on them."—[ED. *I. L. T. Rep.*]

† See the question fully discussed in an article published (December, 16, 1871) in 5 IR. L. T. 611.—[ED. *I. L. T. Rep.*]

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before the FULL COURT.)

TREACY v. CORCORAN.

Jan. 21, 31, 1874.—*Salary of Clerk of the Crown—* 6 *&* 7 *Will.* 4, *c.* 116, *s.* 110—33 *&* 34 *Vict. c.* 35.

T., a Clerk of the Crown, discharged the duties of his office for a portion of a half-year, and then resigned. C. who was appointed to the post, discharged the duties until the next Assizes, and then obtained, from the County Treasurer, the full amount which the 6 *&* 7 *Will.* 4, *c.* 116, *enables a Grand Jury to present as payment for duties done within the entire six months previous. In an action by T. against C. to recover an apportioned part of the half-year's salary,*

Held, *that the salary of the Clerk of the Crown was apportionable under the* 33 *&* 34 *Vict., c.* 35, *and that an action for money had and received lay to recover such apportionment.*

Money had and received, and due on accounts stated. Traverses of causes of action.

The trial took place before Whiteside, C.J., and a jury, at Kildare Summer Assizes, 1873. The facts appearing were as follows:—The office of Clerk of the Crown for the Queen's County had been filled by the plaintiff up to April 13, 1872, when he resigned. The defendant was appointed to the vacant office on the 21st April, 1872. On the 24th July, 1872, the defendant received from the Treasurer of the Queen's County the sum of £115, on a presentment made at the Summer Assizes, 1872, for the half-year's salary of the Clerk of the Crown for said County to the said Summer Assizes of 1872. The plaintiff having brought this action to recover that sum of £115 as part of the salary payable to him, the question at the trial was whether he was entitled to recover same or any and what part thereof. On behalf of the plaintiff, it was then urged that, under 33 & 34 Vict., c. 35, he could recover an apportionment, and that he was thus entitled to £50 3s. 3d., from the date of the previous presentment at the Spring Assizes to the date of the presentment at the Summer Assizes, or if not so, then to the sum of £35 2s. 3d., as a proportionate part of six months' salary. The learned Judge directed a verdict for the defendant, reserving leave to plaintiff to move to have the verdict entered for him for such sum as the Court might think him entitled to.

Pursuant to this leave, a conditional order having been obtained,

Dames, Q.C. (with him *J. B. Falconer*), showed cause. We admit that the salary of the Clerk of the Crown is apportionable under the 5th sec. of 33 & 34 Vict. c. 35. But the plaintiff has no right of action. There is no privity between the parties so as to entitle the plaintiff to recover under the count for money had and received: *Jones* v. *Carter*, 8 Q. B. 134; *Stephen* v. *Badcock*, 3 B. & Ad. 354; *Barron* v. *Husband*, 4 B. & Ad. 611; *Barlow* v. *Brown*, 16 M. & W. 126; *Cobb* v. *Becke*, 6

Digitized by Google

Q.B. 930. Furthermore, the remedy the plaintiff ought to have adopted was that given him by the 6 & 7 Wm. IV., c. 116, ss. 110, 112, 166. The 110th sec. enacts—"That all County Treasurers, Clerks of the Crown," &c., "shall, from and after the passing of this Act, be paid," &c., "for their respective duties, services, &c., by annual salaries, only payable half yearly at each assizes, by equal moieties," &c. By the 112th sec.—"Before any Clerk of the Crown," &c., "shall be entitled to receive such salary as is hereby provided, he shall at each assizes lay before the Grand Jury an account, verified on oath," &c., "of his fees," &c., "and it shall not be lawful for any Grand Jury to present to be paid to any Clerk of the Peace unless it shall appear to them to have given security. By sec. 166—"Every person requiring a presentment for fees," &c., "or salary within the powers of Grand Jury without previous approval at Presentment Sessions, he shall lodge a full detail of the particulars with the Secretary of the Grand Jury six clear days previous to day for empannelling the same." These requirements should have been complied with as conditions precedent to the payment of the plaintiff by the Grand Jury; and not having been performed, he cannot now proceed against the defendant.

Walker, Q.C. (with him *Bewley*), *contra*.—The salary of the Clerk of the Crown is clearly apportionable under the 33 & 34 Vict., c. 35, which recites the 4 & 5 Wm. IV., c. 22. Though in *Lowndes* v. *the Earl of Stamford*, 18 Q.B. 425, Lord Campbell held that, under the latter statute, the salary of the manager of an estate, holding the post during the joint lives of himself and his employer, was not apportionable, yet he distinguishes that case from such as this by reason of the nature of the particular office and its consequent incidents. But it is clear that the salary of Clerk of the Crown comes within the 4 & 5 Wm. IV., c. 22, and consequently within the 33 & 34 Vict., c. 35. The other cases cited have no application here. *Jones* v. *Carter* was merely a decision that a chose in action is not assignable at common law. In *Barron* v. *Husband*, *Barlow* v. *Browne*, and *Cobb* v. *Becke*, the defendants were *agents* with whom the plaintiffs had no privity. The salary of Clerk of the Crown is presented to be paid, not to any person by name, but to the person who has performed the duties of the office for the half-year. The Act says that so much salary is to be paid to whoever does the duty of Clerk of the Crown. Though the plaintiff did work as clerk for one three months, and the defendant for the other three months, the defendant took and is to keep all the money presented, not to *him*, but to the person who did the duty. The money was presented for Treacy just as much as for Corcoran, and he can clearly recover, as money had and received, an apportioned part of the amount so received: *King* v. *Alston*, 12 Q. B. 971; *Queen* v. *The Lords Commissioners of the Treasury*, 16 Q.B. 357, 362; *Roberts* v. *Aulton*, 2 H. & N. 433; 26 L. J. Ex. 380. Lord Ellenborough lays down the rule, "whenever the money of one man has, without consideration, got into the pocket of another, an action for money had and received will lie;" *Hudson* v. *Robinson*, 4 M. & S. 478.

J. B. Falconer, in reply.

Cur adv. vult.

MONAHAN, C.J.—This is a motion to show cause against a conditional order, made on the 6th of last November. The order was that the verdict had for the defendant at the last Summer Assizes at Kildare, before the Lord Chief Justice, be set aside and a verdict entered up for the plaintiff, for such portion (if any) of the sum of £115, as the Court shall consider the plaintiff entitled to, pursuant to leave reserved to that effect by the learned Lord Chief Justice. It appears from the certificate of counsel that the action was brought to recover the sum of £115, claimed as an apportioned part of the salary of Clerk of the Crown for the Queen's County, received by the defendant, Corcoran. That office had been filled by Treacy up to the 13th of April, 1872, when he resigned. Corcoran, the defendant, was appointed on the 21st April, 1872, and on the 24th July, received the sum of £115, salary for the half-year then ending. The question at the trial was—Whether the plaintiff was entitled to recover any, and what part of the £115 so paid to the defendant on the 24th of July, 1872. By the Apportionment Act, 1870 (33 & 34 Vict. c. 35), it is recited—"Whereas rents and some other periodical payments are not at common law apportionable (like interest on money lent) in respect of time, and for remedy of some of the mischiefs and inconveniences thereby arising, divers statutes have been passed. . . . And whereas it is expedient to make provision for the remedy of all such mischiefs and inconveniences" [so that the Act should provide for every case]. "Be it, therefore, enacted that from and after the passing of this act, all rents, annuities, dividends, and other periodical payments in the nature of income, . . . shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." There is the express provision in the statute declaring all rents, annuities, dividends, and other periodical payments in the nature of income, to be accruing from day to day. The 3rd section declares the times at which payment should be made. "The apportioned part of any such rent, annuity, &c., shall be payable or recoverable in the case of a continuing rent, annuity, &c., when the entire portion of which such apportioned part shall form part, shall become due and payable, and not before, and in the case of a rent, annuity, &c., determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before." The 5th section, as to the construction of certain words in the Act, states, that the word "annuities" includes "salaries and pensions." This being so, it is clear that the salary of the Clerk of the Crown became due to Mr. Treacy from day to day, up to April, 1872, being the period during which he filled that office, and became recoverable by him on or after the 24th July, 1872, the proper time for payment having then arrived.

That being so, the only question for us to decide now is, whether Corcoran, having got the salary for the whole half-year, during part of which Treacy did the duties of the office, is now liable for part to the plaintiff. By the 110th section of the Grand Jury Act (6 & 7 W. IV., 116), it is enacted: "That all County Treasurers, Clerks of the Crown, &c., shall, from and after the passing of this Act, be paid and remunerated for their respective duties, &c., by annual *salaries only, payable* half-yearly *at each assizes*, by equal moieties, and *not exceeding* the amount mentioned in said schedule; and the Grand Jury, at any Assizes, shall and may present (without previous application to presentment sessions) for each such officer, to be raised off the County at Large, the moiety of such annual *salary*; provided always, that in case of any negligent or insufficient discharge of duty by any such officer or officers, it shall and may be lawful to and for any Grand Jury, with the express sanction of the Court, but not otherwise, to present any sum or sums less on the whole, &c." Let us see did the defendant get the salary under such circumstances as to make him liable for an apportioned part. In the first place, the salary is limited in its amount. Secondly, he got the entire sum so fixed by the Act. And, thirdly, under what circumstance alone was he entitled to get it? Now, only looking at the presentment, we find that the salary is "presented," to be levied off the County at large, and "paid," not to Mr. Corcoran, not to Mr. Treacy, but to the "Clerk of the Crown," whoever he might be, "being for his half-year's salary to these Assizes." We must presume this presentment to be legal; and to be legally

Digitized by Google

presented, it is necessary that it should be for the payment of parties doing the duty of the Clerk of the Crown, for the half-year preceding the Summer Assizes of 1872. This is the fair construction of the Acts quoted. The cases which have been cited for the defendant are beside the question. In all of these there was no privity between the parties. In this case the Act creates the privity, and gives title to Mr. Treacy. The defendant is clearly bound to pay an apportioned part of the salary for the half-year, during some of which plaintiff did the work, and which salary he received in full. The cases *Roberts* v. *Aulton*, *King* v. *Alston*, and *Lowndes* v. *The Earl of Stamford*, apply here. We are of opinion that the verdict should be entered for the plaintiff for the apportioned sum to which he would be thus entitled. And as the total number of days was 136, during 34 of which number the plaintiff was in office, a verdict shall be entered accordingly for the plaintiff for £28 15s.; costs to follow the result.

Order accordingly.

Attorney for the plaintiff, *Walsh.*
Attorney for the defendant, *In person.*

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law.

(Before LAWSON, J., in Chamber.)

SHIEL *v.* ENNIS and another.

March 31, 1874.—*31 & 32 Vic., c. 125, sec. 11, cl. 16—Special case stated—Jurisdiction of Court to draw inferences of fact—35 & 36 Vic., c. 33, sched. 1, rule 36—Rejection of ballot papers.*

Where, in an election petition, the only allegation was that votes had been improperly rejected by the returning officer, on the ground alleged that the votes had been so marked upon the ballot papers that the voters might be identified,

Held, *a proper case to be decided upon a special case stated for the full Court.*

Application, under 31 & 32 Vic., c. 125, sec. 11, cl. 16, on behalf of the petitioner in the Athlone County (Parliamentary) Election Petition, to have a special case stated for the full Court of Common Pleas. The grounds of the petition, under which the petitioner claimed the seat, were that the returning officer had improperly rejected ballot papers which had been marked by the voters in a peculiar way, it being alleged that this peculiar mode of marking might lead to the identification of voters.

Armstrong, Serjeant (with him *David Fitzgerald*), for petitioner.—The only point to be decided in the case is as to the rejection of some ballot papers, which were not marked with a cross in the printed compartment at the right hand side of the name of the candidate, but outside it. There is no matter of fact in dispute which is not apparent on the face of the documents themselves, which will be produced before the Court.

Heron, Q.C. (with him *Macdermot*), for respondent.—By 35 & 36 Vic, c. 33, sched. 1, rule 36, "the returning officer shall endorse 'rejected' on any ballot paper, which he may reject as invalid, and shall add to the endorsement 'rejection objected to,' if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected, and not counted by him," under several heads, of which the third is "writing, or mark by which the voter could be identified." Such a possibility of identification is a question of fact, and in no point of view a question of law. From comparing a certain number of ballot papers, there might be evidence that a number of persons voted with design in some particular manner, so as to be recognized. If the full Court has power to draw inferences of fact, it is a fit case to be tried on a special case by the full Court. If not, we object to the case being tried before the full Court; but, in order to save expense, we will consent to the case being tried in Dublin before an Election Judge.

Nicolls, for the returning officer.

LAWSON, J.—I shall make the order sought, to state a special case for the Court of Common Pleas, as it appears that there is no extrinsic evidence to be given, and as the decision of the petition will depend upon the examination of the ballot papers themselves.

Heron, Q.C.—This order will not preclude us from contending, that on the face of the documents there is evidence of design.

LAWSON, J.—It will not.

Order accordingly.

Attorney for petitioner, *Dillon.*
Attorney for respondent, *Stapleton.*
Attorney for returning officer, *Daly.*

CORK ASSIZES.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

(Before FITZGERALD, J.)

BARRY *v.* CORK AND BANDON RAILWAY CO.

1874.—*Railway Company—Transit beyond own line—17 & 18 Vic., c. 31—Reasonableness of condition.*

Goods were delivered to the Cork and Bandon Railway Company, at Bandon, consigned to a consignee in London, and were booked through; the consignor not paying for carriage, and signing a consignment-note containing a condition, that the Company would not be responsible for loss or damage happening beyond their own line. The goods were safely carried to Cork, and there delivered to a carrier, to be taken to the Bristol steamer. The carrier was not acting as such for the Railway Company; but, on his delivering the goods at the steamer, received from the Steam-ship Company payment for the carriage from Bandon to Cork. The goods were then forwarded by the Steam-ship Company to Bristol, charged with the money so paid, to be repaid, together with the dues for carriage to London, by the consignee at London. In the carriage between Bristol and London damage occurred, for which the consignor sued the Cork and Bandon Railway Company.

Held, *that the defendants were not liable, as the contract between them and the consignor was only to carry from Bandon to Cork;* and semble *that, had the contract been to carry from Bandon to London, the defendants would have been exempted from liability by virtue of the condition in the consignment-note.*

Appeal from a decree of the Chairman of the West Riding of the County of Cork, pronounced at the Quarter Sessions held at Macroom in October, 1873.

The facts of the case were as follows:—James Barry, the plaintiff, delivered five cases of butter at the Bandon station of the Cork and Bandon Railway Company, on the 3rd June, 1872. The butter was consigned to "J. Bowran, London." The cases were sent on from the Bandon station on the same day that they were delivered to the servants of the Company. The Company booked the cases through to London; they were, on their due arrival in Cork, delivered to Mr. Connolly, carrier, to be conveyed to the Bristol steamer; and they were carried to Bristol, and the butter arrived in good order and condition at the railway station there. But, in the transit from Bristol to London some delay occurred, in consequence of

Digitized by Google

which the butter became bad, and was refused by Bowran, the consignee. There was, ultimately, a loss of £11 on the butter, for which a decree was given against the Cork and Bandon Railway Company by the Chairman. From this decree the defendants brought the present appeal, which was heard at the Cork Spring Assizes.

It appeared that the consignor paid nothing to the Cork and Bandon Railway Company. The usual course of business, which was followed in this case, is as follows:—As a matter of convenience to the consignor, the carrier who attends at the railway station takes goods destined for London, or other out-places, to the next steamer sailing for the place. When the carrier delivers the goods at the steamer, he gets payment of the carriage, from the Bandon (or other) station to the steamer, from the Steam-ship Company. They forward the goods with these charges of transit on them, and obtain payment for all the charges from the consignee on delivery of the goods. The Company, therefore, do not ever deliver goods consigned to places beyond their own railway, and they are paid for the transit from Bandon to Cork by the carrier, who is not in any sense the carrier of the Company. A consignment-note was signed by the consignor, which contained, amongst others, the following conditions:—"The delivery of the goods (when delivery is effected by the Company) will be considered complete when the same are unloaded out of the waggon, van, dray, or cart, and placed at the door of the consignee; the cellaring or warehousing of them afterwards will be at the owner's risk; nor will the Cork and Bandon Railway Company be responsible for any loss or damage that may happen to goods sent by them, if such loss or damage happens beyond the distance of their own railways. The above conditions apply to all goods received by the Cork and Bandon Railway Company, at their respective offices, etc., and they engage to carry them on the above express conditions only."

O'Hea, for the respondent.—The defendants are bound by the Railway and Canal Traffic Act, and, therefore, the condition being unreasonable does not exempt them from liability. He cited *Aldridge* v. *Great Western Railway Co.*, 15 C. B. N. S. 582.

J. Sullivan, for the appellants, *contra*, cited *Zunz* v. *South Eastern Railway Co.*,* L. R. 4, Q. B. 539.

Fitzgerald, J.—The contract was only to carry from Bandon to Cork, and not from Bandon to London. But, if it were necessary to decide the point, I should hold that the condition in the consignment-note was a reasonable one, and exempted the Company from liability beyond their own line.

Decree of Chairman reversed.

Solicitors for the appellants, *Thomas Babington and Son.*

Solicitor for the respondent, *F. Noonan.*

LAND SESSIONS.

(Before H. P. Jellett, Esq., Q.C.)

Connolly v. Lord Digby.

1874, Jan. 4, April 9.—*L. & T. Act*, 1870, *ss.* 3, 4, 8, 9, 18—*Compensation for disturbance—Refusal by tenant to continue in occupation—"just and reasonable terms of occupation"—Contracting out of benefit of Land Act—Evidence of improvements—Costs.*

* See *Ranahan* v. *M. G. W. Ry.*, 8 Ir. L. T. R. 34. And see Com., 8 Ir. L. T. 97.—[Ed. *I. L. T. R.*]

A. having agreed to become yearly tenant to B. of a farm, upon the usual terms prevailing on the estate, B. tendered to him a form of lease, at the same rent, and differing from such usual contract of letting in the following particulars:—It provided that all quarries of stone or slate, all marl clay, gravel, and sand, bog and bog timber, should be excepted out of the demise; that the lessee should not be entitled to any corn or other crop as a way-going crop, to be sown after the expiration of the demise; that the demise should be forfeited in the event of the tenant assigning, sub-letting, or sub-dividing the farm, becoming bankrupt or insolvent, or having his interest taken in execution, or any judgment, decree, or order being registered against it, or an order for the sale of it made by a competent Court. The tenant refused to abandon his former contract, and to accept the new one as offered, not receiving under the latter any equivalent for the benefits he was required to forego. He was then evicted; and, thereupon, claimed compensation for disturbance.

Held, *that the refusal of the tenant to continue in occupation upon the terms of the new contract of tenancy, as offered, was not unreasonable conduct on the part of the tenant, so as to disentitle him to compensation for disturbance.*

The claimant in this case, Mr. A. Connolly, J.P., was tenant of certain lands of Clonad, the property of the respondent; and he claimed £249 compensation for the loss he sustained by being obliged to give up possession, improvements, &c. The following are the particulars of the claim, which was heard at the Tullamore Land Sessions:—Four years' rent, £122; amount paid to out-going or evicted tenants, £10; improvements effected on the holdings in cleaning, laying down grass seeds, &c., £50; expended in fencing, £12; amount paid towards making a main drain, as stipulated by the agent, £20; amount for unexhausted manures in 1872, £10; tilling, ploughing, harrowing, &c., £5; value of rape crop on land when possession was taken up by the landlord, £20. The defendant disputed the claim in every particular, and relied upon an item of £30 as a set off.

The facts sufficiently appear in the judgment.

C. Molloy, for the claimant.

Falkiner, Q.C., for the respondent.

The Chairman.—This case was heard at the last Land Sessions for this division, and was reserved by me in order that I might consider the questions raised on the discussion of the case. The claimant who was a tenant on the Geashill Estate, was evicted under a Notice to Quit, served in March, 1873, and gave up possession in the following September. He now claims compensation for improvements alleged to have been effected by him, and in respect of payments made by him on his entry on the farm, for unexhausted tillages and manures, and also for disturbance. On several of the questions I expressed my opinion on the hearing of the case, and some of the claims, were not, as it seemed to me, very seriously pressed. I cannot allow the sum of £10 paid, as it is alleged, to the outgoing tenant after Mr. Connolly had entered on the farm. On Mr. Connolly's own statement, the payment of this sum was an act of voluntary bounty on his part, which I cannot hold Lord Digby bound to make good. I am also satisfied that the claim for the embankment was discharged by the sum Lord Digby agreed to contribute to the execution of this work, at the solicitation of the tenant. As to the claim for fences, the wood was supplied by Lord Digby, and Mr. Connolly has furnished me with no evidence, such as I can accept, of his expenditure for the purpose. He neither gives me the details of the work done by him, nor the cost of it, but requires me to act upon a vague, general statement, unsupported by vouchers, or even by

Digitized by Google

contemporaneous entries made by himself. I cannot act on such evidence. The next head of claim is in respect of improvements effected when entering on the farm. I am left in the same position as to this item. I am not furnished either with the details or the cost of the work, or any vouchers of the outlay; and considering the time (ten years) during which the benefit of these improvements, if made, have been enjoyed, and the rent about 11s. 9d. per acre, at which the farm has been held, I am of opinion that this claim has not been satisfactorily proved to have ever existed as a valid claim against the landlord, and that if it did, it has been discharged by occupation. I allow £10 for unexhausted manures and tillage, and nothing for the rape crop which is, in effect, included in the latter claim.

To come, however, to the principal claim in the case—that for disturbance of possession. This claim is resisted by the respondent on the grounds that he was willing to permit the tenant to remain in occupation of the farm, on just and reasonable terms, which were unreasonably refused by the tenant—a state of things which, under the 18th Section of the Land Act, deprives the tenant of his claim to compensation. To determine whether the landlord can sustain this defence, it is necessary to consider the position in which the parties stood towards each other at the time the offer in question was made and refused. As the result of the evidence, I think the claimant was then a yearly tenant holding under the terms of the contract of tenancy prevailing on the estate. I think this conclusion is placed beyond doubt by the terms of the letter of the first November, 1864, in which Mr. Trench, on behalf of Lord Digby, offers Mr. Connolly the land in these terms, "I shall be happy to let all to you as tenant, on the usual terms of the estates, tenancy to commence from the 29th September last," and the acceptance of this offer contained in Mr. Connolly's letter of 4th November, 1864, in which he says, "I accept your terms for the Clonad farm, and thank you for giving me the preference." I must assume, on this correspondence, that Mr. Connolly either knew what was the prevalent form of letting on the estate, or that he was willing to incur the risk of not acquainting himself with it, and to accept the offer without further inquiry. In either view his position must, I think, be regulated by the form of lease or contract of tenancy then prevailing on the estate. This form of lease has been proved before me. It purports to be an agreement to hold as tenant from year to year, the letting to be determined either by the death of the tenant or by a six months' notice to quit. It excepts timber, royalties, and minerals, reserves to Lord Digby game, wild fowl and fish, the exclusive right of hunting, coursing, fishing and shooting, and of authorising others to enter on the land for the like purpose. It then contains husbandry covenants, not to sow two white or grain crops in succession; to lay down one-sixth of the land in tillage each year; that the quantity of land under potatoes shall not exceed that under other green crops; that no straw, dung, or roots, except potatoes, shall be sold off the land, the tenant to be repaid the price of all clover and grass seeds sown by him in the last year of his tenancy, and to be paid according to the valuation of arbitrators for any hay, straw, dung, or roots, on the land at the termination of the tenancy, or to be at liberty to carry them away at the option of the landlord. It, also, contains a covenant that he shall not assign or sublet without the permission of Lord Digby; make any new walks, fences, or drains, or build or alter any house or building on the premises, or use or allow any other house to be used as a dwelling-house, save that in which the tenant resides. It then contains a covenant not to burn the land and use the allotted turf bank, not to cut turf for sale, to scour the farm ditches, and roads, and keep them in order, and not to permit any one to hunt, fish, course, or shoot on the lands without the license of Lord Digby, to give Lord Digby notice of any person found doing so, and to permit such person to be prosecuted in the name of the tenant. Now, I have nothing to say to determining as to whether this lease was reasonable or unreasonable. It embodies the terms on which Lord Digby was willing to let, and Mr. Connolly to occupy the farm. The terms are proved to be the same as those on which the previous tenant occupied, and on which 500 tenants on the Geashill estate then and now occupy. The landlord and tenant agreed to be bound by these terms, and I must assume that each party understood his own interests and contracted accordingly. No signed agreement was ever taken out. The reason of this fact has not been explained; but, I assume either that it was not considered necessary in the case of a person in the position of Mr. Connolly, or that it was an oversight which might occur on this or any estate of the same magnitude. However, in the month of February, 1873, without, so far as I can see, any very precise intimation on the part of Lord Digby of the manner in which he proposed to alter the form of letting, a form of lease was enclosed to the claimant for his signature, accompanied by a complaint, on the part of the agent, that Mr. Connolly had shot pheasants and a hare. This form of lease Mr. Connolly declined to accept, and consequent on this refusal the Notice to Quit was served. It is said that the sending of this proposal arose out of a misunderstanding on the subject of game. This is denied, and, in my view of the case, it is not necessary for me to express any opinion on the subject. The question for my decision is, whether that lease or contract of tenancy so tendered, and which is relied upon as absolving the landlord from the obligation of compensating the tenant for disturbance, was either a reasonable lease for Lord Digby to offer, or was a lease which Mr. Connolly was reasonably entitled to refuse. If either Lord Digby acted unreasonably in requiring the execution of this lease by the lessee, as the condition of his remaining on the farm, or Mr. Connolly acted reasonably in refusing to accept the lease so offered, in either case the defence fails. To determine either of these questions, it is necessary to compare the terms of this new form of contract with that under which the tenant then held. There is no very material distinction in the earlier clauses, but there is an exception out of the demise in the new form, of all quarries of stone or slate, and of all marl clay, gravel and sand, bog and bog timber, which is not to be found in the former contract. This exception might considerably diminish the value of the tenant's holding, although, as it has not been proved that there were any open quarries or gravel pits, or that the land contained any which were unopened, I do not lay much stress upon the introduction of this exception; but the instrument then contains, in addition to husbandry clauses similar to those contained in the former contract, a provision, "That the Lessee shall not be entitled to any corn or other crop as a waygoing crop, to be sown after the expiration of this demise." There is some difficulty in seeing, at first sight, what is the object of that provision. The right to a waygoing crop, when conferred by custom, is, according to my impression, always confined to cases in which the crop has been sown before the expiration of the demise, and never extends to cases in which it has been put in the ground after the termination of the tenancy, and unless there is some special custom in the barony of Geashill, or in the county at large, under which the right to a waygoing crop extends to cases in which the crop has been sown after the expiration of the demise (of which I have no proof), the clause would seem to be uncalled for, and superfluous, so far as it restricts the right to a waygoing crop, as founded upon the custom of the country. I have, therefore, come to the conclusion that this clause was framed in order to counteract the general right to a waygoing crop conferred by the 8th Section of the Land Act, and which appears to extend to all persons, whether holding for terms certain or otherwise, and to give them, on quitting such holdings, a right to the entire crop, or to be compensated for it, whether the crop was sown before the expiration of the demise or not, provided it has been sown while the tenant is in lawful occupation. Such tenants are permitted by that section to agree to forego that right, and I can discover no object in the introduction of this clause but to constitute an agreement to relinquish that right within the terms of the eighth section of the Land Act. The instrument then contains a clause by which the tenant contracts to pay the Grand Jury cess assessed on the lands, and not to deduct it from

Digitized by Google

the rent, to which no objection can be taken, and to which I refer only for the purpose of observing that it shows that the whole instrument was framed with reference to the provisions of the Land Act; and then it contains a clause of re-entry, under which the demise is forfeited in the event of the tenant assigning, sub-letting, or sub-dividing the farm, becoming bankrupt or insolvent, in case of the interest of the tenant being taken in execution, or any judgment decree, or order being registered against it, or an order for the sale of it made by a competent court. Now, in what position would this latter clause have placed the tenant, as compared with his existing rights? Under the existing contract of tenancy, in the event of a *voluntary* assignment by the tenant, which was the only form of assignment to which that contract applied, the landlord might sue him on the covenant and recover damages for any loss he had sustained, and might, under the Landlord and Tenant Act of 1860, treat the assignment as a nullity, while *involuntary* assignments by act of law, were entirely excluded. Under the new form of letting, all assignments, whether voluntary or involuntary, are included, and every assignment or sub-letting entails a forfeiture of the tenant's interest, and entitles the landlord to recover possession of the farm, discharged under the provisions of the 9th section of the Land Act from all claim for compensation for disturbance. Now, I wish to be understood as expressing no opinion whether the terms embodied in this agreement were just and reasonable terms for the landlord to require. No evidence has been produced before me to show whether this form of lease is usual or unusual, whether it is or is not adopted on other estates in this County. Both parties have abstained from adducing evidence on this point. But, on the other point, whether the refusal of the tenant to abandon the contract, under which he then held the lands, and accept in lieu thereof the new contract which was offered to him, was an unreasonable act on his part, I have arrived at a very clear conclusion that it was not. I cannot find that he was to receive any equivalent for the benefits he was required to forego. His rent was not reduced. His tenure was, certainly, rendered more precarious. He was required to abandon one important benefit conferred by the Land Act, and to annex to the covenant against assignment, and sub-letting, a condition of re-entry involving, in case of breach of covenant, a forfeiture of his lease, and of his claim to compensation for disturbance. I think he was not in any way bound to make such concessions; and I should be frustrating the whole policy of the Land Act if I were to hold that the refusal of the tenant to contract himself out of any of the benefits conferred by the Land Act, or to place himself in a position in which these benefits were liable to be forfeited, or asserted with less effect, could be treated as unreasonable conduct on the part of the tenant, and as absolving the landlord from the necessity of making any compensation for disturbance.* I have already decided this point in the case of *Bergin* v. *Casey* (7 Ir. L. T. R. 154), in which the landlord evicted the tenant because the latter refused to assume a rent which would have placed him outside the limit assigned by the Land Act in case of yearly tenants claiming compensation for disturbance; and my decision was upheld on appeal by the late Chief Baron. I must, therefore, hold that the defence under the 18th section is not sustained. I do not approve of the claimant's conduct in relation to the game, and I reduce half a year from the sum which I would otherwise have allowed him, which in this, as in other cases in which the tenant has been evicted, because he refused to deprive himself by contract of the benefits of the Land Act, I would have assessed at the maximum sum. I, therefore, allow £107 15s. for disturbance, £10 for tillage and manures, from which I deduct £30 10s. for one year's rent, and give a decree for £87 5s. Under ordinary circumstances the costs of the case would follow the decree, but the manner in which this case has been brought into Court, and the irrelevant and unfounded charges against the respondent, with which the assertion of his claim by the claimant has been accompanied, induces me to exercise my discretion in this matter by saying that the decree must be without costs.

Decree accordingly.

Attorneys for the claimant, *Mitchell & Son.*
Attorneys for the respondent, *Keily & Lloyd.*

* *Hynes* v. *Sir H. Gunning.*
In this case, heard at Longford Land Sessions (Jan. 1874), before *Charles Kelly*, Q.C., it appeared that Hynes, who was over eighty years of age, had been tenant from year to year to Sir H. Gunning of 1a. 3r., at £2 4s. He had been served with notice to quit; and, pending the expiry of the notice, the landlord offered to continue him as tenant if he accepted a lease for his (the tenant's) own life, at the same rent, containing covenants against under-letting, not to erect unsuitable buildings, to repair and keep in repair, to use all dung on the premises, and a proviso as follows:—"It is hereby expressly agreed that the said lessee, his executors, &c., on quitting the holding hereby demised, shall not make any claim for compensation under any of the clauses or provisions of the L. & T. (Ir.) Act, 1870, in respect of any money or money's worth paid or given by him or them on coming into said holding." The tenant refused to accept this lease, whereupon an ejectment was brought. Hynes, who had in fact erected a dwelling house and executed some improvements on the lands (for which he was entitled to compensation under s. 4), then served a claim for compensation for disturbance and improvements.
Mr. *Fleming*, for the respondent, relied upon the concluding clause of s. 18, and insisted that the tender of the lease was an offer by the landlord to continue Hynes as tenant upon reasonable terms, and that the refusal by the tenant to accept such lease, disentitled him to any claim for disturbance under the third section.
Mr. *Reynolds*, for the claimant, *contra.*
Held, that the claimant, being a yearly tenant entitled to compensation for improvements under the 4th section, it was unreasonable to ask him to accept a lease the acceptance of which would deprive him of that claim. Compensation allowed for disturbance and improvements.

VICE-CHANCELLOR'S COURT.

Reported by E. F. Beatty, Esq., Barrister-at-law.

(Before Chatterton, V.C.)

Daly v. The Attorney-General.

Feb. 28, 1874.—*Apportionment Act*, 1870—*Apportionment of interest on shares in banking companies, between specific and residuary legatees.*

A testator bequeathed shares in banking companies to specific legatees. He also appointed residuary legatees. The specific legatees claimed the whole of the dividends, and the residuary legatee claimed the portion that had accrued up to the death of the testator.

Held, *that the Apportionment Act*, 1870, *applied, and that the residuary legatee was entitled to that portion of the dividends that had accrued up to the death of the testator.* Roseingrave v. Burke, *Ir. R.* 7 *Eq.* 186; Capron v. Capron, 22 *W. R.* 347, *followed.*

This suit was instituted for the administration of the trusts of the will of Thomas Clifford, deceased, by which, amongst other things, he bequeathed a number of shares in different banking companies to relatives in words which were admitted to constitute to them specific bequests. Dividends accrued due on the different shares shortly after the decease of the testator; and the question was raised as to whether the legatees were entitled to the whole of the dividends on their respective shares, or whether the apportioned part up to the death of the testator fell into the residue.

Mr. *Pakenham Law*, for the executors, cited *Whitehead* v. *Whitehead*, L. R. 16 Eq. 528.

Mr. *Jonathan Phillips*, for one of the legatees of the bank-shares, relied on *Whitehead* v. *Whitehead*, and claimed the whole gale.

Digitized by Google

Mr. *Thomas Lefroy*, Q.C., for the residuary legatees. The Apportionment Act, 1870, applies to this case. Since *Whitehead* v. *Whitehead* was decided, the case of *Capron* v. *Capron*, 22 W. R. 347, which follows *Roseingrave* v. *Burke*, Ir. R. 7 Eq., 186, has decided that there is no distinction between a devise of realty and a specific bequest. The Legislature meant that everything in the nature of a periodical payment should be apportioned.

Chatterton, V.C.—As regards the Apportionment Act of 1870, I do not see any difference between the rents and profits of lands and the dividends on shares or stock. Malins, V.C., has followed the case of *Roseingrave* v. *Burke*, and has expressed his own independent opinion on this subject. Those dividends must be apportioned, and the portion that accrued up to the death of the testator must be considered part of the testator's residuary personal estate.

Solicitors, *J. Malcomson*, *J. Stone*, *T. Cusack*.

COURT OF BANKRUPTCY.

Reported by E. N. Blake, Esq., Barrister-at-law.

(Before Miller, J.)

Re Connor, a Bankrupt.

April 14, 17, 1874.—*Lease vesting in assignees—Assignees electing not to accept—Onerous property—Disclaimer—20 & 21 Vict., ch.* 60, *ss.* 268, 271—35 *&* 36 *Vict., ch.* 58, *ss.* 97, 98—114 *G. O.*, 1872.

Where the assignees of a bankrupt have elected under the B. & I. Act, 1857, *section* 271, *not to accept the bankrupt's interest in a lease, a disclaimer under the B. A. Act*, 1872, *section* 97 *is unnecessary.*

Motion, on behalf of the assignees of the bankrupt, that they be at liberty to execute a disclaimer of the premises mentioned in a lease from J. Rowan and others to the bankrupt; and also, that the assignees be at liberty to execute same to a purchaser.

In support of the motion, an affidavit was made by the trade assignee stating that the lease, dated Nov. 21, 1872, was for the term of 950 years, at £220 rent per annum; that in Feb., 1873, William Mussen agreed to lend the bankrupt £130 on the security, *inter alia*, of a deposit of the loan; that as equitable mortgagee Mussen had obtained an order for the sale of the premises, for which he was proceeding; that there was now no beneficial interest for the creditors in the premises by reason of the head-rent, and that the sum to be realized by a sale would scarcely pay the amount of the mortgage and rent due; and that notice had been served on the lessors that the assignees would not take under the lease.

Seeds, in support of the motion.

Weir, for the lessors.

J. P. Lynch, for the equitable mortgagee.

Miller, J.—An application has been made on the part of the assignees, "that they may be at liberty to execute a disclaimer of the premises mentioned in a lease dated the 21st of November, 1872." There is also another case pending, in which a similar application has been made, likewise on the part of assignees. As the Bankruptcy (Ireland) Amendment Act is of very recent date, I will refer shortly to the rule and provisions in the bankruptcy code bearing upon the present application. By the 114th General Order it is directed that, "the assignees of any bankrupt shall not execute a disclaimer of any leasehold interest without the leave of the Court being first obtained for that purpose, and, upon any application to the Court for such leave, notice of the desire of the assignees to disclaim such interest shall be given to such person or persons as the Court shall direct." If, therefore, the circumstances of the present case required, and would warrant the assignees in executing a disclaimer at all, they are right in coming to this Court to obtain leave for that purpose. Under the 268th section of the Act of 1857 (Ireland), 20 & 21 Vict., chap. 60, it is provided in substance, that the interest of bankrupts in any lands or tenements shall become absolutely vested in the assignees, for the benefit of the creditors of such bankrupt; but when that section is read in connexion with the 271st section of the same Act, it would appear plain that such absolute vesting, as specified in that 268th sec., must be accompanied by a further act on the part of the assignees before they can be charged with the consequences of such an enactment as that contained in the 268th section if it had stood by itself; and accordingly, by the 271st section of that Act it is provided that, if the assignees shall not, within a reasonable time after being thereto required, elect whether they will accept such land or lease, any person entitled to such land or rent, shall be entitled to apply to the Court, and the Court may order them to elect, and may order the lessees, or bankrupt, to deliver up such lease, in case they shall decline the same, and the possession of the premises, and may make such other order therein as it shall think fit. In the present matter a notice was served, on the part of the lessor in the lease mentioned in the notice of motion, pursuant to that 271st section, calling upon the assignees to elect whether they would accept the interest under that lease, and the assignees would appear to have served a notice in reply, declining to accept the interest under that lease; and if the lessor alleged any ground for complaint, it was for the lessor, and not for the assignees, to come to this Court for any relief in respect of that section. In this respect, the law in Ireland differs from what had been the law in England before the passing of the Act in England in 1869—32 & 33 Vict., chap. 71—as it would appear that, under the bankruptcy law in England, prior to the passing of that statute in 1869, all the property of a bankrupt became absolutely vested in the assignees of such bankrupt, without any act, either on the part of lessors or assignees, as provided by the 271st section of the 20th and 21st Vic., chap. 60, in Ireland, or other qualification. The 97th and 98th sections of the Bankruptcy (Ireland) Amendment Act—35 & 36 Vict., chap. 58—would appear to have been copied from, and are similar in terms to the 23rd and 24th sections of the English Act above referred to of the 32nd & 33rd Vic., chap. 71. By that 98th section of the Bankruptcy (Ireland) Amendment Act it is provided:—that the assignees shall not be entitled to disclaim any property, in pursuance of that Act, in cases where an application in writing has been made to them, by any person interested in such property, requiring such assignees to decide whether they will disclaim or not, and the assignees have, or has not, for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not. That section is pointed, and applies to a specific class of property enumerated in the preceding 97th section of the same Act. It has, however, been urged by counsel for the lessor in the lease in question, that the 98th section of the 35th & 36th Vic., chap. 58, applies not only to the property particularized in the 97th section of that Act, but also to all property which would vest in assignees under the 268th section of the 20th & 21st Vic., chap. 60; and I would yield to that argument to the extent of giving it application to a case circumstanced like the present, of a lease of recent date, subject to a high rent and to a prior equitable mortgage, and if the assignees had elected, under the 71st section of the 20th & 21st Vic., chap. 60, to take the interest of the bankrupt in such lease, but afterwards, finding it unprofitable, desired to avail themselves of the provisions of the 98th section of the 35th & 36th Vic., chap. 58. But, we are directed by the very first section of the 35th & 36th Vic., chap. 58, to construe that Act with so much of the 20th & 21st Vic., chap. 60, as was not thereby altered or repealed as one Act; and it would seem plain that the 98th section of

Digitized by Google

the 35th & 36th Vic., chap. 58, by reason of the distinction as regards the vesting of estates of bankrupts in assignees under the code of bankruptcy law in England and Ireland which I have pointed out, must, necessarily, have a more limited application than the 24th section in the English Act of 1869—the 32nd & 33rd Vic., chap. 71; and I must, in the present case, hold that, the assignees having served a notice when called upon to elect, under the provisions of the 271st section of the 20th & 21st Vic., chap. 60, declining to accept the lease, no such vesting of the interest of the bankrupt under the lease mentioned in the notice took place as to render any disclaimer on their part necessary under the 98th section of the 35th & 36th Vic., chap. 58, and, therefore, I must say no rule upon the motion.

If the lessor has any claim in respect of past rent under any special circumstances, he must originate an application for the purpose; and I may add, in reference to such applications generally, that my desire is to assist lessors to the utmost in the assertion of their just rights, but if lessors will not co-operate with assignees when desirous of relieving themselves of future liability, so as to enable them to close their accounts, I should feel quite justified in sanctioning assignees taking such immediate steps as would necessarily terminate the liability as far as they were concerned. I will only further add that, when this Bankruptcy (Ireland) Amendment Act, as yet so recent in date, is better known, I will hold assignees, who are obliged to resort to the remedies provided by the 98th section of the 35th & 36th Vic., more strictly to the period of time limited by that section than I am disposed to do at present.

Solicitors, *Seed & Lynch*; *W. Harper*; *Andrews & Mac Laine.*

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before the FULL COURT.)

PARSONS v. O'TOOLE.

Jan. 17, 1874.—*Pleading—Summons and plaint under Lord Campbell's Act—Duplicity—Mixing tort and contract—Two causes of action in one count.*

The first count of the summons and plaint averred that Robert Parsons was employed by the defendant, on the terms that the defendant should take due and ordinary care not to expose him to extraordinary danger; yet the defendant did not take due and ordinary care not to expose the said Parsons to extraordinary danger; and through the negligence of the defendant in not having a proper apparatus for securely lighting the room of the defendant, in which said Parsons was engaged, said Parsons was injured, and died. The second count averred that said Parsons became servant to the defendant on the terms that the defendant should provide proper materials and apparatus for lighting the room in which said Parsons should be engaged; yet the defendant negligently provided improper materials, &c., for lighting the room in which said Parsons was working, the dangerous nature of which improper materials was well known to the defendant and not to the said Parsons; and in consequence of such negligence said Parsons was injured, and died.

Held, *that both counts were double and embarrassing; and that they should be amended by striking out of both the averments of negligence, and by striking out of the second the averment of defendant's knowledge of the dangerous nature of the materials.*

Motion to set aside summons and plaint as embarrassing.

The plaintiff, in the first count, complained—"That one Robert Parsons, now deceased, was employed by the defendant in the way of his trade as a window-blind maker, on the terms that the defendant should take due and ordinary care not to expose the said Robert Parsons to extraordinary danger and risk; and through the negligence of the defendant, in not having a proper apparatus for securely lighting the room of the defendant, in which the said Robert Parsons was engaged in the course of his said employment, an inflammatory liquid, near which the said Robert Parsons was engaged as aforesaid, became ignited, and the said Robert Parsons was thereby burned, so that, by the burns and injuries thereby occasioned to him, the said Robert Parsons afterwards, within twelve calendar months, died."

Second count—"That the said Robert Parsons became servant to the defendant in his business aforesaid, on the terms that the defendant should provide and supply proper materials and apparatus for lighting the room in which the said Robert Parsons should be engaged in his said business, so as to make the said Robert Parsons reasonably safe while working for the defendant; yet the defendant negligently provided, and supplied improper materials and apparatus for lighting the room of the defendant, in which the said Robert Parsons was working for the defendant, in his employment as aforesaid, the dangerous nature of which improper materials and apparatus was well known to the defendant, and not to the said Robert Parsons; and in consequence of such negligence of the defendant an inflammatory liquid became ignited, and caused the death of the said Robert Parsons within twelve calendar months as aforesaid.

David Sherlock, in support of the motion.—First, as regards the second count.—It does not appear whether this count is framed in contract or in tort, for it commences by stating that the defendant employed Parsons on certain "terms," which would imply a contract, but it then proceeds to charge that the defendant "negligently provided improper materials," which indicates a tort. If the count is meant to be in contract then the breach should correspond with the duty, which is not the case here; and also, the statements of the defendant's knowledge of the natureof the dangerous materials and his negligence are immaterial averments, and should be struck out; C. L. P. Act, 1853, ss. 68, 70. If the count is in tort, then the averment of the contract and its argumentative breach are untraversable, and should be struck out. The count, therefore, contains the elements of both contract and tort, but the essential requirements of neither. In its present form the count cannot safely be pleaded to, for a defence traversing the contract and also the negligence is double, and will be set aside, *Shepperd* v. *The Great Southern and Western Railway Co.*, 5 IR. L. T. R. 52; and if either the contract or negligence is left untraversed, the fact not traversed is admitted; C. L. P. Act, 1853, s. 68. The count contains two separate causes of action, and should, therefore, be set aside: *Redmond* v. *Clarke*, 4 IR. L. T. 475. The first count is bad for like reasons.

John Short, for the plaintiff.—The plaint is in conformity with precedent and reason. It is framed on the precedent in Bullen & Leake, Pl., pp. 278, 279, where, in actions against carriers for breach of contract, their negligence in not fulfilling their duty is expressly averred.

[WHITESIDE, C.J.—Is there any precedent for a plaint similar to this one, in actions framed under Lord Campbell's Act?]

Sherlock.—I have not seen any. The precedents in Bullen and Leake referred to are considered bad by eminent English pleaders. But, even if they were good, they would not apply, for they are English precedents,

Digitized by Google

and in England "*not guilty*" might be pleaded, and it would cover every averment, but in Ireland every material averment not expressly pleaded to is taken to be admitted.

Short.—Clearly, an averment of negligence is necessary in this cause of action. The plaint is not double.

Whiteside, C.J.—We are of opinion that both counts of the summons and plaint are double and embarrassing; and we, therefore, order that they shall be amended by striking out the averments of "negligence" in the first and second counts, and the averments of the defendant's knowledge of the dangerous nature of the materials in the second count. The costs to be the defendant's costs in the cause.

Order accordingly.

Attorney for plaintiff, *R. Wilson.*
Attorney for defendant, *V. Daly.*

COURT OF EXCHEQUER.

Reported by George A. P. Kelly, Esq., Barrister-at-law.

(Before Palles, C.B., Fitzgerald, Deasy, and Dowse, BB.)

Keogh v. Alleyne.

May 2, 1874.—*Practice—C. L. P. A.*, 1870, *sec.* 6—*Striking out counts in detinue, as sham and in fraud of the Act—Remitting to Civil Bill Court.*

When it manifestly appears that a count in detinue, claiming a return of the chattels, is a mere sham, and has been inserted in a summons and plaint for the purpose of ousting the jurisdiction of the Court to remit the action to the Civil Bill Court, there being no bona fide *foundation for the alleged claim, the Court will strike out the count, and remit the action, unless it appears that the remaining causes of action are fit to be prosecuted in the Superior Court.*

Ludlow v. Headley, 7 *Ir. L. T. R.* 136, *discussed.*

Motion, on behalf of the defendant, that the third and fifth counts (in detinue) of the summons and plaint be struck out, as being frivolous and sham; and that thereupon, unless the plaintiff give security for costs, the action be referred to the Chairman of Quarter Sessions for the division of Kilmainham, and county of Dublin.

The summons and plaint contained six counts. The first and second counts were for assault and false imprisonment, by giving the plaintiff into the custody of a policeman; the third and fourth were respectively in detinue and trover, for a trunk, with wearing apparel, amongst other chattels contained; and the fifth and sixth were in detinue and trover, for certain discharges and certificates of character. The plaintiff prayed judgment for a return of the property, and £55 as damages for its detention; together with £100 damages under the first and second counts.

The motion was grounded on the affidavits of the defendant, his wife, the policeman, and the defendant's gate-lodge keeper. The defendant stated that about the end of July, 1873, he noticed the plaintiff to be under the influence of drink, quarrelling violently with the servants, and otherwise misconducting herself in an excited manner, so much so, that he was unable to reason with her; that on the next morning he had an interview with her, and, expressing his regret at seeing her in such a condition, warned her that if, on any subsequent occasion, she similarly misconducted herself, he would discharge her without further notice; that on the 16th of August, 1873, he observed that plaintiff was, on her arrival from town, and previously to his sitting down to dinner, under the influence of drink, and mentioned same to Mrs. Alleyne. During dinner, hearing a violent and unusual outcry in the nursery, he suggested to Mrs. Alleyne that she should leave the table, and ascertain the reason for such outcry; shortly after, hearing a scream from Mrs. Alleyne, he ran up to the nursery, where he found Mrs. Alleyne and the plaintiff struggling as to who should have possession of the baby, which was then about twelve months old; that he told the plaintiff to leave the room, and told her she might have any other unoccupied room in the house for the night, but that she could not remain in the nursery in such a condition as she then was; that she refused to leave, and said the room was her own, and he then placed his hand on her shoulder to push her from the room, and eventually got her out; that she made her way in by pushing at the door, and that he put her out again; that this was repeated three times, and the last time, immediately subsequent to her removal from the room, she threw herself, or fell on the ground, but did not receive the slightest harm, nor did she make any complaint then or at any time during that evening; that finding he could not keep her out of the nursery, and believing that the baby would receive injury if she was permitted to remain, he went for a policeman, and brought him to the house to have the plaintiff removed; that the policeman entreated her to leave the room, and she persistently refused to go into any other room in the house, asserting that the nursery was her own, and that no one had a right to interfere with her there; that the policeman remained for upwards of two hours endeavouring to get her to go quietly, and that he desired him not to put her out forcibly, and declined to give her in charge, knowing, or suspecting, that she was merely trying to get up a cause of action; that at last, when she found the policeman was remaining, and would not go away, she left of her own accord; that at first she said she would go with the policeman, but as he said he did not want her at all, she then left the house of her own accord; that during the altercation the plaintiff asked for her discharges, and that he went to Mrs. Alleyne, and got them, and handed to the plaintiff all that he received; that she examined them, and did not then, or since, until the issue of the summons and plaint, complain that any were wanting; that he has not any discharge of the plaintiff, nor does he know of the existence of any discharges, save those which were handed to plaintiff on the evening in question; that the plaintiff, when handed the discharges she had asked for, required him to give her a discharge from himself; that he wrote out a discharge, saying that she came in one day, and left on another, and was discharged, all wages being paid; that she at first threw this on the ground, refusing to take it, but afterwards secured, and placed it with her other discharges; that her wages were over-paid at the time she left; that, at an early hour the following morning and the next, plaintiff came to the house and took away the greater portion of her clothes, if not the entire; that he then directed the gate-keeper to take her trunk down to the gate-lodge, so that she could get it without coming to the house, and that being the most convenient for her, and the place at which servants' luggage is usually left; that the trunk has since remained in the lodge, with any clothes, if any, that may be in it; that no clothes whatever have been kept or detained by him; that the trunk left by her she can, and always could have had, as she knew, by applying at the gate-lodge; that on the 25th of August, 1873,

Digitized by Google

the plaintiff issued a summons against him, and that he thereupon issued a cross-summons, and duly attended at the Petty Sessions, but the plaintiff did not appear, and the summonses were not proceeded with; that from that time he never heard of or from the plaintiff, or from any one on her behalf, until he got a letter, dated the 7th of April, 1874, from E. H. Hunter; that this action was utterly frivolous and vexatious; that he believed the plaintiff had no visible or any other means of paying costs should a verdict not be found for her; that he believed the action was purely speculative, and brought in the hope that he would give a trifle to buy off the persecution of the plaintiff and her attorney; that he believed the plaintiff and her attorney were well aware that there was no foundation whatever for the counts in detinue, and that same had been suggested and put into the summons and plaint merely to meet the decisions of the Courts of Common Law—that actions of detinue cannot be referred to Quarter Sessions—with the view of preventing the case from being referred; and that he had a good, valid, and *bonâ fide* defence to the action on the merits. The affidavit of Mrs. Alleyne corroborated that of the defendant as to the alleged assault and imprisonment, and further stated that about two hours after the *fracas* defendant came to her for the plaintiff's discharges, and she gave him all the discharges which she had received from the plaintiff; that she retained no discharge belonging to the plaintiff, nor was any such statement put forward by the plaintiff until the issuing of the summons and plaint; that the plaintiff, on the two succeeding days, called at the defendant's residence to remove her clothes, and took away everything belonging to her except a locked trunk; that the plaintiff caused her trunk and the clothes to be conveyed from the nursery to another apartment, in which the plaintiff subsequently allowed it to remain, removing the rest of her clothes; and that subsequently, finding that she had not taken away her trunk, they had it removed to the gate-lodge, to facilitate her in taking it away as well as to prevent her returning a third time to the house. The gate-lodge keeper deposed that two or three days after plaintiff left, the trunk in question was placed in her charge, with directions to give it to the plaintiff when called for; that on same day she saw the plaintiff passing and requested her to remove it; that plaintiff replied, "I won't take it, let it stay there;" and that from that time it was never called for. The policeman deposed that he was called in to restrain the violent conduct of the plaintiff, but that the defendant refused to allow him to take plaintiff in charge, and that she left the premises of her own accord; that the defendant gave the plaintiff liberty to remove her trunk, and asked her to do so; that plaintiff requested the deponent to examine it, which he declined; and that he heard plaintiff ask for her discharges, which defendant handed to her.

In reply, the plaintiff deposed, in general terms, that the greater part of the defendant's statements were untrue, more especially all he had stated concerning the assault and the interference of the policeman; that it was utterly untrue that she did not demand the goods and chattels, but that she did demand same, which were refused, and the defendant still kept the trunk, with its contents, which were of considerable value to plaintiff, although before action she frequently applied for and was refused same. She positively denied that she had been intoxicated. The affidavit, further, contained statements putting forward several irrelevant charges against the defendant.

Walker, Q. C. (*Monroe* with him), in support of the motion.—The present case is clearly distinguishable from that of *Ludlow* v. *Headley*, 7 Ir. L. T. R. 136. That case was solely in trover and detinue, and there was a *bonâ fide* contest as to the discharges. Here the defendant swears that the claim for specific return of the goods has no foundation, and is put in to avoid the decisions as to remitting counts in detinue. The summons to Petty Sessions does not refer to the detention now complained of; and the attorney's letter, the sole notice of action received, does not state what was detained or converted. In *Connor* v. *Saurin*, Ir. R. 8 C. L. 146, Fitzgerald, J., says:—"It remains for us to consider how we should deal with a case, in which a second count is inserted manifestly with the intention of defeating the operation of the Act. I think we have ample power to deal with such a case. We have full authority under the Common Law Procedure Act to direct a plaintiff to amend his writ, by striking out the count inserted for this purpose." And, in the same case, Barry, J., says:—"If this was an application to set aside this count in contract, on the ground that it had been put in merely in order to oust the power of the Court to remit, I should be willing to hear and consider it. I should have no hesitation, if such a case were satisfactorily proved, to order the objectionable count to be struck out of the plaint, in order that the action might be remitted." The real cause of complaint here is the assault; the counts in detinue are clearly put in to oust the jurisdiction of the Court, and in fraud of the Act of Parliament. The Court has power to regulate and control its own procedure, so as to prevent its being made the instrument of fraud. The policy of the Act of 1870 was that the Court should have and exercise a discretion. The damages for the assault cannot be greater than £40. In reference to the irrelevant charges made in the plaintiff's affidavit, they cited *O'Driscoll* v. *Blackwell*, 8 Ir. L. T. (Notanda) 54.

Heron, Q.C. (*Coates* with him), *contra*.—In the Court of Common Pleas an action for detinue was remitted in the case of *Byrne* v. *Ffrench*, 6 Ir. L. T. R. 10, although a return of the goods was claimed; but that case has not been followed in this Court or in the Queen's Bench. In *Walsh* v. *Sugrue*, 6 Ir. L. T. R. 11, this Court refused to remit an action in detinue which claimed the return of a lease, although it was shown it had been deposited as a security, and the count was a sham on the face of it. In the Queen's Bench, in the case of *White* v. *Josephs*, 7 Ir. L. T. R., 61, a count in detinue for a few old bottles was remitted; but that case does not appear to have been approved of in *Ludlow* v. *Headley*, *per* Dowse, B. The plaintiff swears that she has a claim; she says that the greater part of the defendant's affidavit is untrue, and that her demand of the chattels was refused.

[FITZGERALD, B.—She was told, in May, 1873, that the trunk was in the gate-lodge; she does not contradict that; she said nothing about the detinue until action brought. DOWSE, B.—This must cease to be an action for detinue before we can remit it.]

There is no motion before the Court to refer the action generally. The first branch of the motion is that the two counts in detinue be struck out. That part of the motion, except as regards the effect of the 54th section of the C. L. P. A., 1870, 1853, is to the common law jurisdiction of the Court. There is express authority that the Court cannot strike out these counts; and there was no *decision* to the contrary in *Connor* v. *Saurin*. In *Harte* v. *Panter*, 7 Ir. L. T. R. 137, Dowse, B., refused to strike out a count in detinue, although there was no claim for return of the goods.

Digitized by Google

The ground upon which the third count is sought to be struck out is that the trunk was left at the gate for her. There is a controversy as to the truth of that, for she says she demanded it and was refused.

[Dowse, B.—There is no controversy as to the trunk being left at the gate. Fitzgerald, B.—The lodge-keeper says he offered it to her. She is silent as to that.]

The jurisdiction to decide belongs to a jury, and not to this Court, where there is a conflict of evidence. Even assuming that there was no affidavit in reply, the Court could not strike out these counts. In *O'Donnell* v. *Reilly* 11 Ir. C. L. R. 329, it was ruled that where a defence is warranted by the Common Law Procedure Act, the Court will not try its truth or fasehood upon affidavit. That decision was confirmed in the Queen's Bench, *Marquis of Drogheda* v. *O'Hanlon*, Ir. R. 1 C. L. 319; *O'Brien* v. *Taylor*, 2 Ir. Jur. N. S. 53. On the decisions, the Court cannot strike out even sham detinue counts.

[Fitzgerald, B.—What we are asked to do is a very strong measure, and we can only do it on the ground that these counts are a fraud on the Act.]

Irrespective of the question of detinue, in this case the plaintiff ought to get more than £40 damages. The allegations now made in the defendant's affidavit aggravate the injury to the plaintiff; and it is plain that the only defence open is a justification, which, if found against the defendant, will increase the damages.

Monroe in reply.

Palles, C.B.—The Court has no doubt that this motion should be granted. The application to remit is made under the 6th section of the Common Law Procedure Amendment Act, 1870; but the objection to remitting, on the form of the summons and plaint as it stands, is that it contains two counts in detinue. In order to get rid of that objection the defendant, by his notice of motion, also asks the Court (as incidental to remitting) to strike out those two counts. We must, first, arrive at the conclusion that the Court should remit the action, leaving the counts in detinue for the present out of consideration. If we would have remitted the action, had those counts not been introduced, then we must consider if we ought not to remit in consequence of those counts being included. The legislature has invested the Court with the function as it were of a jury, for the purpose of considering the nature of the cause of action, and deciding whether the action be fit to be prosecuted in the superior courts. That we cannot determine by merely reading the summons and plaint, and in administering this peculiar jurisdiction we must, acting as a jury, form an opinion as to the nature of the cause of action from what is shown to us on the affidavits. The causes of action here are stated in the affidavit of the defendant with great distinctness. He deposes, that hearing a violent and unusual outcry he ran up stairs, where he found Mrs. Alleyne and the plaintiff struggling, as to who should have possession of the baby, which was then about twelve months old. He told the plaintiff to leave the room, she refused, and he placed his hand on her shoulder, and eventually got her out. She pushed in the door but was again put out, and the third time she fell on the floor, but did not then or afterwards complain of being hurt. The defendant then went for a policeman who entreated her to leave, and remained for two hours endeavouring to persuade her to go. The defendant declined to give her in charge, and she ultimately left of her own accord. We, have, also the policeman's affidavit, and Mrs. Alleyne's, substantially corroborating her husband. As against these allegations we have practically nothing, merely the bare statement, as to what is deposed to by the defendant and Mrs. Alleyne, "that as to the greater portion of the said affidavits same are untrue, especially the first eight paragraphs of the defendant's affidavit." Dealing with the entire affidavits, we have come to the conclusion that, if the alleged assault and false imprisonment were the sole ground of action, we ought to feel reasonably satisfied that the plaintiff ought not reasonably to recover more than £40 damages—that being now the admitted test in such cases. But then, we have to consider the causes of action in trover and detinue. And first, as regards the trunk :—It is stated by the gate keeper, and not contradicted by the plaintiff in terms or even inferentially, that in August, 1873, he saw her passing the gate, that he told her to take away her trunk, and that she replied, "I won't take it, let it stay there." There is no denial of that specific statement. Then, as to the remaining cause of action—the conversion of the discharges—Mr. Alleyne positively states that they were returned to her. The policeman says that some discharges were given to her, and Mrs. Alleyne corroborates them; and to this the plaintiff says nothing, absolutely nothing. Therefore, we have reasonable cause to believe that the plaintiff would not get more than £40.

Assuming, now, that the Court would have remitted the action if there were no counts in detinue claiming a return of the goods, we come to what is by far the more serious question, and one requiring a great deal of consideration—ought the Court to strike out the 3rd and 5th counts, if security be not given, in order to enable the action to be remitted? I am not prepared to hold that we ought in any case to exercise such jurisdiction, unless it appears clearly and conclusively on the facts of the case, admitted or proved to the satisfaction of the Court, that the causes of action are not merely frivolous in the ordinary sense but sham, and having no foundation, and inserted not *bona fide* but for the purpose of ousting the jurisdiction of the Court. If so, the Court has jurisdiction to prevent its process from being abused by resorting to a form of action for the purpose of injustice, and in order to defeat the operation of a beneficial statute. We have to consider whether the plaintiff is *bona fide* insisting on a *bona fide* claim of right, or whether these counts are inserted colourably in order to effectuate a fraud on the Act of Parliament. In the defendant's affidavit we find the statement—"Deponent believes the plaintiff and her attorney are aware that there is no foundation for the counts in detinue, and that the same have been put in solely with the view of preventing the plaint from being referred." That is a direct charge of misconduct against an attorney, of wilfully resorting to the process of the Court for a purpose to which it ought not to have been applied; and as such ought to have been answered by him. No one can know whether those counts were inserted with the intention charged except the attorney, who, though thus challenged, does not venture to say that they were not deliberately inserted for the purpose of defeating the Act of Parliament. If there were nothing but his silence I would, probably, come to the conclusion that he knows it to be so. But looking to the entire facts, we have evidence that the trunk was offered to the plaintiff in 1873, and the uncontradicted fact that all the discharges were given to her. There is an omission of any charge of detinue in the summons before Petty Sessions, and the attorney's letter seeks not a return of the goods but compensation. The case of *Ludlow* v. *Headley* does not apply. There the facts were admitted, here they are either invented or supposed. The judgment of the Court is, that in the event of the plaintiff giving security for costs the counts in detinue are to remain; in the other alternative they are to be struck out, and the case remitted to Quarter Sessions.

Dowse, B.—I have only a few remarks to make, as my judgment in *Ludlow* v. *Headley* has been referred to. If this were a *bonâ fide* claim I should merely follow that case; but I believe that the present claim is not *bonâ fide*. What I said in *Ludlow* v. *Headley** (7 Ir. L. T. R., 136) was: "A plaintiff has as much right to the return of the identical articles that he sues for, though they be of but small intrinsic value, if he makes a *bonâ fide* demand for them, as he would have a right to claim the return of the title deeds of his estate." I wish to state that I entirely agree that here the facts do not show the claim in detinue to have been *bonâ*

* See *Com.* 7 Ir. L. T. 418. [Ed. *I. L. T. Rep.*]

Digitized by Google

fide, but to be wholly illusory, and made to defeat, and in fraud of the Act of Parliament. The Court has an indisputable power of regulating and controlling its process. I do not, to any great extent, rest my views on the fact that the attorney does not deny that the counts in detinue were introduced in order to meet the decisions on this question. It is obviously so on the facts, and there is no necessity to rely on his silence alone. I think it is rather to the credit of the plaintiff's attorney that he has abstained from denying the impeachment, for if he denied it I would not have believed him.

FITZGERALD and DEASY, BB., concurred.

Motion granted.

Attorney for the plaintiff, *E. H. Hunter.*
Attorney for the defendant, *H. C. Neilson.*

JOHNSTON v. GRAVES.

April 23, 24, 1874.—*Garnishee order—C. L. P. Act, 1856, s. 63—Judgment entered for amount of verdict—Costs untaxed.*

A judgment entered for the amount of a verdict cannot be attached if the costs in the cause have not been taxed and added to the roll.

Motion for a garnishee order. The plaintiff obtained a judgment against the defendant in the Court of Exchequer for £23 4s. 2d., and £7 4s. 11d. costs, on the 22nd April, 1874. The defendant, in an action in respect of an unliquidated claim, obtained a verdict against the Midland Railway Company for the sum of £78 17s. 6d. and 6d. costs, on which a judgment was entered in the Court of Queen's Bench on the 27th March, 1874, for the sum of £78 17s. 6d. and 6d. costs, and ——— (*sic*) costs. The costs of the trial had not yet been taxed and were, therefore, not added to the judgment roll.

Teeling, on behalf of the plaintiff in *Johnston* v. *Graves*, moved to attach so much of the judgment entered on the 27th March, 1874, in *Graves* v. *Midland Railway Co.*, as would be sufficient to discharge Johnston's judgment; and produced an attested copy of the judgment in *Graves* v. *Midland Railway Co.*, signed by Master Lane, certifying that judgment had been entered on the 27th March, 1874, for £78 17s. 6d. and 6d. costs, and ——— (*sic*) costs.

[FITZGERALD, B.—The judgment of the 27th March, 1874, is not a final judgment. The costs are not yet taxed. PALLES, C.B.—Should not a *remittitur* be entered and the costs abandoned?]

It has been ascertained that no such document is known in the Queen's Bench Office as a *remittitur* as applicable to a case like the present. The officer, when execution is issued before costs are taxed, merely writes "no costs" on the roll in order to prevent the issuing of a second execution. The sum to be attached is a debt within the meaning of the 63rd section of the C. L. P. Act, 1856. It has been definitely ascertained, beyond any further controversy, that £78 17s. 6d. is now due to Graves, and he might immediately issue execution for that amount, which he could not do if the judgment was not final for that amount. In *M'Craith* v. *Quin*, I. R. 7, Eq. 324, the Master of the Rolls held, that a judgment entered for £5000 damages, with 6d. for expenses, together with ——— (*sic*) for costs, in a case in which the costs were not added to the roll, could be validly registered as a statutable mortgage, so as to transfer all the judgment debtor's interest in lands to the judgment creditor, and to justify the Court in appointing a receiver. That case involved the decision that the judgment obtained by M'Craith was final as to the sum of £5000 and 6d. costs. The judgment in Graves *v.* Midland Railway Co. is precisely in the same condition as the judgment in *M'Craith* v. *Quin*, and that case was affirmed by the Court of Chancery Appeal, 7 Ir. L. T. R., 161.

[DOWSE, B.—The decision in *M'Craith* v. *Quin* is consistent with the plaintiff in that case abandoning his costs. If Graves now issued execution against the Midland Railway Co. for the £78 17s. 6d., he would thereby waive his costs, but you cannot be allowed to do that for him. And you seek, in effect, also to discharge the attorney's lien for costs.]

It is admitted that Graves would waive his costs if he now issued execution for the £78 17s. 6d. It was so decided in *Bennett* v. *Heron*, 8 I. C. L. R., App. 19; but an execution on a judgment for the amount of a verdict, in order to deprive a plaintiff of his costs, must be an execution issued at the instance of a plaintiff, and not, as it would be here, at the instance of a stranger; but any difficulty of that kind may be obviated by making the order at present only one to attach, and postponing the order to pay until evidence is produced to show that the costs have been added to the roll. A similar course was pursued in *Sparks* v. *Young*, 8 I. C. L. R., 251, in which it was held that the mere possibility that when the day of payment arrived (in that case two years distant) there might be a defence against the recovery of the debt, was no ground for resisting an attachment order, and the Court accordingly discharged the conditional order to pay, but allowed the attachment order to stand. *Russell* v. *Ferguson*, 2 Ir. L. T., 137, is to the same effect.

He also cited *Shaw* v. *Shaw*, 2 Ir. L. T., 243; *Daniel* v. *M'Carthy*, 7 I. C. L. R., 261.

PALLES, C.B.—The abandonment of the costs by the garnishee is an act necessary before judgment can be considered final—you cannot do that for him. We must refuse the application—the amount has not yet become a debt, and therefore cannot be attached.

DEASY, B.—There are only two kinds of judgments—one interlocutory, and the other final. The judgment obtained by Graves is neither.

FITZGERALD and DOWSE, BB, concurred.

Motion refused.

Attorney for the plaintiff, *D. J. Mac Egan.*

CONSOLIDATED CHAMBER.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before DOWSE, B.)

SHAW v. DUNLOP.

Feb. 17, 1874.—*Debtors Act, 1872—Judgment for debts accrued before and after passing of Act—Amendment.*

Where judgment was recovered against a defendant for two gales of rent, one of which accrued due before and the other after the passing of the Debtors Act (Ir.), 1872, the Court allowed the plaintiff to amend the judgment by striking out the cause of action accruing subsequently to the passing of the Act.

On Dec. 16, 1873, a summons and plaint was issued (Q. B.) at plaintiff's suit, against E. Dunlop and F. Dunlop, executor and executrix of John D. Dunlop, deceased, to recover £108 in respect of rent due for the lands of Ballyholey, up to Nov., 1873. John Dunlop held the lands under a lease of twenty-one years, at the yearly rent of £54, payable half-yearly on May 1, and Nov. 1, covenanted to be paid. The plaintiff deposed that said John Dunlop died Nov. 2, 1873, leaving the

Digitized by Google

defendants, his widow and son surviving, who immediately afterwards took possession of the farm and all effects thereon; that the plaint was issued for two years' rent under the lease to the 1st of Nov., 1873, and that one of said half-year's gales, amounting to £27, accrued due on May 1, 1872, before the death of John Dunlop, and before the passing of the Debtors Act (Ir.), 1872, but that the rest accrued due after the passing of that Act; that the defendants in Nov., 1873, sold all the stock and other property, which realized £150; that on Jan. 15, the plaintiff recovered judgment by default for said £108 debt, and £7 4s. 11d. costs; that he believed that the defendants were about leaving the country, and that as they had abandoned possession of the farm, sold everything, and had no other available property, plaintiff was unable to realize the fruits of said judgment.

Colquhoun on behalf of the plaintiff. We apply for leave to issue a *ca. sa.* for the amount of the debt which accrued before the passing of the Debtors Act, 1872.

[DOWSE, B.—For that purpose you should have served notice of motion. Might not your proper remedy be by entering a *nolli prosequi*, or *remittitur damna*?]

If we served notice, the defendants would at once abscond. If leave be given to issue the *ca. sa.*, we shall agree to abandon the residue of our claim. Under the circumstances, any remedy involving delay would prove fruitless. The judgment might be amended.

DOWSE, B.—I shall give you liberty to amend the judgment, by striking out all that relates to the causes of action accruing subsequent to August 6, 1872.

Order accordingly.

COURT OF CHANCERY APPEAL.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

In re M., a Disputed Adjudication.

May 5, 1874.—*Bankruptcy Amendment Act*, 1872, *s.* 22—*Debtors Act*, 1872, *s.* 4—*Petitioning creditor—Debt of non-trader, contracted after the passing of* 35 & 36 *Vict.*, c. 58—*Rent accruing after, on lease executed before the passing of the Act—Construction of statutes.*

The interpretation-clause of the Debtors Act (Ir.), 1872, is not to be construed as incorporated with the Bankruptcy Amendment Act (Ir.), 1872.

Rent accruing due and payable after the passing of the Bankruptcy (Ir.) Amendment Act, 1872, by a lessee or assignee of a lease executed or assigned before the passing of the Act, will be held to be a debt contracted by the lessee or assignee before the passing of the Act, and, therefore, not to constitute a good petitioning creditor's debt within section 22.

Order of HARRISON, J. (ante *p.* 34), *affirmed.*

Appeal from an order pronounced by Harrison, J., February 6, 1874, that the cause shown by D. M., the alleged bankrupt, against the validity of the adjudication of bankruptcy be allowed, and that the said adjudication be accordingly annulled, with costs.

By lease dated the 23rd of March, 1865, Thomas Power demised to Michael Cronin, his heirs and assigns, part of the lands of Corbally, in the county of Cork, to hold during the lives and life of the said Michael Cronin and Elizabeth Cronin, and the survivor of them, at the yearly rent of £99 17s. 10½d., payable half yearly, on the 29th of September and 25th of March. By the said lease the said Michael Cronin covenanted for himself, his heirs, executors, administrators, and assigns, for the payment of the said rent upon the days aforesaid, and also that he would not assign the premises without the consent in writing of the lessor. By an assignment of the 31st of May, 1870, the said Michael Cronin assigned to D. M., the alleged bankrupt, the said lands and premises comprised in said lease of the 23rd of March, 1865, to hold the same to the said D. M., his heirs and assigns, for all the residue then unexpired of the said term granted by the said lease, subject to the rent thereby reserved; and the said Thomas Power duly signified his assent to the said assignment. D. M. entered into possession of the said lands. Thomas Power died in April, 1873, and probate of his will was granted to Stephen Power Coppinger and Penelope Power. At the time of Thomas Power's death, D. M. was indebted to him in the sum of £99 17s. 10½d. for two gales of rent, which fell due on the 29th of September, 1872, and the 25th of March, 1873, respectively. The petitioners sued D. M., as assignee of the lease, for the said sum of £99 17s. 10½d. upon foot of the covenant for the payment of rent contained in the lease, and on the 8th July, 1873, judgment was marked for £107 2s. 9d., being the amount of rent due and the costs of the action. The petitioners, on the 6th August, 1873, caused a debtor's summons to be issued against D. M., in respect of said sum of £107 2s. 9d. The said D. M. having, for three weeks succeeding the service of the said summons, neglected to pay the said sum, or to secure or compound for same, he was, on the 30th December, 1873, adjudicated a bankrupt upon that act of bankruptcy. The said D. M. showed cause against this adjudication on the 9th January, 1874, and the cause shown was allowed, as reported *ante*, 8 IR. L. T. R. 34.

Mr. Purcell, Q.C. (*Mr. Naish* with him), for the appellants.—This case turns on the 22nd section of the Bankruptcy Amendment Act, 1872, which is practically identical with the 90th section of the corresponding English Act; and it must be admitted that, unless there is something in the Irish Act which is not in the English Act, this case is concluded by *ex parte Williams, in re Harding*, L. R. 1, H. L. 9. There is, however, in the Irish Act what there is not in the English Act, a definition of the words "debt contracted after the passing of the Act."

[CHRISTIAN, L.J.—Does it occur to you that there was no complete debt till the gale day arrived; that there might be a contract, but not the contracting of a debt, before the passing of the Act? If there was a privity in estate only and not in contract, the debt would have been one accruing, and the liability would have sprung up after the passing of the Act. But if there was a privity of contract, as well as estate, there was a contract entered into before the passing of the Act, although the breach of the contract occurred after the passing of the Act, both of which would have to go to make up the liability. In the former case the whole indebtedness would have arisen after the passing of the Act. It might be contended, that although Deasy's Act has superadded to privity of estate privity of contract, it has not necessarily taken away the effect of the former privity of estate. However, Lord Cranworth's decision would seem to apply to all cases where the foundation of the liability has been laid before the passing of the Act.]

Lord Kingsdown's judgment is not so strong. The debtor's liability was not by reason of privity of tenure; he was sued in covenant. The definitions in the Debtors Act, 1872, section 4, will afford an explanation of the terms in the Bankruptcy Act, 1872; and if the petitioner's demand is within the terms of any one of

Digitized by Google

the definitions in the Debtors Act, of "debt contracted after the passing of the Act," it is, also, within section 22 of the Bankruptcy Act.

[SIR J. NAPIER, L.C.—The 3rd section of the Bankruptcy Act had already passed, so that they are not strictly contemporaneous. How can we import into the Bankruptcy Act a definition intended for the Debtors Act? CHRISTIAN, L.J.—Is there, or is there not in the Debtors Act an express provision that the definitions in it shall apply to the Bankruptcy Act?]

No; but they are *in pari materiâ*, and deal with the same subject-matter.

[SIR J. NAPIER, L.C.—The definition is in a subsequent Act, and how can you apply that to an Act passed before it?]

It can only be said inferentially that the Bankruptcy Act was passed first.

[CHRISTIAN, L.J.—Is not the argument possible, that when in the one Act the Legislature put rather an artificial construction on certain words, and left out that definition in the other Act, it may be assumed that in the latter case the definition is not meant to apply.]

When we find that both Acts received the Royal assent on the same day, and deal with different parts of the same subject-matter, we may apply the definitions in one Act to the other. If not, it would result in this, that while the one Act would enable a man to get himself set free from arrest, the other would not be sufficient to enable him to be adjudicated a bankrupt. The Legislature itself has given priority to the Debtors Act, for the Debtors Act is chap. 57 and the Bankruptcy Act is chap. 58. The English Debtors Act contains a similar reference to the contemporaneous Act authorising the adjudication of non-traders as bankrupts—"this Act shall not come into operation until the day on which the Bankruptcy Amendment Act comes into operation." *In re Dempsey*, 21 W. R. 523, it was held that the two Acts were to be read together.

[SIR J. NAPIER, L.C.—The interpretation clause of the Debtors Act says that "in *this* Act" the terms mentioned shall have the meaning assigned; the Bankruptcy Act had already passed; and the Debtors Act refers in terms to the definitions in the Bankruptcy Act.]

Assuming that the interpretation clause in the Debtors Act is not binding, yet the Court can adopt it on its own merits. Although it cannot be contended that the contract or obligation was contracted after the passing of the Act, the liability was contracted subsequent to it; and, at all events, no cause of action or suit arose till after the passing of it, as there was none until the gale of rent became due in September, 1872.

[SIR J. NAPIER, L.C.—There may be a difference in your favour as between a lessee and an assignee. Suppose a lease executed before the passing of those Acts, and a sum covenanted to be paid in respect of rent, is not that a case of *debitum in præsenti, solvendum in futuro?* There the liability was contracted at the time of the execution of the lease. But an assignee becomes liable by privity of tenure. There would be nothing to prevent him assigning over before the rent fell due. CHRISTIAN, L.J.—As I understand, there was no *debitum*, either payable *in præsenti* or *in futuro*.]

If the debtor had been arrested he would, on application to a Court of law, have been discharged, as having been arrested for a debt contracted after the passing of the Act.

[LAWSON, L.C.—It would be very strong to import these words, "cause of action or suit arisen after the passing of this Act," into the Bankruptcy Act. Suppose a man passed a bill of exchange before the passing of the Act, which fell due after, then, the cause of action not accruing till after the passing of the Act, he could be made a bankrupt under this Act. That is quite contrary to the decision in *ex parte Williams, in re Harding*. CHRISTIAN, L.J.—That is a different case from the other. The case of a bill of exchange is clearly a case of *debitum in præsenti, solvendum in futuro.*]

In the Court below, *in re Galls*, minors, 7 IR. L. T. R. 29, was referred to.

[CHRISTIAN, L.J.—Is not the definition of "debt contracted *before* the passing of the Act," which follows immediately in the same section, rather against you?]

It is extremely difficult to reconcile the language of the two definitions. They should be read:—"Any sum of money due or payable" after the passing of the Act, "under or in respect of any contract," &c., and "any sum of money due or payable" before the passing of the Act, "under or in respect of any contract," &c., shall have the meanings assigned.

[CHRISTIAN, L.J.—All inconsistency may be avoided by adopting what is laid down by Lord Cranworth in *ex p. Harding*.]

The consequence will be that a Court of law might hold that, where a judgment is recovered subsequently to the Act, although the liability arose out of a cause of action accrued before the passing of the Act, and the debtor is thereupon arrested, he would be entitled to be discharged as having been arrested for a debt contracted after the Act; while if, on the other hand, it is sought to adjudicate him bankrupt, it will be held that he cannot be so adjudicated under s. 22; and neither can he now be proceeded against as an insolvent.

Mr. Porter, Q.C. (*Mr. Perry* with him), *contra*. To hold that the debtor may be adjudicated bankrupt would be, as pointed out by Harrison, J., 8 Ir. L. T. R. 35, to subject him to a fresh liability, entailing almost penal consequences, which he could not have contemplated when he became assignee. It was the policy of the Legislature to prevent that result. Irrespective of whether the relation of landlord and tenant exists, in this case, by privity of tenure or by contract, this is a case in any view much *a fortiori*, as compared with *Re Harding*. In that case there was an indefinite liability, and in one probable event, the debtor, instead of having to pay calls, would have been sharing in profits. But in the case of a lessee or assignee, the liability is on a covenant to pay a fixed definite sum at a fixed definite period; and the policy of the Act would be much more in favour of exempting him than a member of a trading partnership, who might or might not in the result be liable as a debtor.

[SIR J. NAPIER, L.C.—If, during the currency of a gale, he had assigned over, would that not have put an end to his liability?]

Yes, as he was assignee.

[SIR J. NAPIER, L.C.—The liability is composed of two elements—the entering, and the continuing to hold under the assignment. The policy of the law is that where a person subjects himself to an obligation, of which he cannot divest himself, and which might eventuate in his being made a bankrupt, he may, by the liability so incurred, be brought within the operation of the bankruptcy law. Now, in a case of lessor and lessee, the lessee cannot get rid of his covenant, and is liable whether he assigned over or not, and that seems to me a mere case of *debitum in præsenti, solvendum in futuro*. But the other case, of an assignee of a lessee, presents this distinction, that the assignee

Digitized by Google

can at any time get rid of his obligation, if he so pleases.]

No doubt that is true, but, as a matter of fact, the assignee has not assigned in this instance, and has continued in possession under the terms of the lease. His liability is referable, firstly, to the assignment; and, secondly, to his remaining in under it.

[SIR J. NAPIER, L.C.—Part of his liability arises from his continuing in as assignee after the passing of the Act—without that it was not complete.]

Yet that arises from his having been assignee before the passing of the Act. All is referable to the inception of the contract.

[LAWSON, L. C.—The shareholder in *ex parte Williams* might have, perhaps, assigned over his share by a proper instrument. CHRISTIAN, L. J.—And the assignee of the lessee may have been deterred from so assigning over by the fact that he would not be liable to the same penalties under the old state of the law.]

In *re Harding* the Company was registered under 7 & 8 Vict., c. 110, and a shareholder might have relieved himself from liability by transferring his shares. We contend that the definition clause in the Debtors Act is not incorporated into the Bankruptcy Act; and that, even if it be, it has not the effect of modifying the provisions of the 22nd section. Although those Acts received the Royal assent on the same day, one must, in the nature of things, have received the assent subsequent to the other. Their relative position on the statute book is a mere matter of accident or of detail, worked out by a printer or official. The Debtors Act must have been the later, as the third section obviously refers to the other Act as at any rate logically prior. It would be a strong measure, in the absence of authority, to import words of definition from a subsequent Act into a previous one—and to hold that, because the Acts are more or less connected, they are necessarily incorporated together, although there might have been some argument in favour of that, if there were no definition clauses in the Acts; but where each Act has its own definition clause, that is a strong argument against transferring the one to the other. It is said that this result would ensue, that whilst the debtor cannot be made a bankrupt under one Act, he may be liberated from the previous legal consequences of his debt under the other. That would hardly follow; but, the duty is not cast upon the courts by subtle constructions to reconcile clauses which were perhaps hastily drawn at first, but to interpret them as they stand. If the glossary in the Debtors Act be considered as incorporated, a construction should still prevail which would best accord with the intention and policy of the Bankruptcy Act. When *ex parte Williams* was before Lord Westbury (33 L. J. Ba. 26), he referred the commencement of the liability to the time when the adjustment of the debts of the shareholders took place, and the amount was ascertained to which the bankrupt was liable. The liability as a debt only arose when the balance was adjusted.

[CHRISTIAN, L. J.—But the liability was in consequence of a previous arrangement as to how the liability of the parties should be regulated. Suppose a tenancy from year to year was agreed on by parol before the passing of the Act, and continued after the passing of the Act, and a gale of rent accrued due after the Act, would that be a liability before the passing of the Act?]

It is apprehended that it would; but that is a different and a more difficult question. The relation of landlord and tenant would have been carried on upon the same basis, and there is authority to show that, when that is so, it is the same estate. Since 23 & 24 Vic., c. 154, s. 3, the relationship of landlord and tenant is one of contract, and not of tenure. The words "cause of action" should be taken to mean the *whole* cause of action, as it has been held that they are capable of that meaning; and as that is a meaning which, if given to them, will reconcile all the parts of the definition. On the construction of similar words in the 34th section of the Common Law Procedure Act, 1853, the decisions are in conflict; *Cherry* v. *Thompson*, L. R. 7 Q. B. 573; *Jackson* v. *Spittal*, L. R. 5 C. P. 542; *Durham* v. *Spence*, L. R. 6 Ex. 46; *Matthews* v. *Alexander*, I. R. 7 C. L. 575.

[LAWSON, L. C.—The Court of Common Pleas here follows *Jackson* v. *Spittal*.]

In that conflict of authority, if there is nothing repugnant in the statute, the court should, as the words are capable of meaning the *whole* cause of action, give to them that meaning, as doing so would carry out the policy of the Act; *ex p. Harding*. It may be asked what case can be suggested which is not embraced by the earlier words of the clause? "Incurring a liability" involves something voluntary; "cause of action" may mean something outside that and involuntary, as where penalties are imposed. That penalties are within the meaning of the word "debt" in the statute appears from section 5, and they would satisfy the application of the words "cause of action." The word debt is employed in the popular sense in the Bankruptcy Act, 1857, as in section 257, in which it is applied to contingent liabilities.

Mr. *Naish*, in reply.—If two Acts are passed on the same day, they must be taken as the simultaneous act of the legislature with reference to the matters with which they deal. And, while the Debtors Act refers to the Bankruptcy Act as one already passed, the Bankruptcy Act, in the like manner, refers to the Debtors Act as one already passed; ss. 5, 56. On the roll of Parliament the Debtors Act is first numbered. They deal also with the same subject matter, for they both regulate the mode and the means by which the creditor can enforce his remedy against the debtor. If, in a case like the present, there is no power to adjudicate the debtor bankrupt, then, after five years he would also be exempted from imprisonment, by the Debtors Act, without a corresponding right having been given to the creditor to make the debtor's property available in bankruptcy. We cannot contend that the liability arose under a contract made after the passing of the Act, but it fairly comes within the meaning of the words "cause of action arising after the passing of the Act."

SIR J. NAPIER, Lord Commissioner.—We are of opinion that the judgment of Harrison, J., is right, and ought to be affirmed. The question turns on the 22nd section of the Bankruptcy Amendment Act, 1872. (His Lordship read same.) Now, this is an Act of Parliament which, though in one sense remedial, interferes with the common law rights of persons not traders, which they had before the passing of the Act; and no proposition can be clearer, and better founded on justice, than that any words taking away a common law right must be clear and unambiguous. Therefore, we must be clear that the debt was contracted after the passing of the Act. Now, on the facts of the case, the assignment of the lease took place before the passing of the Act; and if it had been simply a case between lessor and lessee the case would scarcely bear argument. That would be a case of *debitum in præsenti, solvendum in futuro*. At first, there was a difficulty in my mind whether there was any difference between the case of an assignee and of a lessee. But, the assignee has his property with its common law rights, and to compel the assignee to get rid of his liability by getting rid of his property, which he might have

Digitized by Google

built upon or otherwise improved, and to compel him, in fact, to assign for the purpose of escaping the effect of the new legislation, might operate with great injustice. The plain sense and meaning of the thing is that the debtor should not be prejudiced by the bankruptcy laws, and that, *quoad* them, he should be left with his common law rights as they stood before the passing of the Acts. *Ex p. Williams* concludes this case, unless the definition clause of the Debtors Act can be brought in. The decision of the House of Lords can only be set aside by the Houses of Parliament, and one case goes the length of saying that it could not be overruled by the House of Lords itself. The *Queen* v. *Millis* may be, also, referred to as illustrating the binding efficacy of a decision of the House of Lords. Mr. Purcell admitted that, if there was not some distinction between the cases, this case must be governed by that in the House of Lords. Well, then, Mr. Purcell's point is that the definition in the Debtors Act is to be imported into the Bankruptcy Act, and that there it has a meaning which assists his case. I am clearly of opinion that we cannot import the definition clause. The interpretation clause of the Debtors Act says, that "in *this* Act" the terms defined shall have the meaning assigned, and then refers to the Bankruptcy Act as already passed, and imports into the Debtors Act any definitions in the Bankruptcy Act; but the interpretation clause of the Bankruptcy Act does not import into it the definitions in the Debtors Act. I remember a case (it is reported) before Baron Pennefather in the Commission Court, in which, where an Act of Parliament was referred to in another Act, though, somewhat like the present ones, they had been passed together, he held that such a reference in the one Act to the other, as passed before, was conclusive.. Therefore, I put that argument aside altogether as to the definition clause. But, even if it were taken as imported, I do not see that it would help the contention. The assignment was the basis upon which the debt was contracted. What followed was, in part, an effect arising from the contract; and the liability was completed. Here I consider that the debt was contracted within the meaning of this Act of Parliament, before the passing of the Act, and within the principles laid down in *re Harding*. In construing an Act of Parliament we are not to isolate phrases, but to keep in mind the occasion, purpose, object, and policy of the Act, making the phrases subservient to the purposes of the Act. Here it was meant that, when the foundation of the liability was laid before the passing of the Act, although there was something further afterwards to be done which was not of the essence of the obligation, that was not to bring the debtor within the meaning of the Act, and he was to remain with his full common law rights, he having been a non-trader. The judgment of the Court below will, therefore, stand affirmed.

Lawson, Lord Commissioner.—I rest my judgment, in concurring, on the decision in the case in the House of Lords. The principle of that case completely governs this; and, I think, no Court ought to be disposed to make fine distinctions in order to evade the authority of a decision of the House of Lords, or decline to apply it as an authority. For my part, I always feel comfortable when I find a decision of the House of Lords upon which to lean; and I hope we shall never be deprived of that support. This is a liability arising on an instrument made before the passing of the Act, and falls within the decision in *ex parte Williams*. As to importing the interpretation clause of the Debtors Act into the Bankruptcy Act, I think there is great force in Mr. Naish's argument, that as both referred to the same subject matter, and were *in pari materiâ*, and received the royal assent on the same day, they should be considered as passed at the same moment. But, even if that clause were to be introduced into the Bankruptcy Act, it would not alter my view of the case, for it should be so read as not to contradict it. It would not be a cause of action arising after the passing of the Act, within the meaning of the Act, if part of that cause of action was founded on an instrument executed before the passing of the Act.

Christian, L. J.- The first question is, whether there is any substantial difference between this statute and the English one, expounded in *ex parte Williams, re Harding*; and it is admitted there is not any unless the definitions in the Irish Debtors Act can be imported into the Irish Bankruptcy Act. The first question is, can that take place at all; and the second, if so does that make any difference? I think that the definition clause cannot be imported, though I concur with Mr. Naish's argument that they are to be taken as passed contemporaneously—for the law does not take notice of fractions of a day. But what is the consequence? Here are two Acts passed in one and the same moment; one contains a certain special definition clause putting a certain construction on certain language, but the other, using the same language, carefully abstains from affixing an artificial construction to the language so used. The difficulty as to importing that glossary into the Bankruptcy Act is enormously increased by the concluding clause, providing that words and expressions defined or explained in the Bankruptcy Act are to have the same meaning in the Debtors Act. There is no clause corresponding in the Bankruptcy Act to that clause in the Debtors Act. In my opinion, the importation cannot take place. But, what difference would be made by the definition being introduced? Each of the portions of the clause must be taken separately. "Debt contracted after the passing of this Act shall mean (1) any sum of money due or payable in respect of any contract or obligation made or entered into (2), or liability incurred (3), or cause of action, or suit arisen after the passing of this Act." Those terms must be taken distributively. They are separated by the disjunctive preposition, and the meaning of each must be something different from the others. The words then in the third clause—cause of action, or suit arising after the passing of this Act—must be taken as something different from what is in the former clauses. They are general precautionary words, adopted in order to take in whatever might have escaped the operation of the former terms defined. But they cannot control the previous expressions, which are likewise to be taken disjunctively. This is made still clearer by the next clause, as to "Debts contracted *before* the passing of the Act." We have there a declaration of the Legislature that, if any debt arises on a contract before the passing of the Act, that is to be considered a debt contracted before the passing of the Act. I have, therefore, come to the conclusion that the definition clause cannot be imported into the Bankruptcy Act, but that if it could, it would make no substantial difference in the construction of the 22nd section. If so, all that the Court has to do in this case is to follow the decision of the House of Lords. If the question were *res integra*, or if all this Court had to do was to put a dry legal construction on the section, and if we were not to allow our minds to look abroad at the object and policy of the Legislature, there would be very strong grounds for saying that the subject matter we are dealing with here was very differently circumstanced from that which Lord Westbury dealt with in the case of *ex parte Williams, in re Harding*. But it has been laid down, and it stands to reason, that an inferior court in dealing with the decisions of the House of Lords should not regard merely the dry decision on the accidental facts of the case, but is bound to have regard to the *ratio decidendi*, not, indeed, to the mere dicta thrown out by one noble lord or another noble lord, but to the *ratio decidendi*, even though on the facts some apparently material difference may be suggested. What is the *ratio decidendi* in *ex parte Williams, in re Harding*? That when a party has laid the foundation of a liability before the passing of the Act, though that foundation has not raised upon it a superstructure of indebtedness till after the passing of the Act, he must be judged by the law as it stood before the passing of the Act, and not by the Act subsequently passed with its penal provisions. That *ratio decidendi* expounds the true sense and policy of the statute, and by it I hold that this Court is simply bound, even if our opinion were against that decision. We, therefore, dismiss the appeal with costs.

Solicitors for the appellants, *Perry & Crosskerry*.
Solicitors for the respondent, *Oldham & Eaton*.

Digitized by Google

ROLLS COURT.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before SULLIVAN, M.R.)

THE DUBLIN AND DROGHEDA RAILWAY COMPANY; *Ex parte* JAMES W. KNOTT and THOMAS KNOTT.

Feb. 26, May 6, 1874.—*Practice—Petition to draw money lodged in Court—Solicitor—Suppression of facts—Bankruptcy, and infancy of petitioners.*

Money awarded to two persons, as compensation for property taken from them by a railway company, had been lodged to their credit in Court. Subsequently, one of those persons was adjudicated a bankrupt. An order was obtained from this Court, directing the payment out of Court of the sum lodged by the railway company; but, in the petition on which the order was pronounced, the fact of the bankruptcy of one of the petitioners was suppressed, as also the fact that the other petitioner was a minor. On motion, by the assignees in bankruptcy, to rescind the order for payment out of Court,

Held, *that the order should be rescinded, and the money paid over to the assignees in bankruptcy; and that the solicitor who obtained the order, and was guilty of the suppression of facts, should be suspended from practising in the Court.*

Motion on behalf of the assignees of James W. Knott, a bankrupt, to rescind an order pronounced by this Court on 25th June, 1873, directing the sum of £146 to be paid out of Court to him and his son, Thomas Knott.

The facts of the case appearing on the affidavits of the solicitor of the assignees were as follows:—The bankrupt, James W. Knott, was entitled to the premises No. 21, Church-road, in the parish of St. Thomas, Dublin, as tenant from year to year, subject to the rent of £23 per annum, in which he carried on the business of a grocer and spirit dealer, with his son, Thomas Knott. In 1869 the Dublin and Drogheda Railway Co., under their statutable powers, took the house, and lodged in Court £46, which was awarded by the arbitrator, as compensation for the tenants' interest; but the bankrupt, having traversed the award, was awarded by a jury an additional sum of £100, which was also lodged in Court by the Company. On the 13th June, 1873, James W. Knott was adjudicated a bankrupt, on a petition presented by himself on 10th June, and on 8th July a creditors' assignee was appointed. Before the presenting of the petition in bankruptcy James W. Knott and his son, Thomas Knott, presented a petition in Chancery on the 28th May, 1873, praying for payment to them of the money so lodged in Court by the railway company, and on 25th June, 1873, an order was made, directing payment to be made to the petitioners after the usual advertisements had been inserted. The assignees in bankruptcy caused a *caveat* to be lodged against payment of the money to James W. Knott and Thomas Knott, and by an order of the Court of Bankruptcy, dated 9th September, 1873, the assignees were directed to present a petition in Chancery for the payment of the money to them, in order that it might be distributed in the bankruptcy matter. In the petition by the bankrupt, and the affidavits in support of it, all mention was suppressed of the fact of the bankruptcy, and in the body of the affidavit no statement appeared that Thomas Knott was under 21 years of age, though his age was stated in the heading of the affidavit.

Mr. Perry, for the assignees.

Mr. Fitzgibbon, Q.C., for the solicitor of the Knotts.

SULLIVAN, M. R. (after mentioning the facts of the case)—Thomas Knott was a minor when the petition in Chancery was presented and the order obtained. Both James W. Knott and his solicitor were present in Court at the hearing of the motion, when the matter was directed to stand over, in order that the persons concerned in the presenting of the petition might make affidavits to explain their conduct. The solicitor made an affidavit in which he stated that, having been engaged as attorney for the petitioner at the trial of the traverse, in which he was awarded £146, he filed the usual summary petition to enable the Knotts to get out of Court the sum lodged; that the petition and affidavit verifying the same were lodged on 28th May, 1873, and, having been referred to the Master of the Rolls, the usual order for service was made, and the petition was listed for 11th June; that on 9th June, James W. Knott was arrested under a *ca. sa.*; that, as solicitor for Knott, and by his direction, he filed a petition in bankruptcy, in which Knott stated he was entitled to one half of the money lodged in Chancery, and on the 13th he was adjudicated a bankrupt; that the motion to draw the £146 was listed for the 11th June, but was not heard until 25th June, when the usual order, directing postings, &c., was made; that on 8th July the creditors' assignee was appointed, and on 18th July he was served with notice that a *caveat* had been lodged by the assignees against the paying out of the money; that after lodgment of the *caveat*, he took no step in the matter, save to get his costs taxed and paid by the Dublin and Drogheda Railway Company; that he had several interviews with the solicitor for the assignees, and gave him all information in his power; and that when the motion of 25th June was heard he had no conception whatever that he was acting wrongly in allowing the petition to be moved; that he was not in any collusion with the petitioners, and had no undue desire that they should get the money; that he considered it a matter of course that the publication of the usual advertisement would be a sufficient protection against the fund being paid out of Court; that he was not now concerned for the bankrupt, and that he strongly advised the bankrupt to give a power of attorney to Mr. Deering, one of the assignees, or to their solicitor, in order to enable him to get the money, and apply it in payment of the debts, but that the bankrupt refused to accept his advice. That was the substance of the affidavit. The *caveat* having been lodged in the Secretary's office on the 17th July, the Secretary communicated with Mr. Knott's solicitor, who, on 19th July, replied, stating that the matter was quite correct. After the *caveat* had been lodged, Knott's solicitor had the temerity to act under the order, and enforced payment from the railway company, under the order, of £27 1s. 5d., the amount of his taxed costs. In his affidavit there was not a word stated about the minority of Thomas Knott, or why the petition was presented by him as if *sui juris*. Not a syllable was mentioned about the minority, although when affidavits were directed to be filed, I pointedly drew attention to that matter. The order of the Court is never made unless the parties applying are absolutely entitled to the money. The advertisements were directed merely as an additional precaution before paying out the money. If Knott's solicitor was right, then, after the presenting of the petition, if James W. Knott employed him as his solicitor to prepare a deed assigning his rights to a third party for value, after the execution of the assignment he might still apply to the Court for payment to the assignor, and leave the assignee to look out in the papers for the advertisements, and so take his chance. He prepared the petition in bankruptcy, and on the 25th June there was a suppression in a flagrant manner of the fact that the title of Knott to the fund in Court was the property of others, although in the affidavit to support the petition it was sworn that his interest in the fund was unincumbered and no other person was interested therein. It was suppressed from the Court that Knott's interest had been vested in the assignees in bankruptcy in the interval. In a matter so serious as the present I prefer to deal with the law as I find it laid down by other Judges. Where a solicitor

Digitized by Google

without authority instructed counsel to appear for parties interested in money in Court, and to consent to its payment out of Court, he was ordered to be struck off the rolls, and Knight Bruce, L. J., observed, "It should be known that, however personally painful it may have been to us to perform this duty, it has not been prompted or moved by any one but ourselves. We ordered the proceedings from a sense of public duty, and they are directly and solely attributable to us;" *in re Collins*, an attorney, 7 De. G. M'N. & G. 558. In that case the money was lost, but in the present case, by the fortunate accident of the advertisements catching the eye of the officers in bankruptcy, the money was saved; but Knott's solicitor is not to be thanked for that. It was the paramount duty of the solicitor to have informed the Court of every thing affecting the money in Court, instead of suppressing the fact that the title of the party for whom he was moving had passed to his assignees; but, here we have a solicitor so lost to every sense of duty that he concealed the fact of the bankruptcy. In addition to that, a scandalous trick has been practised on the Court. Thomas Knott was a minor; in the petition every fact connected with his minority is suppressed; from the body of the affidavit every statement of fact was suppressed as to his minority; but, by way of having a reserved case if the minority should be discovered, in the heading of the affidavit, where the eye of the officer was not likely to see it, it appears in this way—"We James W. Knott, and Thomas Knott, aged respectively upwards of 40 years and 19 years, jointly make oath, &c."—and the solicitor, filing an affidavit to explain his conduct, does not condescend to tell the Court why the affidavit was prepared in this manner, or how it came to pass that the petition was presented in this scandalous manner. It is impossible to allow the fair and honest practice of this Court to be exposed to the contagion of such conduct. I have most seriously considered whether I should not follow the order in *Re Collins*, and strike the name of this solicitor off the roll; but having regard to the fact that the money was not lost, I think I shall satisfy the ends of justice by setting aside the order of 25th of June, 1873, as having been obtained by wilful suppression of fact, and by directing James W. Knott and his solicitor to pay the costs of the motion to set aside the order; and by ordering that the solicitor shall be suspended from practising in the Court of Chancery until further order. Knott's solicitor must also repay to the Railway Company, the sum which he received from them. I am anxious to deal with the matter in a lenient manner, it being an offence against myself; and finding that the late Master of the Rolls made an order similar to the present, in regard to a solicitor who had taken a seal off a settlement, I shall stop short of striking the name of this solicitor off the rolls. I hope that this will be the last of those scandalous cases in this court. The assignees' duty will be to move their petition for payment of the money to them as soon as possible.

6th May.—On motion of *Perry* for the assignees, an order was made to pay the money over to them.

Solicitors for the assignees.—*Casey & Clay*.

VICE-CHANCELLOR'S COURT.

Reported by E. F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

In the matter of the RENEWABLE LEASEHOLD CONVERSION ACT; *ex parte* HARRISON.

April 27, 1874.—*Renewable Leasehold Conversion Act—Lessee out of jurisdiction—Petition by Receiver to have deed of fee-farm grant executed by one of the Masters—Title of petition.*

A Receiver over lands having obtained a fee-farm grant, which he and the lessor had executed, applied by petition, under the Renewable Leasehold Conversion Act, for an order, directing that one of the Masters should execute it for the lessee, who was out of the jurisdiction of the Court.

Held, *that the Court had no power under the Act to grant the order.*

Petitions by Receivers, under the Act, should be entitled in the cause or matter to which the Receivers have been appointed, as well as in the matter of the Act.

This was a petition, under the Renewable Leasehold Conversion Act, by a receiver, for the purpose of having a deed executed by one of the Masters of the Court for the lessee, who was out of the jurisdiction. The facts of the case were that, by lease dated the 6th August, 1816, William Caulfield demised certain lands to William Fitzgerald, and Bridget Fitzgerald, his wife, to hold for lives renewable for ever. Under the trusts of a settlement made on the occasion of the marriage of John Fitzgerald, the only son and heir apparent of William and Bridget Fitzgerald, John Fitzgerald became entitled to the rents and profits during his natural life. By an order of the Court, in the matter of the Act of the 5th and 6th of Will. IV., c. 35, and bearing date the 29th January, 1841, James Harrison, the petitioner, was appointed and still continued receiver. By indenture dated the 24th November, 1873, Robert Caulfield, the then legal owner of the reversion upon the determination of the lease, and in the actual receipt of the rent therein reserved, granted and confirmed to the petitioner and John Fitzgerald, his heirs and assigns, for ever, the said lands, at a fee-farm rent. The said fee-farm grant was executed by Robert Caulfield, and by the petitioner, as one of the grantees therein named, in pursuance of the ruling of Gerald Fitzgibbon, the Receiver Master. John Fitzgerald, the other grantee named in the fee-farm grant, was, and had been for several years, resident in St. Louis, United States of America, and not within the United Kingdom, and there was, as the petitioner believed, no attorney lawfully authorised on his behalf in this country to execute the lease for, or in his name. In pursuance of the ruling of the Receiver Master, the petitioner was advised to apply to the Court for an order, directing that the fee-farm grant be executed by one of the Masters in Ordinary of the Court, and in the name of John Fitzgerald.

Mr. H. Plunkett, for the petitioner, in support of the petition.—The 22nd section of the Act enacts that, "if the person who might be required to execute a grant under the Act be a minor, idiot, lunatic, *feme covert*, or not within the United Kingdom, it shall be lawful for the person entitled to require the same to apply to the Court of Chancery in a summary way—viz., petition, praying that a grant may be executed to him under the Act." We are entitled to an order that the deed be executed by the Master for the person absent. Sections 23, 24, 25, and 26 are inapplicable to this case, as there are no disputed facts, and everything is ascertained.

[CHATTERTON, V.C.—Under what section do you say I have jurisdiction?]

Under the 22nd section, which declares us entitled to pray for the relief, and therefore, by implication, gives power to grant it. The 27th section gives power to order the grant to be executed by the Master or Remembrancer.

CHATTERTON, V.C.—This motion is untenable. The 27th section applies only to proceedings under the 22nd section, and the 22nd section has no application to the present case. The provision applies to the case where a party is obliged to come to the court to have matters ascertained, and that does not apply to the present matter. The words of the 22nd section are "by petition praying that a grant may be executed to him under the Act, or that it may be declared

Digitized by Google

what covenants, conditions, exceptions, and reservations should be contained in such grant, or that any such exceptions, reservations, or rights as aforesaid may be commuted, or that the terms or conditions of such grant may be settled, or that the amount of the fee farm rent may be determined, or such other relief as may be applicable to the case." That, it is quite clear, was never intended to apply to this case. I am clearly of opinion that this motion is untenable, and that there is no power under the Act to grant it.

I may add it has been decided that, in applications under the Act by receivers, the petition should be entitled not only under the Renewable Leasehold Conversion Act, but in the cause or matter in which the receiver has been appointed.

Solicitor, *H. O'Beirne.*

LANDED ESTATES COURT.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Flanagan, J.)

In the matter of the Record of Title Act (Ireland), 1865, and of Patrick Rooney, an owner of Land under Parliamentary Title.

February 18, 1874.—*Record of Title Act* (*Ireland*)—*Land Certificate—Lien.*

When a title is recorded by an owner, the mortgagee, under a mortgage from a previous owner, is entitled to retain the land certificate.

This was an application that the Recording Officer should deliver over to the owner the land certificate lodged, subject to a lien for costs.

It appeared that, in February, 1862, Matthew Rooney got a conveyance from the Landed Estates Court of the lands of Nutstown, and in the same year Mr. West, on behalf of Charles Maclean and Mrs. Maclean, invested £1,800 in a mortgage on the estate. The mortgage was assigned and handed over to Mrs. Maclean, as it had been made with her money; and it had been declared in the mortgage deed to be for her sole and separate use. In 1866, the title was recorded by Matthew Rooney, the owner, and the certificates of title and of charge were returned to Mrs. Maclean, in whose possession they remained till July, 1873. Matthew Rooney died, and his brother, Patrick Rooney, having succeeded as heir-at-law, wished to have his title registered. He, accordingly, applied to Mr. West for the land certificate. On the 17th December, 1873, Mr. West, in pursuance of an order of the Court, made on the 11th December, under the 17th section of the Record of Title Act, lodged the land certificate in the office, subject to a lien for costs.

Mr. G. Cathrew, in support of the motion.—No object would be gained by Mr. Rooney in having his title recorded if he were not to have possession of his land certificate. The Land Record of Title Act does not contemplate the idea of every incumbrancer being entitled to the owner's certificate; but, on the contrary, the mortgagee has a certificate of charge, and that is sufficient.

Mr. H. Fitzgibbon, Q. C., *contra.*—Mrs. Maclean is entitled to retain the custody of the land certificate until the amount of the mortgage is paid off. The mortgagee is entitled always to all evidences of title necessary to effect a sale; and if the mortgagee have not the land certificate, she could not effect a perfect title.

Flanagan, J.—This is an application by a party who is entitled to a certificate of title under the Act. Mr. West, the solicitor for Charles Maclean and Mrs. Maclean, had advanced £1,800 on behalf of Mrs. Maclean, on mortgage to Matthew Rooney. Rooney had purchased in this Court, and held under a Parliamentary title; and the title-deeds were handed over to Mr. West, as solicitor for the mortgagee. Rooney wished to have his title recorded, and that was done in 1866, the conveyance and other documents of title being brought into the office. West then got back the certificate of title from the office, and kept it till the death of Rooney. On the death of Matthew Rooney, Patrick Rooney succeeded as heir-at-law; and shortly after, being desirous of having his title recorded, he applied to West for the certificate of title. West appears, from the evidence, to have given him every facility to record his title, the only difference between them being a question of some costs. The certificate was lodged in December last, in pursuance of an order, and it so remains. Rooney now asks for the land certificate, stating that the mortgagee is entitled only to the certificate of charge. I am of opinion that West's client must get the certificate of title on the ground that the mortgagee may have all evidences of title necessary to effect a sale. The certificate of title is exactly one of these. By the 26th section of the Act the equitable mortgage or lien on recorded lands shall be created by deposit of title deeds. To this, however, there is this exception, viz. :—the deposit of the certificate. The land certificate is of the greatest importance, in the event of a sale; it is the first document required by the Court; and, also, the owner getting the certificate might embarrass the mortgagee in recovering her money. He might go to any of the banks of Dublin, and, by deposit of the certificate, charge the lands to any amount he pleased, and so seriously alter the position of the mortgagee. The retention of the land certificate is, therefore, of the greatest importance to the mortgagee, though the contrary was urged on the argument. Without going through all the sections of the Act, I hold that the owner is not, having regard to the facts of the case, entitled to the certificate of title, and the mortgagee is entitled to more than the certificate of charge. This application, therefore, must be refused with costs.

Solicitors for the applicant, *Messrs. Tench & Reynolds.*
Solicitor for mortgagee, *Mr. West*, in person.

LAND SESSIONS.

Reported by John Sullivan, Esq., Barrister-at-Law.

(Before Robert Ferguson, Esq., Q.C.)

Taylor v. Dowden and Others.

April, 1874.—*Landlord and Tenant* (*Ireland*) *Act*, 1870, *sec.* 15—*Compensation for Disturbance—Town Parks—Unreasonable conduct.*

In order to satisfy the requirements of sec. 15, *sub-sec.* 1 *of the Landlord and Tenant* (*Ireland*) *Act*, 1870, *the land which has an increased value as accommodation land, must be held by a resident in a town for the accommodation of his town house.*

A landlord, for the purpose of repairing a mill-weir adjoining his tenant's land, raised earth and gravel from a field of the tenant, offering to pay compensation for the trespass. The tenant, however, brought an action against the landlord, which was left to arbitration, and resulted in an award of heavy damages for the mere surface trespass, the landlord being also subjected to the costs of the litigation. Contemplating that it would again become necessary to raise earth and gravel in like manner, for a similar purpose, and apprehending that the incidental trespass to the surface of the tenant's land would be again made the subject of litigation, instead of having any damages assessed by a less expensive process, the landlord served a notice to quit, and brought an ejectment against the tenant.

Held, *that the conduct of the tenant was vexatious, and that the amount awarded him in the action should be taken into consideration in estimating his compensation for disturbance; and that the conduct of the landlord was not unreasonable, nor was the eviction capricious.*

The claimant was a farmer and cattle-dealer, residing

Digitized by Google

in the town of Bandon, in the county of Cork. The respondents were the owners of the Bandon mills, and also resided in that town. The claim, which was heard before the Chairman for the county of Cork, was for disturbance—four years' rent, at £44 per annum, amounting to £176; and for improvements, £39, consisting of the following items:—building a house for cattle, £15; cleaning drains, £2; and unexhausted manures, £22. The whole claim amounted to £215. The respondents, by their dispute, traversed the entire claim, and relied on a set-off, amounting in the whole to £142, and composed of the following items:—deterioration of the holding, arising from the claimant's neglect, in not keeping fences and drains in order, £50; the cost of restoring water-ditches, 50; opening drains allowed by the claimant to become choked, £15; materials supplied by the respondents for the cattle house built by claimant, £13; cash allowed in rent to claimant, for the labour of putting up the cattle house, £3; and occupation rent of the holding for three months, £11. The valuation of the holding was £18 10s. It contained 11 acres, and formed part of the Bandon mill lands, was called the Bog-field, and was within two or three yards of the town of Bandon, and within the boundary of the Parliamentary Borough. It was taken by the claimant in the year 1865, as yearly tenant, at a rent of £44, from Mr. Bell, who was tenant of the mill lands under a lease from the Duke of Devonshire. In the year 1871, Mr. Bell assigned his interest in the mill lands to the respondents, but the claimant, who was still tenant of the Bog-field at the time of the assignment, continued as tenant of the holding at his original rent of £44, until disturbed in his possession under the circumstances which gave rise to the present claim. For the first two or three years of his tenancy the claimant tilled the holding; but since then he had used it exclusively for pasture. It was bounded on the south by the River Bandon, and on the east and south-east by the Bandon mills, and by a weir built, at the same time as the mills, for the purpose of pressing back the water of the river for the use of the mills.

The respondents, who carried on business as millers in the Bandon mills, in the month of May, 1872, placed erections, consisting of timber and stones on their weir, for the purpose of directing the water of the river from the mill wheel, in order that they might erect a larger wheel. For the purpose of strengthening these erections the respondents, about the same time, removed a considerable quantity of earth, stones, and manure from the claimant's holding, and placed them on the weir. The claimant brought an action against the respondents, in which he claimed £550 for the injury sustained by the flooding of his holding, which he alleged to have been caused by the erections on the weir, and £100 for the removal of the earth and manure. In the month of April following the claimant was served with a notice to quit his holding, on 1st November following, by the respondents; and on the 10th November the respondents brought an ejectment against him to recover possession of the holding. The claimant took defence to the ejectment, but eventually in January, 1874, he gave up possession. The action brought by the claimant against the respondents was ripe for trial at the Cork Summer Assizes, 1873, but was then referred to arbitration. The arbitrators by their award found that the flooding of the claimant's holding was not caused by the erections on the weir, but they awarded to him a sum of £50 for the removal of the manure and earth by the respondents, and costs. The further facts appear in the judgment.

Mr. *T. R. Wright*, solicitor for the respondents. The holding is a "town park," within the meaning of the Landlord and Tenant, Ireland, Act, 1870, sec. 15; and, therefore, the claimant is not entitled to compensation for disturbance. But assuming that the holding is not a town park, the claimant, by bringing his action against the respondents for the flooding of his holding and the removal of earth and manure, was guilty of unreasonable conduct, such as to disentitle him to compensation for disturbance. He cited *Corbet* v. *Carey*, 5 IR. L. T. R. 15; *Forsythe* v. *Daly*, 5 IR. L. T. R. 35; *Saul* v. *Keown*, 5 IR. L. T. R. 35; *Adams* v. *Jones*, 5 IR. L. T. R. 74; *Boyd* v. *Graham*, 5 IR. L. T. R. 102; and *Kane & Nolan*, L. A. pp. 412, 155.

John Sullivan, for the claimant. The holding is not a "town park" within the meaning of sec. 15. The bringing of the action by the claimant was not vexatious; but the service of the notice to quit and ejectment on the claimant was a vindictive and unreasonable proceeding by the respondents; and the eviction was capricious. The claimant is, therefore, entitled to the full sum he claims for disturbance. He cited *Lord Dunally* v. *Hodgins*, 7 IR. L. T. R. 181.

THE CHAIRMAN.—It is impossible to say that the question involved in this case is quite free from doubt, or that another tribunal may not on the evidence come to a conclusion different from that at which I have arrived; but, in my opinion, the fields which are the subject matter of this claim are not *town parks* within the meaning of the 15th section of the Land Act, and the claimant is not on that ground disentitled to compensation for disturbance. By the 15th section no compensation for disturbance is payable in respect of "any demesne land, or any holding ordinarily termed 'town parks' adjoining or near any city or town, which shall bear an increased value as *accommodation land*, over and above the ordinarily letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof." Town parks which are well known by that name in England, but in Ireland are generally called "town fields," appear to have had their origin in the following manner:—When the owner of the soil on which a town is built, is also the owner of the property which surrounds it, he frequently, for the accommodation and encouragement of the persons resident in the town, allotted certain small holdings in the immediate neighbourhood, which went with the houses, and were held not as a commercial or agricultural speculation, but as an accommodation for the town residents. An instance of this class of holdings exists in a neighbouring county. On the well managed estate of the Earl of Devon, in the County of Limerick, is situate the town of Newcastle West. To each of the principal houses in that town is attached, or at least with each house is usually occupied, a town park or field, held for the accommodation of the resident in that house and his family, and manifestly intended to supply them with those small comforts and luxuries which may not otherwise be easily attainable in a county town. Now it seemed manifestly unjust to the Legislature, that the occupier from year to year of a field of this sort, which was rather an appendage to his house than a separate holding, should be entitled to the compensation which was intended for persons who by disturbance were deprived of their means, or a portion of their means of subsistence. The true test by which a holding of this sort can be distinguished is, not its vicinity to a town (a farm manifestly within the Act may immediately adjoin the town), not by the residence of the owner in the town, but by its being held as an *accommodation* for the *town house*, and for that purpose only. The fields in this case do not come within that definition. They were never known as town fields, or town parks; there is, however, not much in that, the important element in which they are deficient is this, they have never been allotted or used for the accommodation of a house in the town. They have been held and used for agricultural or commercial

Digitized by Google

purposes, and are not in my opinion within the meaning of the 15th section.*

In considering, however, the amount of compensation to be awarded to the claimant, I must take into consideration the conduct of the parties, and the circumstances under which the possession of those fields was resumed. The landlord is, also, the owner of the large and valuable mills which these fields adjoin, and with which they were formerly held. His mill-weir requiring repairs, he raised earth and gravel for the purpose in the field of his tenant, offering, however, to pay for the trespass. That seems reasonable enough, and the damages for trespass could easily have been ascertained. The course adopted by the tenant, however, was an action against his landlord in the Superior Courts, which finally resulted in an arbitration by which £35 was awarded for the trespass, and £15 for a heap of compost, which was used by the landlord for the repairs of his weir. The value of the compost was perhaps fair enough, but how £35 could have been awarded for mere *surface* trespass, to which alone this tenant was entitled, I feel it difficult to understand. The claimant has thereby, however, got nearly a year's rent out of the fields, and the landlord had to pay the costs. Now, the landlord thinking it probable that he may again require, for his valuable mill works, the accommodation of gravel soil or stuff to be taken from these fields, and being unwilling to undergo the same expensive process of ascertaining the damages for the trespass, serves a notice to quit, and brings his ejectment. I cannot consider this eviction capricious. I believe that, were it not for the sturdy and litigious conduct of the tenant, this notice to quit, would not have been served, and although his conduct in the transaction does not exactly amount to "an unreasonable refusal of landlord privileges," within the terms of the 14th section of the Act, it is quite sufficient to justify me in reducing the compensation for disturbance to one year's rent. I shall therefore give,

For disturbance - - - -	£44
For the shed or outhouse - -	10
	£54
From which I deduct for waste committed by the tenant to the river boundary -	£5
Allowed	£49

From which is to be deducted all rent, and mesne rates.

Attorney for claimant, *J. T. Sullivan.*

Attorney for respondent, *T. R. Wright.*

COURT OF CHANCERY APPEAL.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

JOHN LYDON *v.* DANIEL LYDON and Others.

May 8, 1874.—*Specific performance—Laches—Acquiescence.*

On April 11, 1870, *Martin Lydon agreed in writing to assign certain leasehold premises to John Lydon. On April* 16, *Martin Lydon's attorney, by his instructions, caused a notice to be served on John Lydon, stating that his client disputed the validity of the agreement, that same was fraudulently obtained and while said Martin Lydon was inebriated, and that he would proceed to have same, if set up, set aside. A draft assignment, reciting the agreement, was furnished by John Lydon's solicitor on April 20th; no other answer being given to the notice. The draft was returned unapproved. Martin Lydon, on 29th April, assigned the premises to another person. Martin Lydon died on Nov.* 14, 1870. *In March,* 1872, *John Lydon filed a bill for specific performance.*

Held, *that specific performance should not be enforced.*

Per CHRISTIAN, L. J. (*Acc.* LAWSON, L. C.)—*The plaintiff's not having filed a bill to enforce specific performance during the seven months which, after the notice disputing the validity of the agreement, elapsed during the lifetime of Martin Lydon, of itself disentitled the plaintiff to relief.*

Appeal from a decree of Chatterton, V.C., dated the 20th day of January, 1874, by which it was declared that an agreement, dated the 11th April, 1870, should be specifically performed.

Martin Lydon was possessed of, and held under a lease, bearing date the 17th June, 1846, for a term of sixty-one years, a plot of ground, tenement, and premises, in the town of Galway, at the yearly rent of £5 5s., and on the 11th April, 1870, signed an agreement to assign them to John Lydon. The agreement was as follows:—"SIR, I hereby agree and undertake to assign all my right, title, and interest in all that and those, the house, yard, and premises situate at Eyre-street, in the county of the town of Galway, at present in my occupation, and which said premises I hold, under lease bearing date the 25th day of March, 1846, for a term of sixty-one years, in consideration of your paying over to me the sum of £100, £50 thereof to be paid on my giving up possession, and the remaining £50 to be payable in two years from this date. And I further agree and undertake to execute any assignment for the more perfectly assuring you the interest in the aforesaid premises.

"MARTIN LYDON.

"*Galway*, 11*th April*, 1870.

"Witness present, MICHAEL O'BRIEN."

At that time a treaty of marriage was in process of negociation between John Lydon (the plaintiff) and Kate Lydon, a daughter of Martin Lydon. An assignment of the said premises was executed by the said Martin Lydon to Michael Lydon (one of the defendants), by deed bearing date 29th April, 1870. Martin Lydon died on the 14th November, 1870, intestate, leaving Michael and Kate Lydon and Mary Quinn, otherwise Lydon, his children and sole next of kin him surviving. It appeared from the affidavit of Mr. James W. Blake, solicitor, that John Lydon, in company with a man named Denman, had called upon him on the 24th February, 1870. John Lydon stated that he was about to marry Kate Lydon, and that he wanted an assignment of Martin Lydon's lease drawn up as his intended wife's fortune. Blake declined to act without seeing Martin Lydon, and desired him to bring Lydon to his office, and also to bring the lease. Afterwards John, Kate, and Martin Lydon, as also Denman, came together to Blake's office, and a conversation took place about the assignment of the lease, in the course of which Martin Lydon appeared to be under the influence of drink, and showed himself most unwilling to part with the lease, as he said he had no other means of setting up Michael Lydon in business. John Lydon, after much difficulty, induced Martin to say that he would assign the premises for £92, reserving liberty to himself to reside in the house during his life. John Lydon pressed Blake to prepare the assignment, and have it executed at once, but Blake, not considering Martin Lydon to be in a fit state to execute a deed, desired them to return the next day, and cautioned them not to allow Martin Lydon to drink in the meantime. John Lydon contradicted Blake's account of the transaction, and stated that Martin Lydon was sober, and that the negociations were broken off by John Lydon himself, as he did not agree to the terms of sale proposed by Martin Lydon. On the following day Martin Lydon returned to Blake's office alone, in-

* See, also, *Trustees of Lord Kilmorey* v. *Anderson*, 8 IR. L. T 109. [Ed. *I. L. T. Rep.*]

Digitized by Google

quired as to the instructions given on the previous day, and, on hearing what they were, said he would never agree to any such thing, that no one but his son should have the house, and that he was quite drunk on the previous evening. John Lydon never returned to Blake's office. About the middle of March negociations with Martin Lydon and Michael Lydon were renewed by John Lydon in respect of said marriage, and it was agreed that Kate Lydon's fortune should be £50, to be secured by the joint note of Martin and Michael Lydon. But John Lydon stated that he never knew of the existence of the note till long after he married. On April 12th, 1870, Martin Lydon, accompanied by John Tanian, again called on Mr. Blake, and told him that John Lydon had on the previous evening got him to sign an agreement in Michael O'Brien's house while he was drunk for the sale of his house, but that he did not wish to sell it, and that he would never have agreed to do so if John Lydon had not made him drunk, and he directed Mr. Blake to do whatever was necessary to repudiate the alleged agreement. On the 16th April, 1870, Blake, by the instructions of Martin Lydon, prepared and had served on the parties named at foot thereof the following notice:—"Sirs and Madam,—I hereby give you notice, on behalf of Mr. Martin Lydon, that he disputes the validity of any deed or agreement, or otherwise, entered into or executed by him at the house of Michael O'Brien, or elsewhere, on Monday, the 11th instant, same having been obtained by fraudulent and improper means, and whilst said Martin Lydon was in a state of inebriety; and should you, or any other person, set up a claim on foot of any such document, he will at once proceed to have same set aside by the Court of Chancery, and will make use of this notice in any such proceeding as he may be advised.

"James W. Blake, Solicitor for Martin Lydon,
"10, Henry-street, Dublin, and Galway.
"*Dated April 16th*, 1870.

"To Messrs. John Lydon, Michael O'Brien,
and Miss Kate Lydon."

On April 20th a draft deed, reciting the alleged agreement, was furnished by Mr. Jennings, on behalf of John Lydon, to Martin Lydon, with a notice calling on him to assign the premises; and this was the only answer to Mr. Blake's notice. The draft was returned unapproved, and, though John Lydon stated that he repeatedly applied to Martin Lydon to carry out the agreement, and had a bill for specific performance printed at the time of Martin's death, no proceedings were actually taken in his life-time. Martin Lydon instructed Blake to prepare an assignment of the premises to Michael Lydon, and by deed of 29th April, 1870, the premises were assigned accordingly to Michael Lydon, who entered into possession on the death of the assignor. On May 7th, 1870, John Lydon and Kate Lydon were married. On the 2nd November, 1870, a summons and plaint was issued by John against Martin and Michael Lydon, for the amount of the promissory note; and on the death of Martin proceedings were continued against Michael Lydon, and the money ultimately recovered from him. The fact of the delay in filing the bill after the death of Martin Lydon John Lydon explained by stating, that same was wholly occasioned by the acts of Michael Lydon, whom he cited to take out administration to Martin Lydon; that Michael Lydon formally accepted the office of administrator, but, after many delays and evasions of the duty of extracting letters of administration, his conduct was held to amount to a renunciation of the office, and ultimately, on February 7th, 1872, an administration, limited to the subject-matter of the suit, was granted to Daniel Lydon on John Lydon's nomination. With regard to the agreement, John Lydon's case was that at the time of its execution Martin Lydon was sober, subject to no pressure, and understood perfectly what he was doing; and to establish this he put in the affidavits of Francis Jennings, an assistant in the office, and son of Richard Jennings, solicitor, who said that he prepared the said draft agreement, having been sent for to the house of Michael O'Brien, a toll-collector, where there were present Martin, Kate, and John Lydon, and Anne and Michael O'Brien. All these parties bore testimony to the competency and sobriety of Martin Lydon on the occasion. The Vice-Chancellor, being of opinion that the case of undue pressure and intoxication of Martin Lydon had failed, made a decree for specific performance. From this decree Michael Lydon now appealed.

Mr. M'Kenna, for the appellant, referred to *Darkin* v. *Darkin*, 17 Beav. 578, 1 W. & T., L. C. (Eq.) 507.

Mr. Campion, Q.C., (with him *Mr. Macdermot*), for the respondent, cited *Clowes* v. *Higginson*, 1 Ves. & B. 527; *Omerod* v. *Hardman*, 5 Ves. Jun. 722; *Browne* v. *M'Clintock*, L. R. 6 H. L. 456; *Parker* v. *Taswell*, 2 De G. & Jon. 559; *Finney* v. *Pardy*, 9 Ir. Ch. 347; *Croome* v. *Lediard*, 2 Myl. & K. 251; Sugden's Vendors and Purchasers, 14th ed. 163.

Sir J. Napier, L.C.—We are all well satisfied that the decree of the Vice-Chancellor cannot be sustained. We are not here to decide on questions of hardship. John Lydon married this lady for better or for worse. It appeared that in the year 1870 there were negociations for the marriage of these parties, which are thus stated by the appellant in the 10th paragraph of his petition of appeal:—"About the middle of March negociations with said Martin Lydon and defendant, Michael Lydon, were renewed by the plaintiff in respect of said marriage, and it was agreed that Kate Lydon's fortune should be £50, to be secured by the joint note of said Martin and Michael Lydon. The note was signed and handed to the plaintiff, and defendant, Michael Lydon, charges that no other fortune was ever agreed on." Now, in his answer to that respondent says, in the 5th paragraph:—"It is wholly untrue that I agreed to marry the said Kate Lydon on £50 being secured to her by the promissory note, in the 10th paragraph of the petition of appeal mentioned, nor had I any knowledge of the agreement therein alleged, nor was I aware of the existence of the said note till long after it had been made. It was never suggested to me that the said note should be a substitute for the agreement to sell me the said house and premises, or that I should not be paid the said note when at maturity, if the agreement were entered into, and I say I would not have consented to marry the said Kate Lydon unless and until the contract of the 11th April had been entered into." At that time, on the 24th March, 1870, there were these negociations on foot, which the one side say referred to the one subject-matter, and the other to a different one. But be that as it may, John Lydon got the note at some time, and how did he act with regard to the note? In considering statements of this kind I have found nothing so important as to see how the parties acted subsequently. He proceeds, on the 2nd November, by summons and plaint, to realize the amount of it. How does he act with regard to the house and premises? Before he married at all, after he proceeded to obtain this agreement, on the 12th April, the day following its execution, Martin Lydon went to Mr. Blake, and then comes the notice [His Lordship here read the notice which Blake served on John Lydon, Michael O'Brien, and Kate Lydon]. Now, how was that followed up on the other hand? On April 20th, four days after, a draft deed was furnished to Blake, but the draft deed was returned by him unapproved of, and beyond sending

Digitized by Google

that draft deed, no answer was made to Blake's notice. He realizes his security on the one hand, and on the other he only sends the draft deed: why did he leave one security in abeyance, and realize the other? There he holds his hand and does nothing, but he gets into his pocket the proceeds of the promissory note. The property that he says was agreed to be made part of the consideration for his marrying Kate Lydon is assigned to Michael Lydon, and then, Michael Lydon having got into possession, John Lydon, nevertheless, marries this lady, and takes the promissory note. Does he take any step in the life-time of Martin Lydon? He takes a step as to the promissory note, but not as to the house and premises. What inference do I draw from that? That he did not think he had a right to anything but the promissory note. He leaves the defendant, Michael Lydon, in possession, and then, after some years, he files his bill to ask a Court of Equity to give validity to this agreement that he has got. The Court, when it is asked for its aid to decree specific performance, ought to be satisfied that the contract ought to be performed in conscience and equity. I have always understood that where the case is doubtful a Court of Equity ought not to lend its authority to effectuate that which it is not quite clear about. We ought to hold our hand in a case with such a cloud of doubt upon it as this. If it had depended on the mere allegation of drunkenness, I would have had great difficulty, for it is hard to come to a conclusion on paper evidence. Where there is a real *bonâ fide* question of fact let us have the real witnesses themselves. I put very little value on paper evidence; therefore, on that part of the case I should not have been inclined to this view which I have taken.

LAWSON, L.C.—In this case I concur with the judgment of Lord Commissioner Napier; and I must say that I never saw a case in which it was more free for a Court of Equity to refuse specific performance. We have the evidence of Mr. Blake, who was solicitor for Martin Lydon, that on the 24th February, 1870, John Lydon, the plaintiff, called on him alone, not accompanied by the old man, and told him that he wanted that assignment drawn up. Blake refused to act without seeing the old man, and Martin Lydon did come to him, but he was under the influence of drink. Blake swears that, and I entirely believe him. Blake most properly said he did not consider him in a fit state to execute the deed, and told them to return, but they never did return. What does this plaintiff do, having notice that Blake was protecting the interests of this old man as his solicitor, and badly he wanted advice? He and his friends go and appoint a meeting at the house of one O'Brien, and they send for a Mr. Jennings, who never knew the parties before, and then the execution of this instrument took place on the 11th April, 1870. In five days after, Blake, by the instructions of the old man, served a notice, in which he expressly impeached that deed, and he does not say, "I will resist the performance of that contract," but "I will take steps to set it aside." Could there be a more distinct repudiation of the deed? There was no reply given to that notice, but in the ordinary course of business a draft deed was furnished, and that was just sent back again. If John Lydon ever meant to set up any claim, it became his duty at once to file his bill, and, in my opinion, his not doing so is not mere laches, but a distinct acquiescence in the truth of that notice, that that document was executed under circumstances which invalidated it. I see a clear and distinct repudiation by act and document of that deed, and I believe that that was acquiesced in during the lifetime of Martin Lydon. There is another matter on which I do not mean to rest my judgment, that is about the promissory note and the verbal agreement that Martin Lydon was to live in the house after the assignment. John Lydon admits that the last matter was spoken of at the time, but I rather rest on that as reflecting on the whole of the transaction, as showing that the old man had not proper protection, and that he was left without proper advice.

CHRISTIAN, L.J.—I am of the same opinion, and I shall not repeat what has been already said. I rest my decision upon one simple, narrow point—I hold that, upon every principle which governs the Court in enforcing specific performance, the length of time which the plaintiff has suffered to elapse during the life-time of Martin Lydon without filing his bill, without taking any account at all of the additional sixteen months which elapsed after the death of Martin Lydon, disentitles him to the relief he seeks. I hold that his seven months' submission to the notice of repudiation was alone fatal to the present case.

Solicitor for the appellant, *James W. Blake.*
Solicitor for the respondent, *Richard Jennings.*

LANDED ESTATES' COURT.

Reported by R. D. MURRAY, Esq., Barrister-at-law.

(Before FLANAGAN, J.)

In the matter of the Estate of HENRY GREER, SEN., and Others, Owners; REV. JOSEPH BRADSHAW, Petitioner.

May, 1874.—*Misdescription in map attached to Rental—Discharge of purchaser.*

Where the vendors had caused a map to be prepared, with the portion to be sold (consisting of two lots) coloured green, and, after the preparation of the map, changed their intention and determined not to sell the smaller lot, the purchaser, who thought bonâ fide *that he was purchasing both lots, and had paid his purchase-money, was held entitled to be discharged from the purchase.*

The property in this matter was shown in the map in two parts coloured green; the one a large parcel of land, called on the map lot 1, part of the lands of Lurgantameny, and the other part near to Donaghcloney Bridge, comprising 6a. 0r. 3p., described as part of No. 1. In the description in the rental the property was stated to consist of one parcel. It appeared that the vendors had at first intended to sell both parts, and that the map was prepared with that intention; but subsequently, by some family arrangement, the smaller plot had been disposed of to one of the vendors, and was, therefore, not mentioned in the description in the rental. Hugh Harrison became the purchaser for about £5,500. He was unable to read and write, but his son, who could do so, was present with him at the sale. The vendors told the auctioneer to announce that the smaller plot would not be sold, but the purchaser and his son both swore that they did not hear this announced.

Mr. J. Frazer, for the purchaser.—The land delineated on the rental map as lot No. 1, and therein described as part of lot No. 1, should be conveyed to the purchaser under his purchase of said lot, or, in the event of such portion not being conveyed to him, he should be awarded compensation in lieu thereof. The purchaser could not read and write, and was guided solely by the pictorial description in the map attached to the rental. Though he could not read the rental, he could understand the map. Neither he nor his son heard the auctioneer make the announcement at the auction, and, consequently, the vendors have made a gross misdescription of the premises. The purchaser pointed out the mistake as soon as he could; he purchased *bona fide*, and, therefore, he ought to be compensated. *In re Browne*, 3 Ir. Jur. N. S. 185; *in re Gore*, 3 IR. L. T. 137; I. R. 3 Eq. 260.

Mr. W. D. Andrews, Q.C. (with him *Mr. Weir*).—This is not a case for compensation. The vendors did all they could to rectify the mistake. When the map was prepared they intended to sell all, but afterwards kept the small portion by a family arrangement. They

Digitized by Google

told the auctioneer to say that the small portion would not be sold, and he swears he announced it. The purchaser clearly cannot be compensated, and he ought not to be discharged for so trifling an amount.

FLANAGAN, J.—This is a case in which a sale took place in the country, and the purchaser was Hugh Harrison, for about £5,500. He swears he is illiterate; but he must be a shrewd and intelligent man. As to the rental, an intelligent man reading it would, of course, see that the detached part was not intended to be sold; but an ordinary man, not conversant with legal matters or rentals, would, probably, come to the conclusion that all the property coloured green was to be sold, as appeared by the map. The map is, of course, of no use, unless it is to be incorporated with the rest of the rental. Now it is clear, from the evidence, that Harrison thought he was getting both pieces of property when he was buying, and it is equally clear that the vendors did not mean to sell the smaller piece, and it is on this latter ground that I do not think this is a case for compensation. As to whether I shall discharge the purchaser depends on the question—Had he reasonable grounds for knowing that the smaller plot was not comprised in the sale? Now, Mr. Harrison swears that he believed that the second plot was intended to be included in the sale. His son swears the same. Mr. Andrews, the solicitor having carriage of the proceedings, told the auctioneer to announce at the sale that it was to be omitted, and Mr. Cherry, the auctioneer, in his affidavit, swears that he did mention it.* But, it was gross negligence on the part of the vendor's solicitor not to amend the rental.† The small piece of property might have been struck out of the map, and a note might have been inserted on the rental to the effect that the smaller part was not to be sold. But as it is, the rental comes up here unaltered and unamended. If, therefore, Mr. Harrison elects to be discharged, I shall discharge him from the purchase. Mr. Harrison will in that case be entitled to get back his purchase money, and interest‡ thereon; and the question of costs will be reserved till the Court is informed what course Mr. Harrison elects to adopt. For this purpose let the case stand for a week.

Mr. Greer having elected to stand by his purchase, the Court allowed him his costs in the matter.

Solicitor for purchaser, *George G. Tyrrell.*

Solicitors having carriage, *Andrews & Maclaine.*

* See per Lynch, J., *Wigmore's Estate*, 5 IR. L. T. R. 169.—[ED. *I. L. T. Rep.*]

† See *Dargan's Estate*, 4 IR. L. T. 187.—[ED. *I. L. T. Rep.*]

‡ See *Kelly's Estate*, 5 IR. L. T. R. 195.—[ED. *I. L. T. Rep.*]

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before O'BRIEN and FITZGERALD, JJ.)

COLEMAN v. FAYLE.

June 1, 1874.—*Practice—Security for costs—Plaintiff resident in England—Judgments Extension Act*, 1868—*Common Law Procedure Act*, 1853, *sec.* 52—*Special circumstances.*

Motion, to compel a plaintiff resident in England to give security for costs, refused, as no special circumstances were shown to induce the Court, in its discretion, to grant the order.

White and Hart v. Carroll, 8 IR. L. T. R. 63, *followed.*

Motion, on behalf of the defendant, for an order that the plaintiff do give security for the costs of this action, or, for "such parts of the proceedings therein" as the Court should direct, and that all proceedings be stayed till such security be given. The plaintiff was described in the summons and plaint as residing in Woolwich, Kent. The defendant lived in Dublin. It was an action of trover for a paper-writing, dated the 21st and 24th August, 1868, whereby John Vance left to the plaintiff the house, No. 2, Upper Pembroke-street. The defendant, in an affidavit in support of the motion, deposed that there was no foundation whatever for the action; that the defendant never had in his possession any such document, and that he had a just defence to the action upon the merits; that the plaintiff had not been resident in Ireland for a year, and he (defendant) believed that he had no property within the jurisdiction, but was living on a small pension only, and residing with his son in furnished lodgings in Plumstead, not Woolwich; and, as a circumstance showing the nature of the plaintiff's resources, he adduced the alleged fact that the plaintiff had given him his bond for a sum of £400, in which he was indebted to him (defendant), but he had never been able to obtain payment of that amount, nor any part of the debt. The defendant further alleged that the action was not *bona fide*, but was vexatious, and brought for the purpose of subjecting him to the costs of his defence.

Houston, in support of the motion.—The motion is in one respect peculiar, as the security for costs which the defendant requires, includes security for interlocutory costs. The probabilities are that there will be interlocutory costs. They could not be recovered in England under the Judgments Extension Act.* In *White* v. *Carroll*, 8 IR. L. T. R. 63, the Court refused the application, because it did not appear that there were any circumstances to render the giving of security necessary; but that case does not govern the motion now before the Court, as here the action is a groundless one. *Raeburn* v. *Andrews*, L. R. 9 Q. B. 118, followed in *White* v. *Carroll*, does not apply, because in England security for costs is not a statutory right as it is in Ireland, under C. L. P. Act, 1853, s. 56.

[O'BRIEN, J.—In *White* v. *Carroll* I said that it was not necessary to consider the question as to the special circumstances that in the discretion of the Court might warrant the granting of the order.]

There are special circumstances in this case. If not, it is difficult to know what would be special circumstances.

[O'BRIEN, J.—It cannot be maintained that poverty is of itself, as the defendant alleges, a special circumstance. The only thing that may be urged is, that there is, as you say, a good defence to the action, and that the defendant never got possession of the document in question, which statements have not been contradicted. FITZGERALD, J.—The party would be entitled to every remedy which a judgment creditor in England has. When the certificate of the judgment has been registered it becomes in effect an English judgment, with all the remedies appertaining to it.]

The certificate does not convert it into an English judgment; and it is not clear that we could get under the Debtors Act in England an order, enabling us to commit the debtor if he did not pay the amount. In *Clarke* v. *Croker*, pending before the Common Pleas on a similar motion, the question as regards interlocutory costs was argued, and the Court has reserved judgment.

M'Loughlin, contra.—The question of poverty is not

* See *Garod* v. *Halliday*, 4 IR. L. T. 551, where the Court of Exchequer refused to direct the Master to give a special certificate of an order of the Court for payment of costs, in order to enable the party to register it in England, under the Judgments Extension Act. And see 5 IR. L. T. 611. [ED. *I. L. T. Rep.*]

Digitized by Google

here an element for consideration, and the Court will not decide the question of merits upon affidavits. The assertions made in the defendant's affidavit could be refuted by the plaintiff on affidavit, but would the Court entertain it? *White* v. *Carroll* is not distinguishable from the present case.

O'BRIEN, J.—The circumstances of this case are not such as to warrant us in granting the motion. We are not to try the question of merits in such a case upon affidavits. The defendant says, in his affidavit, that the plaintiff does not reside in Ireland, and that he has no cause of action, and if there were an answering affidavit we would have conflicting statements. We cannot decide the case in such a way. We shall make no rule on the motion.

FITZGERALD, J.—We would not be justified in making the order which has been applied for here; and I protest against the practice of trying upon motions the merits of such a case. With regard to interlocutory costs, we shall protect the defendant in this particular, for if we give him any costs we shall, by making them costs in the cause, enable him to add them to the judgment in England. As to the special circumstances urged in this case, as entitling the defendant to the order which he seeks, we do not see any. The poverty of a plaintiff is not, of itself, a special circumstance. We cannot try to arrive at a conclusion relative to the merits of the case by a comparison of affidavits. The defendant swears that he never had the document in his possession; that he is not chargeable with the detention of it, never having had it at all. It is consistent with a party's being in an action of trover chargeable with the detention of a document, that it is in the hands of his agent. Special circumstances might be supposed, such as where an uncertificated bankrupt, residing abroad, is suing for that which has been vested in his assignees, or where a declared insolvent, residing abroad, is suing in like manner, or where the person beneficially interested in the subject-matter of the action, allows others to sue for his benefit, he being at the time out of the jurisdiction. In the case of a plaintiff who makes a misrepresentation as to his residence in England, where he cannot be found—a false place of abode having been given—there should be fraud in the conduct of the party to justify the Court in requiring the plaintiff to give security for costs. In this case, there is a total absence of any of the various causes that could induce the Court to grant a motion like the present, requiring security for costs. We, therefore, think that the motion should be refused, with costs.

Motion refused.

Attorney for plaintiff, *Leahy*.
Attorney for defendant, *M'Govern*.

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before MONAHAN, C.J., KEOGH, and MORRIS, JJ.)

TORKINGTON *v.* CONNOR.

May 29, 1874.—*Practice—Common Law Procedure Act*, 1870, *s.* 6—" *Visible means.*"

On a motion that an action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, *s.* 6, *it appeared that the plaintiff was in the employment of his father, at a salary of* £120 *per annum, as manager of a business of cabinet-making and upholstery.*

Held, *that plaintiff's means were not "visible means" of paying costs within the 6th section C. L. P. A. Act*, 1870.

Motion that, unless security for costs given, the action be remitted to the Civil Bill Court, under C. L. P. A. Act, 1870, s. 6.

The action was brought to recover £300 damages for slander, assault, and battery. In support of the motion an affidavit was made by the defendant, stating that the plaintiff was a young man without any visible means, and merely an assistant to his father in the business of cabinet-making. The defendant also denied that any assault was committed, or that the words complained of were uttered. In reply, the plaintiff deposed that he had been for two years, and still was, managing his father's business at the salary of £120 per annum, and that he was well able to pay the defendant his costs.

Cleary, in support of the motion.—The means of the plaintiff sworn to do not constitute visible means under 33 & 34 Vict., c. 100, s. 6.

Houston, *contra*.—The salary of the plaintiff is sufficient to satisfy the terms of the Act. In *Counsel* v. *Garvie*, 5 IR. L. T. R. 96, IR. R. 5 C. L. 77, the plaintiff was a shop assistant, at a salary of £100 per annum, and the action was for slander. Yet, in that case, the Court refused to remit. Here the means are not only greater, but the plaintiff is in his father's employment, which is therefore more likely to be permanent, and he is not a mere shop assistant, but the manager of the business.

[MONAHAN, C.J.—Are not "visible means" such as could be taken under an execution?]

No. A plaintiff has visible means when he has such a pecuniary position as will enable him, in all probability, to pay his costs.* In *Counsel* v. *Garvie*, Whiteside, C.J., says:—" One question raised in this case is, what is meant by 'visible means?' Now, I prefer the word 'tangible;' and can it be contended that, if a man has an office to which a salary of £100 per annum is attached, he is possessed of no tangible means, because his property is not visible to the eye? Clearly not, I think. By 'visible means' is meant properties which the defendant could reach to pay his costs in the event of his obtaining a verdict." This action is one fit to be prosecuted in a superior court, and should not be remitted: *Kennedy* v. *Baxendale*, 5 IR. L. T. R. 96; IR. R. 5 C. L. 81.

Cleary, in reply.—In *Counsel* v. *Garvie*, the motion was refused, not on the question of means only, but because the case was such as should be tried in the superior court. Whiteside, C.J., in his judgment, says: "The next point is, what amount of damages the plaintiff is likely to recover; for we are all agreed, as I have already intimated, that this is one element to be taken into our consideration. Now the slander complained of by the plaintiff is of a very serious nature, and was spoken in a very public place, and calculated to cause much damage to the plaintiff if suffered to pass unrefuted. It is therefore probable, at all events, that the plaintiff may recover more than £40." And Fitzgerald, J., in the Report in the IRISH LAW TIMES, says:—" We have all come to the conclusion, in both cases, that the plaintiffs have causes of action fit to be tried in this Court; therefore, they are not cases in which we can make the order." The character of the cause of action, and not the description of the means of the plaintiff, was the ground of that decision, and therefore it is not an authority against the motion now made.

---

* It might be added that the salary might be attached under C. L. P. A. Act, 1856, s. 63; and, that such attachment is an execution, see *Nolan* v. *Hornidge*, IR. R. 3 C. L. 48. And the salary would be plainly means of payment within the Debtors Act, s. 6, for the purpose of warranting an order of commitment; *cf. Moore* v. *Gaussen*, 8. Ir. L. T., 108. So, that an attorney's professional income is "visible means;" see *Hunter* v. *Darcy*, 7 Ir. L. T. 556; *Hennegan* v. *Jackman*, 19 W. R. 208.—[ED. *I. L. T. Rep.*]

Digitized by Google

MONAHAN, C.J.—The means of the plaintiff are not "visible means" within the meaning of the Act. "Visible means" are such as the defendant can render available for his costs by levying an execution. The plaintiff will have an opportunity of giving security for costs, and so showing his *bona fides* in the action.

Motion granted.

Attorney for plaintiff, *Dunne.*
Attorney for defendant, *Lawless.*

CONSOLIDATED CHAMBER.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before MORRIS, J.)

CASEY v. GALWAY.

19th May, 1874.—*Practice—C. L. P. A. Act,* 1870, *sec.* 6—*Striking out count in detinue—Remitting to Quarter Sessions.*

Motion granted, that a count in detinue be struck out of the summons and plaint, and that the remaining causes of action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, *sec.* 6.

Motion that a count in detinue be struck out, and the action, thereupon, remitted to Quarter Sessions.

The action was for breaking and entering a close of plaintiffs, and seizing a quantity of meat, and the summons and plaint also contained a count in detinue for the same meat, claiming a return thereof, and £50 damages. The plaintiff, Denis Casey, who was a victualler in the city of Cork, was, prior to August, 1873, in the employment of a butcher named Leahy. At that date Leahy failed in business, and the plaintiff took up the business in the stalls which had been used by Leahy. In September, 1873, the defendants, as sergeants of the Court of Record of the borough of Cork, seized at the plaintiff's stall £70 worth of meat, under decrees which had been obtained against Leahy. The plaintiff believed that the seizure took place by one of the defendants as sub-sheriff of the city of Cork, and commenced an action against the High Sheriff of the city of Cork. In November, 1873, the defendants, in execution of civil bill decrees against Leahy, made another seizure of plaintiff's meat (for which seizure the present action was brought), and the plaintiff commenced another action against the sheriff. The plaintiff, having subsequently discovered that the seizures were made by the defendants as sergeants of the Court of Record of the borough of Cork, abandoned proceedings against the sheriff, and instituted the present action. The meat seized in November was sold, and realized £9 14s. 11d.; but the plaintiff swore that it was of over £20 value. The defendants deposed that they had a good defence on the merits; that the plaintiff had no visible means, and that the count in detinue was inserted in the summons and plaint with the object of evading the provisions of the C. L. P. Act, 1870.

Mark O'Shaughnessy, in support of the motion.

O'Riordan, contra.

MORRIS, J.—I shall order that the case be remitted to the Chairman, unless the plaintiff give security; and also, that the count in detinue be struck out, as, in point of fact, it could do the plaintiff no good if it were retained.

*Motion granted.**

* See *Keogh* v. *Alleyne, ante,* p. 78.—[ED. *I. L. T. Rep.*]

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MILLER, J.)

Re CAREW, a Bankrupt.

Oct. 10, Nov. 28, 1873.—35 & 36 *Vict. c.* 58, *s.* 53—*Fraudulent preference—Voluntary act of bankrupt—Contemplation of bankruptcy.*

In order that an act, which would cause a distribution of assets different from what would be made in bankruptcy, may be constituted a fraudulent preference, it must be an act done in contemplation of immediate bankruptcy, and on the mere motion of the bankrupt.

C. having purchased, through M., a cargo of maize, and being able to pay a portion only of the purchase-money, M., in order to aid C. in paying the residue, procured certain mercantile firms to accept bills of exchange amounting to £6,000, drawn by C., the acceptors being guaranteed by M. against all liability. C. discounted the bills with the Provincial Bank. At the instance of the manager of the Bank (who was aware that C. was in pecuniary difficulties, but who did not apprehend bankruptcy) C., in January, 1874, *deposited with him certain trade-bills, as a security to the Bank for the bills for £6,000 previously discounted. On February 3rd,* 1873, *the manager of the Bank, at the instance of M., applied to C. in reference to M.'s liability on his guarantee, and it was arranged that, after satisfying the obligations to the Bank, the proceeds of the trade bills should be held by the Bank as a security for M. The bills guaranteed by M. came to maturity on February 7th,* 1873, *and were taken up by the acceptors to whom M. had become liable. And on March 14th,* 1873, *C. was adjudicated bankrupt.*

Held, *that the dealing with the trade bills did not amount to a fraudulent preference.*

Charge and discharge.

The facts sufficiently appear in the judgment of the Court.

Monroe, for chargeants.

Carton, for the assignees, *contra.*

MILLER, J.—The bankrupt, while trading as a corn merchant and commission agent, on the 4th of September, 1872, purchased, through a person named Moroney, of Gracechurch-street, London (a merchant, and one of the chargeants in this matter), a cargo of maize for the sum of £12,000. In the course of trade, delivery and possession of that cargo could not be procured by the bankrupt until paid for. The bankrupt, being able of himself to provide for payment of only a portion of that cargo, applied to Moroney to assist him in procuring the residue of the purchase-money of that cargo to the extent of £6,000. Moroney, accordingly, induced one firm, upon receiving from him a written guarantee against all liability in that respect, to accept bills drawn by the bankrupt on the 4th of November, 1872, at three months, amounting altogether to £3,000. Moroney likewise induced another firm, upon receiving from him a verbal guarantee against all liability in that respect, to accept other bills drawn by the bankrupt on the 6th of November, 1872, at three months, amounting altogether to a further sum of £3,000. The bankrupt, shortly afterwards, discounted those several bills thus accepted, amounting altogether to £6,000, with the Provincial Bank at Waterford, of which branch a person named Allingham was manager. It is admitted that Allingham, as the manager of the Provincial Bank at Waterford, got into his possession, in the latter end of January, 1873, certain trade bills belonging to the bankrupt, out of which he collected a gross sum of £2,658 19s. 9d., which, upon receipt of them, he claimed to hold as collateral security for the payment by the respective acceptors of the several bills drawn by the bankrupt, amounting altogether to £6,000, and those held on discount by that bank, and which last mentioned bills would not have arrived at maturity until the 7th of

Digitized by Google

February, 1873; and I shall presently deal with the circumstances under which such trade bills were deposited with Mr. Allingham as manager of the bank at Waterford. It is also admitted, that on the 3rd of February, 1873, or thereabouts, and before the bills drawn by the bankrupt and thus accepted for £6,000 had arrived at maturity, Allingham, who then held the trade bills of the bankrupt as the manager of that bank, had, at the instance of Moroney, who had so guaranteed the acceptors of the bills of the bankrupt for £6,000, applied to the bankrupt, that in the event of the bills of the bankrupt for £6,000 being taken up by the acceptors, he (Allingham) should then hold such trade bills and the proceeds of them as security for Moroney, who had, on behalf of the bankrupt, guaranteed such acceptors against any liability on foot of those bills; and I shall likewise presently deal with the evidence as to what took place on the occasion of that application by Allingham. When the several bills for £6,000 and the drafts of the bankrupt reached maturity on the 7th and 9th days of February, 1873, they were not then taken up by the bankrupt, but were severally then taken up by the respective acceptors thereof, who, for their indemnity, must have looked to the bankrupt, or Moroney, who had guaranteed such acceptors that the bankrupt would have taken up such several bills when at maturity. Moroney, when his liability in respect of the guarantee arose upon the failure of the bankrupt to take up his drafts, required Allingham to hold the trade bills and their proceeds so deposited as a security for him (Moroney) to that extent against the liability which he had thus incurred. The bankrupt was adjudicated on the 14th of March, 1873. Subsequently, the Provincial Bank at Waterford lodged to the credit of this matter the sum of £2,658 19s. 9d., as the proceeds of the bills thus deposited with it to abide the order of this Court.

Charges have been filed by the acceptors of the bills for £6,000, and by Moroney, as the guarantor of the bankrupt in respect of such acceptances, claiming to be absolutely entitled to that sum of £2,658 19s. 9d., upon the ground that the trade bills by which that sum had been produced had been specifically deposited with the manager of the Provincial Bank at Waterford as security for the payment of the bills of which they were acceptors, and for Moroney, as the guarantor of the bankrupt, for the payment by him of such acceptances, and that such bills for £6,000 had thus been taken up by the acceptors thereof.

The assignees have filed a discharge, in which they have put the chargeants upon proof of various matters and have raised various defences; but their counsel upon this, as upon every other occasion, has fairly put the case of the assignees as substantially resting upon the single question as put forward by the 7th paragraph of that discharge—namely, whether the transactions between the bankrupt and Allingham as manager of the Bank in relation to the trade bills of the bankrupt as proved did not, under the circumstances, constitute a fraudulent preference by the bankrupt in favour of that bank and Moroney, and were, therefore, altogether void as against them as such assignees.

In order to constitute any act, which would cause any different distribution from what would be made by a Court of Bankruptcy, a fraudulent preference, it must be an act done in contemplation of immediate bankruptcy, and it must be done on the mere motion of the bankrupt. In considering whether the transactions in this case amounted to a fraudulent preference, it must be observed that, so far back as the 3rd of May, 1873, the bankrupt was very fully examined, and was silent as to all transactions relative to his trade bills mentioned in the charge; and I will not say that this circumstance alone would furnish an inference that the bankrupt himself at that date considered that his trade bills had been specifically appropriated, and did not constitute general assets for payment of his creditors. But Allingham, the manager of the Bank, was examined upon that same 3rd of May, 1873, in the presence of the bankrupt, and distinctly swore that he had applied to the bankrupt to get the trade bills as a security to the Bank for the bills which he had already previously discounted, and he assigned his reason for doing so—viz. (in answer to question 225), "When he saw matters coming to a crisis he tried to strengthen his hands." And upon the same occasion he further, in answer to question 233, deposed that, having, at the instance of the manager of the Provincial Bank at Cork, sought for an interview with the bankrupt, he (Allingham), on the 3rd of February, 1873, represented to the bankrupt the hardship it was upon Moroney losing the large sum which he did, and that the reply of the bankrupt was that Moroney was entitled to every farthing he (the bankrupt) had in the world after the bank was paid; and, in answer to question 235, Allingham further swore that, for reasons stated, he, upon that occasion, told the bankrupt that he would hold the bills upon that understanding. And, in answer to question 237, he stated that he knew perfectly that the bankrupt was then in difficulties, and that it was in consequence he took the collateral security, but he did not apprehend that he would become bankrupt. The bankrupt remained perfectly silent, notwithstanding such direct testimony being thus given in his presence at that early stage of this matter. Again, upon the 28th of July, 1873, Allingham made an affidavit in support of the charge filed as already stated, and he then specifically repeated the statements previously made by him as to the circumstances under which the trade bills had been deposited as security with him, and which, if adopted by the Court, would dispel any such case of fraudulent preference by the bankrupt as alleged by the assignees. These statements, on deposition and affidavit by Allingham, remained unchallenged and uncontradicted by the bankrupt until he was examined on the 10th of October, 1873, upon which occasion he alleged for the first time that he (the bankrupt), knowing his difficulties, voluntarily deposited such trade bills with Allingham out of a wish for him personally, in order to keep him harmless as regarded his directors; and further, although he admitted that the proposition as regarded Moroney had been made by Allingham, as stated by him, yet he alleged that he (the bankrupt) had neither assented to or dissented from such proposition as thus made. A deposition of that nature by the bankrupt, as bearing upon the question of fraudulent preference, forces upon the Court the consideration of the weight to be attached to the testimony of the bankrupt, standing as it does in contrast to the evidence of Allingham in that respect. I have, already, adverted to the length of time which the bankrupt suffered to elapse before he came forward to contradict the testimony of the other party to the transactions so directly placed before him. But it must, in that respect, be further observed that, in the event of Moroney not being declared entitled to the proceeds of such trade bills, the state of the assets of the bankrupt as then ascertained would, in all probability, furnish a dividend upon his liabilities of ten shillings in the pound, and thus entitle the bankrupt almost as of right to obtain his certificate as a bankrupt. The testimony of Allingham, on the one hand, is in strict accordance with what might be expected from an experienced manager of a bank; while, on the other hand, the testimony of the bankrupt is of itself of rather an unusual character, and coincides with his personal interests so far as they are involved.

I have gone far enough to warrant me in saying that, upon the facts and the whole of the evidence in this matter, I am of opinion that the case of fraudulent preference as presented by the assignees has failed, and that, in the events which have happened, the chargeants are entitled to have the proceeds of the trade bills after all proper deductions made thereout. The assignees, upon the information supplied by the bankrupt, could not take any other course than such as was adopted by them, and they must have their costs in the matter. As Moroney is the party who really derives the benefit of this litigation, solely through the agency of Allingham, and as Allingham has in a great measure led to this litigation, by not taking a memorandum in writing expressing the purposes for which the trade bills were deposited with him, the chargeants must take with their agent, and bear their own costs.

Order accordingly.

Solicitors, *J. Mathews*, *W. Sullivan*.

Digitized by Google

In re L., an Arranging Debtor.

Reported by R. D. MURRAY, Esq., Barrister-at-law.

(Before HARRISON, J.)

April, 21st 1874.—*Proof for premiums upon policies of insurance—Money value of the contract—Bankruptcy (Ireland) Amendment Act*, 1872, *section* 47.

Motion granted, that a creditor of an arranging debtor should be entitled to prove on the estate, under the Bankruptcy Amendment Act (1872), *section* 47, *for the money-value of policies of insurance mortgaged by the arranging-debtor to the creditor, such value having been ascertained by a valuation made, at the creditor's instance, by a public notary.*

Motion, on behalf of the Provincial Bank of Ireland, that the Bank be admitted to prove on the estate for £242 19s. 7d., the money-value of a contract between the arranging-debtor and the Bank to pay premiums on certain policies of insurance.

The Provincial Bank of Ireland were mortgagees of certain leaseholds and certain policies of insurance on the life of W. L., who had presented a petition for arrangement. The leasehold premises had been sold, and were out of the question. The policies of insurance were three in number: the 1st had been made with the United Kingdom Life Assurance Company, bearing date the 6th August, 1849, for the amount of £200, subject to the payment of the annual premium of £5 1s. 2d.; the 2nd was with the Standard Life Assurance Company, bearing date the 3rd July, 1851, for £500, subject to the annual premium of £8 6s. 6d.; and the 3rd was with the Standard Life Assurance Company, bearing date the 4th October, 1866, for £300, subject to the annual payment of £12 16s. The mortgage of the Provincial Bank had been created by a deposit of the policies, and the deposit had taken place previous to the 25th September, 1868. On September 25, 1868, the arranging debtor, by an agreement in writing, undertook to pay the premiums necessary to be paid during his life for the renewal of the policies. On the 27th October, 1873, the Provincial Bank filed a charge, and, amongst other things, claimed to be entitled to prove for the money value of the contract so entered into by the agreement of the 25th September, 1868. On the 5th December, 1873, by an order of that date, the charge was declared proved, the premises and policies were directed to be sold, and the matter was referred to the Chief Registrar to take an account of what was due to the Provincial Bank. On that occasion, the Bank claimed to be entitled to prove on the estate for the money value of the contract. The Court, being informed that it was then impossible to say with certainty whether the property pledged were equal to discharge the Bank's claims or not, declined to make the order sought, but reserved liberty to the Bank to renew the application if so advised. The premises and policies had since been sold. The Chief Registrar, under the order, made his report, finding a certain sum due to the Bank, and that the proceeds of the premises and policies had been applied *pro tanto* to discharge the amount so found to be due. A balance remained still unpaid, and the present application was made pursuant to leave reserved by the order of 5th December, 1873.

R. D. Murray, on behalf of the Provincial Bank, in support of the application.—A statement has been sent to a public notary, and the money value of the contract contained in the agreement of 25th September, 1868, has been ascertained to be £242 19s. 7d. The Bank are now entitled to prove for this amount, under the 47th section of the Act of 1872.

R. Seeds, on behalf of the official assignees.—It does not appear from the accounts what was due to the Bank on foot of the mortgage. A certain amount had been paid, but the exact balance does not appear. From the words of the 47th section it would appear that the money value of the contract is to be ascertained by order of the Court, and not by the creditor.

HARRISON, J.—The amount paid to the Provincial Bank on foot of the mortgage is set out in the account, and the amount found due to them is stated in the report; subtracting one from the other, we can ascertain what balance remains unpaid. The Bank are clearly entitled to be entered on the list of creditors in the matter for the sum of £242 19s. 7d., that being the money value of the contract entered into by the arranging debtor with the Bank's trustee, on the 25th September, 1868. The official assignees are, of course, at liberty to have another valuation made of the contract, if they think it necessary, for their own satisfaction. The order will be, that the official assignees do pay to the Provincial Bank dividends on said sum of £242 19s. 7d., till, by payment of such dividends, the balance due to said bank on foot of their mortgage be satisfied. The mortgagees are entitled to their costs, and they must be paid by the official assignees out of the dividends accruing from said sum of £242 19s. 7d.

Solicitor for Provincial Bank, *John Murray*.

Solicitors for official assignees, *Oldham & Eaton*.

LAND SESSIONS.

(Before W. N. BARRON, Esq., Q.C.)

LAPPIN and LITTLE *v.* COOTE.

April 16, 1874.—*Landlord and Tenant* (*Ir.*) *Act*, 1870—*Compensation for disturbance—Ulster custom—Purchase of tenant's interest—Reasonable objection to purchaser.*

Compensation for disturbance granted to a tenant of lands held, subject to the Ulster custom, where the tenant had been evicted for having sold his farm to a purchaser without the landlord's consent, but there being no reasonable objection to the purchaser which could be maintained by the landlord.

This was a claim brought under the Ulster custom by E. Lappin and M. Little, tenants of the lands of Alkill, in the county of Monaghan, against Thomas Coote, the landlord, who disputed the claim and alleged that the said Edward Lappin being tenant of the farm, sold the same to Michael Little, and the said Michael Little purchased without the consent of the landlord and against his express directions, although the custom on the estate was that a tenant should not sell without obtaining the landlord's consent.

The case was heard at Monaghan Land Sessions. The claimant Lappin did not appear, but the other claimant, Little, was examined, as also some witnesses as to the value of the tenant-right on the estate. It appeared that Little was born on Mr. Coote's property, and his father had been a tenant of good character, and an industrious farmer. Upon his death his son succeeded to the farm, and was since a tenant on the estate. For some years Lappin had not being doing well. His farm was bounded on two sides by Little's. Little, as the farm lay into his, and anticipating that, in the course of things, he would be the purchaser, assisted Lappin to keep him in his farm. The latter owed him £15 in the winter of 1872, and he then sold the farm to Little at £18 per acre. Mr. Mitchell, the agent, refused to accept Little as tenant thereof. He made no objection

Digitized by Google

to Little personally. It was admitted the farm lay well to Little's farm, nor did he make objection to the price for which it was sold. After this a notice to quit was served, and all parties evicted. Little, then, seeing the determination of respondent, presented a memorial asking forgiveness, entreating respondent to let him get back his money, and offering to pay the expense of sending circulars through the tenantry admitting his mistake, so that he might not be regarded as attempting to violate any custom on the estate. The respondent refused to accede to the request. Mr. Mitchell proved that, previous to the sale, he gave special directions to both Lappin and Little not to go on with it. In defiance of these directions they completed the sale. Little had not been acknowledged the tenant. There could be no personal objection to Little, and the farm lay in only to that of another tenant named Conroy equally as well. The only objection to confirm the sale was that it had been made without the landlord's consent.

Mr. W. A. Simpson, solicitor for the claimant.

Mr. T. A. Wright, solicitor for the respondent.

The Chairman—This is a claim brought against Mr. Thomas Coote, under the Ulster custom, by Edward Lappin and Michael Little. One of the claimants, Lappin, retires from the case, having the honest money of the other in his pocket. I cannot listen to this. The question for me to consider is whether the Ulster custom is the custom on the property, and is there a reasonable objection to the purchaser? The custom is here clearly proved and admitted. No reasonable objection to the purchaser, Michael Little, has been shown to me. He was born on the property; he is a tenant on the property, and his farm adjoins the one in question. From its position, Conroy is the only other person to whom it could be sold. If he is the tenant preferred he can now have it on paying the sum I award. I make a decree for the full amount claimed, £18 per acre, and I will give the claimant his costs.

*Decree accordingly.**

(Before Hans H. Hamilton, Esq., Q.C.)

Bolland and Ruddock v. Porter.

April 9, 1874.—*Landlord and Tenant Act*, 1870—*Compensation for disturbance—Ulster custom—Sale of tenant's interest—Public auction—Reasonable objection to purchaser—Unreasonable conduct of tenant, what constitutes.*

Under the Ulster custom where the tenant wishes to sell his tenant-right, and to procure the necessary consent of his landlord to such sale, as being one to which no reasonable objection can be made on the landlord's part, it is to be considered that the tenant is entitled to a fair and reasonable price; that the landlord is entitled to have in the proposed purchaser a solvent tenant, to receive a fair increase of rent, and to have an arrangement effected, beneficial to his estate in a moderate and reasonable point of view respecting it; and that the incoming tenant is entitled to the same right as the former tenant, to hold the premises at a moderate rent, not encroaching on the custom.

Conduct of a tenant held not so unreasonable as to warrant the disallowance of a claim for compensation, for disturbance, under the Ulster custom.

These were two claims under the Ulster custom (heard at Armagh Land Sessions), for £800 compensation for disturbance; the one by Bolland and Ruddock v. Porter, and the other by Ruddock v. Porter.

* See next case.—[Ed. *I. L. T. Rep.*]

Bolland as tenant from year to year, held a farm of 40a. (statute measure), under the respondent at £45, and had been ejected on notice to quit. It appeared that he had drained, reclaimed, and largely improved the farm, removed old fences, altered the dwelling house, and built a barn, in consequence of which he was allowed £40, upon which £3 per annum was added to the rent, making £48 per annum. The Poor Law valuation was £54 per annum; and the buildings were worth £324. The farm was held subject to the custom, enabling the tenant to dispose of his tenant-right to any person to whom the landlord could not reasonably object. In February, 1871, Bolland told Goodlate (the respondent's agent), that he wished to emigrate to Canada, and Goodlate told him to keep the farm, until upon his going to Canada he should have determined whether or not he would settle there. He went to Canada, concluded on settling there, and then returned. On his return in 1872, he advertised the farm for sale by auction, without apprising Goodlate. Goodlate then objected to a sale by public auction (which was never allowed on the estate), and informed him that he would allow only £10 per acre Irish, and that he should sell to some adjoining tenant, by private contract. Bolland, however, while refraining from holding the sale by auction, by biddings in the ordinary way, when the auction came on received private written offers for the farm; but not being satisfied with the offers, retained the farm, by himself offering £20 per acre for it. Afterwards Bolland was offered £700, for his interest, by Ruddock his brother-in-law, and apprised Goodlate thereof. The latter said there was no such tenant-right price, and asked would Ruddock live on the land. Bolland said not. Ruddock lived seven miles distant from the farm. Goodlate, after making inquiries about Ruddock, wrote to Bolland, refusing to accept Ruddock, and objecting to the price of £17 per acre offered by him as too high; and offering to assist Bolland in selling to an adjoining tenant, from whom £10 per acre Irish, could be procured. Bolland, however, persevered in putting Ruddock into possession, whereupon notice to quit was served.

Donnell for the claimant.

Mr. Simpson attorney for the respondent.

They cited *Lafferty* v. *Heygate*, 7 Ir. L. T. R. 86; *Fleck* v. *Lord O'Neill*, Donnell L. A. Rep. 188; Butt L. A. 544.*

The Chairman.—These claims were made in respect of a farm containing 40 acres, statute measure, which Bolland held under respondent, and from which he was evicted by ejectment, on notice to quit, on the 1st November, 1873. It was admitted that the claims were substantially identical. The claim was founded on the Ulster tenant-right custom. The claim alleges the custom in the form, now become usual, as entitling the tenant to sell to any person to whom the landlord cannot make any reasonable objection, subject to the rent, or such increased rent as the landlord may require, without encroaching on the tenant-right; this form, to some extent, recognizes the controlling power of the landlord over a sale to a new tenant, but the custom proved before me in this case as existing over this estate, and in other cases heard by me at previous sessions, over other large estates in this county, recognizing the controlling power of the landlord over the transfer of a holding to a new tenant, is of a more extensive character. This farm was partly purchased by the claimant, but chiefly devolved on him through his father-in-law, who became tenant of the other part of it, nearly 40 years ago. It appeared that upon entering upon

* See also, *Lappin and Little* v. *Coote*, ante, 92—[Ed. *I. L. T. Rep.*]

Digitized by Google

it, he repaired the dwelling house, and that good offices and some other buildings have been added by him, assisted as he had been by the usual supply of lime given to the tenant of the property, and by a sum of £40, given by the landlord, on which £3 per annum was added to the rent, which is now £48 per annum, the government valuation being £54 per annum. The buildings were proved to be worth £324 as they now stand, and it would appear that £57 would be a fair rent for the holding. In 1871, Bolland apprised the agent that he intended to settle in Canada, and wished to sell the farm, to which the agent did not object, but suggested his going to Canada before deciding to settle there, and accordingly he did so, and on his return in 1872, proceeded without further communication with the agent, to advertise the sale of the farm by public auction. The agent at once objected to this course, as injurious to the landlord, and Bolland, in order to meet the objection, refrained from holding a sale by ordinary biddings, but, when the auction was held, took written offers for the farm, from such persons as chose to make them, but none coming up to his expectation, retained the farm by offering £20 per acre for it. Afterwards he required the assent of the agent to his brother-in-law, Ruddock, being the new tenant, at the price of £17 per acre. The agent expressed the wish of the landlord, to have one of the adjoining tenants as the purchaser, but took time to make inquiries about Ruddock, before giving an answer, and afterwards on 22nd August, 1872, wrote to Bolland, refusing to take Ruddock as tenant, objecting also to the price of £17 as too high, and offering to assist Bolland in selling to an adjoining tenant, from whom £10 per Irish acre would be procured, and saying he would arrange a suitable sub-division to realize that price. Bolland persevered in putting Ruddock into possession, took part of the price from him, and paid the rent up to November, 1872. In consequence, notice to quit on 1st November, 1873, was served in April, accompanied by a letter, still offering to assist in a sale to an adjoining tenant, if required.

In my opinion, the conduct of the agent was fair and reasonable, and did not constitute any breach of tenant-right custom. The conduct of the tenant after his return from Canada, was in breach of the custom on the estate. Three parties are interested in such a transaction—the old tenant, the new tenant, and the landlord; the custom respects the rights of all; the tenant is entitled to a fair and reasonable price for his right as such; the landlord has a right to a solvent tenant, a fair increase of rent, and an arrangement beneficial to his estate in moderate and reasonable views respecting it; and the incoming tenant has the same right as the former one, to hold at a moderate rent, not encroaching on the custom.

I do not consider that the claimant, although mistaken in his course, has been guilty of such unreasonable conduct as calls on me or should justify me in altogether disallowing his claim. I shall, therefore, give on the first claim £320, being at the rate of £8 per statute acre, and dismiss Ruddock's second and separate claim with costs, which I give chiefly in consequence of an improper letter sent to respondent by him.

Attorneys for the claimants, *F. E. Peel and G. Cochrane.*

Attorney for the respondent, *W. A. Simpson.*

(Before SAME.)

BENNETT v. JONES.

March 31, 1874.—*Landlord and Tenant Act*, 1870—*Compensation for disturbance—Ulster custom—Increase of rent.*

It is legitimate, according to the Ulster custom, that a revision in the valuation and alteration in the rent of the demised premises, should take place on special occasions; but, the tenant should not be called on to pay increased rent for his land in respect of improvements made by him, except in so far as they have increased the productive power of the land relatively to its condition as originally demised; and it is not desirable that such changes in the rent reserved should be brought about by the service of notices to quit—the frequent habit of serving which is inconsistent with the Ulster custom.

This was a claim (heard at Ballibot), under the Ulster custom, for £300 for disturbance, in respect of a holding consisting of 11a. 2r. 3p., Irish measure, situate in the townland of Foughiletra, in the county Armagh.

The lands were held by the claimant as tenant to the respondent from year to year, at an acreable rent of £1 5s. 9d. per acre. In April, 1873, the claimant was served with notice to quit, and a decree in ejectment, founded on it, was subsequently obtained at the January sessions. A short time after the service of the first notice to quit, another notice was served on the claimant and other tenants, offering to withdraw it if they offered, within a month, to pay a certain increased rent demanded by the respondent. The increased rent sought to be imposed by the respondent was 3s. 9d. an acre, which would raise the holding from the annual rent of £14 16s. 3d. to £16 17s. 6d. The Poor Law valuation of the farm, irrespective of the houses, was £13 10s., and for the houses was £3.

The claimant deposed that he had increased the value of the premises by expending money on improving the land, and in building and fencing. For more than eighteen years the rent had been £14 16s. 3d. for the holding, and he believed it was high enough. He now owed one year's rent. His tenant-right would sell for £30 per acre. Other witnesses, examined as to the value of the tenant-right, varied as regards its value. E. Bridgeman, a valuator, deposed that the farm was worth £14 18s. 3d. at a rack-rent, and he considered that the Poor Law valuation was the fair letting value of the land itself. J. M'Bride, a valuator, deposed that the fair rent would be £17 2s. for the lands and buildings included.

M'Blaine (with him *Monroe*), for the claimant.

A. O'Rorke, attorney for the respondent, *contra.*

The CHAIRMAN.—It is satisfactory in this case that neither party wishes to break the relation that had hitherto existed between them. A revised valuation by the landlord, involving a small advance, one can understand. It is quite reasonable, according to the custom of tenant-right, that a revision should take place in the valuation on great occasions, or where a permanent change has taken place; but the tenant in possession should not be called on to pay increased rent in respect of improvements made by him, except in so far as they have increased the productive power of the land relatively to its state as originally demised. It appears that in this case a general view of this kind had been attempted to be carried out by the landlord, and it seems not to have been a harsh proceeding on the part of the landlord. I would observe, however, that it is not desirable that these changes should be brought about by the service of notices to quit. The frequent habit of serving notices to quit I regard as in itself a breach of the Ulster custom. It disturbs the confidence of the tenant in the continuance of his possession of his holding. In this case, it does not appear that anything had occurred to bring about the alteration in the valuation, except the change in the times. Seeing, therefore, that there was nothing unreasonable in the attempts of the landlord, I suggested at the opening of the case that it would be unfair to place the Court in the position of arbiter as to the amount of increase to be made in the rents. I would have preferred that the intervention of the Court should only be made use of for the purpose of ratifying an agreement come to between the landlord and the tenant, and if an arrangement had been come to between them I would have been only too happy to have had the opportunity of establishing it by giving it the sanction of the Court. Objection, however, was made,

Digitized by Google

on the part of the respondent, to the rent being fixed by arbitration. And, accordingly, the case having been proceeded with, it now becomes my duty to say what would be a fair amount of compensation for the tenant to receive in this case. Taking all the circumstances into consideration, there is nothing more difficult to do than this. The evidence has been conflicting as to the value of the tenant-right. With regard to the evidence given by the two surveyors, I think that these gentlemen were not so far asunder as the figures would seem to import. After giving the case my fullest consideration, the result of my judgment is that I estimate the tenant-right as worth £12 an acre, which amounts to a total of £138, less one year's rent, £14 16s. 3d. I shall, therefore, decree for £133 3s. 9d.

Decree accordingly.

Attorney for the claimant, *Carey*.
Attorney for the respondent, *O'Rorke*.

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J., O'BRIEN, FITZGERALD, and BARRY, JJ.)

HUNTER v. D'ARCY.

Nov. 6, 1873.—*Practice—C. L. P. A. Act*, 1870, *s.* 6—*Visible means—Practising attorney—Scandal in affidavit—Suppression of fact—Costs.*

Motion, that an action be remitted to the Civil Bill Court, under 33 *&* 34 *Vic.*, c. 109, *s.* 6, *refused, as the plaintiff was possessed of " visible means," it appearing that he was a practising attorney, and that he held a mortgage on lands for* £61 5*s.* 6*d. and interest.*

Scandalous matter, irrelevant to the motion, having been introduced into the affidavits filed in opposition to the motion, and a material fact as regards the plaintiff's means having been suppressed, the Court, while refusing the motion, gave no costs as against the applicant.

Motion that this action be remitted to the Recorder of the city of Dublin.

The action was brought by E. H. Hunter, one of the attorneys, against Mathew P. D'Arcy, High Sheriff of the county of Dublin, to recover £100 damages for voluntarily allowing a prisoner to escape who had been arrested on a *ca. sa.*, at plaintiff's suit, for £27 6s. 8d.; for the non-execution of said writ; and for a false return. The motion was grounded on an affidavit of William Ormsby, the sub-sheriff. As regards the question of visible means, he deposed that the plaintiff had assigned all his personal chattels, by a bill of sale, in 1872, to a Miss Goodfellow, by way of mortgage to secure £625; and that in 1873 the goods had been seized, under a *fi. fa.*, for a debt of less than £10, but the seizure had to be relinquished in consequence of Miss Goodfellow's claim. The plaintiff, in reply, deposed that Mr. Ormsby had then in his hands executions at the suit of the deponent, and otherwise, to the extent of about £150; that he had a mortgage on lands in the county of Meath, a first charge for £61 5s. 6d., with interest at £6 per cent., from March 22nd, 1871; that he, also, held a bond, &c., and was entitled to register judgment as a mortgage against said lands; that there was, also, £96 11s. due to him, and payable the following November, which was a first charge on the estate of Rev. J. M'Cann, in a cause then in Chancery; and that there were due to him, between bills, bonds, costs, and securities, about £1,500, irrespective of his professional practice, which was respectable, the deponent doing business for certain banks (named) in England, and for several extensive firms in England; and that he had a bill of costs under taxation for upwards of £400; that in April, 1871, he had obtained a lease of his house in Rutland-square for 150 years, and no rent was then due; that he was, also, purchasing some few acres of land in the county of Dublin for about £200, and the conveyance was in the solicitor's hands for approval. Mr. Ormsby stated, on the other hand, that the only execution he had in hands for the plaintiff was one for £72 6s. 8d. which he was unable to realize; that the mortgage against the lands in Meath was a statutable one, and the owner had a doubtful title; that he did not believe that the £96 11s. 1d. (which was for costs) was payable, or a charge, as alleged, but that creditors of the plaintiff could obtain charging orders against it; that the rent reserved in the lease mentioned was higher than the valuation made for the purpose of municipal taxation, and that said lease had been assigned to Miss Goodfellow by deed of April 21, 1873, and that the taxes of the house were largely in arrear; that as to the other securities, &c., mentioned, and as to plaintiff's professional practice, the deponent, from his knowledge of plaintiff, did not believe they would form any available security. The plaintiff, in reply, deposed that there was upwards of £170 due to him in respect of certain actions in which executions had been lodged with the sheriff; that he had also a statutable mortgage affecting property in Kingstown, and that the owner of the lands in Meath had, as he believed, a valid title.

J. Murphy, Q.C. (with him *P. Keogh*), in support of the motion, cited *Counsel* v. *Garvie*, 5 Ir. L. T. R., 96; *Hennegan* v. *Jackson*, 19 W. R., 208.

E. Gibson, Q.C. (with him *Buchanan*), *contra.*

WHITESIDE, C.J.—We have heard this case fully argued. Matters have been introduced into it, and a little more feeling displayed at both sides than it is ordinarily our good, or evil fortune to witness on questions of practice. The first thing for us to do is to see what has been the practice of the Court, and administer the law accordingly. It is to be regretted that suitors should expect the Court to depart from that which, in principle, rules the cases before it. This is in the nature of a motion made upon behalf of the sub-sheriff for the city of Dublin—for he is virtually the defendant. An action has been brought against the sheriff by the plaintiff to recover damages for the escape of a person named Eastwood, against whom a writ of *ca. sa.* was issued, on a judgment marked for £27 6s. 8d., and whom it is alleged was arrested. If a sheriff has not discharged his duty under such circumstances, it is a legitimate action to bring; but I cannot see that the Recorder, whose good sense is shown in the treatment of such cases, would not be able to deal with the case now before us. It is not a fictitious action, but one that is right to maintain against a sheriff, if there is ground for it. Mr. Ormsby rests his right to have the case remitted to the Quarter Sessions of the city of Dublin, upon the ground that the plaintiff has no visible means. We think the original affidavit of Mr. Ormsby is a fair one on which to found the application; and I cannot help thinking it is not a matter of surprise, if a person finds that property, available as well as visible, has been made away with by the party who brings an action against him, that he should require some explanation to be given to him as to the cause and circumstances that led to the transaction, and it was natural for him, as he did not know of any other property possessed by the plaintiff, to apply to the Court to require him to give security for costs, or have the action remitted. This case has been answered by Mr. Hunter. I distinguish between his facts and the arguments of his learned and able counsel; and he (Mr. Hunter) answers the case made for remitting the proceedings, by endeavouring to leave the Court under the impression that a valuable house property in the city of Dublin belongs to him. We are of opinion that this was not a truthful, or correct statement for him to make, for it turns

Digitized by Google

out that the house and property to which Mr. Hunter refers have been assigned to a fortunate lady, who is, I presume, quite sensible of the kindness bestowed upon her by this gentleman. But, we should not allow ourselves to be carried away even by this matter. Mr. Hunter seeks to make a case that he is a practitioner of these Courts, an attorney of many years standing. He has, it appears, cases occasionally in the Court and on circuit; and it comes out on affidavit that an execution was placed in the hands of the sub-sheriff, a writ of *fi. fa.* at the instance of a creditor, against Mr. Hunter, and I am sure that the sub-sheriff discharged his duty in that, as well as in every other case in which he was engaged so far as my observation enables me to form an opinion on the subject. Mr. Hunter, having stated that he has considerable business in a professional way, says that he has a mortgage affecting lands in the county of Meath—property certainly not considerable, but we cannot throw this circumstance out of the case. He, further, states that bills of costs are due to him for business done in his professional capacity; but, whether these bills shall ever be paid to him is uncertain; and he explains the unfortunate transaction about the £10, which he paid because he could not help it. It is said that the professional position of this gentleman entitles him to maintain an action in this Court; and then, as if to shut our mouths, we have been referred to the case of *Hennegan* v. *Jackson*, 19 W. R. 208. It is impossible to deny that *Hennegan* v. *Jackson* is very much in point; and I have a particular aversion to overrule any case after it has been well-considered, and decided upon reasonable principles. The other case referred to – *Counsel* v. *Garvie*, 5 IR. L. T. R. 96—was decided in this Court, and that case also appears to apply to the present, and we shall not allow ourselves to be so much affected by the facts of the case as to act contrary to the authorities that have been already decided. We feel ourselves constrained to follow them, and to refuse the motion. Considering, however, the concealment of the assignment of the lease, and the irrelevant and improper charges introduced into the plaintiff's last affidavit, in which the plaintiff has gone into scandalous charges against a public officer of the Court, we must decline to do that which we are in the habit of doing in ordinary cases when we refuse such a motion as the present—to give the plaintiff any costs.

*Motion refused.**

Attorney for the plaintiff, *E. H. Hunter*.
Attorney for the defendant, *W. H. Peyton*.

* See *Torkington* v. *O'Connor*, 8 Ir. L. T. R., 89; *O'Driscoll* v. *Blackwell*, 8 Ir. L. T. (Notanda), 54.—[ED. *I. L. T. Rep.*]

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before MONAHAN, C.J., KEOGH, and MORRIS, JJ.)

CLARKE v. CROKER.

May 7, June 3, 1874.—*Practice—Security for costs—Plaintiff resident in England—Judgments Extension Act*, 1868 (31 & 32 *Vic.*, c. 54.)—*C. L. P. Act*, 1853, *s.* 52—52 *G. O.*, 1854.

A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, *is entitled to obtain an order to compel a plaintiff, resident in England, to give security for costs, upon an affidavit showing that the defendant has a good defence to the action on the merits.*

White and Hart *v.* Carroll, 8 *Ir. L. T. R.*, 63, Raeburn *v.* Andrews, *L. R.*, 9 *Q. B.*, 180, *not followed.*

Motion that the proceedings in this action should be stayed until the plaintiff should give security for costs. The defendant's affidavit set out that the plaintiff resided in London, out of the jurisdiction of the Court; that the plaintiff had no such grounds of action against the defendant as were set out in the summons and plaint; that the defendant did not owe the plaintiff any money, and that the defendant was advised, and believed, that he had a good defence on the merits to the action. In reply to a letter from the attorney to the defendant, requiring security for costs, the attorney for the plaintiff had written a letter, dated the 27th January, 1874, stating that he consented to give security for costs, and would do so as soon as he heard from his client how it could be done, in the meantime undertaking to stay proceedings. But, after the security had been measured, the plaintiff, on April 30th, gave notice, through his attorney, that he declined giving security for costs, and requiring the defendant to file a defence within forty-eight hours.

J. C. Lane, in support of the motion.—We are entitled to the order under the C. L. P. Act, 1853, s. 52; and the undertaking to give security, and the plaintiff's lying by so long after giving the undertaking, are additional grounds for the granting of this application.

H. H. Macdermot, contra.—Since the Judgments Extension Act, 1868, the Court will not oblige a plaintiff to give security for costs merely on the ground of his residence being out of the jurisdiction of the Court, if he reside within the United Kingdom. Such security is now unnecessary. In England the point has been decided, that the residence of the plaintiff in Scotland, the action being in the English courts, is not a sufficient ground for this motion, in consequence of the Judgments Extension Act, 1868, *Raeburn* v. *Andrews*, L. R. 9, Q. B. 180. The same point has been decided in this country, in *White and Hart* v. *Carroll*,* 8 Ir. L. T. R., 68, following *Raeburn* v. *Andrews*.

[MORRIS, J.—Is there anything in the English Act requiring security for costs to be given?]

There is no affirmative section requiring security to be given, but there is a general order under the Act, 22 G. O., H., 1853, as to the time when such an application should be made. In England an affidavit of merits is not necessary. The application must be supported by an affidavit of the facts; if the absence of the plaintiff be the ground, it must state the fact of absence positively—"an affidavit of merits is not necessary, nor is it an objection that it clearly appears the defendant has no merits," 8 Lush. Prac. 933. There originally existed a practice by which a defendant was enabled to obtain security for costs on the ground that the plaintiff was living out of the jurisdiction. The obligation to give security was not imposed by statute but by a practice. Both the English and Irish Common Law Procedure Acts recognize the practice, the former by the 22 G. O., H., 1853, the latter by the 52nd section and by the 52 G. O. 1854; and as regards both, the Judgments Extension Act has the same effect. It is expedient, also, that uniformity of practice should prevail.

J. C. Lane, in reply.—The Court is asked, notwithstanding the undertaking given by the plaintiff's attorney three months ago, and his lying by ever since, to refuse this motion upon a decision made in the interval. But there is a wider question than this. Are the benefits allowed to the defendant by the 52nd section of the C. L. P. Act, 1863, to be taken away by an Act passed six years ago, and which has not since then, until now, been held to have this operation? The only costs the defendants can recover under the Act of 1868 are the taxed costs between party and party on final judgment. Such a change in the settled practice of the Court would cause great inconvenience to

* Followed, *Coleman* v. *Fayle*, *ante* 88. [ED. *I. L. T. Rep.*]

Digitized by Google

successful defendants seeking to recover their costs. New attorneys should be retained in England, and fresh expense incurred. Again, there might be irregularities in the proceedings, as in the case of *Bailey* v. *Welpy*, Ir. R. 4 C. L. 243; but the certificate would be conclusive, and, even in reference to the plaintiff himself, if there were a mistake in the certificate given, that could not be inquired into in England. Again, by a provision in the first section of the Judgments Extension Act of 1868, no certificate of any such judgment shall be registered as aforesaid more than twelve months after the date of such judgment, unless application shall have been first made to the Court, and leave obtained from the Court or judge of the Court in which it is sought to register such certificate. Whence, then, are these costs to be recovered? We cannot say whether or not we would be held entitled to them, or on what grounds they might be allowed.

[Monahan, C.J.—One of the reasons why it was thought fit that security should be given, though the plaintiff had property here, was that, if interlocutory costs were awarded, payment might have been enforced by an attachment against the person of the plaintiff, if within the jurisdiction. Morris. J.—There was a case of *Bartlett* v. *Lewis*, an action on a bill of exchange for an inconsiderable sum, in the Court of Exchequer some years ago, in which the interlocutory costs were so great that the security had to be increased till it ultimately reached £500; and the action was not proceeded with.]

That is a strong ground why we should not be left merely to our remedy under the Judgments Extension Act. But interlocutory costs could not be so recovered, at all events till final judgment; and it would be in the plaintiff's power to delay if he chose, or not to proceed until non-prossed. The object of the C. L. P. Act, 1852, s. 52, was to prevent the incurring of unnecessary and fruitless expense. Even under the 5th section of the Act of 1868, in a proceeding within it, we would be entitled to security for costs on such an affidavit as has here been made, since in this case it is sworn that the plaintiff has no cause of action whatever, which would be a special ground within that section. In *Thomas and Another* v. *Cox*, 8 Ir. L. T. R. 52, Fitzgerald, B., upon a like application, declined to follow *Raeburn* v. *Andrews;* and in *Murley & Co.* v. *C. and T. Keating*, 8 Ir. L. T. R. 52, n., Palles, C.B., observed that he would not, sitting in Chamber, determine whether the prevailing practice should be altered in conformity with the decision in *Raeburn* v. *Andrews*, and so far declined to follow it.

Judgment reserved.

Monahan, C.J.*—In this motion, for an order to have the proceedings stayed until the plaintiff give security for costs, the usual affidavit has been sworn by the defendant, and we see no reason why the plaintiff should not be compelled to give such security. We find that the Court of Queen's Bench has refused a motion similar to this, and that, in consequence of an alteration in the English practice, they have altered the rule of practice which has always been followed in these Courts. But, we see no sufficient grounds for such a change in the settled practice. The Court of Queen's Bench may be right in their decision, but if any change should be made in the practice which has now existed here for some thirty or forty years, it appears to us that the judges should meet, and make a General Order, and alter the 52 G. O., 1854. We, therefore, are of opinion that this motion must be granted.

* Keogh, J., was absent

Morris, J.—I concur with my Chief Justice, that we should grant this application, and abide by the well-settled practice, which in Ireland has received the sanction of an Act of Parliament—the C. L. P. A., 1853. In England a mere usage prevailed, but here the practice has been sanctioned by the C. L. P. A., 1853, the 52nd section of which limits the practice to certain cases. It says:—"Any defendant served with any writ of summons and plaint" may compel the plaintiff to give security for costs, "provided that no order for security for costs shall be made by reason of any plaintiff being resident out of the jurisdiction of the Court, unless upon a satisfactory affidavit that the defendant has a defence upon the merits." Now, no such affidavit of merits is necessary in England. There, too, the practice is that the application for security must be made before issue joined. Here, by the 52 G. O., 1854, the application must be made before the defence is filed; and, in addition, there is the 52nd section of the C. L. P. A., 1853, which as I have said, limits the practice to certain cases. Therefore, the case of *Raeburn* v. *Andrews*, L. R. 9, Q. B. 180, upon which the Queen's Bench acted, should not affect the practice here, which is so different. In the case to which my Lord Chief Justice referred—*White and Hart* v. *Carrol*, 8 Ir. L. T. R. 63—it appears that it was held that the rule of practice laid down in *Raeburn* v. *Andrews* should be followed here. Whiteside, C.J., in his judgment in that case, says:—"The action was brought to recover the amount of goods which the plaintiffs say they delivered to the defendant, and the question in the case is whether the present state of the law requires the plaintiffs to give security for costs, as required by defendant. I make the observation in reference to what defendant's counsel has said, that he was correct in stating that the old practice founded upon the 52nd section of the C. L. P. A. of 1853 gave a defendant a right to the order for which he applied. It is to be observed, that there are many decisions limiting the universal operation of this 52nd section. If, for instance, a man has any property in this country, though he does not reside there, or if he is resident here for temporary purposes, the Court will refuse to grant the order to compel the plaintiff to give security for costs." Now, I must differ, which I do with great deference, from the statement of the Lord Chief Justice, that, according to the practice which has prevailed here, security was not required to be given if the plaintiff had property in this country. For the origin of the practice is stated in 2 Ferg. Prac. 904 (ed. 1842)—an authority on practice here analogous to Tidd's Practice in England—where it is said that "the ground on which security for costs is required is that the defendant, by the plaintiff's absence, loses that summary and immediate means of enforcing payment of such costs of suit as may be awarded him; and, therefore, it is no answer to the application that the plaintiff is in possession of a large landed estate in Ireland, or of personal property, and in an action of covenant by an absentee landlord against his tenant, for non-payment of rent, although he was possessed of the property out of which the rent was due, still this circumstance did not exempt him from the rule, nor was the ownership of a judgment affecting the defendant's own estate, and for the recovery of which the proceedings were taken, sufficient security, for *non constat*, but it may be no charge at all. In such case a defendant is entitled to security for costs *ex debito justiciæ*, and it is not necessary that he should have a good defence on the merits, for even if his defence were founded upon some technical defect in the plaintiff's declaration, still, even in that case, as he may become entitled to costs, the Court will see that that which is adjudged by law shall be secured, whatever may be the parties' merits." We, thus, see both the ground and origin of this practice, and that having property within the jurisdiction will not exempt the plaintiff from giving security for costs. The 52nd section merely limits the practice by requiring an affidavit of a defence upon the merits before granting the order. And I concur that we should not in an off-hand manner change that practice, which has received the sanction of the Act of Parliament by limiting it to certain cases. But, it is said that the practice should be changed, in

Digitized by Google

consequence of the Judgments Extension Act of 1868. One would imagine that Act had been only a month passed, but it was passed six years ago, and it is rather strange that, if its effect is as contended for, the practice was not altered before now. In my opinion, no individual Court should take on itself to alter the fixed practice, erasing, in fact, both the Act of Parliament and the General Order. I concur with my Lord Chief Justice, that an alteration in the practice should have been preceded by a meeting of all the judges, to make a new rule; but even this might be an interference with the 52nd section of the C. L. P. Act, 1853, and I offer no opinion whether it would be competent or not to make any such General Order. We shall uphold the old practice, at least until the 52nd G. O., 1854, has been altered, and, accordingly, this motion must be granted. Costs to follow the ordinary rule.

Motion granted.

Attorney for the plaintiff, *T. Exham*.
Attorney for the defendant, *E. D'Alton*.

COURT OF EXCHEQUER.

Reported by GEORGE A. KELLY, Esq., Barrister-at-law.

(Before PALLES, C.B., FITZGERALD, DEASY, and DOWSE, BB.)

HANWAY v. TAYLOR.

April, 15, 16, 17, May, 7, 1874.—*Ejectment on the title—Parties to action—20 & 21 Vict. c. 60, ss. 268, 271—Insolvent—Lease vesting in assignees—Election.*

Chattel interests in land remain vested in a bankrupt or insolvent, until his assignees have elected to take same; and until such election, the assignees need not be joined with the bankrupt or insolvent, as parties in an ejectment on the title for the land.

Ejectment on the title.

The case was tried before Pigot, C.B., at the Spring Assizes, 1873, for the County of Meath. The plaintiff claimed under a lease, made to him on the 30th of December, 1830, of the lands of Knocktown, in the County Meath, for the life (still in being) of the Marquis of Kildare. The plaintiff, James Hanway, filed his petition and schedule as an insolvent on the 14th July, 1871, and was discharged as an insolvent before the bringing of the ejectment. The ejectment was brought upon the title in November, 1872, in the name of James Hanway alone as plaintiff, laying the demise as of April 10th, 1872. The further facts sufficiently appear, for the purposes of this report, in the judgment of the court. Pigot, C.B. at the trial, having directed a verdict to be entered for the plaintiff, reserving liberty for the defendant to move to change the verdict into one for him, if the court should be of opinion that he was so entitled; and a conditional order having been obtained, on his behalf, to change the verdict pursuant to leave reserved, or for a new trial, on the ground of its being against the weight of evidence,

Walker, Q.C. (with him *Molloy*) showed cause.—The property in question was a leasehold interest, subject to a rent. There is no evidence that the assignees ever elected to take it, and until election the lease remained in the insolvent. The question turns on the 268th and 271st sections of the Bankruptcy and Insolvency Act of 1857, 20 & 21 Vict. c. 60. The words of the 268th section are no doubt large, but they are controlled by those of the 271st. If it was vested in the assignees on the insolvency, they would be liable to the rent and covenants, but it was not intended they should be, till they elected to take the premises; and the use of the word "elect" would be inappropriate, if the lease was already in them. The 268th & 271st sections of the Irish Act, are the same in substance as the 37th & 50th sections of the 1 & 2 Vict. c. 110; and it has been expressly decided in *Bishop* v. *Trustees of the Bedford Charity*, 1 E. & E. 715, that under that Act a lease remains vested in the insolvent till election by the assignees. *Cartwright* v. *Glover*, 2 *Giff.* 620, would seem an authority to the contrary, but that was a decision on the Bankruptcy Act; none of the authorities appear to have been cited; and, in any event, the case of *Bishop* v. *Trustees of the Bedford Charity*, as a decision of the Exchequer Chamber is of higher authority.

Mackley v. *Pattenden*, 1 B & S. 178, and *Doe d. Copeland* v. *Stephens* were, also, referred to.

Battersby, Q.C. and *Gamble*, Q.C. (with them *J. N. Gerrard*), *contra*.—The assignees in insolvency should have been parties. The legal estate became vested in them, under the statute (20 & 21 Vic. 60, sec. 268). They had not done anything to disclaim the estate in the lease, and it was not necessary for them to do anything to elect to take it. The authorities relied on for the plaintiff Hanway, do not rule the case. *Copeland* v. *Stephens*, was decided under the 49 Geo. III. c. 121, sec. 19, and 7 Geo. II. c. 30. By sec. 1 of the latter Act, the bankrupt was bound to disclose his estate and effects; and by sec. 26, it was provided that, when assignees were appointed, the Bankruptcy Commissioners should assign the bankrupt's estate and effects to them; and the 19th sec. of the former Act, enabled the bankrupt to free himself from liability to rent under a lease, upon his delivering it up to the assignees. But neither Act contained a vesting clause similar to sec. 268. In that case, the commissioners had assigned the lease to the bankrupt's assignees, but Lord Ellenborough in his judgment (p. 604), says "nothing passes from them for nothing was previously vested in them," and attention is drawn to this by Gaselee Justice, in the case of *Palmer* v. *Andrews*, 4 Bing. 351. In the case of *Bishop* v. *The Trustees of the Bedford Charity* (*ante*), it was not necessary to decide the point. The action was one of trespass by Bishop, who fell through an area grating that had been left open, and it was brought against the landlord. The tenant had been bankrupt under 1 & 2 Vic. 110. The question was rather one of possession than of estate. The defendants as landlords, had applied under the 50th sec. of the Act, to the bankrupt's assignees, to elect either to take or disclaim the lease. They had elected not to take (see p. 706); the question then was, whether sufficient had been done to amount to a surrender of the lease to the defendants as landlords; and so the only question necessary to be decided was, whether or not the lease had been revested in the defendants as landlords. The *dictum* of the court, certainly goes far beyond this, but the language is ambiguous, and the point mentioned in the *dictum* was not needed for the case. Under the Insolvent Act, 1 Geo.IV. c. 119 sec. 4, it was held that the provisional assignee could sue in ejectment, without the leave of the court; *Doe d. Clarke and others* v. *Spencer*, 3 Bing. 293; and the lessor when insolvent could not bring ejectment, even though the provisional assignee had never taken possession, nor the lessor ceased to collect the rent; *Doe d. Palmer* v. *Andrews*, 4 Bing. 348. Gaselee, J., there draws the distinction between the Insolvent Act and the old Bankruptcy Act (p. 351), because the latter "had no clause making the estate vest;" and Parke, J., says (p. 370):—"This *was* the law as to bankrupts, but it is no longer so." In *Mackley* v. *Pattenden*, 1 B. & S. 178, the ejectment was brought by a purchaser from the assignee, against the

Digitized by Google

representatives of the bankrupt, and a verdict for the plaintiff was set aside; but the facts raised a different question. The bankruptcy was in 1847, under the 1 & 2 W. IV. c. 56, and the bankrupt was left in undisturbed possession until 1858, and the assignment to the plaintiff was only made in 1860, so that the real question was whether the bankrupt assignee had not disclaimed the estate, and the court held that this question should have been left to the jury. The case of *Cartwright* v. *Glover*, is an authority upon an exactly similar statute in England, 12 & 13 Vic. c. 106, sec 145, and the decision is distinct that the lease at once passes to the official assignees.

The words of the 268th sec. are very plain, that the estate shall vest; no plainer words could be found, if the word vest is to have any legal meaning. In the Landed Estates Act, which gives indefeasible titles, in the Acts giving power to the court to vest trust estates in new trustees, and in many similar statutes, no stronger words are or could be used. The object of the statute was to deprive the bankrupt of the power of disposing of his property, and this was done by taking the legal estate out of him, and vesting it in the provisional assignee. It was intended to give it the same effect that the conveyance by the insolvent had under the old Acts, as in the cases cited. The 269th sec. shews this, for it provides for the registry of the vesting order. For what purpose was this, if the vesting order did not divest the estate out of the bankrupts? The 270th sec. does not affect the operation of the former sections, it has reference to the liability to rent, and not to the vesting of the legal estate, and so it contemplates the case of a bankrupt lessee only, and not to the assignee of a lessee, who may become bankrupt or insolvent; *Manning* v. *Flight*, 3 B. & Ad. 211. It was passed to protect a bankrupt who was an original lessee, from liability on his covenant for the rent which he would otherwise have been liable for, even after the legal estate had passed out of him to the official assignee, just as he would have been if he had assigned it by deed. This is the principle upon which *Goodwin* v. *Noble*, 8 E. & B. 587 was decided, and it does not rule this case. The power given by this section to the assignees, is a power to disclaim the estate, and thus revest it in the bankrupt, who is then obliged to surrender the lease. This is shewn more fully by the last clause, which is, that if the assignees neither elect to take or to disclaim, then "the court may order *them* to elect and deliver up the lease, &c." If the estate was not vested in them until they had elected, this language would be meaningless, for if by not electing to take the lease, no estate had been vested in them, there would be nothing to deliver up. The true construction is that upon the bankruptcy, the legal estate in leaseholds as well as fee-simple, vests in the assignees; but in the case of leases, they have power under sec. 270, to disclaim and repudiate the lease if it should be onerous. The assignees were, therefore, necessary parties to this ejectment.

PALLES, C B.—This case comes before the court upon cause being shewn against a conditional order obtained by the defendant, to change the verdict into one for the defendant, or for a new trial upon the ground of the verdict being against the weight of evidence. It is an action of ejectment on the title, which was tried before the learned late Lord Chief Baron, at the Spring Assizes of 1873. The lands, the subject of the ejectment, comprised two separate parcels. One of these, consisting of 170 acres, was demised to the plaintiff by a lease of 30th December, 1830, for lives, one of which was admitted to be in being. The other parcel had been held by the plaintiff originally, as tenant from year to year, to the defendant, Colonel Taylor. In the month of January, 1868, an ejectment for non-payment of three half-years' rent of the first mentioned parcel, was brought by the defendant; judgment was marked, and upon the 30th January, 1868, a writ of habere was issued, under which, possession of the lands was given to the defendant, upon the 4th February, 1868. Upon the same 4th February, 1868, a lease of the premises so recovered, was executed by the defendant, Colonel Taylor, to one Patrick Bannon for nine months, subject to redemption, at the bulk rent of £103, with a provision for an apportioned part only becoming payable in the event of the redemption of the premises. As a matter of fact, the premises were not redeemed. This being the state of facts, no rent would have accrued due from the plaintiff or his representatives, on the 1st May, 1868, or the 1st November, 1868. However, it appears that upon the 28th November, 1868, £51 3s. 10d. was paid to Mr. Hamilton, the defendant's agent, as half a year's rent of these premises, due by the representatives of Hanway, to the first of May, 1868, and was received by him as such rent. The period for redemption having expired, Patrick Bannon on the 7th December, 1868, proposed in writing to Mr. Hamilton to become tenant to the defendant for one year, from the 1st November, 1868, for the lands comprised in the former ejectment, together with an additional parcel of 3 acres 1 rood and 30 perches, at the yearly rent of £105 12s. 0d., payable half yearly, upon the 1st May and 1st November. That proposal was accepted by Mr. Hamilton. It appears that upon the 22nd April, 1869, Mr. Hamilton was paid the further sum of £51 3s. 10d., as and for a half-year's rent, due by the representatives of Hanway, to the 1st November, 1868. And on the 24th of April, 1871, notice to quit was served upon Bannon; and the present ejectment has been brought upon the expiration of that notice to quit. It was contended upon the part of the defendant, that the lease of 1830, having been determined by the ejectment proceedings, the new tenancy was a tenancy in Bannon, that this new tenancy was determined by the notice to quit, and that, therefore, the defendant was entitled to have a verdict directed for him for this parcel of the premises. On behalf of the plaintiff, it was insisted that the payments made in November, 1868 and April, 1869, respectively, were evidence of the existence in May and November, 1868, of a tenancy from year to year in Hanway, created after the execution of the habere. The learned Chief Baron left to the jury the question whether such tenancy had been created by the payment of these gales of rent, and the jury found in the affirmative. We are of opinion that this question could not have been withdrawn from the jury. The lease of 1830 had been determined by the execution of the habere upon the 4th February, 1868. The new lease reserved rent which did not become due until the 4th November, 1868. The sums paid to and received by Colonel Taylor's agent, as and for rent due upon the 1st May and 1st November, 1868, were not payable under, and could not have been received as rent due under either of the above leases. But the receipt of these sums as rent, was evidence of an acknowledgment by Colonel Taylor of the existence upon those days of a tenancy in Hanway, subject to a rent then payable; and, as no other tenancy appeared under which these gales of rent would have been payable, the tenancy so acknowledged, would *primâ facie* be a tenancy from year to year. We are, therefore, of opinion that the contention of the defendant upon this point fails.

The next question raised was one of more general importance. It appeared that upon the 12th July, 1871, the plaintiff filed his petition of insolvency, under the provisions of the 20 & 21 Vic. cap. 60. No trade assignee was appointed, and it did not appear that any act had been done by the official assignees, which could amount to an election, to accept or take the leasehold interest. It was contended, upon the part of the defendant, that upon the true construction of the Act of 20 & 21 Vic. c. 60, any chattel interest in lands, vested in the insolvent at the time of the filing of his petition of insolvency, vested in the official

assignees by virtue of the filing of the petition, irrespective of any subsequent act of election. Upon the part of the plaintiff, on the other hand, it was insisted that those chattel interests in lands remained vested in the insolvent, notwithstanding the filing of his petition, until the assignees had elected to accept them [His lordship read ss. 267, 268, and 271 of 20 & 21 Vic. c. 60.] We are of opinion that this tenancy from year to year, did not pass to the official assignees by the mere act of filing the petition, but that such tenancy remained in the insolvent notwithstanding, subject to the right of the assignees to elect to take the same. As no evidence was given of any such election, the learned judge, in our opinion, was right in declining to direct a verdict for the defendant upon this ground. Similar questions have frequently arisen upon the former Bankruptcy and Insolvency Acts, and the decisions upon those questions have, to a large extent, settled the construction of statutes *in pari materia*, with that now under consideration. The Act of 5 George 2, c. 30 sec. 26, directed the commissioners to assign the estate and effects of a bankrupt to the assignees chosen in the manner provided by that section The Act 49th George III., cap. 121, sec. 13, which, as far as the questions in this case are involved, is similar to the 271st section of the 20th and 21st Victoria, cap. 60, provided, *inter alia*, that in all cases in which a bankrupt should be entitled to any lease, and the assignees should accept the same and the benefit therefrom as part of the bankrupt's estate and effects, the bankrupt should not be liable to pay the rent accruing due after such acceptance of the same, nor to be sued in respect of any subsequent non performance of the covenants therein. The decision of the leading case of *Copeland* v. *Stephens*, 1 B. & Ald. 593, rested upon the construction of those sections. There, in an action of covenant by lessor against assignee of lessee, the defendant pleaded his bankruptcy, and that, before the rent sued for had accrued due, the commissioners assigned to one William Tate, the assignee of the defendant's estate and effects, all the defendant's estate in the demised premises. The plaintiff replied that Tate did not accept the lease or the benefit therefrom, as part of the estate and effects of the defendant, and to this replication there was a demurrer. Now, as the defendant, Stephens, was not the direct lessee, his liability to rent could have existed only by virtue of privity of estate; and if the estate had passed from him upon his bankruptcy, and before the acceptance by his assignee, he could not have been liable to the rent. Lord Ellenborough, in an elaborate judgment, which definitely settled the law under the then existing statutes, treated the statute referred to [49th George III., cap 121] as not leading to any clear inference on either side of the question, but based his judgment upon the ground that the general assignment of a bankrupt's personal estate under his commission did not vest a term of years in the assignees, unless they did some act to manifest their assent to the assignment as it regarded the terms and their acceptance of the estate. He says:—"An assignment by commissioners of a bankrupt is an execution of a statutable power given to them for a particular purpose, viz., the payment of the bankrupt's debts. Nothing passes from them, for nothing was previously vested in them; whatever passes passes by force of the statute, and for the purpose of effecting the object of the statute. And therefore the assigns of a bankrupt are not bound to accept a term of years that belonged to the bankrupt, subject to the rents and covenants; for the object of the statute and of the assignment being the payment of the bankrupt's debts, and the assignees, under the commission, being trustees for that purpose, the acceptance of a term which, instead of furnishing the means of such payment, would diminish the fund arising from other sources, cannot be within the scope of their trust and duty." The objects of the statutes 5 George II., c. 30, and the 20 & 21 Vict., c. 60, are the same. The acceptance of a burthensome lease in such a mode as to onerate the estate would, under the latter as well as the former statute, be outside the trust or duty of the assignees. The event upon which the non-liability of the bankrupt or insolvent to rent and covenants rests is made dependent, under the 20 & 21 Vict. c. 60, on the election of the assignees to take the lease, or the same event as is mentioned in the 49th G. III,, c. 121, sec. 13, upon which *Copeland* v. *Stephens* was decided. There is, however, a very serious difference between the words "shall assign unto," which occur in the 5 G. III., cap. 30, and the words of the 20 & 21 Vict., cap. 60, "shall be absolutely vested in;" and if the question were now to be considered a *res nova* we would deem the arguments of the defendant's counsel worthy of very great consideration. But, we are of opinion that the question has been closed by authority, and that we must hold that the leasehold estate does not vest in the assignees until they have elected to take.*

Goodwin v. *Noble*. 8 El. & Bl. 587, was decided upon the English Bankruptcy Acts of 1849, the 12 & 13 Vict. c. 106, the 142nd and 145th sections of which are similar to ss. 266, 268, and 271 of the 20 & 21 Vict. c. 60. It was an action of covenant for rent by lessor against the assignees in bankruptcy of the lessee; the defendant pleaded that he did not elect to take the lease within the meaning of the statutes, and to this there was a replication that he did elect to take. Lord Campbell, C.J., in giving judgment, said:—"The result of the various cases upon the subject seems to be that the assignees of the bankrupt are not liable as assignees of the term unless they have done some act which unequivocally indicates to the lessor that they have elected to take the benefit of the lease." The inevitable result of the assignees not being liable until election is, that the leasehold interest does not vest in them until election. The case of *Bishop* v. *The Trustees of the Bedford Charity*, 1 El. & El. 714, arose upon the construction of the Insolvent Act, 1 & 2 Vict. c. 110. [His Lordship read ss. 37, 45, 50.] The action was brought to recover damages for personal injuries sustained by reason of a grating being suffered to be in a dangerous state for want of proper repair. The defendants were sought to be made liable as being possessed of the premises upon which the grating was situated. They were the owners of the premises, and had demised them to Murton for 30 years from Christmas, 1851. Murton was discharged by the Insolvent Court on 30th July, 1856, having given up the lease to the official assignees. In November, 1856, the defendants obtained an order from the Insolvent Court for delivery to them of the lease, the official assignees having repudiated it. and it was accordingly delivered to them. In the Court of Exchequer Chamber it was contended, upon the part of the plaintiff, that the insolvency of Murton in July, 1856, *ipso facto* vested the lease in the respondents, the official assignees not having elected to take it. The only answer which was attempted to be given to this argument was that the lease remained vested in Murton notwithstanding and after his insolvency, and that the law in this respect was the same with regard to insolvent as to bankrupt lessees. *Copeland* v. *Stephens* was cited. In delivering the unanimous judgment of the Court, Williams, J. said, "with reference to the interest of Murton in the lease it may be observed, that upon the true construction of the present Insolvent Act, 1 & 2 Vic., cap. 110, a lease made to a person who afterwards seeks the benefit of the Act, remains vested in him until either it is taken by the assignees or given up to the landlord. The opinions formerly entertained to the contrary [see *Doe* d. *Palmer* v. *Andrews*, 4 Bing. 348], were founded upon the fact of the assignment being by the deed of the insolvent himself, and they have no longer any application, since the vesting order has been the act of the court. In this respect, there is not now any essential difference between the case of a bankrupt and that of an insolvent." For the purposes of the present question the 37th, 45th, and 50th secs. of the 1 & 2 Vic., cap. 110, cannot be distinguished from the 21 & 22 Vic., cap. 60; and the case of *Bishop* v. *The Trustees of the Bedford Charity* appears to be precisely in point upon that question. In opposition to this decision of the Court of Exchequer Chamber, certain observations of Vice-

* See, also, *Re Connor*, 8 Ir. L. T. R. 81; and Com. 8 Ir. L. T. 304.—[ED. *I. L. T. Rep.*]

Digitized by Google

Chancellor Stuart, in the case of *Cartwright* v. *Glover*, were much relied upon. In that case there was a bankruptcy on the 16th of August, 1860; in September, the assignees sold and conveyed to a purchaser a leasehold interest which had been vested in the bankrupt; and in January, 1861, the purchaser took possession of the property. The bill was filed for the purpose of obtaining the declaration of the court, that the assignees had elected not to take, or that they were in equity then precluded from electing to take. There the sale and conveyance by the assignees amounted to an election to take; and any observations of the learned Vice-Chancellor, as to the question now under our consideration, were not material to the question in the cause. But even if this were otherwise, and if *Cartwright* v. *Glover* were a clear decision upon the question, we would not deem ourselves warranted in acting upon it, in opposition to the Court of Exchequer Chamber in *Bishop* v. *The Trustees of the Bedford Charity*.

Those were the only questions which arose in relation to the entering a verdict for the defendant; but there remains the very serious question, much discussed at the bar, whether, assuming as we now must that the case ought to have been submitted to the jury, the verdict is one which, having regard to all the circumstances, we ought to permit to stand. Unfortunately, we have not had the advantage of the opinion of the late Lord Chief Baron, in reference to the verdict; we have, however, carefully considered the evidence in the case, and, notwithstanding our anxiety not to disturb verdicts upon questions within the province of a jury, upon the ground of their being against the weight of evidence, we feel ourselves coerced to come to the conclusion, that we ought not to permit this verdict to stand. As there must be a second trial, we think it more convenient not to refer in detail to the view which we entertain of the evidence which was given at the trial. The order will therefore be absolute, to set aside the verdict, as being against the weight of evidence, and for a new trial.

Dowse, B.—While concurring in the judgment just pronounced, I shall only add that, in my opinion, it would result in great inconvenience if we were to hold that a lease did not remain in the bankrupt until an election by the assignees to take it. With the judgment of Mr. Justice Williams, in the case of *Bishop* v. *The Trustees of the Bedford Charity*, I entirely agree, but with the reasons on which he grounds that decision I must declare myself dissatisfied.

Fitzgerald and Deasy, B.B., concurred.

Attorney for the plaintiff, *W. Carey*.
Attorney for the defendant, *T. F. Parkinson*.

Reported by E. N. Blake, Esq., Barrister-at-law.

Doyne v. Campbell.

June 7, 1874.—*L. & T. Act*, 1870, *ss.* 65, 71—. *Tenant's right to deduct half county cess—Holding agricultural or pastoral.*

A dwelling-house, situate a little more than five miles from Dublin, having about 25 *acres (Ir.) of land attached, was taken by a Dublin merchant, at* £300 *a year, as a residence, at the same time intending to make profit out of the land so as to contribute towards the payment of the rent. The premises were all enclosed by a wall. About* 15 *acres (Ir.) were in pasture, and* 10 *under buildings, ornamental grounds, and plantations. The rent, at a valuation, would be properly apportioned at* £200 *for the dwelling-house, garden, and ornamental grounds, and* £100 *for the rest of the premises. The tenant kept some* 20 *head of cattle on the land, and in one year had* 20 *tons of hay off the land. On a Case stated, reserving the question whether the holding was agricultural or pastoral in its character, or partly both, within the L. & T. Act,* 1870, *section* 71, *so as to entitle the defendant to deduct one-half the Grand Jury cess payable in respect of the premises,*

Held, *that the premises were not agricultural or pastoral within the meaning of that section.*

Case stated by Deasy, B., for the opinion of the Court, as follows:—

"This was a civil bill process before the chairman of the county of Dublin, Kilmainham division, for the sum of £18 6s. 6d., for arrears of rent, in respect of premises known as 'The Hermitage,' situate near Rathfarnham, in the county of Dublin. The case was heard before the chairman of the county Dublin, at the Quarter Sessions, held at Kilmainham, in January last, when the chairman made his decree in favour of the plaintiff for the amount claimed, with costs. The defendant having lodged his appeal, the case came on to be heard before me on the 27th day of January last. Both parties were represented by counsel; and, upon the facts proved, and hereinafter stated, this case has been submitted to the Court, with the consent of the parties.

"The premises consist of a house and about forty statute acres of land, and were taken by the defendant from the plaintiff, at a rent of £300 a year, by a proposal in the words following:—'I hereby propose to become tenant to the house and lands of Hermitage, situate in the barony of and county of Dublin, containing forty statute acres, or thereabouts, for the term of twenty-one years, from the 1st day of May, 1871, at the yearly rent of £300 sterling, payable half-yearly. And I propose I should have power to determine said tenancy at the expiration of each period of seven years, from said 1st May next, giving the usual notice; and that Philip Kavanagh Doyne, his heirs and assigns, shall have power to determine said tenancy at the expiration of fourteen years, from the said 1st day of May next. I propose that Philip Kavanagh Doyne shall execute the following works and repairs in a satisfactory manner, namely, to repair the roof of the dwelling house and out-offices so as to render same water-tight; to put the sewers in good order; to paint, with two coats of paint, the greenhouses; to repair the gate lodge, yard gates, and existing breaches in the demesne wall; or, I propose, to execute the above-mentioned work for the sum of £100, said sum to be allowed to me from the first half-yearly gale of rent, payable in respect of the said premises. I propose that the said Philip Kavanagh Doyne shall execute to me a lease of the said premises, on the terms of this proposal, as soon as the said P. K. Doyne is discharged from the wardship of the Court of Chancery. I propose not to assign my interest under said lease, without first giving to the said P. K. Doyne, or his heirs and assigns, the option of taking it. I propose to maintain, preserve, and keep the said premises, and every part thereof, in good and sufficient order, and repair, and condition, and that, in case any portion of the demesne wall shall fall down during my tenancy, I propose that same be reinstated at the joint expense of the said Philip Kavanagh Doyne and myself. George Campbell, Dublin, 25th March, 1871.' 'I accept the above proposal, P. K. Doyne.' It appeared that plaintiff had been a ward of the Court of Chancery up to 22nd August, 1871, and an order of the said Court, dated the day of was given in evidence, whereby the plaintiff was, on the said 22nd day of August, 1871, discharged from the wardship of the Court, he then having attained his full age of twenty-one years. It appears that the receiver over plaintiff's

Digitized by Google

property had not been discharged at the date of the proposal, and that same was submitted to the receiver-master, and ratified by him on the 30th March, 1871, subject to landlord's proportion of poor rate, income tax, and county cess. The defendant, in paying the rent which subsequently accrued, deducted therefrom, from time to time, one-half of the amount which he had actually paid for grand jury cess, amounting to £18 6s. 6d., claiming to be entitled so to do as well from the terms of the master's ruling, approving of the proposal, as under the provisions of the Landlord and Tenant (Ireland) Act, 1870; and the process was brought to recover this sum. It was admitted before me in argument, by the defendant's counsel, that this case must be governed by the provisions of the said Act, and more particularly by sec. 65 as governed by sec. 71, in other words, whether this is a holding agricultural or pastoral in its character, or partly agricultural and partly pastoral, within the terms of sec. 71, so as to entitle the occupier, as defined by sec. 15, to deduct half of the grand jury cess paid by him in respect of the premises; and for the amount of sums so deducted by the defendant, as being arrears of rent unpaid, and with the object of settling this disputed question between the parties, this action was brought.

"Mr. Charles Uniacke Townsend was the first witness examined on behalf of the plaintiff. He said he was a land agent, and had had much experience in letting both houses and lands in and about Dublin, and elsewhere; knows the premises called Hermitage; went over the place with the ordnance map in his hand (map produced); that map correctly represents the premises; the quantities are given in the Ordnance book of reference (book produced); in all there are about 41 statute acres, equal to 25 acres Irish, of which 25 statute or 15 Irish acres are in pasture, and about 16 statute acres or 10 Irish, under houses, and ornamental grounds, and plantations; the place is surrounded on all sides by a high demesne wall; there is a handsome entrance gate, with a good gate lodge, and a nice approach leading to the house; the house is very large, built of cut granite; the reception rooms are very handsome; there are extensive greenhouses as well as a conservatory; the house is quite unsuited to a farm of 42 acres; it is fit for a nobleman's or gentleman's residence; I value the 15 acres available for pasture at £7 per acre; I have let land at that side of Dublin, but much nearer to town, at a somewhat higher rate; I do not believe it would be possible, by any system of farming, to make out of the land one-half the rent which Mr. Campbell pays; in apportioning that rent, I would say in round numbers £200 for the house, garden, and ornamental grounds, and £100 for the land; I consider it to be a residence with accommodation land, and not a farm with a house on it; the tenement valuation of the buildings is £76, and of 42a. 2r. 0p., (statute) of land £85; in my opinion, the house, gardens, and ornamental grounds, form the principal subject of the demise. Mr. Maffitt was the next witness. He said he knew the premises, and had recently walked over them. He had heard the evidence of the last witness, and entirely concurred with it. The defendant was examined on his own behalf, and said that he took the place with the intention of making as much as he could out of the land attached, believing that by proper management he could thereby make a large portion of the rent of the entire—that he thought he had about 20 tons of hay off it last year, and during the summer kept about 20 head of cattle. That, assuming the hay to have been worth £5 per ton, he estimated that he made £200 out of the land in the last year. That he would not have taken the place at £300 a year, as a residence merely, and that in taking the place he expected to make, and did make a great portion of his rent; that he did not think that out of the total extent of the premises (about 25 acres, Irish), there were more than ten acres, Irish, which were not available for grazing purposes; that the 15 acres, Irish, were divided into fields by the ordinary fences and ditches, and that, in addition to that, part of the plantation was available for the grazing of young cattle. On cross-examination, defendant said that he took the place as a residence; that he was a wine merchant, having his offices in Upper Sackville-street, and that he came into his office each morning, and returned to Hermitage every evening. That he kept no farm books or accounts. He had 3 carriage horses and 1 farm horse; these horses consumed a good deal of hay grown on the place. He, also, kept milch cows for the use of his household, reared all his calves, and sometimes bought calves to rear in addition—the stock he spoke of consisted of these cows and calves. Had about half a statute acre under potatoes last year, and was about to till the remainder of the field this season; the entire field contains about 1 statute acre; would not have given £300 a year for the place, if he did not expect to make something out of the land. In reply to my question, witness stated that the front and back lawns, numbered 34 and 35 on the map, were included in the 15 acres of pasture; these contained about 5 acres.

Counsel, on behalf of the plaintiff, referred to the cases of *Raphael* v. *Sinclair*, 7 Ir. L. T. R., 202, and *Carr* v. *Nunn*, Reg. and Land Ap. p. 89.

"I submit for the opinion of the Court:—Is this a holding agricultural or pastoral in its character, or partly agricultural and partly pastoral, within the meaning of the 71st sec. of the Land Act, 1870, so as to entitle the defendant to deduct one-half the Grand Jury Cess, payable in respect of the premises? With liberty to the Court to examine witnesses, if they should deem it advisable to do so. If the Court be of opinion in the affirmative, then to reverse the decree of the chairman with costs, including the costs of this appeal and of this case. If in the negative, to confirm the decree of the chairman with costs, including the costs of the appeal and of this case."

Hamilton (with him *Walker*, Q.C.,) for the plaintiff. It may be contended by the defendant that the holding comes within the L. & T. Act, 1870, sec. 65, although not agricultural or pastoral; but, we maintain that the application of that section is limited by the 71st, *Raphael* v. *Sinclair*, 7 Ir. L. T. R. 202.

[PALLES, C.B.—That question is not open to them on the reservation.]

The only question, therefore, is whether the holding was agricultural or pastoral, or partly both, within section 71. The defendant's evidence is conclusive that it was not. He took the place as a "residence," in consequence of its proximity to the city (a little more than five miles distant), where he has his offices as a wine merchant; and, as subordinate to that purpose, he had in view that the profits of the farm would assist him in paying the rent. The profits mentioned in the case were gross profits; and there may have been an actual loss. The place is, itself, essentially residential in its character, as appearing from the facts stated in the case. It was not taken for the primary purpose of making profit by it as a farm; and that a few acres more or less were laid out in grass, or used for grazing, would not influence the result, *Carr* v. *Nunn*, 7 Ir. L.

Digitized by Google

T. R. 26. The front and back lawns are included in the 15 acres described as pasture, although the lawns are laid out and partly covered with shrubbery, as appears by the map. The net profit of the place did not appear.

G. Fitzgibbon, Q.C. (with him *Keogh*), *contra.*—*Carr* v. *Nunn* is distinguishable, as there it was plain that the lands could not have been nor were they, in fact, taken with a view to profit by farming; and it was held that every such case must be determined on its own special circumstances. We admit that the question is whether, at the date of the letting, the holding was agricultual or pastoral, or partly both; but, no subsequent alteration in its character in fact took place. The defendant took it with a view of making as much as he could out of the land attached; and accordingly used it, to all intents and purposes, as a farm, making large profits by the hay, and buying and selling cattle reared and fed on the land. He did, in fact, in this way, make a large portion of the rent; and he states that he would not have taken the place at that rent as a residence merely. There were 15 acres, Irish, divided by hedges and ditches, as in an ordinary farm; and another portion available for grazing cattle.

[FITZGERALD, B.—That is, available without injury to the character of the premises as a residence.]

There are provisions of the Act applicable to holdings other than those defined in terms by section 71, and which cannot be limited by it. So section 15, while excluding certain demesne lands, shows that the provisions of the Act are applicable to others properly so called. Therefore, as such are included, proving that lands are demesne lands, does not conclude that they are not agricultural or pastoral.

[PALLES, C.B., referred to *Williamson* v. *Earl of Antrim*, 7 Ir. L. T. R. 157.]

No words more extensive could be used than have been used in Part V.; and if s. 65 stood alone, it would be large enough to include this case. Section 71 does not provide that the *whole* of the holding is to be agricultural or pastoral, or partly both.

[PALLES, C.B.—The latter clause declares that the term "holding," shall *include* all land of the character previously specified, held as therein mentioned. In order to ascertain its character, we are to regard every portion of it.]

A holding is not to be excluded because it has on it buildings and a residence; that the residence is a good one, does not prevent the holding from being a farm; and he would not have taken the house but for the land.

[FITZGERALD, B.—The same argument might be reversed, that he would not have taken the agricultural or pastoral holding, but for the house on it. On the defendant's own evidence, it is clear that he subordinates the use of the holding as a farm, to the use of it as a residence. His own evidence is the principal difficulty.]

The principal incident of the holding is that which keeps the whole going; and here the greater part of the rent is paid by the profits of the place, apart from its use as a residence. As land, it would fetch £5 an acre, or £200 a year. It is not to be said that, because the holder derives an income from another occupation his holding is not agricultural.

[PALLES, C.B.—Making as much as he could by grazing, consistently with keeping the place as a demesne, will not make it pastoral.]

If both were let separately the absurdity would ensue, that as regards one part there would clearly be a right to make the deduction, though not as regards the other; and yet, is it to be said that no such right of deduction attaches now in respect of it?

[PALLES, C.B.—He would have altered the character of the holding altogether.]

Walker, Q.C., in reply, was not called on.

PALLES, C.B.—We think that it is plain, on the only question open upon the reservation, that this holding was not agricultural or pastoral in its character, or partly agricultural and partly pastoral, within the meaning of the 71st section of the Landlord and Tenant Act, 1870. The terms of the 71st section clearly show that, in order to ascertain the character of the holding, we must look at the entire holding. [His lordship read the section.] Looking at the entire of the holding, and having regard to the dealings of both parties respecting it, for the purpose of ascertaining its character, we find both parties dealing with it as a residence, and not as an agricultural or pastoral tenancy, and it is impossible to think that it could have been taken as a farm. It would not serve the purpose of making money by its use as a farm. Indeed, the evidence of the defendant himself is conclusive on the question. Its primary use to him was as a residence, with the subordinate use of making money out of the land attached, out of which he believed that he could make a large portion of the rent. But, he took it as a residence as being its primary use. Looking at the entire character of the holding, and not merely of the land, we consider that it was held as a residence, and that upon the evidence it has not been shown to have been agricultural or pastoral.

DEASY, B.—Not that I myself entertained any doubt on the question, but, as its determination involved a future yearly liability to county cess, and would affect a considerable extent of property in the neighbourhood of Dublin, and in the vicinity of many large towns, I thought it right to state the case for the opinion of the full Court. With that opinion, now expressed, I concur. In *Carr* v. *Nunn* the proportion of land in pasturage was, as I have calculated, nearly exactly the same in proportion to the rest as here. Looking at the whole general character of the holding, I am clearly of opinion that it does not come within section 71, as agricultural or pastoral, or partly agricultural and partly pastoral.

DOWSE, B.—I shall only add that, in my opinion, this holding cannot properly be described as a farm with a house on it.

FITZGERALD, B., concurred.

Decree confirmed.

Attorney for the plaintiff, *C. Fitzgerald.*
Attorneys for the defendant, *Ennis & Son.*

KILDARE ASSIZES.

(Before O'BRIEN, J.)

CONNOR v. SWEETMAN.

March 15, 16, 1874.—*Landlord and Tenant Act*, 1870, *ss.* 6, 70—*Registration of improvements—Suitableness of improvements.*

Improvements, to be registered within section 6 *of the Landlord and Tenant Act*, 1870, *must consist, as defined by section* 70, *of works which add to the letting value of the holding on which they are executed, and are suitable to such holding.*

A dwelling-house was erected, at a cost of £1,400, *on a farm of* 70 *acres, held under a lease for lives. Other improvements were also executed, the value of which, taken together with that of the dwelling-house, came to* £1,800. *Ten years afterwards, the lessee assigned the premises, getting* £500 *fine, and reserving a profit-rent of* £40 *a year. It appearing that the dwelling-house was rather suited as a villa residence than as a farm-house of the ordinary class on such holdings, and that the increase in*

Digitized by Google

the value of the holding would be disproportionate to the expenditure,

Held, *that a claim, under* 33 *&* 34 *Vic., c.* 46, *s.* 6, *to register the dwelling-house as an improvement should be disallowed.*

Appeal from the decision of Mr. Ritchie, Q.C., who acted as deputy for Mr. Lefroy, Q.C., Chairman, at Naas Land Sessions.

The claimant sought registration for improvements to the amount of £1,810 19s., effected by buildings from 1825 to 1829 on a farm situate at Osberstown, near Naas, containing 75 acres (Irish). The following are the items of the claim:—An office at rere of house, taken at 3d. per foot, £48; a stable wing containing 22,356 cubic feet, taken at 3d. per foot, £279 9s.; roofing and slating of a barn measuring 16½ square, which, at 60s. per square, amounted to £49 10s. The respondent had purchased the property in the Incumbered Estates Court; and in the lease, under which the claimant held, there was a covenant to expend £300 in good substantial improvements. The deputy Chairman held that improvements were made, and permitted them to be registered in favour of the claimant.

Walker, Q.C., for the appellant.

Dames, Q.C. (with him *Bewley*), for the respondent.

O'Brien, J.—In this case the Rev. John R. Conor is the claimant, and Mr. Patrick Sweetman the respondent; and the claim is made to register improvements under the sixth section of the Landlord and Tenant Act, 1870. It is now settled by *Carr* v. *Nunn*, 7 Ir. L. T. R. 26, that the sixth section is to be considered in connexion with the 70th section, and except the improvement sought to be registered is suitable to the holding it is not to be registered. In that case the controversy was with respect to this point—there it was a small holding, and large buildings had been erected on it by the claimant. However, the general proposition is now laid down in clear and express terms; even in the absence of the 70th section, the plain construction of the sixth section itself must mean an improvement suitable to the holding. It is not sufficient to show that a certain work was done, and that a certain expenditure was incurred, without regard to the application of the section. Ordinarily speaking, using the word "improvement" in its popular sense, this building, I have no doubt, was an improvement, but I must hold, at the same time, that it was unsuitable to the holding. It was incumbent on the chairman to mark what was actually done, and whether it was likely to serve or injure the property on which it was sought to be charged. Taking the 70th section into account, an improvement which does not add to the letting value, and is not suitable to the holding, cannot be registered; and the Court for Land Cases Reserved were of opinion that, in such a case as that of *Carr* v. *Nunn*, it was imperative on the Court—indeed, it could not fulfil its duty if it neglected to make investigation as to these matters. That decision is perfectly binding upon all the Judges administering the Act, and until it is reversed by the House of Lords it should be acted on. Therefore, in this case, had Mr. Conor's improvements increased the value? Did the expenditure compensate for anything like a proportionate increase in the value of the holding? What are the facts of the case? In 1825 Mr. Conor's father got this lease from Mr. Digby, and it was given for three lives, all of which were then very young, being respectively 12, 8, and 6 years of age. The claimant, though then the oldest, is now the only survivor. There was a covenant in the lease to spend £300 in good substantial improvements, and there was a covenant to keep said premises in good repair. There was also a covenant against alienation, but I suppose the respondent will give up that; and there was a power to Mr. Digby to turn up any seven acres of the land he thought proper for the purpose of making bricks. It is not necessary to go into that. There was a house on the farm, which would be the ordinary class of building for 70 acres. The place was used as a farm between 1825 and 1829, the period during which these improvements were made. What were they? The old house was thrown down. It was admitted that the premises were not in a condition to be inhabited, and what was done was this—the roof of the old house was bad, but the walls were made use of, and turned into a stable-wing, offices, and a barn, the cost of the stable being £279 9s.; of the offices, £48; and of the barn, £49 10s. The new house, in the opinion of the claimant's architect, cost £1,400, and these items together make £1,800. There was no objection raised against registering the barn, the stable, and the offices; but with regard to the £1,400, consider what the effect of registering the house would be. It would have increased the value, but it would do so to such an extent as would not be equivalent to the expenditure of this money. In 1839, ten years afterwards, the claimant executes a deed which was equivalent to an assignment, getting £500 fine, and an increase of £40 a year on the rent. That was what was stated. Take the £500 fine out of the £1,800, and that would leave £1,300 expenses. Can any one say, for one moment, that there was an increase in the value of the holding proportionate to the expenditure, when £40 a year was left against £1,300 paid down? The whole rise in value was attributed to this improvement, and the value of land had risen in the interval, but a part may be attributed to the general rise; but it would leave still £40 a year increase in the remuneration for £1,300 expended. It would not be suitable to the holding if the holding was, by reason of it, to be diverted from its purpose. With regard to the evidence that was taken in the case, it was admitted that the value was greatly improved. Of course it was. A great many would give money for what would be suited as a farm, and others would take the place if it would suit as a villa residence. But I was struck particularly by the practical evidence of Mr. Hamilton, a gentleman of as much experience as any one in the country. The way Mr. Hamilton put it was this. Suppose an expenditure of £1,300. The equivalent of that in order to compensate a man would be a rise of about six per cent. That would be £78 a year, or more than £1 an acre on the rent. If the farm was of twice the size, then an increase of £78 over the larger farm would not increase the acreable rent so much. We all know that a class of tenants would not pay an additional price per acre for a house on land better than they require. This place has been inhabited by various persons as a residence, and others farmed the land. Also, it is enough to see the house—for I made it my business to see it this morning—the very aspect of the house only confirms the opinion I had, indeed, already expressed. I thought it right to go there in order to see if there was anything to change my opinion into one in favour of the present application, but my view of the house and place did not alter my opinion; and I shall hold that this house was not a suitable improvement within the meaning of the Act. I think that the increase of the value of the holding would be totally disproportionate to the amount expended. If a man, for his own gratification, builds a house beyond the requirements of a farm, he does so without the slightest idea of compensation, especially when he gets a lease for three lives. I shall, therefore, decline to register the dwelling-house, but I shall allow the other buildings to be registered. I shall make no order for costs in the case—the claimant having succeeded below, and the decree being reversed in part, he is not entitled to costs.

Attorney for the claimant, *Lord.*

Attorney for the respondent, *Longfield.*

ROLLS COURT.

Reported by Cecil R. Roche, Esq., Barrister-at-law.

(Before Sullivan, M.R.)

Nolan v. Nolan.

21st May, 1874.—*Practice—Evidence—Motion for decree—Admission of answer of defendant as evidence—Notice of using as evidence, not given.*

Digitized by Google

Where, on motion for a decree, the defendant had omitted to serve notice of his intention to use his answer as evidence, but the plaintiff had included the answer in the list of documents at the foot of his notice of motion for a decree, and had referred in his answering affidavits to all the allegations contained in the answer,

Held, *that the answer was admissible in evidence.*

On motion for a decree in this cause, the facts of which are immaterial to the question here decided, it was proposed to make use of the answer of the defendant as evidence on behalf of the defendant. The plaintiff had comprised the answer in the list of documents in support of his case, at the foot of his notice of motion for a decree, and had in his affidavit addressed himself in reply to the various allegations contained in the answer.

Mr. Ryan, Q.C. (with him *Mr. John G. Gibson*), for the defendant, proposed to make use of the defendant's answer, and cited *Stephens* v. *Heathcote*, 1 Dr. & Sm., 140.

Mr. Solicitor-General [*Ormsby*] (with him *Mr. Walker*) for the plaintiff. If we read a single line of the answer we would have no right to object to it, but we did not read any portion of it; *Kelly* v. *Gillis*, Ir. R. 5 Eq., 239; *Barrack* v. *M'Cullogh*, 3 K. & J. 110; *Todd* v. *Gamble*, 4 Ir. L. T. 105, Ir. R. 4 Eq. 117.

SULLIVAN, M.R.—I shall allow the answer to be entered. I do not understand the plaintiff serving a notice of a motion for a decree founded on this answer, and then objecting to the defendant using the answer, when the plaintiff, in his own affidavit, addresses himself to every paragraph in the answer. I think the decision of Kindersley, V.C., in *Stephens* v. *Heathcote*, 1 Dr. & Sm. 140, on the general principle is right; he says of this rule, that it is made to guard against surprise. There can be no surprise here, as the plaintiff has gone into evidence in reply to the answer.

Solicitor for plaintiff, *Boyd.*
Solicitor for defendant, *Low.*

LANDED ESTATES COURT.

Reported by R. D. MURRAY, Esq., Barrister-at-law.

(Before FLANAGAN, J.)

Estate of EDWARD HENDERSON, Owner; CHARLOTTE MAY, Petitioner.

May 18, 1874.—*Apparent and continuous easement—Right of way—Partition.*

E. H. and J. H. being jointly seized as tenants in common of certain lands, executed a partition deed, whereby the lands were conveyed to a trustee upon trust, as to one part to the use of E. H., as to the other part to the use of J. H. A right of way through part of the land of E. H. held *not to pass to J. H., in the absence of express words in the deed of partition.*

James *v.* Plant, 4 *A. & E.* 749, *followed.*

Motion that an objection of James Henderson to the conditional final notice to tenants be dismissed.

It appeared that the lands ordered to be sold in this matter contained 21a. 0r. 11p. statute measure, and formed part of a farm containing about 29a. 0r. 25p., formerly held by Edward Henderson (*primus*), the grandfather of the owner and father of the objector. James Henderson held under an indenture of lease for lives renewable for ever, from the late Marquis of Donegall to said Edward Henderson (*primus*), dated the 1st November, 1825, at the yearly rent of £5 3s. 5d., and subject to other reservations. By an indenture of 29th April, 1837, Edward Henderson (*primus*) granted to said James Henderson certain corn and flour mills, being a portion of the premises comprised in the indenture of 1825, at the rents of £12 14s. 0d. and 17s. 3d. Edward Henderson (*primus*) died on the 23rd May, 1847, and by his will devised the remaining portion of the lands comprised in said lease to said Edward Henderson (the owner) and his heirs. After the death of the said Edward Henderson (*primus*), James Henderson entered into an agreement with the trustee of the will of the said Edward, by virtue of which he was permitted to occupy, at the yearly rent of £7, the farm house of his late father, and the garden and field before the door being portion of the premises in the lease. This rent was paid to the trustees till 1862, after which Edward Henderson received it himself. These premises contain the whole right of way claimed by James Henderson. On the 5th April, 1858, the Marquis of Donegall granted to James Henderson a fee-farm grant of all the premises comprised in the lease of 1825. On the 9th October, 1863, James Henderson and Edward Henderson came to an agreement for partition of the lands, omitting the small portion given to John Rogers in 1834, and a map was prepared and signed by the two parties, dividing the premises between them. A deed was signed bearing date 15th January, 1864, whereby the premises numbered, 1 to 9 inclusive, 11, 14, 17, and 19, on the map, being the premises ordered to be sold in this matter, were limited to the use of the said Edward Henderson the owner, his heirs and assigns for ever, subject to certain reservations, and the rest of the premises numbered, 12, 13, 15, 16, and 18, were limited to the use of said James Henderson, subject to certain rents and reservations. By an agreement collateral with the deed, it was agreed that James Henderson should occupy the premises described as "the field before the door, garden, dwelling-houses, and offices thereon," during the term of his natural life at a certain rent. James Henderson now claimed a perpetual right of way from the public road to Ballyhone to the farm-house, which he occupied as tenant for his life only by virtue of the agreement of 15th January, 1864, and from thence into the portion of lands comprised in the fee-farm grant of the 5th April, 1858, limited to the use of said James Henderson by the deed of partition, as the customary and necessary approach to the house, and which he alleged had been used by himself and his father for the last 35 years. The roadway was 7 and 8 on the map, and was one of the portions expressly limited to the use of Edward Henderson (the owner) without any reservation to James Henderson of any right of way or other easement. There was another road leading from the public road to the mills and houses on James Henderson's fee-farm lands.

Mr. G. May, Q.C., on behalf of James Henderson. This road through the lands of Edward Henderson, has been used for 55 years by James Henderson, or the previous occupier of his house. If he has used it for that length of time it is an apparent and continuous easement. James Henderson under the agreement was tenant for a fixed rent. It has been generally held that, on the partition of an estate, there is an implied grant of apparent and continuous easements. Where an owner of land, who has been in the habit of using apparent and continuous easements in his own soil during unity of ownership, conveys to a purchaser that portion of his land for the beneficial occupation of which he has been in the habit of using them, without any special stipulation, and does not grant or reserve

Digitized by Google

a right to them by implication, the easements will pass.

Mr. A. M. Porter, Q.C. contra. The reasons on which this right of way is claimed, are custom and necessity. Custom is out of the case, because no such custom has been proved. To say that this supposed right of way is necessary, is idle; because the county road forms the boundary of part of James Henderson's lands, and he can easily make a road in from it. The objector claims the right of way as existing when the partition was made. There is no case to show that when the conveyance was made, a new right of way is be given to one of the parted lots. In *Pyer* v. *Carter*,* 1 H. & C. 916, which was an action for stopping a drain, the houses of the plaintiff and defendant adjoined each other, and were formerly one house, but had been converted into two, one being sold to the plaintiff, and the other subsequently to the defendant. The drain ran under both houses; and it was decided that plaintiff was entitled to have the use of the drain by implied grant, as it was used at the time of the defendant's purchase. Martin B., in *Dodd* v. *Burchell*, 1 H. & C. 113, though agreeing with *Pyer* v. *Carter*, said it went to the utmost extent of the law. *In Suffield* v. *Brown*, 33 L. J. Ch. 249, the judgment of *Pyer* v. *Carter* was doubted by Westbury, L. C. The principle on which the judgment went, was, that it was part of the matter demised. That is not the case here. The partition deed here does not contain the words "with the appurtenances," and gives no right of way, or any other such rights. Actual easements will pass under the head of "appurtenances;" *quasi* easements will not: Goddard on Easements, p. 71; *James* v. *Plant*, 4 A. & E. 749. This is a grant by both parties, and there is no reservation by either of the grantors. This is not a right of way of necessity, and there are no general words reserving easements.

FLANAGAN, J.—The question in this case is, as to a claim of a right of way over the lands ordered to be sold in this matter, the estate of Edward Henderson. Edward and James Henderson were jointly seized, as tenants in common, of the lands ordered to be sold in this matter, and also of certain other lands, held under a fee-farm grant from the Marquis of Donegall; and in 1861, a partition deed was executed, by which the lands were conveyed to trustees upon trust as to the part which is now the subject matter of sale to the use of Edward, and as to the other part, to the use of James. The road from which the right of way which is now claimed runs, is the boundary of both properties for some distance. It was argued by Mr. May, that although the right of way was not one of necessity, yet it was the most convenient way for the occupier of the house on the fee-farm lands; and also, that by the deed of partition, he had a right to use it. But the case of *James* v. *Plant*, 4 A. & E. 749 & 5 B. & A. 791, appears to me to be identical with the present case, and to govern it. There two estates became vested in one owner, there being originally two different owners; and there being thus unity of person, the easement became extinguished in point of law, and the word "appurtenances" in its legal sense, was held by the Court of Queen's Bench to be insufficient to revive the extinguished easement, but was construed to mean only such rights of way used and occupied if any, as the grantors had over other certain lands, not passed to the trustee. That decision is still good law, and that case is an *a fortiori* case to the present. I have therefore, no hesitation in overruling the objection of James Henderson with costs.

Solicitors for the owner, *L'Estrange and Brett.*

Solicitor for James Henderson, *J. Torrens.*

* See *Jameson* v. *Coulter*, 7 Ir. L. T. R. 164, and cases there cited.—[ED. *I. L. T. Rep.*]

COURT OF BANKRUPTCY.

Reported by W. H. KISBEY, Esq., Barrister-at-Law.

(Before MILLER, J.)

Re J. L., an Arranging Debtor.

May 15, 22, 1874.—35 & 36 *Vict. c.* 58, *s.* 68—*Arrangement—Failure in payment of proposed compositions—Rights of creditors—Power of Court to restrain suits.*

If a debtor who has carried an arrangement under the arrangement clauses of the Irish Bankruptcy and Insolvency Act, 1857, *fail to pay the instalments of the composition which his creditors have agreed to accept, the creditors are remitted to their original rights. The Court of Bankruptcy will not restrain such a creditor from proceeding in a Court of Common Law to recover the entire amount of the debt for which he had agreed to take a composition in the arrangement matter.*

Motion on behalf of the arranging debtor for an order to restrain John Gailey, Joseph Gailey, and James Miller from proceeding with an action pending in the Court of Queen's Bench, in which they were plaintiffs, and the arranging debtor defendant. The motion was grounded upon an affidavit made by the solicitor for the arranging debtor, from which it appeared that the arranging debtor filed his petition on the 15th of November, 1873, and proposed to pay a composition of 12s. 6d. in the pound in three instalments, to give his own promissory notes for the first and second instalments, and to secure the third payment by a joint and several promissory note with a third party. The first promissory note fell due on the 12th of April, but the arranging debtor, not having funds to meet it, was advised by his solicitor to divide what money he had with his creditors; and accordingly on the 14th of April post office orders for 11s. in the pound on the amount of the first promissory note were forwarded to the creditors, with a request for time for payment of the balance. All the creditors, except three or four, accepted that offer, but the plaintiffs in the action returned the post office orders. On the 23rd of April a cheque for the full amount of the promissory note was sent to the plaintiffs, but on the 27th April the writ was issued for the full amount of the debt, and the cheque was returned. Subsequently the same amount was tendered to the solicitor for the plaintiffs, with a sum for his costs, but he declined to accept it. The affidavit of the solicitor, showed that the plaintiffs live in England; that the cheque sent there was a country cheque from Ireland, on which they would have to pay banker's commission, and that a previous cheque on the same bank sent to them by the debtor had been returned dishonoured.

Perry, in support of the motion.—It would be inequitable to permit the action to proceed. The plaintiff has retained the second and third composition, bills, one of them secured by a third party, and having been tendered the full amount of the debt, they ought now to be restrained from further prosecuting their action.

Kisbey, for the plaintiffs in the action.—It was long ago settled in equity that the Court of Chancery would not restrain a creditor, who had agreed to take a smaller sum payable on a day certain, from proceeding for the full amount of his debt in an action at law if the debtor made default, even by a single day, in paying the sum agreed upon; *Sewell* v. *Musson*, 1 Vern. 210. In courts of law it is now a well established principle, that a plea of a composition agreement will be held bad on

Digitized by Google

demurrer, unless performance is averred, or some lawful excuse for non-performance pleaded, as, for example, that the time had not elapsed; *Fesard* v. *Mugnier*, 18 C.B. N.S. 286; *Hazard* v. *Mare*, 6 H. & N. 434. The latest cases in the law courts on this point are *Edwards* v. *Coombe*, L. R. 7 C. P. 519; *Goldney* v. *Lording*, L. R. 8 Q. B. 182. These cases have been followed and approved of in the Court of Chancery in England, though an attempt was made in Bankruptcy to resist their authority. In *Re Hatton*, L. R. 7 Ch. 723, the creditors agreed to accept a composition under the English Act of 1869, section 126. The debtor made default in paying an instalment, and the creditor brought his action for the original debt. The Registrar in Bankruptcy, acting as chief Judge, granted an injunction to restrain the action, but the Lords Justices reversed his decision. They were pressed in vain with the authority of a previous decision of Chief Judge Bacon, *ex parte Hemingway*, L. R. 7 Ch. 724, n., and that case may be regarded as overruled. So in another case, *ex parte the Paper Staining Company*, *in re Bishop*, L. R. 8., Ch. 595, a similar order was reversed by the Lord Justices; and *ex parte Peacock*, *in re Duffield*, L. R. 8., Ch. 682, is the latest case on the subject, and directly in point. There, also, an injunction was granted by the Bankruptcy Court, but the Lords Justices at once reversed the decision. Upon these authorities, the Court has no jurisdiction to make the order sought for.

Perry, in reply.—It is important to remember that the plaintiffs here kept the second and third promissory notes. It does not appear that any bills were given in the cases cited. Moreover, the decisions were under the English Act of 1869, and do not necessarily apply to the arrangement sections of the Act of 1857. In all the cases cited the payment was a cash payment at fixed times, without promissory notes and without security. Here there are notes given, and one of them secured. The Lord Justice, in *re Duffield*, takes this very distinction. The parties must wholly affirm or wholly disaffirm the composition agreement; here they wish to do both in part. They still retain the promissory notes. Suppose that there had been here (as there is not in England) a vesting; is it to be said (as the consequence would be) that a single creditor could, in such case, sweep away the entire property, although the others, relying on their notes, did not dissent?

[Miller, J.—Show me anything in the Act of 1869 which makes the authorities referred to inapplicable. What is the section?]

Kisbey.—The 126th section; and, for all the purposes of this argument, it is identical with the arrangement clauses of the Irish Act of 1857. They are both intended to permit debtors to relieve themselves from their liabilities by compositions agreed to be accepted by a majority of the creditors. The majority is different in England, and the mode of proceeding, but the principle is the same. We have never refused to return the promissory notes, and are willing to return them.

Miller, J.—The very careful argument of the counsel for the creditor who resists the present application has left nothing to be desired by the Court.

The facts upon which the decision of the Court is sought are few and simple indeed. The trader, upon the 18th of Nov., 1873, filed a petition for arrangement with his unsecured creditors, in which arrangement matter he carried a proposal for a composition as follows:—"12s. 6d. in the pound on his unsecured debts, to be paid as follows—4s. 2d. in the pound in four months, 4s. 2d. in eight months, and 4s. 2d. in twelve months, from the 9th of December, 1873, the first two instalments to be secured by the petitioner's own promissory note, and the last instalment to be secured by the joint and several promissory notes of the petitioner, and of Wm. Lancashire, of Darwins, in the county of Monaghan; and of Francis Lancashire, of Drum, in the county of Monaghan, farmers." In conformity with that resolution promissory notes or bills were perfected, and delivered by the trader to his various unsecured creditors, and among others to persons trading under the name or firm of A. & T. Gailey. The bill or promissory note for the first instalment of 4s. 2d. upon the amount of their debt which had been thus declared to A. & T. Gailey, fell due upon the 12th of April last, and was dishonoured; and, according to the statement contained in the affidavit filed by the solicitor for the trader in support of the present application, the course pursued by the trader, who had not sufficient funds to meet his composition bills in full, under his advice was, that he forwarded by post to all the creditors, cheques and post office orders for 11s. in the pound each on the said composition bills, and asked for time for payment of the balance until the month of June next. It appears from the same affidavit that A. & T. Gailey returned to the trader the cheque as sent to them by the trader, and that thereupon the trader procured a cheque of Mr. Robert Gibson, in favour of "A. & T. Gailey," for £5 3s. 10d., as the full amount of their composition bill so dishonoured. Upon the 27th of April, being several days after the first composition note passed to A. & T. Gailey had been dishonoured, a writ was issued at the suit of A. & T. Gailey against the trader, for the full amount of the debt due by the trader to A. & T. Gailey at the time of the filing of the petition for arrangement, although they retained the cheque forwarded by the trader for the full amount of the composition as stated; but the cheque of Gibson, as sent by the trader for the amount of the first instalment, was returned on behalf of A. & T. Gailey upon the 30th of April, and upon the 1st of May following the writ, which had been issued on the part of A. & T. Gailey on the previous 27th of April, was served upon the trader, and a legal tender in cash for the amount of composition so payable to A. & T. Gailey was made on or about the 8th of May. A notice of an application was served on the part of the trader, upon the 12th of May, calling upon this Court, under the powers conferred upon it by the Bankruptcy Amendment Act, 1872, to restrain the proceedings thus commenced by A. & T. Gailey under the circumstances which I have stated, as detailed in the affidavits filed in support of it.

The sole question which I have to consider in the case is, what is the true construction of the agreement for composition which was carried by the trader in this matter? And the plain and inevitable construction of that arrangement was—that 12s. 6d., instead of 20s. in the pound, should be received by all the unsecured creditors if paid in specified amounts, and at particular dates, as set forth in the arrangement, and the time and mode of payment set forth in that agreement was that 4s. 2d. should be paid in four months, 4s. 2d. in eight months, and 4s. 2d. in twelve months, from the 9th of December, 1873.

Payment of the several instalments of composition in the manner as thus provided is the condition precedent upon which the entire composition hinges, and the debtor was not to be discharged from his original liability to pay the full amount of his debt unless he paid the composition according to the manner provided in that composition arrangement; or, in other words, from the moment at which the debtor failed to pay the composition according to his arrangement, any creditor who had not compromised himself by his personal conduct is necessarily, at his own desire, remitted, according to every principle of equity and law, to his original rights and remedies; and under any such agreement, in the terms as stated, no Court of Equity would interfere unless the default occurred through some accidental circumstances over which the debtor himself had not perhaps any control. In a case like the present, where the arrangement for composition admits of so simple a construction, there is no necessity for reviewing the

Digitized by Google

authorities, which are both clear and cumulative, inasmuch as the very first instalment agreed to be paid was left unpaid, and the only excuse at all offered by the trader for not complying with his agreement to pay that first instalment was, that he had no funds to pay such instalments, and that he had sent forward instead other cheques purporting to be for the discharge in full of the entire composition, in a manner at variance with the whole composition as agreed upon, although such substituted cheques might prove as worthless as the promissory notes previously passed by the trader for the instalments of the composition as agreed upon. Neither the cheques, as sent by the trader at variance with the composition agreement, nor the tender of the full amount of the first instalment, at a date considerably after it had become payable, could form any ground for the interference of this Court with the proceedings which had been previously instituted by A. and T. Gailey for the recovery of the full amount of their debt after the failure of the trader to pay the first instalment of his composition as agreed upon. It is out of the province of this Court, upon such an application as the present, to consider what may be the consequences of allowing such proceedings by A. and T. Gailey as alleged by the trader, or whether the creditor who adopts such proceedings will ultimately derive any personal benefit from such proceedings over the other creditors. I have only to declare that no just grounds whatever have been shown for the exercise of any summary jurisdiction of this Court in restraining the action in question; and therefore the motion by the trader must be refused with costs.

Solicitor for the plaintiffs, *R. J. Jones.*

Solicitor for the arranging debtor, *Jeremiah Perry.*

MASTER'S OFFICE.

Reported by JOHN E. WALSH, Esq., Barrister-at-law.

(Before MASTER MURPHY.)

PALMER v. SMYTH.

April 20, 1874.—*Chancery (Ireland) Regulation Act, 1850—15th section petition—Minor—Guardian for the purpose of executing a fee-farm grant.*

A guardian ad litem, *appointed by a Master in Chancery, in a petition referred to him under the 15th section of the Chancery (Ireland) Regulation Act,* 1850, *has no power to execute leases on behalf of the minor for whom he is appointed.*

Semble: *In a cause fully constituted, with a guardian of the minor's estate duly appointed, a Court of Equity could not, unless on a petition filed for the purpose, direct such guardian to execute a fee-farm grant on behalf of the minor, so as to confer a valid title on the grantee.*

In a 15th section petition for administration, the Master refused to appoint a guardian for the purpose of executing a fee-farm grant, on behalf of a minor, but directed a petition to be filed for the purpose, under the Renewable Leasehold Conversion Act.

Application on behalf of Caleb R. Palmer, one of the respondents in the suit, and the executor and trustee of Ralph Smyth deceased, that Samuel Henry Covell, of Liverpool, Esq., be appointed guardian for the minor respondent, Samuel Henry Smyth Covell, in his name and on his behalf, to execute two fee-farm grants, and to obtain the Master's approval of the same.

By his will, dated the 18th of May, 1849, Ralph Smyth, of Glasnevin, in the County of Dublin, bequeathed his real and personal property among his children and their issue in shares and proportions unimportant to be stated. The will was proved by the executor Richard Palmer. The testator had three children, Anne, Ralph, and Maria, all of whom subsequently married and had issue, and the minor, Samuel Henry Smyth Covell, was the son of Maria and Samuel Henry Covell. In 1857 a petition was presented for the administration of the testator's real and personal estate, which was, under the 15th section of the Chancery (Ireland) Regulation Act, 1850, referred to Master Murphy, and, by final order of the 12th April, 1857, the rights of the several parties, under the will, were declared. Part of the testator's property consisted of a lease in perpetuity of the house No. 91, Grafton-street, dated the 18th of June, 1784. A sub-lease had been made of this house on the 20th of July, 1816, to Mrs. Richie, containing a *toties quoties* covenant for perpetual renewal so often as a renewal was obtained of the lease of the 18th of June, 1784 from the owner of the reversion. Mrs. Richie had applied for a fee-farm grant of this house, and it was stated to be for the advantage of all the parties that such grant should be executed, as well as one from the present owner of the reversion, Letitia Read; but such could not be done, without the aid of the Court, owing to the fact of Samuel Henry Smyth Covell, who was, as above shown, interested in the house, being a minor.

Mr. *Chaworth Ferguson*, in support of the motion. There is no reported authority in our favour, but it has been the constant practice in cases like the present for the Masters either to execute the grants themselves, or to direct the guardian in the suit to execute them.

Mr. *J. G. Gibson*, for the owner of the reversion. We do not object to the execution of these grants, and are unwilling to incur more costs than are absolutely necessary. We submit, however, that the appointment of a guardian in this manner will not be sufficient to enable him to execute them on behalf of the minor. The 17th section of the Renewable Leasehold Conversion Act applies to general guardians, not to guardians *ad litem*, whose powers are strictly confined to the purpose of the pending suit, and the Masters in Chancery have no power to appoint a general guardian. The power given by the 13 & 14 Vict., c. 89, s. 21, relates only to the appointment of guardians for the purpose of proceedings under that Act. The course of procedure is pointed out by the 22nd and 27th sections of the Renewable Leasehold Conversion Act, by which a petition, properly intituled, must be presented to the Court for an order that the Master be at liberty to execute the grants for the minor. This jurisdiction being statutory, the terms of the statute, which are in the nature of conditions precedent, must be strictly followed: *Baynes* v. *Baynes*, 9 Ves. 462. There are no provisions in the Act for the appointment of special guardians to represent infants, and the general power given by 13 and 14 Vict., c. 89, does not enable a general guardian to be appointed so as to satisfy the language of the 17th section, which speaks of "the guardian." He, also, cited *Clough's Estate*, L. R. 15, Eq. 284.

THE MASTER—Having considered the points arising in this case, I am clearly of opinion—1st. That no person appointed guardian *ad litem* in a 15th section case like this, would, as such, be competent to execute the leases on behalf of the minor, so as to bind him or confer a good title on the tenant. The guardian should be a guardian of the minor's *estate*, duly appointed. 2ndly. It may be a question whether, in this cause petition matter, I have power now to appoint a guardian of the minor's estate. There may be two objections to the exercise of this power—1st. The minor may be only tenant in tail, or otherwise, in remainder, subject to his father's life estate, and therefore not entitled to the immediate and absolute possession of the estate, in which case a difficulty would arise as to the appointment of any such guardian; 2ndly. I know not whether the cause

Digitized by Google

petition in this matter prayed, and was so far a petition "with respect to the appointment of a guardian, and the allowance of maintenance to the infant," which is the fourth head of jurisdiction conferred by the 15th section of the Chancery Regulation Act, 1850 (13 & 14 Vict., c. 89), on the masters.

But even supposing that these difficulties were got over, and that I had full jurisdiction now to appoint a guardian of the estate, the question would still remain as to whether, according to the provisions of the statute of the 12 & 13 Vict., c. 105, and the practice of the Court, under this or analogous statutes, I could direct the guardian of the minor's estate, if appointed now, to execute such grants on behalf of the minor, or ought now to do so. The 17th section of that Act empowers, in its terms, the guardian to execute such grants, etc.; and the 22nd section provides for the cases of there being no guardian competent to act under the previous provisions, and, in such case, requires a special petition, as therein described, to *the Court of Chancery* for the purpose of obtaining forcibly such grants. No case has been cited, nor has any authority been produced to show that, even in a cause fully constituted, with a guardian of the minor's *estate* duly appointed in it, the Court itself, without a petition under this, or analogous statutes, would direct such guardian to execute, or that such execution of a grant would confer a valid title. The cases cited by Mr. Gibson are very important; and in one case which I have met, *Anstey* v. *Hobson*, 1 Sm. & G. 505, though there was a cause for the administration of the estate, and the mother appears to have been appointed guardian of the minor's estate, a petition under the somewhat analogous statute of 1 Will. IV., c. 65, was presented to obtain the necessary order. Upon the whole case, considering that it is a question of title, and that there is now not even a guardian *ad litem* for the minor, and the difficulty of a master with his limited jurisdiction taking upon himself the exercise of powers of this description, I consider it much the better and safer course to decline making the order as required by the present notice, and to require a petition, or petitions, to be presented under the 22nd section of the Renewable Leasehold Conversion Act.

Solicitors for C. R. Palmer, *Messrs. Orpen, Sons, & Sweeny.*

Solicitors for Letitia Read, *Messrs. Holmes & Kelsall.*

ROLLS COURT.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before SULLIVAN, M.R.)

LOWRY v. PATTERSON.

February 5, 6; June 3, 1874. — *Will — Bequest — Condition in restraint of marriage — Consent of third parties — Consent of testator in his life-time to a marriage — Marriage taking place after his death.*

A testator made a bequest to his son, subject to a condition of forfeiture, in case of the son's marriage without the consent of certain persons named in his will, and if the son so married then over, and, in such case, a gift to the son of a sum of money in lieu of all other benefits under the will. The testator, in his lifetime, gave his consent that his son should marry B. after his (the testator's) death. After the death of the testator the son married B., without the consent of the persons whose consent was required by the will.

Held, *that the testamentary condition requiring the consent of the third persons previous to the marriage of the legatee was not revoked by the testator's having during his lifetime consented to the marriage, such marriage not having taken place until after his death; and that the gift over took effect.*

Bill for the administration of the estate of the late James Patterson, and to carry into execution the trusts of his will. The testator, by his will, dated 6th November, 1867, devised and bequeathed "all the lands which I hold in Dernakelly, and all my stock, crop, farming implements, household furniture, and effects, whatsoever and wheresoever, to my son, William Patterson, now residing with me, provided always that, as regards the said William Patterson, and the devises and bequests so made to him as aforesaid, he shall forfeit the same, and every part thereof absolutely, in case he shall marry without the full consent and approbation of my brother, Thomas Patterson, my sister, Mrs. Blair, and my nephew, James Lowry, or such of them as shall happen to be alive at the time of the marriage of the said William Patterson; and in case of his marriage without such consent, or in case of his marriage with such consent, and dying without lawful issue, the said lands to go to the children of my said sister and to the said James Lowry, as joint tenants, on payment to the said William Patterson, if he shall marry without such consent, of the sum of £200, in lieu and discharge of all other benefits under this my will." The testator died in 1872, leaving considerable personal estate, including the lands mentioned, which were held for a term of years. His son, William Patterson, was unmarried at the time of his death. In 1873, William Patterson married Miss Eliza C. M'Clintock, without the consent of the three persons named in the will. The further facts appear sufficiently for the purposes of this report in the judgment of the Court.

Mr. Walsh, Q.C. (with him *Mr. Holmes*), for the plaintiffs, the executors of the will.

Mr. Ritchie, Q.C. (with him *Mr. M'Laughlin*), for the defendant, William Patterson, cited *Clarke* v. *Berkeley*, 2 Vern. 719; *Parnell* v. *Lyon*, 1 Ves. & B. 479; *Wheeler* v. *Warner*, 1 Sim. & S. 304; *Smith* v. *Cowdery*, 2 Sim. & S. 358.

Mr. Andrew M'Conchy, for the three minors, children of Mrs. Blair, cited *Bullock* v. *Bennett*, 24 L. J. Ch. 397–512, 7 De G. MacN. & G. 283; *Yonge* v. *Furse*, 26 L. J. Ch. 117–352, 8 De G. M'N. & G. 756; *Dobbyn* v. *Adams*, 2 L. J., N. S., 143; *Prole* v. *Soady*, 29 L. J. Ch. 721; *Crommelin* v. *Crommelin*, 3 Ves. Jur. 227.

Mr. Robert Donnell for the residuary legatee.

Judgment reserved.

SULLIVAN, M.R.—The question arises in this case as to what was the effect of the defendant's marriage. There is a considerable controversy as to a matter of fact, whether James Patterson, the deceased, gave his consent to the marriage in his lifetime or not. The evidence as to that leaves very considerable doubt in my mind. The defendant, William Patterson, gives rather a detailed account of conversations he had with his father, the result of which is that the father did give his consent to the marriage. He swears that, about two months before the testator's death, he asked the defendant who it was he should like to marry, and the defendant informed him that it was his intention to marry the said Eliza C. M'Clintock, and no other. The testator, thereupon, expressed himself as quite agreeable to his marriage with her, and gave his approbation and consent to the intended marriage with Eliza C. M'Clintock; and upon this occasion the testator said he would wish the marriage to take place as soon as possible after his death. He gives that as his reason for not asking for the consent of the persons named in the will. The Rev. Mr. Forster, a most respectable witness beyond doubt, swears that he had a conversation with the testator about William Patterson getting married, and on that occasion he mentioned to the testator three persons as any one of them suitable, to become the wife of William Patterson; and the testator approved of two of them, as either of them suitable, one of whom was Miss M'Clintock. He says that he had

Digitized by Google

a further conversation with the testator, and the testator informed him that, as it was not likely William Patterson would marry A. B., he would like to see him marry Miss M'Clintock. It appears that some absurd assertion was made to William Patterson, that provided he married a respectable woman, it did not matter whom he married. James Lowry, the plaintiff, swears that on 21st November, 1872, shortly before the death of the testator, he had a conversation with the testator about the affairs of William Patterson, and that the testator informed him (Lowry) that he had informed William Patterson that he was going wrong if he would marry Miss M'Clintock, for no matter whom he should marry, he would have to please James Lowry and his uncle and aunt. Another witness, William M'Auley, says he knew the testator, and was in constant communication with him, and he says he was aware that the testator was opposed to the marriage. I have considerable doubt as to whether that evidence established for the defendant in any reasonable way that the testator gave any consent to the marriage. However, I think it is safer to hold that the father gave a qualified assent, and that he had no objection to the marriage if it took place after his own death. Assuming such assent, the question arises whether the conditions in the will being unrevoked at his death, he can annul the gift over by a parol conversation. In my opinion he cannot, whatever might be the effect of a consent to a marriage in his own lifetime. I see no reason why the assent to a marriage which is only to take place after his death may not stand, together with the necessity for the consent of the persons named. When the marriage is to take place in the life time of the father, the father has before him all the circumstances, both as to the woman and as to her fortune. But, when it is to take place after his death a state of things may transpire which would make the marriage the last thing to be thought of. The same precaution should be taken as he himself would have taken, up to the marriage, if it had taken place in his lifetime. I think the clause is perfectly consistent with the consent to the marriage by the father. No doubt, when the consent has been followed by a marriage in the lifetime of the testator, the legatee becomes entitled. The language of Turner, V.C., in *Bullock* v. *Bennett*, 7 De G. MacN. & G. 286, has much force:—"He might approve the marriage, and still intend the dispositions of the will to take effect." Whether the point is considered on principle or authority, I think that William Patterson's contention is not sustainable. William Patterson having married without the necessary consent, he is only entitled to £200. I shall give William Patterson his costs.

VICE-CHANCELLOR'S COURT.

Reported by E. F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

BRESLIN *v.* HODGENS.

April 23, 1874.—*Practice—Motion for a decree—Cross-examination of witnesses—Chancery Act (Ir.)*, 1867.

On an application by the plaintiff, in a suit to be heard on motion for a decree, that the cross-examination of witnesses who had been examined ex parte *before the examiner of the Court, or had made affidavits in the cause, might be taken before the examiner,*

Held, *that such cross-examination should take place in open Court, and not before the examiner.*

Motion on behalf of the plaintiff, that the cross-examination and re-examination of certain persons who had been examined *ex parte* before the examiner of the Court, or had made affidavits in the cause, might be taken before the examiner of the Court, without prejudice to the plaintiff's rights, to object to the admissibility of their direct evidence.

The motion was grounded on an affidavit of Henry Oldham, the plaintiff's solicitor, which, amongst other matters, set forth that on April 1st, 1874, counsel on behalf of the plaintiff applied to the examiner to fix a day for the cross-examination of the said witnesses, but that the examiner declined to fix any such day, on the ground that he had no authority to do so, and that he would not proceed with such cross-examination unless so directed.

Mr. Piers White, Q.C. (with him *Mr. T. E. Webb*, Q.C.), in support of the motion, cited Rich. & Bew. Ch. Act and Orders xxxix., where it is stated that "the defendant may, under the 93rd section, examine *viva voce* any unwilling witness whom he may desire to produce. As this evidence cannot be taken *ex parte*, the witness must be examined in the presence of all parties, and cross-examined and re-examined there and then."

Mr. Hewitt P. Jellett, Q.C. (with him *Mr. Fitzgibbon*, Q.C.), for the defendant, *contra*.

Mr. T. E. Webb, Q.C., in reply.—This suit is to be heard on a motion for a decree; and the English practice is, that "the cross-examination of witnesses on their affidavits must, on motion for a decree, be taken before the examiner. The Court has, however, power to order it to be taken *viva voce* before the Court," 1 Dan. Ch. Pr. 727. That was also the practice in Ireland under the cause petition system. The 68th section contemplates nothing but evidence by affidavit. Then comes the 91st section. The motion there contemplated is, according to Lord Cairns, in *Coles* v. *Morris*, L. R. 2 Ch. App. 704, confined with reference to a motion or petition in a cause or matter actually pending, which raises some issue, or states some facts, upon which the Court is called upon to adjudicate. Section 92 applies exclusively to the case of a replication where issue is joined; and that is a strong reason that, when issue is not joined, the evidence is not to be taken *ex parte*. In *Coles* v. *Morris*, *ante*, it is laid down that depositions taken *ex parte* before the examiner cannot be used upon the hearing of a motion for a decree. The 168th General Order contemplates two different states of circumstances—one where issue is joined, the other where notice of motion for a decree is served; and it provides for these two different cases. The 171st General Order applies to a case in which issue is joined; the 172nd General Order where notice of motion for a decree has been served.

[CHATTERTON, V.C.—The object of the 168th General Order is to have the entire printing of the evidence closed in a motion for a decree before the hearing comes on. That has been now the established practice for seven years.]

On motion for a decree the evidence should not be taken *ex parte*, as shown by the distinct provision of the 158th General Order for the cross-examination to be taken before the examiner.

CHATTERTON, V.C.—Certainly this motion shows that no matter how long a practice has been settled, it is still liable in argument to be called into question. That which is sought here is, that those witnesses who have made depositions before the examiner should be cross-examined, not in open Court, but before the examiner. If that were granted I think it would open the door to the worst system that could be imagined, and I shall be no party to facilitating such a proceeding. The words of the 91st section are large enough to embrace a motion for a decree. I am clearly of opinion that the examination before the examiner is open on a motion for a decree. Now, turn to the 168th General Order; the provision I find there is that "all affidavits and depositions which are to be used on the hearing of any cause

Digitized by Google

in which issue shall be joined, or a notice of motion for a decree served shall be printed, except as hereinafter mentioned." The depositions are, therefore, to be printed before the hearing in Court. The whole policy of the Act of Parliament was to get rid of the great evils that existed under the cause petition system—to arrive better at the truth, which is best arrived at by *viva voce* examination; and am I still to be told that I am bound to send these witnesses into the examiner's office, where the cross-examination is of comparatively no value? I must refuse to make this order.

Solicitor for the plaintiff, *H. Oldham.*
Solicitor for the defendant, *J. Goff.*

LANDED ESTATES COURT.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Flanagan, J.)

Estate of Nixon, Owner and Petitioner.

8th June, 1874.—*Statute of Limitations—3 & 4 Wm. IV., c. 27, s. 42—Effect of a petition for sale by an owner.*

Where an order for sale has been made, that order is to be considered as having been made on behalf of every person who has an interest in the proceeds of the sale, whether the petition be presented by an owner or incumbrancer; and if within the time of limitation affecting an incumbrance on the estate, an order for sale is made, the order will take the incumbrance out of the operation of the Statute of Limitations.

In re Colclough, 8 *Ir. Ch. Rep.* 330, *followed.*

Objection to final schedule of incumbrances. The petition for sale was filed in 1861; the estate was sold by the Court in 1867 for £310, and the purchase money still remained in Court to the credit of the matter. The owner, Adam Nixon, was entitled, under the will of his father, Adam Nixon, Senior, bearing date the 19th May, 1843, to the lands, subject to the payment of three legacies of £150 to each of his three sisters, Elizabeth, Catherine, and Harriet. Adam Nixon, senior, died in 1845, and probate of his will was duly granted to the executors therein named, on the 13th September, 1845. None of the legacies bequeathed by the will had been paid, nor any interest thereon, and they were altogether omitted from the schedule of incumbrances. The legacies were charged by the will upon all the real and personal estate of the testator, except on a small portion thereof. Harriet Nixon had since married James Kerr, and resided with her husband in the Dominion of Canada. On the 1st May, 1873, James Kerr and Harriet Kerr filed an objection to the final schedule of incumbrances, on the ground that the said legacy of £150, with interest thereon from the date of the testator's death, was omitted from the schedule.

A. M. Porter, Q.C. (with him *H. Tracey*), in support of the objection.—The petition for sale was filed in 1861, sixteen years after the death of the testator, by the owner. The presentation of the petition of sale operated to take the case out of the statute of limitations, the petition being virtually presented on behalf of all the incumbrancers on the estate, *in re Irwin*, 1 Ir. L. T. 103; *in re Colclough*, 8 Ir. Ch. 330; Darby and Bosanquet, Stat. Lim. 462. So, a mortgagor is not entitled to redeem on the payment of six years' interest only, *Edmunds* v. *Waugh*, L. R. 1 Eq. 418.

Monahan, Q.C.—This debt is clearly barred by the statute, and it would be a startling doctrine to lay down, that a petition in this Court, delayed perhaps for years, would bar the statute in all cases. The petition in *Colclough's* case was for the purpose of raising the charges, and was filed by an incumbrancer. There is a broad difference between a petition filed by an owner, and one filed by an incumbrancer. In the former the incumbrances are inserted by the owner himself on the schedule, and would prevent the statute running. In an incumbrancer's case the petition is filed on behalf of all incumbrancers. Though in *re Irwin*, 1 Ir. Law Times, 103, the petition was by the owner, yet the incumbrances were all scheduled as in an incumbrancer's case. For the purposes of the statute, the objection ought to be considered the commencement of the incumbrancer's claim. In *Barrington* v. *Evans*, 3 Y. & Coll. Ex. 384, where an incumbrancer came in at as late a time, it was held that the petition filed by him after the decree was the commencement of the suit, *quoad* the statute, and not the original bill. That case has been followed in *O'Kelly* v. *Bodkin*, 3 Ir. Eq. Rep. 390; *Hutchins* v. *O'Sullivan*, 11 Ir. Eq. Rep. 443. A bill filed by a creditor under circumstances such as the present is not a bill on behalf of himself and all others, *Watson* v. *Birch*, 15 Sim. 523. In like manner, the statute bars the claim of these objectors from the date of their objection. They ought to be precluded from setting up their claim on the ground of laches and negligence. Even though their legal title were perfect, the length of time they have allowed to pass would raise an equity against them.

[Flanagan, J.—It appears that a notice was directed to be served on these legatees by an order of Judge Hargreave, dated the 23rd January, 1864. Was that notice served?]

It appears, through inadvertence, to have been omitted, but the charge of laches would still apply against the objectors.

H. Tracey, in reply.—An owner's petition does not differ from an incumbrancer's in barring the statute. The Court here has larger powers and larger rights to deal with than the Court of Chancery in England in administration suits, or redemption suits. In *Barrington* v. *Evans* the master had sent in the final certificate, and the incumbrancer came in five years afterwards, so as to constitute subsequent and independent proceedings. That is quite different from the case before the Court, because we have adopted the present proceedings, and not come in at the end. So, in *O'Kelly* v. *Bodkin*, the incumbrancer applied to get leave to originate subsequent proceedings; and subsequent proceedings were taken, not in the original suit at all. *Watson* v. *Birch* has been over-ruled by *Humble* v. *Humble*, 24 Beav. 535. The objector is, therefore, entitled to this money; the money is still in Court, and the Court ought to be deemed a trustee for him. As to the charge of laches, the estate was in the hands of the brother-in-law of James Kerr since 1855 till the date of the petition, and it was only when it was about to be sold that he came to interfere.

Flanagan, J.—I have considered this case fully, and without expressing an opinion as to the principle of *Colclough's* case, I will not act in opposition to it. If I acted upon the argument of Mr. Monahan, learned and ingenious though it was, I should virtually over-rule that case, and the reasoning on which it is based. I cannot do that, and, for my part, I cannot see the difference between the case of a sale by an owner and by an incumbrancer. Lord Chancellor Brady laid it down very clearly, that the Court is here a trustee for all parties who are incumbrancers, and that the statute of limitations is inapplicable to bar their right. Lord Justice Blackburn went even further than this: his Lordship held, not only that where an order for sale had been made, that order is to be considered as

Digitized by Google

having been made on behalf of every person who has an interest in the proceeds of the sale, but, that the party thus interested is exonerated from the necessity of taking proceedings which might otherwise have been necessary, in order to prevent his claim being barred by the statute of limitations. It may appear hard to reconcile that with the words of the statute of limitations, and if this question were a *res nova* I might think otherwise upon it; but as it stands, I must follow the rule in *Colclough's* case, decided by the Court of Chancery Appeal. I must, therefore, allow the claim of those legatees in Canada, with such interest as they may be able to prove for; or, in other words, they are not barred by the statute of limitations as to the legacies. Judge Hargreave gave direction that these three ladies should be served with notice, but it appears that this has been deliberately omitted, and I think that a serious question might arise as to that omission. I allow the claim of the legatees, but I refuse to give costs.

Solicitor for objectors, *P. Dane.*
Solicitor having carriage, *Alexander.*

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before HARRISON, J.)

Re FLYNN, a Bankrupt.

Nov. 20, 1873; Feb. 21, June 2, 1874.—*Agreement, setting aside as fraudulent—Declaration of trust by bankrupt in favour of infant children—Jurisdiction—Appointment of guardians—Binding the rights of minors.*

The Court of Bankruptcy will not set aside a fraudulent agreement executed by a bankrupt, where same comprises a valid declaration of trust in favour of infant children, the Court not having jurisdiction to appoint guardians for the infants, or to bind their rights by an order setting aside the instrument.

Charge and discharge. The facts sufficiently appear in the judgment of the Court.

Purcell, Q.C. (with him *Houston*), for the chargeants, cited *Young* v. *Fletcher*, 3 H. & C. 732; *James* v. *Ebbitt*, 7 IR. L. T. R. 7; *Holmes* v. *Penny*, 1 K. & J. 799, 3 Jur. 80; *Goldsmith* v. *Russell*, 25 L. J. Ch. 232; *Bott* v. *Smith*, 21 Beav. 516, 4 Drew. 628; *Crossley* v. *Elseworthy*, 40 L. J. Ch. 480, L. R. 12 Eq. 158; *Massy* v. *Rowen*, L. R. 4 H. L. 288.

Walker, Q.C. (with him *Perry*) for the dischargeants, cited *ex p. Ray*, 1 Mad. 199; *ex p. Killick*, 3 M. D. & De G. 480; *Massey* v. *Rowen*, L. R. 4 H. L. 288; *Adamson* v. *Armitage*, 19 Ves. 415; *in re Ffrench*, Ir. R. 1 Eq. 66; *Bayspoole* v. *Collins*, L. R. 6 Ch. 228; *Young* v. *Wand*, 8 Ex. 234; *Mather* v. *Frazer*, 2 K. & J. 536; *Grant* v. *Grant*, 34 Beav. 624, 13 W. R. 1057; *Darkin* v. *Darkin*, 17 Beav. 578, 1 W. & T., L. C. (Eq.) 507; *Stevenson* v. *Newnham*, 22 L. J. C. P. 111, 13 C. B. 285; *re Craig*, Ir. R. 4 Eq. 169; *Monk* v. *Sharp*, 3 H. & N. 540; *Alton* v. *Harrison*, L. R. 4 Ch. Ap. 622; *Hartford* v. *Power*,* 2 IR. L. T. 242, Ir. R. 2 Eq. 205; Jar. Wills, 3rd ed. 22; Bew. & Rich. Ch. Act & O. 127; Bew. & Naish, C. L. P. A. 46.

Judgment reserved.

HARRISON, J.—A charge has been filed by the assignees in this case, seeking for a declaration that, according to the true construction of the will of Peter Slevin, in said charge mentioned, they, as assignees of the bankrupt, are entitled to certain premises on the Royal Canal Bank, bequeathed by said will, and that a certain agreement of the 26th July, 1872, may be declared fraudulent and void as against them, and that it may be set aside, and that the assignees may be declared entitled to the lessee's interest in the house and premises, No. 199, Phibsboro'-road, discharged of said articles and all claims thereunder, and that they may be declared entitled to a sum of £50, charged on the lands of Middleboro', in the county of Meath, with any interest due thereon, discharged from said articles, and that they may be directed to sell said premises on the Royal Canal, and said premises No. 199, Phibsboro'-road, in this Court, and to take the necessary steps to have said sum of £50 called in and lodged to the credit of this, and for the costs of the charge; and all proceedings as against Ellen Flynn, in said charge named, the wife of the bankrupt. A discharge has been filed to this charge by the said Ellen Flynn, in which, amongst other matters, she submits that unless and until some proper person can be appointed as guardian, to protect the rights of her children, who are minors, this Court has no jurisdiction to adjudicate upon their rights. It appears from the evidence that the petitioner, Flynn, the bankrupt, on the 26th of July, 1872, executed an instrument under seal, reciting that his wife, Ellen Flynn, under the will of her father, Peter Slevin, was entitled to certain property situate on the Royal Canal Bank, city of Dublin, for her sole use, without the control of her husband, and then said property to go to her children; and that Christopher Flynn had been receiving the rents of his said wife's separate property to the extent of £400, and had used same in his trade; and further, that no settlement had been executed on their marriage, and that Ellen Flynn was anxious that some security should be given to her, as trustee for her children, for the sums Christopher Flynn had received, and was then receiving from her private and personal estate; and that said Christopher Flynn was possessed for a term of years of the house No. 199, Phibsboro'-road, and was entitled to a sum of £50 due by his brother, John Flynn, and charged on certain premises at Middleboro'. It was thereby agreed between the said Christopher Flynn and Ellen Flynn that "I, the said Christopher Flynn, in order to secure and guarantee the said Ellen Flynn from all loss through and misfortune of mine in trade, or otherwise, and also in consideration of the natural love and affection I have towards my wife and children, in consideration of said sum of £400 do hereby grant and assign to the said Ellen Flynn, her executors, administrators, and assigns, all that and those, the said house and premises No. 199, Phibsboro'-road, also said charge of £50, to hold said house, and all my household furniture therein, and said charge of £50, until same was paid." Said instrument then contained a declaration in these words:—"And it is further agreed that, as to the Phibsboro' house and premises, a right of appointment of same amongst our issue is hereby reserved, by deed or will, of the survivor of us, I, the said Christopher Flynn, being then solvent, if survivor; if not, to the said Ellen Flynn, or her executors, or trustees, under any will or deed she may make." This instrument, which is a most informal one, it is sought to set aside by the present proceedings. It appears that it was prepared by an attorney's clerk called Blair, who was examined in the progress of the case under the circumstances stated in the evidence. It further appears that Mrs. Flynn, under the will of her father, Peter Slevin, who died in the month of February, 1867, was, at the date of the execution of said instrument, entitled for her separate use, with power to appoint same amongst her issue surviving at her death, to certain house property called in said will "The Cross Guns," which produced an annual rental of about £60 per annum. She had also become entitled, under her father's will, to the one moiety of what he described in his will as "*all his chattel property*," which the testator directed to be sold by auction, and the proceeds equally divided between Mrs. Flynn and another married daughter (Mrs. Anne Clarke), "*for their sole use and benefit*," and, in like manner, to all money or moneys due testator at his death, to be collected, and the proceeds divided between said Ellen Flynn and Anne Clarke; and

---

* An appeal was taken from this decision. It was reversed on a point of pleading. The plaintiff, thereupon, amended the bill; and the defendant then paid the amount and costs.—[REP.]

Digitized by Google

said will also bequeathed to Mrs. Flynn the possession now held by testator of a certain piece or parcel of ground adjoining the cottages (the Cross Guns), known as the Slang, situate on the banks of the Royal Canal, the property of the Midland Great Western Railway Company. It was proved that Mrs. Flynn made advances to her husband from time to time, from the 3rd of January, 1870, to the time of his embarrassment, which ended in his presenting a petition as an arranging debtor, which was eventually voted into bankruptcy; and Mrs. Flynn, in the end, when she found her husband did not repay any portion of the moneys she advanced to him, consulted Blair, who prepared the agreement of the 26th day of July, 1872, which it is now sought to set aside. At that date, Mrs. Flynn states, she had advanced to her husband £410, partly out of the rents received by her from the houses bequeathed to her for her separate use by her father's will, and partly out of what she called, when examined *viva voce*, "her share of her father's assets." A book was produced by Mrs. Flynn marked A., which contains, amongst other matters, the particulars of the advances so made, and also of the sums received by her under her father's will, and of the rents collected out of the property thereby devised to her.

During the argument the objection was pressed that, as Mrs. Flynn's children, five in number, were infants and as they took certain rights under the instrument of July, 1872, which it was contended amounted to a valid declaration of trust by the bankrupt in favour of his wife and children, which could be enforced in equity, this Court had no jurisdiction to set that instrument aside, inasmuch as the children, who were unrepresented, could not be bound by any proceedings here. The assignees scarcely resisted this argument, to which I have been most reluctantly compelled to yield. I pointed out to the parties how ruinous further litigation would be to all concerned, and I allowed the case to stand over for some time, in order that, if possible, Mrs. Flynn or her friends might be able to pay the assignees such a sum as the Court would sanction their acceptance of, in which event I would have directed them to release their rights, so as to have this house secured for the bankrupt's wife and children. I have, however, been told that no money can be raised or obtained for this purpose. And I now rule that this Court has not jurisdiction to set aside the deed or instrument of the 26th of July, 1872, as against the infant children of the bankrupt, Christopher Flynn—this Court having no machinery to appoint guardians for such children, or to bind them by its order. I think it is very questionable whether these infant children have any rights under the deed in question which would make them necessary parties to a suit to have it set aside; but I do not think it sufficiently clear that they have no rights to justify the Court in ruling that the objection is untenable; and if they have such rights, the declaration which I expressed my opinion was the proper one to make would, doubtless, seriously affect them. I stated, when the argument had closed—and I adhere to the opinion so expressed—that I was of opinion that the sum of £410 was *bonâ fide* advanced by Mrs. Flynn to her husband, as deposed to by her in her evidence; that it was not intended to be a gift, and that the deed or instrument of the 26th July, 1872, was *bonâ fide* executed for the purpose of securing her the advances so made. I further stated my opinion to be that the deed was not executed in contemplation of Bankruptcy or to defraud Christopher Flynn's creditors, nor did same amount to an act of fraudulent preference. During the argument of the case the Book A was produced for the first time, and the accounts it contains were examined by me; attention was also then, for the first time, called to the fact that Mrs. Flynn stood in a different position, as regards the moneys advanced by her from the rents received out of her separate estate and the money she had received as portion of her father's assets, and I expressed my opinion to be that, so far as any portion of those advances was made out of the rents received by her from the property devised to her for her separate use, free from her husband's interference, the deed constituted a valid security therefor; but that so far as such advances were made out of the proceeds of what was bequeathed to her by her father's will, "*for her sole use,*" she could not establish any right to rely on the security effected by the instrument of the 26th July, 1872, inasmuch as I was of opinion that in this particular case, and having regard to the entire will, those words were not sufficient to vest such moneys in her free from her husband's marital rights. Having come to the conclusion I have expressed, that this Court ought not to make any order which might affect the rights (if any) of the infant children of the bankrupt, an order will be made to that effect, but that order will be made without prejudice to the assignees proceeding by bill in Chancery, as they may be advised to have this deed either set aside, or (what I am of opinion is the proper relief to seek) to have same declared to be merely valid as a security for such sums as Mrs. Flynn shall establish to have been advanced by her to her husband, out of the rents or proceeds of her separate estate; and upon a proper indemnity being given to the official assignee, I will sanction such bill being filed. As regards the debt or charge of £50, which said instrument of the 26th July, 1872, purported to assign, it was admitted in the argument that same vested in the assignees, as being under the "order and disposition" of the bankrupt at the time of his bankruptcy, no notice of the assignment of such debt having been served on the debtor, and no declaration was sought as regards this charge.

I, lastly, rule that the respective parties, the assignees and Mrs. Flynn, shall bear their own costs respectively of the charge, discharge, and proceedings thereunder.

COURT OF COMMON PLEAS.

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law.

(Before LAWSON, J., in Chamber.)

JOYCE *v.* O'DONNELL.

15th May, 1874.—*Practice—Computation of time—Parliamentary Election Petition—Recrimination by respondent—Service of list of objections—Sunday—Days of service, and of trial—Parliamentary Elections Act,* 1868, *ss.* 49, 53—8 *G. R.*, 1868.

The six days before the day appointed for the trial of a Parliamentary Election Petition, prescribed by 8 *G. R.*, 1868, *for the delivery of a list of objections, by a respondent who intends to go into a recriminatory case, under* 31 *&* 32 *Vic., c.* 125, *s.* 53, *are to be computed exclusive of Sundays, of the day on which the list is delivered, and of the day appointed for the trial.*

Motion, on behalf of petitioner in the matter of the borough of Galway Election Petition, that the list of objections to the election, served on the respondent's behalf on the petitioner's agent, and lodged with the master on the 11th of May, be disallowed, and treated as ineffectual, on the ground that the same was not served and lodged within the prescribed time.

On Monday, 11th May, 1874, the list was lodged with the officer, and about four o'clock on that day a copy was served on the petitioner's agent. The day fixed for the trial was Monday, 18th May, 1874. The objections mentioned in the notice were that the petitioner was, by himself and his agents, guilty of bribery, treating, and undue influence; and that votes given for the respondent were unduly rejected by the returning officer; and that certain votes given for the petitioner were given by persons who had been guilty of corrupt practices.

Armstrong, Serjeant (with him *O'Flaherty*), in support of the motion.—By 31 & 32 Vic., c. 125, s. 49, Sunday is excluded in the computation of time. The General Orders have been framed in pursuance of the power given by the 25th section of the Act.

Digitized by Google

Sunday cannot be reckoned as one of the days within 8 G. R., 1868, referring to the 53rd section;* and as the day of the service of the notice, or the day of the trial, cannot be reckoned as one of the days, the notice was but a five-days' notice, and was, therefore, invalid; *The Queen* v. *Lauder*, 1 Ir. L. T., 156, Ir. R. 1 C. L. 225; *Connolly* v. *Bremner*, L. R. 1 C. P. 557. If Sunday does not count, then, unless the day on which the list was served is to be counted as one, the list has not been delivered six days before the trial. Those days must mean clear, or full intervening days.

Houston, *contra*.—Sundays are to be reckoned in the six days limited by Rule 8. Unless expressly excluded, Sunday counts like any ordinary day; *Cresswell* v. *Green*, 14 East., 537. It is not excluded by the Rules: it *is* excluded by the 49th section of the Act in cases where the time is limited by the Act itself. The Rules are not expressly incorporated with the Act, but are declared by it to be of the same force as if they had been expressly enacted, by section 25. The General Orders of 1854, made in pursuance of the Common Law Procedure Act, 1853, expressly provide that Sundays shall or shall not count, according as they would or would not have counted under the Act; 6 G. O., 1854. The Judges, in framing those Orders, recognized the necessity of making provision for the exclusion of Sundays, although the Act under which they were framed, by section 132, expressly enacted that Sundays should not be included in any notice or proceeding whatever. To include Sunday would be to prescribe a period of seven days for the service of the notice; that is a period of a week; but where the Rules intend to prescribe a week, they do so expressly. In Rule 8, six days must be reckoned inclusive of the first or last day. The Rule does not say "clear" days, or "full days," nor use any such term as those to be found in the cases cited *contra*. The Election Rules expressly exclude such days as it is intended to exclude. Thus, Rule 13 provides that the time for giving notice of the presentation of a petition is five days, "*exclusive* of the day of the presentation;" notice of objection to a recognizance shall be within five days from the date of service of notice of the nature of the security, "*exclusive* of the day of the service"—Rule 21; the further time to remove the objection by deposit is limited to five days from the date of the order made on the summons, "*not including* the day of the date"—Rule 26; the time of respondent's giving notice that he does not intend to oppose the petition is "six days before the day appointed for the trial, exclusive of the day of leaving such notice"—Rule 52. The inference from this last-quoted Rule is clear, as the number of days is the same as in the Rule under which the present notice is given, and the terminus to which it is to be computed is likewise the same. On the other hand, the Rules have designedly left other periods to be governed by the ordinary practice as to these matters, as including either the first or last day. Thus, the 31st Rule prescribes fifteen days before the day appointed for the trial as the time for the master's giving notice of the time and place of trial; so also Rules 48, 50, 54.

[Lawson, J.—It has been expressly decided, in the Court of Chancery, that when the Rules are incorporated with an Act of Parliament the Court is bound by them. Can it be contended that, if notice were served only three days before the day for trial, I could dispense with the requirement as to six days?]

The Rules are the servants of the Court. In a case in which we were entirely unaware, until a short time before the trial, of circumstances that would invalidate the election of the petitioner, surely it was never intended that, by this hard and fast Rule, we were to be precluded from relying on such circumstances?

[Lawson, J.—That is what I want you to argue for me. Should I have jurisdiction at the time of the trial, upon matters appearing that would render it advisable that a recriminatory case should be gone into, to give you leave to go into it?]

The Rules are intended for the general conduct of the case.

[Lawson, J.—They are very precise in certain matters. In the case of the Leitrim election petition, the other day, the Court held that the petition was invalid, because notice of it had not been served within the regular time.]

That time is prescribed by a rule founded on the Act of Parliament, which limits the power of the Court expressly, by stating that the time is to be computed as under the Common Law Procedure Act. If the notice be not in time it is a nullity, and, therefore, an application to set it aside is unnecessary; and if not a nullity, it ought not to be set aside, the question being a novel one. Nothing should be now done that might prevent the respondent, if he has a recriminatory case, going into it at the trial, on such terms as to postponement and costs as are contemplated by the 8th Rule. The only consequence of not serving notice in the prescribed time is that the party in default cannot go into a recriminatory case without the leave of the Court, or Judge; the Rule does not prohibit him finally, but merely exposes him to the risk of being refused permission to recriminate.

O'Flaherty, in reply.—By the Common Law Procedure Act time is to be exclusive of the first and inclusive of the last day. Therefore, when an ordinary notice of trial of an action is served, the first day does not count, but the day of trial does. But that is because the Act says that notice is to be a "ten days' notice," instead of a notice given "ten days before the trial." But in this case the notice is to be given six days "before" the trial, and the word "before," therefore, excludes the possibility of counting Monday next. Where, under C. L. P. Act, 1852, section 17, an order was made "that three days after service of a copy of this order the plaintiff shall be at liberty to proceed," it was held that the defendant had three clear days for entering an appearance, and that, a copy of the order having been served on Friday, 20th December, judgment signed on Monday, 23rd, was too soon; *Weeks* v. *Wray*, 9 B. & S. 62. If the Rule said that the notice should be served one day before the trial, then, if the respondent's contention be right, a notice served

* By section 53 of the Parliamentary Elections Act, 1868, "on the trial of a petition under this Act, complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election." By the 8th General Rule, 1868, "When the respondent in a petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, pursuant to 53rd section of the Act, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned, and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court, or Judge, upon such terms as to amendments of the Act, postponements of the inquiry, and payment of costs as may be ordered."

Digitized by Google

five minutes before the day of trial would satisfy the Rule.

LAWSON, J.—As to the first point about Sunday, I think it is perfectly plain. By the 49th section of the Act it is declared that Sundays are not to count. Power is given to the Judges by the Act to make General Rules, which form part of the Act, and it is impossible to contend that Sunday shall not count within the Act, and shall count within the General Rules. The reason it was not necessary to mention it in the General Rules was that it was in the Act already. As to the other point, I can see no answer to the observation of Mr. O'Flaherty as to the one day's notice. This would be, in fact, only five days' notice. I am always much guided by the experience of the officers of the Court as to matters of practice, and they inform me that in practice the construction of the Rule has always been that the six days were to be clear days, and not to include either the day appointed for trial, or the day of service of the notice. What the Rule means is that the petitioner should have six *bona fide* days to prepare to meet what is really a sort of cross petition. It would not be reasonable if it were otherwise. I shall grant this motion, but shall make the costs of both parties costs in the cause.

Motion granted.

Attorneys for petitioner, *Davis & Montford.*
Attorney for respondent, *Kavanagh.*

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before MONAHAN, C.J., KEOGH, MORRIS, and LAWSON, JJ.)

WESTON *v.* HUNT.

Jan. 30, 1874.—*Pleading—Action under Lord Campbell's Act—Setting aside pleas as embarrassing—Traversing that the negligence was the cause of the injuries—Contributory negligence.*

In an action, under Lord Campbell's Act, against the defendant for having by his negligence caused the death of A. B., the defendant pleaded that, admitting the negligence, it was not by reason thereof the said A. B. was injured. And also, a plea of contributory negligence, which contained an averment that, by reason of his want of ordinary care, the said A. B. directly contributed to the misfortune alleged. On motion to set the pleas aside as embarrassing, Held, *that the traverse that the negligence was the cause of the injuries should not be set aside; but that the plea of contributory negligence should be amended, by substituting instead of the term "misfortune," the terms, "occurrence of the injuries."*

Motion that defences should be set aside as embarrassing.

The plaintiff, Margaret Weston, widow, complained by the summons and plaint, framed under the provisions of 9 & 10 Vic., c. 93 (Lord Campbell's Act), that the defendant, at the time of the committing of the grievances thereinafter mentioned, was a builder, and was possessed of a certain scaffolding affixed to a house then in process of being built by the defendant, and of a certain wooden way constructed by the defendant for the purpose of leading from the ground up to the said scaffolding, at a great height from the ground; and Bartholomew Weston, in his lifetime, was employed by the defendant to carry stones for the defendant from the ground along and by the said wooden way up to the said scaffolding, at a great height from the ground, which said wooden way was, by the mere negligence and default of the defendant, constructed unsafely and with defective and improper materials, and was in an unsafe condition and unfit for the purpose aforesaid, which the defendant well knew, and by reason of the premises, while the said Bartholomew Weston was so employed as aforesaid carrying stones along and by the said wooden way, and was at a great height from the ground, the said wooden way broke and gave way, and the said Bartholomew Weston was precipitated and thrown to the ground and was thereby wounded and injured, and by reason of the wounds and injuries thereby occasioned to him as aforesaid the said Bartholomew Weston, and within twelve calendar months before the commencement of the suit, died.

The defendant pleaded, amongst other pleas, the following:—3rd. "That admitting, for the purpose of pleading, that the defendant was guilty of the negligence and default alleged, it was not by reason of such negligence or default that the said Bartholomew Weston was injured or wounded as alleged." And 5th—"That the said Bartholomew Weston might, by the exercise of ordinary care, have avoided the consequence of the negligence and default of the defendant in the summons and plaint mentioned, and the said Bartholomew Weston did not exercise such ordinary care; and by reason of his want of ordinary care the said Bartholomew Weston directly contributed to the misfortune in the summons and plaint stated."

David Lynch in support of the motion.—The 3rd defence should be set aside as being double and amounting to a plea of contributory negligence, and tending to raise an immaterial issue: *Bell* v. *Henderson*, Ir. R. 7 C. L. 485. The 5th defence should be set aside or amended, as the term "misfortune" is so ambiguous as to render it impossible to know whether the defendant means to contend, at the trial, that Bartholomew Weston might by the exercise of ordinary care have avoided the happening of the injuries, or might have avoided the happening of his death as resulting from the injuries—the summons and plaint being demurrable in the latter point of view.

John Gibson, contra, cited *Lawlor* v. *Wheeler*, 8 Ir. J. N. S. 397; *Riordan* v. *The Cork and Macroom Railway Co.*, 1 Ir. L. T. 83; Ir. R. 1 C. L. 88.

The COURT refused to set aside the 3rd defence; but ordered that the 5th defence should be amended, by substituting for the term "misfortune" the expression "occurrence of the injuries." The costs of both parties to be costs in the cause.

Attorney for the plaintiff, *W. R. O'Donnell.*
Attorneys for the defendant, *M. & T. Delandre,*

CONSOLIDATED CHAMBER.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MORRIS, J.)

CONNELL *v.* DILLON.

June 17, 1874.—*Pleading—Embarrassing defence—Duplicity—Action of covenant—Traverse of making of covenant.*

To an action for breach of covenant to pay a sum of money, it is an embarrassing plea that the defendant did not make the covenant as alleged.

Motion to set aside defence as embarrassing. The plaintiff complained that the defendant by deed covenanted with him to pay £100, in three months from the death of A. B.; breach, non-payment. Plea:—That the defendant did not make the covenant as alleged.

Vereker, in support of the motion.—This plea could never have been pleaded. "In covenant," says Chitty (On Pleading, Vol. I., p. 514), "there is not, and

Digitized by Google

never was, any plea of general issue." Then he refers to the plea of *non est factum* which he considers to approach nearest to the general issue. At p. 510 he says, "in debt, on specialty or covenant, the plea of *non est factum* operates as a denial of the execution of the deed only, and all other defences must be specially pleaded, including matters which make the deed absolutely void as well as those that make it voidable." Again, in Comyn's digest (Tit. Pleader, 2 v., 5, 6, and 7), it is said, "to covenant the defendant cannot plead *non infregit conventionem*, for it is too general. So to covenant the defendant cannot plead nil debit, nor to debt on bond for performance of covenants, he cannot plead 'no covenants,' for there the bond is single." So, *Willoughby* v. *Brooke*, 1 Cro. Eliz., 756. This plea traverses the execution of the deed, its validity upon every possible point of law, and its contents. It is much wider than a plea of *non est factum*, and that plea was held bad in *Lawder* v. *Lawder*, I. R., 6 C. L., 543. Under this plea it would be open for the defendant not only to deny the covenant, but to prove the deed to be void or invalid for every assignable reason. If it was intended to deny the execution of the deed, the form given in the C. L. P. Act, 1853, schedule C. should have been followed.

O'Loghlen, *contra*.—If the plea were that the defendant did not covenant as alleged it might be that the legal effect of it would, also, be put in issue; but, as pleaded, the defence merely denies the fact of the making of a deed containing any such covenant. So to an action on an agreement it may be pleaded that the defendant did not contract or agree as alleged, *M'Glorin* v. *Bell*, Ir. R. 2 C. L. 126; and where it is alleged that the defendant promised, it may be pleaded that the defendant did not promise as alleged, *Lamb* v. *O'Gorman*, 6 IR. L. T. R. 28.

MORRIS, J.—The defence must be amended. Let the defendant plead that he never executed the alleged deed.

(Before FITZGERALD, B.)

GAYNOR *v.* SHORT.

June 23, 1874.—*Practice—Security for costs—Plaintiff resident in America—Temporary residence—Property in Ireland.*

A plaintiff, resident out of the United Kingdom, will be ordered to give security for costs, notwithstanding that he has property within the jurisdiction adequate to enable the costs of the action to be realised.

John Gibson moved that the plaintiff should give security for costs. The plaintiff was described in the summons and plaint, as a resident in New York, and the defendant, in the affidavit on which the motion was grounded, deposed that the plaintiff resided as so described, and that his property in Ireland would not be adequate to bear the costs. In reply, an affidavit was made by the plaintiff's wife, who resided in Ireland, stating, "that the plaintiff, who is at present temporarily residing in New York, has intimated to deponent his intention of soon returning home; and that he has property in this country worth about £1,000," the particulars of which she specified.

Curtis, *contra*.—It is not sworn that the plaintiff is permanently resident out of the jurisdiction, and as it is shown that he is only temporarily resident abroad he should not be ordered to give security; *Duff and Wife* v. *Hore*, Ir. R. 6 C. L. 508. [FITZGERALD, B.—I am not disposed to treat this as a case of temporary residence. That authority does not apply]. It is now conceded that the plaintiff has adequate property within the jurisdiction. In England that was always held to be an answer to the motion; *Swinburne* v. *Carter*, 23 L. J. Q. B. The practice has been different in Ireland;* *Hickman* v. *Forde*, 8 Ir. Jur. N. S. 133. There was, however, never any substantial reason for that diversity of practice. The only reason for the practice as here adopted, was, that greater importance was attached to having the security of the plaintiff's person; but since the Debtors Act that reason can no longer prevail.

FITZGERALD B.—This motion must be granted. It is no answer, still, to say that the plaintiff has property here.

Motion granted.

(Before BARRY, J.)

REARDON *v.* HAYES.

June 26, 30, 1874.—*Practice—Jurisdiction—Debtors Act (Ir.), 1872, s. 6—1 G. O. 1872—Order for payment.*

A judge has jurisdiction in Consolidated Chamber to make an order under the Debtors Act, 1872, s. 6, 1 G. O., 1873, against a defendant for payment of a debt due.

O'DONNELL *v.* SMITH, 8 Ir. L. T. R. 32, *not followed.*

Green, on behalf of the plaintiff, moved for an order that the defendant should pay to the plaintiff £67 11s. 4d., the amount due on a judgment of the Court of Common Pleas, either in one sum or by instalments, and that on default of payment he be committed to prison. The motion was grounded on an affidavit by the plaintiff, the facts stated in which are immaterial for the purposes of the present report.

J. B. Falconer, *contra*.—The motion should be made *in camerâ*. [BARRY, J.—I shall hear it so, if you wish]. The notice of motion is for Consolidated Chamber. It should be refused, as a judge has no jurisdiction so to hear it; *O'Donnell* v. *Smith*, 8 Ir. L. T. R. 32. This being a Common Pleas case, *a fortiori* there is no jurisdiction. [BARRY, J.—There seems to be something in that point. I shall consider it.]

Judgment deferred.

BARRY, J.—I have considered this case, and fully made up my mind not to follow the ruling of Fitzgerald, B., in *O'Donnell* v. *Smith*, which I consider is not a satisfactory decision. I shall order payment by instalments; but on this motion make no order as to commitment.

Payment by instalments ordered.

NENAGH ASSIZES.

Reported by JOHN E. WALSH, Esq., Barrister-at-law.

Re THE NORTH TIPPERARY PRESENTMENTS.

(Before PALLES, C.B.)

March 5, 1874.—*6 & 7 William IV., c. 116—Presentments to the county surveyor for works executed by his directions—20 & 21 Vic., c. 15, s. 1—Forms of Presentment.*

It is illegal for the grand jury to present sums of money to the county surveyor, to be by him employed in paying for works executed in the county by his direction.

---

* See *Nagle* v. *Power*, 1 Jones 420; *Clarke* v. *Croker*, 8 IR. L. T. R. 97.—[REP].

Digitized by Google

Forms of presentment by the grand jury, in the respective cases where no tender has been made at the adjourned presentment sessions, and where works contracted for have not been executed within the proper time, or according to the terms prescribed.

In this matter, a question was raised as to the validity and effect of presentments made for payment of sums of money to the county surveyor, for works executed by his direction, under the provisions of the Grand Jury Acts. It had been the general practice, for many years, for grand juries to make such presentments in certain cases, but a circular from Master Fitzgibbon, which had some time previously been sent to the grand juries throughout the country, having been brought under the notice of Palles, C.B., he refused to fiat some of the presentments. That circular was in the following terms:—"Receiver Masters' Office, Four Courts, Dublin, 13th of February, 1862. Sir,—Master Fitzgibbon having observed, in the accounts of the Treasurer of some counties, that credit was taken for several sums as paid, or advanced to the surveyor on foot of presentments, or re-presentments, to such county surveyors, has disallowed those credits for the present, but without prejudice to such steps as the Treasurers who had made the payments may adopt for establishing their right to have same allowed in their next or future accounts. The Master is not aware of any case in in which it is legal to make presentments to the county surveyor, or to pay money into his hands for the execution of such presentments, or re-presentments, except those cases of sudden breaches, or damages, provided for by the 6 & 7 Wm., IV. c. 116, s. 49. In all other cases, as far as the Master is aware, the Treasurer is directed to pay the money to the contractors, artificers, or workmen, who have been employed in excuting the work, and the county surveyor's duty is confined to designing, specifying, and delineating the work, and so superintending the execution of it, and certifying so to the Treasurer that work has been done, to countervail the payments which he is called upon to make—not to the county surveyor, but to the persons who have executed the work. The Master thinks it due to the Treasurers to express to them this view of the subject, in order that they may refer him to the authority, if any exists, in support of such payments to the surveyors, or forbear their making them, if there be no law to warrant them. The Master desires me to request that you will lay this communication before the grand jury of the North Riding of the County of Tipperary, on the first day they assemble to transact fiscal business at the next Assizes." The presentments about which the question was raised consisted of: 1st, Those made for certain works, for which no tender had been made at the adjourned presentment sessions; 2nd, Those made for certain works which had been contracted for, but had not been executed within the time and according to the terms prescribed.

Ryan, Q.C. (with him *Edward Gibson*, Q.C.) in support of the presentments.

PALLES, C.B.—Stated that, in his opinion, such presentments were illegal, and refused to fiat them.

The following forms were, by his directions, prepared by counsel, and were approved of by his lordship:—

COUNTY TIPPERARY, NORTH RIDING,
Spring Assizes, 1874.

Act 20 & 21 Vic., c. 15, s. 1.

We present, order, and direct that the works in the schedule hereunto annexed—and which were approved of at road sessions and presented for, and duly advertised for tenders, in the manner directed and prescribed by Act 6 & 7 Wm. IV., c. 116, s. 22, and for the execution of which no proper contractor tendered at the adjourned sessions—shall be, and are hereby given in charge to the county surveyor of said Riding, to execute the same for the respective amounts set opposite to each work in said schedule, being the amounts approved of for the execution of said works respectively at road sessions.

COUNTY TIPPERARY, NORTH RIDING,
Spring Assizes, 1874.

Act 6 & 7 Wm. IV., c. 116, s. 146.

We present, order, and direct that the sums mentioned in the schedule hereunto annexed—which sums were heretofore presented for the execution of the works mentioned in said schedule, but as the contractors for these works did not execute same within the time, or according to the terms prescribed by the contracts for the execution thereof—shall be applied by the Treasurer, under the direction of the county surveyor, for the purpose of completing such works, and shall be paid by the Treasurer to the person or persons executing same, upon the certificate of the county surveyor.

Solicitor, *George Bolton.*

ROLLS COURT.

(Before SULLIVAN, M.R.)

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

In re DUNDAS'S TRUST; *ex parte* SUTCLIFFE.

May 13, 1874.—*Practice*—Feme covert—*Protection of property acquired subsequent to desertion—Money lodged in Court—Notice to husband of drawing money out of Court.*

On petition by a married woman, who had been deserted by her husband, to draw out of Court money to which she became entitled,

Held, *that notice of the petition should be given to the husband, notwithstanding that a protection order, under* 28 *Vict.*, c. 43, *had been obtained.*

Petition that the Accountant-General be ordered to transfer to the petitioner, as if she were a *feme sole*, the sum of £260 7s. 8d. standing to the credit of this matter. The petitioner, Anne Sutcliffe, was married to her husband, Stephen Sutcliffe, in 1861, on which occasion a settlement was executed, by which £985, to the reversion of which the petitioner was entitled on the death of her mother, was assigned to trustees on trust to pay the interest to her mother for life, and after her death in trust for her husband, Stephen Sutcliffe, till bankruptcy or death, in which events in trust for Mrs. Anne Sutcliffe, and after her death in trust for the children of the marriage. No other property was put in settlement upon the marriage. There was issue of the marriage, one child, now aged nine years. Stephen Sutcliffe received after his marriage, in right of his wife, between £600 and £700, which he applied to his own purposes. In 1866 Stephen Sutcliffe deserted the petitioner, and left her wholly dependent on her mother. The mother of the petitioner died in 1873. In October, 1873, the petitioner received a letter from her husband addressed from 63, Jefferson-street, Memphis, in the State of Tennessee, United States of America, asking her to send him £20 to buy clothes; that was the only letter she had received from him for the previous two years. Colonel Philip Dundas bequeathed to the petitioner, by will dated 1871, a sum of £300. The executors of the will advanced the sum of £50 to the petitioner to support her child, and lodged the remainder of the money in Court, after payment of

Digitized by Google

costs, to the credit of the cause. On 24th March, 1874 (upon an affidavit stating the above facts), an order was made by Keogh, J., in Consolidated Chamber, under 28th Vict., c. 43, that all the property acquired by the petitioner since June, 1866, the date of her desertion, be protected from her husband and his creditors. Notice of this order was transmitted to the address of Stephen Sutcliffe, in Memphis, by registered letter.

Mr. Kenny, for petitioner, cited *in re Kingsley's Trusts*, 28 L. J. Ch. 43; *in re Raisdon's Trusts*, 28 L. J. Ch. 334; *Johnston* v. *Kirkwood*, 4 Dr. & War. 379.

Sullivan, M.R.—How can I pay this money out of Court without notice to the husband? *Prima facie* the money is his, and he has a right to be heard. The protection order prevents him getting the property, and I would not pay it over to him; but I shall not fling money out of this Court without notice to the man sought to be affected. I shall allow the motion to stand; and all that I require is that a registered letter be sent to his address giving him notice, and that he have a sufficient time—say six weeks from the day it is posted—to answer it. Anything will do that gives him notice that the money will be paid away.

Solicitors for petitioner, *Maxwell and Weldon.*

(Before Sullivan, M.R.)

Evans v. Cook and Elwood.

April 23, 24, 25, 30, 1874.—*Usury—Fraud—Undue influence—Presumption, as to influence exercised by a brother-in-law over a sister-in-law.*

Upon a bill to set aside a deed as obtained by fraud, misrepresentation, and undue influence, the case, as far as related to fraud and misrepresentation, failing, it was held that there was no presumption of law that the deed had been procured by undue influence, arising merely from its having been executed by a sister-in-law at the instance of her brother-in-law, with whom she resided, and to secure a loan to whom by a third person, aware of the relationship, the deed was executed.

Bill to set aside certain deeds as obtained by fraud, misrepresentation, and undue influence.

In 1861 Francis Elwood, one of the defendants, married Maria Gildea, a sister of the plaintiff, Eliza Gildea; and Eliza Gildea then went to reside with them in London. In Sept., 1862, Francis Elwood induced Eliza Gildea to lend him £850, and gave her an acknowledgment for the money, by which he agreed to pay her 6 per cent. A deed of mortgage was executed 23rd September, 1862, by which Elwood mortgaged a charge of £6,000 to Eliza Gildea for the amount so lent. No interest was paid on foot of the mortgage. Elwood being in need of money, applied to the defendant, Robert Cook, a money-lender in London, who advanced money to him at a high rate of interest. In January, 1863, Elwood induced Eliza Gildea to join with him in obtaining a loan from Cook. A letter was written by Eliza Gildea to Cook, in which she gave an account of her property, stating that she did so at the request of Elwood, and, among other items, she mentioned "a sum of £850 lent by me to Mr. Elwood, and secured to me upon a charge of £6,000." The bill alleged that Elwood and Cook having failed to obtain possession of the mortgage deed, without the concurrence of the plaintiff, from Mr. Fry, the solicitor who had prepared it, and being desirous to use it for the purpose of securing moneys to be advanced by Cook to Elwood, the latter, at the suggestion of Cook, induced the plaintiff to agree to assign the interest payable to her under the mortgage as a security to Cook, by representing to her that while living with him she would not need the interest, and that she could at any time stop the payment of the interest to Cook. The plaintiff, further, alleged that she accompanied Elwood to the offices of Cook and of Fry, the latter of whom admonished her not to part with the mortgage, which she, being under the influence of her brother-in-law, consented to do. On 3rd February she executed an assignment to Cook of the mortgage for £850 of September, 1862, and certain other property, to secure £135, with interest at 20 per cent. to the 14th of March, and from that date £3 10s. per cent. per month. As collateral securities for this, she gave also an English warrant of attorney and a promissory note. The consideration for the assignment was £100 paid in cash, and £35 discount. The bill alleged that she executed the assignment by reason of the representation that she was dealing with the interest alone, and that the other securities subsequently obtained from her were all procured in the same way, by the undue influence of Elwood, at the instance and with the knowledge of Cook, she having no person to act for her, and being in full belief that she was dealing only with the interest. She endorsed the cheques given in consideration to Elwood, he got the money, and she never received any consideration. Several other deeds were given by the plaintiff to Cook on similar conditions. The bill alleged that, when these advances were made, Cook was in the habit of pointing to a cash-box, and saying, "your interest is in that box, and you will be getting it back one of these days." In September, 1863, Elwood was arrested for debt, and about the same period his father died. Eliza Gildea and Mrs. Elwood then went to Fry's office, in order to procure him to negotiate a loan with Cook, for the purpose of getting Elwood out of gaol, so as to enable him to go over to Ireland to look after the father's estates. On September 26th a mortgage was executed, for £1,100, by the plaintiff to Cook, and like securities were given by her as in the former instance. The interest upon the further loan was fixed at 10 per cent. till September, 1865, after which date it was to be 20 per cent. A bonus of £300 was exacted by Cook. Cook and Fry were present at the execution of the deed then executed. With the money so obtained Elwood was released from gaol. Eliza Gildea subsequently, in 1865, married Mr. Evans, another plaintiff. The bill was filed in 1871. The answer of the defendant, Cook, denied the fraud, misrepresentation, and all knowledge of the influence exercised by Elwood over his sister-in-law.

Mr. Walsh, Q.C., and *Mr. Murphy*, Q.C. (with them *Mr. H. H. Macdermot*), for the plaintiff, cited *Jorden* v. *Money*, 5 H. L. 185; *Smith* v. *Kay*, 7 H. L. 750; *Tyler* v. *Yates*, L. R. 6 Ch. 665; *Huguenin* v. *Baseley*, 14 Ves. 273; *Maitland* v. *Irvine*, 15 Sim. 437; *Maitland* v. *Blackhouse*, 16 Sim. 58; *Blackie* v. *Clarke*, 15 Beav. 595; *Espy* v. *Lake*, 10 Hare, 261; *Wild* v. *Gibson*, 1 H. L. 605; *Bridgeman* v. *Green*, Wilm. 58; *Archer* v. *Hudson*, 7 Beav. 551; *Murray* v. *Palmer*, 2 Sch. & Lef. 474; *Crowe* v. *Ballard*, 3 Br. Ch. Ca. 117; *Dent* v. *Bennett*, 4 My. & Cr. 269.

Serjeant Sherlock and *Mr. Jellett*, Q.C. (with them *Mr. Price*), for defendant, cited *Boyse* v. *Rossborough*, 6 H. L. 2; *Kelly* v. *Thewles*, 2 Ir. Ch. Rep. 510; *Earl of Aylesford* v. *Morris*, L. R. 8 Ch. 498; *Rodes* v. *Bait*, L. R. 1 Ch. 252; *Harrison* v. *Guest*, 8 H. L. 481.

Judgment reserved.

Sullivan, M.R.—This is a case of paramount importance in reference to the rule of law which affects it. I shall not, for my part, be found to limit or fetter the circum-

Digitized by Google

stances and relation of parties which raise a presumption of undue influence. But it is a new doctrine to me, that a sister-in-law, 25 years of age, who goes to live with her brother-in-law, is, by reason of that fact alone, brought within the relationship from which this Court presumes undue influence, as in the case of guardians, attorneys, &c. I believe a more unfounded proposition it is impossible to conceive; there is no warrant for it at law, and, as a matter of fact, it is quite possible that a sister-in-law may be in a position of mastery over the mind of a brother-in-law. That such a proposition constitutes no head of equity I am clear. If I saw my way, on the evidence, to free the plaintiff from those transactions consistently with the rules of law, I would gladly do so. There is no mistake in the language of the bill: it implies a deliberate conspiracy on the part of the defendants to get the plaintiff to sign the document, which was to be the foundation of the transactions that she was about to engage in. The right to relief is founded on a most nefarious fraud, if it be true that those deeds were obtained upon a concocted plan, and that she was drawn into these transactions under a representation that she was only pledging the interest. I believe that the bill is founded on the most positive fraud, as far as the averments are concerned. It is said that the bill can be sustained if the fraud falls to the ground; and even if the case as to misrepresentation fails, because undue influence is charged against Cook. I will take it that that view of the case is maintainable, that, even if fraud and misrepresentation are not well charged, the bill may be maintained on the ground of undue influence, although I think that the undue influence as charged in this bill is simply one of the steps in the fraud. I think there is much wisdom in what Lord Cranworth observes in *Hickson* v. *Lombard*, L. R. 1 H. L. 336, that, "where pleadings are so framed as to rest the claim for relief solely on the ground of fraud, it is not open to the plaintiff, if he fails in establishing the fraud, to pick out from the allegations of the bill facts which might, if not put forward as proofs of fraud, have yet warranted the plaintiff in asking for relief." But I shall deal with it as a bill which, if fraud be not proved, may still be maintained on the grounds of undue influence. The bill is not to obtain relief from an inequitable bargain, on the terms of refunding what was due to the defendant, but to be relieved *in toto* on the ground of positive fraud. The bill is filed years after those transactions, when the plaintiff has had ample time to consider her case. She is the sole witness to sustain the case of fraud and misrepresentation. Fraud and misrepresentation can never be presumed; no more can undue influence, unless it arises from the relationship between the parties. As against the defendant's oath, the unsupported oath of the plaintiff cannot prevail: *Jordan* v. *Money*, 5 H. L. 185. But the Court is not prevented from making a decree, if there are circumstances to co-operate. There are matters in Cook's character and the surrounding circumstances which would cause me to hesitate very much to believe his oath as against a reliable witness; but, I can place no reliance in the testimony of the plaintiff, Eliza Evans. Either by design or by carelessness, her testimony has been infirm. Some of the documents which she had sworn were forgeries she had to admit, on cross-examination, were written by herself. How am I to believe a witness falsified on those particulars? When I weigh her testimony against Cook's—weak and infirm as it is—I shall found no decree on such evidence. I so dispose of this matter as to fraud and misrepresentation. As to undue influence, I quite agree with the judgment of Lord Kingsdown in *Smith* v. *Kay*, 7 H. L. 778:—"It is not the relation of solicitor and client, or of trustee and *cestui que trust*, which constitutes the sole title to relief in these cases, and which imposes upon those who obtain such securities as these, the duty, before they obtain their confirmation, of making a free disclosure of every circumstance which it is important that the individual who is called upon for the confirmation should be apprised of. The principle applies to every case where influence is acquired and abused, where confidence is reposed and betrayed. The relations with which the Court of Equity most ordinarily deals are those of trustee and *cestui que trust*, and such like. It applies specially to those cases for this reason, and this reason only, that from those relations the Court presumes confidence put and influence exerted. Whereas in all other cases, where these relations do not exist, the confidence and influence must be proved extrinsically." It appears to me to be impossible that, where the confidence is not presumed, merely throwing down the deed can raise a presumption; and I am at a loss to know how a sister-in-law is not under equal obligation to prove undue influence with every other person in the community. The averments in the bill are not like what they are in most cases where this point arises. "That she was a mere puppet in Elwood's hands, and that Cook knew it"—that would have been an intelligible case, but it is not in the bill. The question is, did she know that this money was advanced to herself and Elwood? I am sure she did know it. The undue influence charged in this case is wrapped up with fraud, and is not a mere case of undue influence which springs from her relationship, of which Cook had notice. There is no averment in the bill of the fact which constituted that undue influence. I doubt even that there is evidence that Cook knew she was Elwood's sister-in-law. No doubt, nefarious interest was charged on the sums lent; but she seeks to set aside the deed not on that account, but because all her property was pledged. She was represented by Mr. Fry, a respectable solicitor, and I can see no evidence of his having betrayed her. She was warned by him, but she insisted on his handing over the mortgage. When she instructed Fry to prepare the deed in September, 1863, Elwood, the alleged master of her mind, was not present, but in gaol; that transaction confirms all the prior transactions. Looking at those transactions, I would pronounce them outrageous and exorbitant, and almost nefarious; but, on the facts of the bill, the plaintiff would be equally entitled to relief if the loans were the fairest ever made. It is admitted that if the actual money Cook paid down, and 5 per cent. on it, were refunded to Cook, it would give the plaintiff no assistance whatsoever. Let it not be supposed that I hold a light hand over usury, and that the doctrines of the Court in *Earl of Aylesford* v. *Morris*, L. R. 8 Ch. 498, are not in force. I have acted on those doctrines before against the defendant Cook, in the case of *Cook* v. *Howley* (not yet reported), but there I took care that justice should be done to him. I believe that if I gave the plaintiff relief, it would be nothing short of defrauding Cook. Viewing the bill as founded on fraud or misrepresentation it fails. I hold that there is nothing in the relation of brother-in-law and sister-in-law to raise the presumption of undue influence. This bill failing, I dismiss it with costs.

Bill dismissed.

Solicitor for plaintiff, *Jennings*.
Solicitor for defendant, *Daniel*.

VICE-CHANCELLOR'S COURT.

Reported by E. F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

CALDBECK'S TRUSTS.

April 27, 1874.—52 *Geo. III.*, c. 101—*Trustee Act*, 1850—*Appointment of new trustees of a charity—Provision for appointment of future trustees.*

On a petition to appoint a new trustee of a charity, praying that a scheme should be settled whereby persons filling certain offices should, by virtue thereof, be trustees of the charity,

Held, *that the Court had no power to settle a scheme whereby such persons should ex officio be trustees; and that, at most, particular persons might be empowered to appoint future trustees.*

Petition to appoint the Rev. William Winslow Berry, Rector of Clondalkin, a trustee for a charity, in the room of the Rev. David Reade, deceased, and also to provide for the appointment of future trustees of the

Digitized by Google

said charity without the necessity of applying to the Court. William Caldbeck had devised certain lands, in the parish of Clondalkin, to trustees for 999 years, in trust to build a school-house for the education of female children, but that if the said premises should not be used for building a school-house, they should be set by lease to the highest and best bidder, and that the profits thereof should be distributed among the poor of the said parish. A school-house was erected, which, afterwards becoming useless, was let at a rent of £12. William Caldbeck gave other premises for the erection of a dispensary for the poor, which also became useless for that purpose, and were let on lease for 61 years, at a rent of £12. In 1866 the Lord Chancellor directed trustees to be appointed, and under that order two trustees were appointed. In April, 1873, one of those trustees died, and the petitioners were anxious to appoint some one in his place; and as the scheme for the administration of the charity did not contain any power to appoint new trustees, it had become necessary to apply to the Court for that purpose. The amount of rent of the premises was only £24.

Mr. R. H. Stanley for the petitioners. It is sworn that Mr. Berry is a fit and proper person to act as trustee, and he has consented so to act. As the rent of the premises is so small, it would be of advantage that the Church of Ireland Protestant Episcopalian Rector, or Incumbent, for the time being of the parish, and the Roman Catholic parish priest for the time being should, by virtue of their said offices, respectively administer the trusts of the charity. In *the matter of* 52 Geo. III., c. 101, 12 Sim. 262, the Vice-Chancellor, on a petition for the appointment of new trustees of a charity, directed that in the deed, appointing the new trustees, a power should be inserted for appointing new trustees in future.

[CHATTERTON, V.C.—What you now seek does not come within the Act. Under the Act, the most I can do would be to confer upon a body the power of electing trustees. That is different from declaring that certain persons *ex officio* should be trustees].

We are only anxious that the funds should be spared.

Mr. Robert Dames for the Attorney-General. The Court has jurisdiction, as prayed, under Sir Samuel Romilly's Act; Tudor, Char. Trusts, 180.

[CHATTERTON, V.C.—Would that apply where a scheme has been already settled?]

There has been no scheme settled.

CHATTERTON, V.C.—I doubt if any scheme could be effected that would cause less expense. In any case, there must be some act done to appoint new trustees. The most that I could do would be to empower particular persons to appoint a trustee in place of another, and then a new conveyance would be necessary. No benefit would be derived from that. The expense of doing it would be as great as that of coming in under a summary petition. In case of charities of this kind, the Court should be very careful to keep its power over its own trustees. I shall appoint the Rev. William Winslow Berry to act as trustee.

Solicitors for the petitioner, *H. & W. Stanley.*

PROBATE COURT.

(Before WARREN, J.)

Reported by R. D. MURRAY, Esq., Barrister-at-Law.

IN THE GOODS OF ELIZABETH COWAN.

Feb. 16, 1874.—*Practice—Limited administration to person entitled to general administration—Absence of special circumstances.*

Limited administration will not be granted to a person entitled to general administration, where no special circumstances are shown.

Henry Harris died in 1838, having previously made his will, by which he directed his property to be sold, the proceeds whereof he bequeathed to his wife, Mary Harris, for life, and, after her death, to be divided equally between his three children, Joseph Harris, Henry Harris, and Elizabeth Cowan. Elizabeth Cowan died in 1842, leaving her husband, Stephen Cowan, and eight children surviving. Stephen Cowan died in 1845, leaving the eight children surviving. Mary Harris, the tenant for life, died in 1854. At the date of her death there were six children, the issue of the marriage of Stephen and Elizabeth Cowan, living—two others had died bachelors intestate. In 1855, administration *de bonis non* was taken out to Henry Harris, the original testator, by Joseph Harris, and he paid five of the Cowans their shares. Joseph Cowan had left Ireland in 1852, and was not paid. He returned in 1863, whereupon the administrator paid his share into Court, under the Trustee Relief Act. In July, 1873, Samuel Cowan took out administration to his brother, Joseph Cowan, as one supposed to be dead; and in August, 1873, Samuel Cowan presented a petition to the Court of Chancery for payment of the share of Joseph Cowan out of Court. It then appeared that no administration had been taken out to Elizabeth Cowan his mother, and the Master of the Rolls directed the matter to stand over till that administration could be taken out. Samuel Cowan applied in the office for administration to Elizabeth Cowan, but this was refused until he took out administration to her husband. He, accordingly, took out administration to her husband on the 3rd February, 1874, and paid £60 stamp duty.

Mr. J. Wiley now applied, on behalf of Samuel Cowan, for administration to Elizabeth Cowan limited to the effects in Court; citing *Gutteridge* v. *Stilwell*, 1 M. & R. 486: *in re William Watts*, 1 S. & T. 538; *in re Dodgson*, 1 S. & T. 260; *in re Mary Counsel*, L. R. 2 Pro. & D. 314.

WARREN, J.—This is an application for limited administration by a person entitled to general administration. The rule laid down in the works on Probate practice is that a general grant of administration ought to be taken out, unless there are strong reasons in favour of a limited one. Now, there are no such reasons here. Administration was never taken out to Elizabeth Cowan; and, consequently, the duty was never paid to the Crown. In consequence of that reason, especially, general administration ought now to be taken out.

In the Goods of THOMAS DEVERY.

Nov. 10, 1873.—*Practice—Administration—Rights of widow and next of kin—Special circumstances.*

The widow's right to administration to her husband, deceased, will not be postponed in favour of the next of kin because the widow is in prison, having been arrested on suspicion of being implicated in the murder of her husband.

Application on behalf of Michael Devery, the father of the deceased, for a grant of administration; grounded on the joint-affidavit of the said Michael Devery and his son, Michael Devery, junior, and on the affidavits of three others. Those affidavits stated that the widow and Patrick Egan had been arrested and committed to gaol on a charge of having murdered the deceased, and that it was notorious and generally believed in the country that an improper intimacy had existed between her and Patrick Egan, and that the deceased met his death at the hands of the Egans; and

Digitized by Google

that the sole object of thus applying for the grant of administration was to protect the property for those who might be entitled to it; and alleging suspicious circumstances.

There was a cross-motion, on behalf of the widow, that administration should be granted to the plaintiff on giving sufficient security, according to the rules and practice of the Court. The cross-motion was grounded on an affidavit of the widow, denying the allegations of the defendants, and repudiating, as a wicked and atrocious calumny, his insinuation; and stating that, if she knew who had committed the murder, she would do her best to bring him to justice; and charging that the defendant wanted to get the property for himself, through jealousy at her not giving evidence against persons whom he suspected. The widow had been arrested the day after the murder; but was liberated and again arrested on further information, which had been sworn some three months after the murder.

Mr. Shekleton, in support of the motion, on behalf of Michael Devery.

Mr. John Gibson, *contra*, cited *Brown* v. *Brown*, 1 Eccl. & Adm. 423; *in the Goods of Ihler*, L. R. 3 Pro. & D. 50; *in the Goods of Davis*, 2 Curt. 628.

Warren, J—In this case, there is a contest for administration between the widow and the next of kin. The widow is *prima facie* entitled to the grant, and the question before the Court is whether she is to be deprived of her *prima facie* right by reason of her having been arrested on a charge, or rather on an insinuation of adultery, and conspiracy with the adulterer for the murder of her husband. The affidavits filed by the defendants are unsatisfactory, the deponents not even stating their belief in the charge or insinuation made. If, therefore, this application had been made before her second arrest, I would have refused it with costs. But, now the widow is in custody on suspicion of having been implicated in the death of her husband. Yet, that fact need not prevent her administering the effects of the deceased, through the agency of her attorney, if full and satisfactory security be given to secure the rights of all the parties; and I cannot but think that the effect, great or small, of refusing her a grant of administration would be to create a prejudice against her on her trial, in the event of there being sufficient evidence against her to bring her to trial at the assizes. Let, therefore, administration be granted to the widow, on her giving sufficient security, according to the usual practice of the Court. The costs of both parties are to be paid out of the assets.

COURT OF BANKRUPTCY.

Reported by E. N. Blake, Esq., Barrister-at-law.

(Before Miller, J.)

Re Harris, a Bankrupt.

March 3, 27, 1874.—*B. A. Act*, 1872, *ss.* 56, 57, *sched. B.—Certificate of conformity—Non-payment of* 10*s. in* £1—*Circumstances for which bankrupt not responsible—Conduct of trader, before bankruptcy—Keeping irregular books*—215 *G. O.*, 1872.

On an application by a bankrupt, whose estate did not realize 10*s. in the* £1, *in a bankruptcy heard before the Court, for a certificate of conformity, under* 35 *&* 36 *Vict.*, *cap.* 58, *sec.* 56, *sub-sec.* 1, *the official assignee reported, under* 215 *G. O.*, 1872, "*That the books of the bankrupt had been imperfectly kept, and that such fact might be attributed to his late irregular habits, and that since he had passed his final examination he had given assistance to realize his estate.*" *And further,* "*That there had not come to his knowledge, during the realization of the property or otherwise, any matter to show that the bankruptcy, or the failure to pay* 10*s. in the* £1, *had arisen from circumstances for which the bankrupt could be held responsible, except as follows:—*1*st, the irregular habits previously referred to;* 2*nd, the circumstance that such irregularity may* (*though such has not been specifically shown to have had that consequence*) *have led the bankrupt to part with his property on credit to debtors who have not paid for it, and from whom it would appear the assignees have little prospect of recovering their debts. That, however, he has no reason to believe that the debts are fictitious, or have been fraudulently created, or otherwise than in the ordinary way of trade, though some of the debts returned in his statement of affairs as due were afterwards shown to have been already paid to the bankrupt. And that the goods, taken at cost price, and all his debts actually due to the estate, so far as known, had they been all good and fully realized, would appear to amount to a sum sufficient to pay* 10*s. in the* £1, *although the result of the realization falls so far short of that rate of dividend.*"

Held *that, although the irregularity firstly imputed to the bankrupt would have been a ground for withholding his certificate, had it been shown that, as a result, property of the creditors entrusted to the bankrupt had been improperly dealt with, yet that, such not being shown, the bankrupt was, upon the facts stated in the report of the official assignee, entitled to an immediate certificate of conformity.*

Application for allowance of certificate of conformity. The bankrupt was examined as to certain bills of exchange which he had got discounted by the National Bank, accepted by persons who, it was alleged, were not of present ability to meet them; also, as to a lease which had been deposited by the bankrupt with the bank, but which turned out to have been put in settlement by a previous marriage settlement, of which, however, the bankrupt deposed that he had been ignorant. As to his books, the bankrupt deposed that he had commenced business in 1846, and his books were perfectly kept until, in Januury, 1873, in consequence of pressure by the Bank, he was obliged in haste to take stock, employing the time of sixteen persons, and while so doing was obliged to neglect posting up his ledger; he never posted his books himself, as his trade was too extensive. The further facts sufficiently appear, for the purposes of this report, in the judgment delivered.

Monroe, in support of the application.—The bankrupt is entitled to an immediate certificate, under B. A. Act, 1872, sec. 56, sub-sec. 1. He has made an affidavit, explaining the matters and discrepancies appearing in his schedules and accounts to which objection is made.

[Miller, J.—He is silent as to the irregularity imputed to him by the official assignee, namely the irregular keeping of his books.* That has always been, and will be a question, upon applications for certificates of conformity by traders, as the words of the certificate (B. A. Act, 1872, sched. B.) are, "having regard to the conformity of the bankrupt to the law of bankruptcy, *and to his conduct as a trader before*, as well as after his bankruptcy."]

Those were the terms of the 153rd section of the B. & I. Act, 1857, under which the conduct of the trader was to be considered. But that section has been repealed. The bankrupt has complied with the conditions upon which, under the Amendment Act, he is to be entitled to a certificate, conduct as a trader not being specified as a matter for consideration under

* The examination of the bankrupt took place subsequently.—Rep.

Digitized by Google

section 56. By an oversight the words contained in the old are retained in the new form, given in the Irish Act, though it was intended to assimilate the law on the subject to the provisions of the English Act of 1869, under which the conduct of a trader, as regards the keeping of his books, can no longer, in such case, come into question. A new disability as regards the obtaining of the certificate is created, for a bankrupt must pay 10s. in the pound, unless under circumstances for which he cannot justly be held responsible; while, by the Debtors Act, he has been subjected to severe penal consequences for various acts in relation to his books and otherwise. If a prosecution has been commenced under that Act against him, the certificate may be suspended, or withheld altogether; but, whether his conduct as a trader is criminal, and to be punished as such, is a question now to be determined by another tribunal. If this Court can still take his conduct as a trader into account, apart from its being made the matter of a prosecution, it could do so although a prosecution had been commenced, and there would have been no necessity for the express provision in that respect; and such a contention would, moreover, be inconsistent with the provisions of sub-section 2, and enable the Court to override the resolution of the creditors as therein. It would defeat the intention of the existing code to hold that, in this country (though not so in England), a bankrupt who had complied with the stringent condition, now imposed, of paying 10s. in the pound, and who had committed none of the acts now made criminal, should still be disentitled to his certificate by reason of any of the many other matters which would have had that effect formerly under a different state of things. There being no such terms in the section of the Act, it would be a strained and harsh construction to give to the words of the form, while by section 57 it is enacted that the certificate is to be in that form, "or to the like effect," and the application of the words in the form can be satisfied by referring them to conduct that would affect the bankrupt's ability to pay 10s. in the pound. Though it be that some good debts are due, the bankrupt having passed his final examination (September 19), is entitled to now apply for a certificate.

Perry, for the trade assignee, *contra*.—The certificate should be withheld altogether. Keeping irregular books was always considered conduct disentitling a trader to his certificate. Keeping books imperfectly, in the way reported by the official assignee, is not an offence under the Debtors Act; and the only mode of dealing with it as it deserves is by giving effect, in such case, to the terms contained in the form of certificate which is incorporated with the Act. Two years' credits have not been posted up. And there are considerable discrepancies between his schedules filed as an arranging trader and as a bankrupt. Debts have been proved considerably in excess of those returned in the latter, and he is not entitled to various credits claimed. It was intended by the bankruptcy law that traders in embarrassed circumstances should come before the Court at once, before their estates have been frittered away, and enable the Court to certify that a full disclosure and discovery of the effects was made. The trader is responsible for the manner in which he conducts his trade. The result of lenience to traders who do not keep their books regularly would be to facilitate improper dealings with the property. And it would afterwards lead to expense being incurred, and perhaps property might be depreciated.

Mr. Larkin, solicitor, on behalf of the National Bank, creditors, contended that a stay should be put upon the granting of the certificate of the bankrupt.

Judgment reserved.

MILLER, J.—Notice had been served in this matter of an application, on the 3rd of March, 1874, by the bankrupt for his certificate of conformity, and upon such application those acting for the trade assignee, in his capacity of trustee for the general creditors of the bankrupt, contended that no certificate should at any time be granted to the bankrupt, while the National Bank, on their own behalf, as creditors being holders of various bills passed by the bankrupt into that bank, contended that, although the certificate should not be altogether withheld from the bankrupt, yet that a stay should be put upon the granting of the certificate for a considerable period, upon certain grounds alleged on the part of that bank.

I may dispose, first, of the case of the National Bank, as regards the suspension of the certificate of the bankrupt, by referring to the terms of the 56th section of the 35th and 36th of Victoria, chap. 58, which empowers this Court to suspend for such time as it deems to be just the certificate of a bankrupt, under circumstances of a three-fold nature. Firstly, if a prosecution has been commenced against the bankrupt in pursuance of the provisions relating to the punishment of fraudulent debtors, as therein; as to which there is no allegation that any such prosecution has been commenced against the present bankrupt. Secondly, if the Court should be of opinion that the bankrupt has not made a full disclosure and discovery of his estate and effects, or has made default in giving up to his creditors the property which he is required to give up; as to which, likewise, there is no allegation as to any default on the part of the present bankrupt. Thirdly, under a state of circumstances which has no application to the circumstances of the present case. It is, therefore, plain that I must either grant to the bankrupt his immediate certificate, or withhold it altogether, under the circumstances as presented to this Court.

It appeared that the bankrupt had been in trade since the year 1846, without having been at any time in this Court, until, unable to meet his engagements, he, on the 10th of February, 1873, presented his petition for an arrangement with his creditors, and that, being unable to carry that arrangement, it was, on the 4th of April, 1873, turned into bankruptcy. It further appeared that the bankrupt did not succeed in passing his final examination until the 19th of September, 1873, and that the delay in that respect was altogether occasioned by himself. Under the 56th section of the 35th and 36th of Victoria, chap. 58, already referred to, it is provided that a certificate shall not be granted to a bankrupt unless it is proved to the Court that, "in a bankruptcy before the Court, a dividend of not less than ten shillings in the pound has been paid out of his property, or that his bankruptcy, or the failure to pay ten shillings in the pound, has, in the opinion of the Court, arisen from circumstances for which the bankrupt cannot justly be held responsible." By that provision an obligation, which in England rests altogether with the creditors, is in this country cast upon the judges of this Court, namely, of determining whether the failure on the part of the bankrupt to pay ten shillings in the pound has, in the opinion of the Court, arisen from circumstances for which the bankrupt cannot justly be held responsible. It is, therefore, indispensable that this Court, for the purpose of arriving at a proper conclusion upon such a question, should have all the assistance which the officers engaged in the progress of such bankruptcy can afford, and accordingly the official assignee is required, by the 215th General Order, to submit to the Court, on the hearing of any application by a bankrupt for his certificate, a report of what matters, if any, have come to the knowledge of the assignees during the realization of the property, or otherwise, to show whether the bankruptcy, or the failure to pay ten shillings in the pound, has arisen from circumstances for which the bankrupt cannot be held responsible, or otherwise. The official assignee has, accordingly, made his report in this matter, dated the 3rd of March, 1874, giving a very

Digitized by Google

careful analysis of the accounts, to which I would have referred more in detail if the official assignee had not made a further report, to which I will presently refer; but he concluded his first report by a statement "that the books of the bankrupt had been imperfectly kept, and that such fact might be attributed in some measure to his late irregular habits, and that since he had passed his final examination he had given assistance to realize his estate." He, further, reported that the est te of the bankrupt would not pay ten shillings in the pound. The bankrupt made an affidavit, in support of his application for a certificate, purporting to enter fully by way of explanation into the detailed analysis of the official assignee's statement of the accounts of the bankrupt as set forth in his report.

As this is the first case under the late Bankruptcy Act, in which any real contest as between the bankrupt and his creditors as to the granting of his certificate has arisen, it was necessary to consider what the nature of the report of the official assignee, as required by the 215th General Order, should be, and it appearing that the report of the official assignee, of the 3rd of March, 1874, did not meet the requirements of that order, the official assignee was required to make a further report in that respect, and also in reference to the affidavit; and he has, accordingly, made a further report, dated the 21st of March, 1874, which will enable me to deal with the present application; and by that second report he finds "that there has not come to his knowledge, during the realization of the property, or otherwise, any matter to show that the bankruptcy, or the failure to pay ten shillings in the pound, has arisen from circumstances for which the bankrupt can be held responsible, except as follows:—1st. The irregular habits of the bankrupt, referred to in his former report." I should be quite prepared to deal with the irregularity, imputed to the bankrupt, as a ground for withholding his certificate, if it could be shown, as a result from such irregularity, that the property of the creditors entrusted to the bankrupt had been improperly dealt with; but the second exception set forth in the official's second report does not go to that extent. That exception is as follows:—"2ndly, The circumstance that such irregularity may (*though such has not been specifically shown to have had that consequence*) have led the bankrupt to part with his property on credit to debtors who have not paid for it, and from whom it would appear the assignees have little prospect of recovering their debts." The official assignee goes on to report "that, however, he has no reason to believe that the debts are fictitious, or have been fraudulently created, otherwise than in the ordinary way of trade, though some of the debts returned in his statement of affairs as due were, afterwards, shown to have been already paid to the bankrupt;" and the official assignee concludes that second report by stating, "that the goods taken at cost price, and all his debts actually due to the estate, so far as known, had they been all good and fully realized, would appear to amount to a sum sufficient to pay ten shillings in the pound, although the result of the realization falls so far short of that rate of dividend." Upon that report, however strongly I may disapprove of the irregularity of the bankrupt referred to, as to which I have, on a former occasion, expressed myself as the bankrupt well merited, I have no hesitation in now granting to the bankrupt—who has appeared in this Court for the first time after a trading of 28 years, and has been already in this Court for a period of 14 months (and the more so as he has manifested some improvement in his habits by fulfilling his undertaking, given when I passed his final examination, to assist the officers of this Court in the realization of his property)—an immediate certificate.

Order accordingly.

Solicitors for the bankrupt, *Casey & Clay.*
Solicitors for the trade assignee, *Oldham & Eaton.*
Solicitors for the National Bank, *Larkin & Co.*

CONSOLIDATED CHAMBER.

Reported by E. N. Blake, Esq., Barrister-at-law.

Griffin v. Mayor and Corporation of Dublin.

(Before Deasy, B.)

March 5, 1874.—*Practice—Setting aside regular judgment—Fatality—Affidavit of merits.*

An affidavit, by the defendant's attorney, stating that he is advised and verily believes that the defendant has a good defence to the action on the merits, is an insufficient affidavit of merits, for the purpose of setting aside a regular judgment, which the defendant, through a fatality, has suffered to go by default.

Motion, to set aside judgment. The plaintiff complained that the defendants neglected to keep a portion of Dunne-street in proper repair, whereby he was tripped up and sustained personal injury. The summons and plaint was served Jan. 13, 1874, and on the same day notice of the issuing of the writ was published in a local newspaper, but notice was not published in the *Dublin Gazette* until Jan. 27. Interlocutory judgment by default was marked Feb. 12, and on Feb. 26th notice was served of the inquiry to assess damages, to be held before the sheriff of the county of Cavan on March 10th. The notice of motion was served on Feb. 28th; and, in support of the motion, an affidavit was made by the defendants' attorney, who deposed that, counsel having advised that a motion should be made to set aside the plaint as embarrassing, search was made to ascertain if the writ had been filed, and it being found that same was not filed up to Jan. 27, more than eight days from the date of service, and of the first-mentioned publication of the notice, he believed that no further step could be taken without notice of the filing of the writ being served; that he only became aware on Feb. 29th of the notice in the *Gazette;* that his not proceeding, as he had intended, to set aside the writ, was owing to that oversight, and that he was advised and verily believed that the defendants had a good defence to the action on the merits.

Green, Q.C., in support of the motion. The judgment has been marked through a fatality. Until the writ was filed we could not have moved to set it aside, as was intended. It is almost impossible to know what cause of action, if any, is complained of by the summons and plaint, which has not been prepared by counsel. The summons and plaint being thus framed, the affidavit of merits is sufficiently explicit. It would be held sufficient by some of the Courts on a motion for security for costs.

Malone (with him *Keogh*), *contra.*—The judgment has been regularly marked, and should not be set aside save on a satisfactory affidavit of merits.* The affidavit is insufficient: *Whiley* v. *Whiley*, 4 C. B. N. S. 653; *Daniel* v. *Dalton*, Hay. & Jon. 346.

Deasy, B.—The gentleman who makes the affidavit merely says that he is advised and believes that the defendants have a good defence on the merits. He may know nothing about it, and he does not disclose its nature. The summons and plaint, though a most informal document, sufficiently shows, at all events, that the plaintiff complains of some personal injury occasioned by not keeping a footpath in proper repair. The defendants' engineer might have made an affidavit of the facts. The judgment is not sought to be set aside as irregular. And where a regular

* See *Coen* v. *Gallagher*, 6 Ir. L. T. R. 192.—[Rep.]

Digitized by Google

judgment is sought to be set aside, the affidavit of merits, according to the practice of all the Courts, must disclose the facts relied upon as a defence; but I do not look upon this as an affidavit of merits at all. The motion must, therefore, be refused with costs.

Motion refused.

Attorney for the plaintiff, *Henegan.*
Attorneys for the defendants, *Smith & Barry.*

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before MORRIS, J.)

BARRY *v.* CASS.

June 16, 1874.—*Practice—C. L. P. A. Act,* 1870, *s.* 6—*Visible means—Striking out count in detinue.*

In an action for trespass on the plaintiff's land and seizing two calves, and a count in detinue for the calves being joined, it appeared that the calves had been seized and sold for £4 9*s., under a civil bill decree against the plaintiff's son, which was the detention complained of; that the count for trespass to the land and taking the calves referred to the same proceeding upon which the cause of action in detinue was founded; and that the plaintiff was not possessed of visible means except her property, if any, in the said lands, but that the question to be determined in the action was whether the plaintiff or her son was the real owner of the lands and cattle. On motion that the action be remitted to the Chairman, under C. L. P. A. Act,* 1870, *s.* 6,

Held, *that the count in detinue should be struck out, and the action remitted, unless security for costs given.*

Per MORRIS, J.—*The Court of Common Pleas adheres to the decision of* Byrne *v.* Ffrench, 6 *Ir. L. T. R.* 10, *that detinue may be remitted under C. L. P. A. Act,* 1870, *s.* 6.

Motion on behalf of defendant, under C. L. P. A. Act, 1870, s. 6, that the action be remitted for trial before the Chairman of the county Kilkenny, or that the defendant find security for the plaintiff's costs; or for such other order as should seem fit. The action was for trespass on the plaintiff's lands and seizing there two calves, the property of the plaintiff. The summons and plaint contained another count, for conversion of the calves. On those counts £100 damages were claimed. A count in detinue was joined, on which £10 was claimed, and a return of the property detained. The calves were seized under a civil bill decree, obtained by the defendant against Michael Barry, son of the plaintiff, and were sold for £4 9s. The question virtually to be decided was whether the lands and the stock upon them were the property of the plaintiff or her son. It appeared from the affidavit of the defendant that the plaintiff had no visible means, except the alleged property, if any, in the lands.

Lister, for defendant.
Kavenagh, for plaintiff.

MORRIS, J.—This is pre-eminently a case for the Chairman to decide. There is virtually nothing but a mere entry on the lands in pursuit of two calves; and, as regards the calves themselves, I should think that £40 would compensate the plaintiff, even if they were prize cattle. The question of visible means depends on whether the plaintiff is really the owner of the lands or not. I rather think there will be no difficulty in solving the question of ownership. But if the plaintiff is really the owner, she can herself solve the whole difficulty by the simple process of giving security, and proceeding in the Superior Court at her option. As regards the question as to remitting detinue, there is a difference of opinion; but the Court of Common Pleas have decided that it may be remitted, and we abide by that decision. I have been asked, however, to strike out the count, and I see no objection here to taking
Let the count in detinue be struck out, there
the action be thereupon remitted to the Chai
security be given for the costs.

Order acc

Attorney for plaintiff, *Shortal.*
Attorney for defendant, *Boyd.*

OMAGH ASSIZES.

(Before WHITESIDE, C.J.)

WOODS *v.* GALLAGHER.

March 3, 1874.—*Horse-race—Conditions-*
age—Alteration of conditions—Recovery of sta
had and received.

A horse-race was announced to be held, s
conditions, "One sovereign entrance—weig
and the decision of the stewards to be final
According to the racing calendar, the weight
for five-year old horses was nine stone thir
After the horse, "the Gaiety," had been
stewards altered the conditions, by changing
nine stone for each horse; but the owner of "
although apprised of the change before he paid
fee, allowed the horse to run carrying nine
pounds. The other horses carried nine st
Gaiety" came in third. The treasurer hel
The owner of "the Gaiety" having sued to
as money had and received, in an action aga
who acted as clerk of the course, hon. secre
one of the stewards, and who merely received
money and handed same to the treasurer,

Held, 1*stly. That money had and received*
2*ndly. That the contract was not completed u*
of the entrance-money, and that the plaintiff,
having been notified as to the alteration in the c
bound by the condition as altered.

Appeal. The respondent, Gallagher, suin
had and received, had obtained a civil
for £18, the amount of the stakes for wh
was entered to run at the Castlederg r
month of November, 1873. In connexi
races a number of gentlemen issued a pr
which one of the races announced was
"Castlederg plate for 20 sovereigns, or
entrance; open to all horses; winner to
towards expenses; weight for age." The
had in his possession a mare called "the G
having been sent a programme by a gentlem
in the races, he arranged with a trainer to
mare for the races. He afterwards wrote
who entered the mare for that particular
Castlederg Plate for 20 sovereigns." Se
was a "weight for age" race, the responde
the racing calendar, and found that the
month for five-year old horses was nine st
pounds. He then wrote to a jockey, and a
him to ride his mare in this race. The r
come off on the 24th and 25th of Novem
entries were made on the previous Satur
Gaiety" was entered on that day, and wa
sent to run; but, shortly before the race
the stewards altered the conditions, changin
from nine stone and thirteen pounds to ni
each horse. The respondent objected to a
in the regulations, but allowed his mare to
nine stone thirteen pounds, "weight for ag
the other competing horses only carried ni

* See *Casey* v. *Galway*, 8 IR. L. T. 90.—[ED.

weight fixed by the altered arrangement. "The Gaiety" came in third, but the respondent claimed the amount of the stakes offered. A process was brought, and a decree obtained on the ground that the stewards had no power to alter the conditions after having published them. The case was now re-heard on appeal. Evidence was given that, although "the Gaiety" was entered on the Saturday previous to the races, still the entrance fee was not paid until after the alteration as to the weight to be carried had been arranged and published, and then the respondent, or his representative, was told "that he might or might not run his horse, if he did not agree to the conditions." Evidence was also given that Mr. Woods was not the treasurer, but clerk of the course, hon. secretary, and one of the stewards, and that he merely received the entrance-money, and handed it over to Mr. Gilbert M'Hugh, who acted as treasurer, and who still held the stakes claimed by the respondent.

Holmes, for the appellant.

M'Corkell, for the respondent.

WHITESIDE, C. J.—The first question that arises, in this case, is whether the defendant had received money for the use of the plaintiff. In my opinion, in point of law, the action, as brought against Mr. Woods, is misconceived, that gentleman never having received money for the use of the plaintiff. The principle of law is that the money must have been received by the person against whom the action is brought. That is the principle of law, and a general rule. There are some exceptions to the general rule, but this case does not come within any of the exceptions known to the law. On the ground, therefore, that the action has not been brought against the proper person, I hold that the decision in favour of the plaintiff in the court below was erroneous. Besides, on the merits of the case, the decision appears to be erroneous. The words "weight for age" are very vague, so much so, in fact, that the gentlemen who got up the races and have been examined as witnesses did not appear to understand what those words meant. It has been stated that the decision of the stewards was in all cases to be final; and here we have the fact that the stewards had fixed the weight at nine stone for each horse, and acquainted Gallagher with that arrangement before he paid his entrance-fee, and before the contract was legally and finally completed. That being so, the conduct of Gallagher, in afterwards allowing his horse to run, was calculated to leave the idea that if he won he would say nothing, but that if he lost he would protest against the handing over of the stakes to the winner. So that, on both grounds, the decision of the court below must be reversed, and the case dismissed.

Attorney for the appellant, *M'Cay*.

Attorney for the respondent, *P. Gallagher*.

COURT OF APPEAL IN CHANCERY.

Reported by MILES V. KEHOE, Esq., Barrister-at-Law.

In re Estate of ROONEY, Owner and Petitioner.

May 5, 6, 7, 1874.—*Arranging Trader—Protection order—Registering judgment as a mortgage—Judgment-mortgagee not proving, but receiving dividend, in arrangement matter—Acquiescence—Onus of proof of election—Effect of certificate*—20 *&* 21 *Vict. c.* 60, *ss* 262, 349—35 *&* 36 *Vict. c.* 58, *ss.* 58, 62, 63.

On February 8th, 1872, *a trader presented a petition for arrangement with his creditors, under* 20 *&* 21 *Vic., c.* 60, *and obtained a protection order under section* 343. *At the first sitting, in March,* 1872, *the majority of his creditors assented to his proposal for a composition, to be secured by promissory notes and by the vesting of his property in the official assignee. The creditors' proposal was subsequently confirmed by the Court. S was returned, in the debtor's schedule, as an unsecured creditor whose debt was admitted. He did not prove his debt, or vote in the arrangement matter. Pending the arrangement proceedings, he, on Feb.* 15, *obtained a judgment in an action against the debtor, for a portion of the debt returned on the schedule; and, on Feb.* 20, *registered the judgment as a statutable mortgage against lands of the debtor. In April the debtor had duly lodged his composition notes, including composition notes on the whole debt due to S. The notes were posted to S, and by him endorsed, and same were paid at maturity. The arrangement having been carried through, the trader received his certificate, pursuant to the statute, on Aug.* 12, 1873.

Held, (1.) *That the registration of the judgment as a mortgage was not a "process," within* 20 *&* 21 *Vic., c.* 60, *s.* 343.

(2.) *That, as the creditor had not proved in the arrangement matter, it was not competent to him to assent or dissent within the statute, nor was he barred by the statutable operation of the arrangement proceedings from realizing his demand under the judgment mortgage.*

(3.) *That the mere payment to and acceptance by the creditor of the composition on his whole demand, did not operate as an accord and satisfaction thereof, as it was not shown that he had in fact, or by implication from his acts, concurred in the arrangement, and received the composition notes with the intention of accepting same in full satisfaction of his entire demand.*

In re Lambe's Estate, 3 IR. L. T. 224; *in re* Ferrall, 1 IR. L. T. 102, *followed.*

Appeal from an order of Flanagan, J., in the Landed Estates Court, allowing the objection of Edward Simpson Samuell to the final schedule of incumbrances in the matter.

On the 8th February, 1872, the appellant, John Rooney, presented a petition for arrangement in the Court of Bankruptcy, pursuant to 20 & 21 Vict, c. 60. On the 9th February, 1872, an order was made by the Court that his person and property should be protected from all process, from that date till the 1st March following. At the first private sitting, held on the 5th day of March, 1872, creditors of the statutable number and value assented to the proposal for arrangement. That proposal was an offer of four shillings in the pound on his unsecured debts, payable by equal instalments at four and eight months from the confirmation of his proposal by the Court; the first to be secured by the appellant's promissory notes, and the second by the joint and several promissory notes of the appellant and Michael Coen; and by vesting all the appellant's property in the official assignee, till the composition should be paid. At the second sitting, held on the 22nd March, 1872, creditors of the statutable number and value agreed to accept the said proposal. The Court, by order of the same date, confirmed that agreement, and granted the petitioner further protection till the 5th April following. And it was ordered that the appellant should, before the 28th April following, lodge with the official assignee the cash and bills to pay the composition. The composition notes were, before the 28th April, lodged with the official assignee. Among the creditors whose debts were set forth in the schedule filed in the arrangement matter as admitted, were Messrs. Samuell & Son, of Liverpool, for the sum of £327; but it appeared that they had never made any proof of debt. Two promissory notes, each dated the 22nd March, 1872, payable, respectively, four and eight months after date, to Messrs. Samuell & Son, for the sum of £32 14s. each, were lodged. The notes were posted to Samuell & Son, were by them endorsed, and were paid at maturity by the appellant. Pending

Digitized by Google

the arrangement proceedings, on the 15th February, 1872, Edward Simpson Samuell, one of the firm of Samuell & Son, obtained a judgment in the Court of Queen's Bench against the appellant for £94 7s. debt, and £7 4s. 11d. costs, making together the sum of £101 11s. 11d. on foot of a bill of exchange for £93 10s., drawn by Samuell & Son on, and accepted by the appellant. That sum, which formed part of the said partnership debt of £327, was the sole consideration for the said bill, and was not a distinct or separate debt due by the appellant to Edward Simpson Samuell. On the 20th February, 1872, the judgment was registered as a mortgage upon the lands in the said matter, pursuant to the statute, upon an affidavit sworn on the 17th February preceding. It was stated by the appellant that Mr. Fay, solicitor, attended the first meeting of the creditors, as representative of Messrs. Samuell & Son, and concurred in the appellant's offer for arrangement; Mr. Fay, on the other hand, denied positively that he concurred, and said that he, on the contrary, dissented. The arrangement having been carried through, the appellant obtained his certificate, pursuant to the statute, on the 12th August, 1873. The judgment mortgage was placed on the final schedule in this matter, but it was alleged by the appellant that nothing was due on foot thereof. On the 30th June, 1873, the said Edward Simpson Samuell filed his objection to said final schedule, and thereby claimed the sum of £111 3s. 7d., with interest at the rate of 4s. in the pound, on the sum of £101 11s. 11d., part of said last-mentioned sum, as charged upon the premises sold in the said matter, and payable to him out of the residue of the fund produced by the sale of the said premises. By an order of the 19th of January, 1874, the objection was allowed with costs, and from that order John Rooney brought the present appeal.*

Mr. Leech, Q C. (with him *Mr. Kelly*), for the appellant.—The acceptance by Samuell & Son of the promissory notes, and their negociating and receiving the amount of them, without giving any notice to the appellant or his creditors of the respondent having obtained, or of his intention to enforce the judgment mortgage, was an adoption by them of the arrangement proceedings, so as to prevent them from afterwards sustaining any claim against the appellant or his estate on foot of the said judgment mortgage. To enforce payment under the judgment mortgage would be a fraud upon the other creditors who were parties to the arrangement proceedings, as Samuell & Son were consenting creditors to the arrangement proceedings. He cited *Harrley* v. *Wall*, 1 B. & Ald. 103; *Holmer* v. *Viner*, 1 Esp. 133; *Britten* v. *Hughes*, 5 Bing. 485; *Lee* v. *Lockhart*, 3 My. & Cr. 302; *In re Ferrall*, 1 Ir L. T. 103, I. R. 1 Eq. 81; *In re Lambe's Estate*, 3 Ir. L. T. 224, I. R. 3 Eq. 286; *In re Kennedy's Estate*, 17 Ir. Ch. 104; 20 & 21 Vict. c. 60, s. 349; 35 & 36 Vict. c. 58, ss. 58, 63.

* The following is the judgment of Flanagan, J.—This case came before me on an objection, by way of claim, of Mr. Edward Simpson Samuell to the final schedule of incumbrances in this matter. The facts of the case, as I understand them, are these. Mr. Edward Simpson Samuell, by his affidavit, filed on the 30th of June last, simply stated the recovery of a judgment by him against Mr. John Rooney, the owner and petitioner, on the 15th of February, 1872, and the registration of it as a judgment mortgage on the 20th February, 1872, and then he swears that a sum of £110 3s. 7d. is due to him on foot of that demand. The case made by Mr. Rooney, in opposition to Mr. Samuell's demand, is this:—He, in an affidavit filed on the 9th of July last, says that the judgment in the said objection mentioned was recovered on a bill of exchange, dated the 21st of October, 1871, for a sum of £98 10s., accepted by him on account of a debt of £327 due by him to Messrs. Samuell and Son, which debt he says was one of the debts returned on a schedule filed on the 9th of February, 1872, in respect of which he effected an arrangement in the Court of Bankruptcy, which was confirmed by that Court on the 22nd March, 1872, and for which a sum of £65 8s. was paid to Messrs. Samuell and Son by two promissory notes for the sum of £32 14s. each, payable the one at four,and the other at eight months after date—and so on. The only point in the case is a very short one, and it is this. There is no doubt (for it is admitted) that the judgment was recovered on foot of the original debt of £327; it is also admitted that, after the arrangement proceedings had been commenced the judgment was registered as a judgment mortgage against the estate of Mr. John Rooney; it is, also, admitted that Mr. Edward Simpson Samuell received a certain sum of money, being the amount of the composition payable to him under the arrangement proceedings. It was, indeed, suggested by Mr. Kelly (though, I must say, not strenuously argued by him) that the judgment mortgage was annulled by the arrangement proceedings; but I could not allow that to be argued, having regard to the decision of the Court of Chancery Appeal in the case of *In re Lambe's Estate*. The only point for my consideration was whether the judgment mortgagee, having accepted the composition bills, was bound by the arrangement proceedings, and, a certificate having been obtained in the arrangement matter, the judgment mortgage was thereby satisfied, and not available as a security against the estate of the owner and petitioner for the difference between the amount of the original debt and the amount paid under the arrangement proceedings. On this point it seems to me that the case of *In re Ferrall* is an express authority. There, exactly as here, a judgment was registered as a judgment mortgage, and payments were made to the judgment mortgagee of certain sums of money from time to time, as a composition under the arrangement clauses of the Bankruptcy Act, and it was argued that, on the doctrine of acquiescence, the receipt of those payments by the judgment mortgagee implied an election on his part to abandon the security of his judgment mortgage. Judge Miller, after an elaborate review of the law, was of opinion that the judgment mortgagee, not having *proved* his debt as an unsecured debt, was, notwithstanding that he had been returned on the schedule as an unsecured creditor, and had received a composition as such, at liberty to fall back upon the security of his judgment mortgage for the balance of the amount of his debt. The only distinction between that case and this is, that here composition bills were accepted and there cash. But there is no distinction in principle between the effect of accepting composition bills in part payment of a debt, and the effect of accepting cash in part payment of a debt. It was argued, on behalf of Mr. Rooney, that Mr. Edward Simpson Samuell became an assenting party in the Court of Bankruptcy to the arrangement proceedings under which the composition was effected; but there is no evidence that *proof* (I mean in the technical sense) was ever made by him in that Court. There remains, of course, the question—Is the decision in the case of *In re Ferrall* a good decision in point of law or not? Mr. Kelly boldly asserted that it was not a good decision in point of law, and that I was not bound by it. Whether I am necessarily bound by it or not, I intend to be bound by it, and for these reasons—First, it is a decision of the Court of Bankruptcy in a matter peculiarly connected with the jurisdiction of that Court, pronounced by a judge familiar with the code of law regulating that Court, and much more competent to decide on such a matter than I am. Second, I have, from inquiries made, ascertained that that decision has been uniformly recognized in the Court of Bankruptcy; and further, I would observe that the dispute there was between a judgment mortgage creditor of an arranging trader, who had subsequently become bankrupt, and the assignees in bankruptcy, to whom it would have been of importance to get rid of the judgment mortgage, inasmuch as the effect of their succeeding in doing so would have been to increase the funds available for payment to the general creditors; and I find that Mr. James Kernan, Q C., an accomplished bankruptcy lawyer, who appeared on behalf of the assignees, acquiesced in the decision of Judge Miller. I confess that, when this case was first opened before me, I had a strong opinion the other way, but having considered the arguments and the decision in the case of *In re Ferrall*, I am now of opinion that the view I was about to take would have been a mistaken view. I shall, therefore, allow the objection of Mr. Edward Simpson Samuell with costs, to be paid by Mr. John Rooney, the owner and petitioner.

Digitized by Google

Mr. Purcell, Q.C. (with him *Mr. Houston*), for the respondents.—There is no analogy between an arrangement under the statute and an arrangement by agreement between the creditors. Notice to the recusant creditor, in an arrangement under the Act, is of no avail, and does not bind him. He is not obliged to express dissent. There is no obligation on him to stay his hand from getting every security he can, consistently with the provisions of the Act. A protection order constitutes no bar against a creditor registering his judgment as a mortgage. Until the creditor has come in and proved his debt under section 346, the statute does not recognise the debt.

[CHRISTIAN, L. J.—If a creditor comes in and proves at the time appointed for claim, it is an evidence of assent.]

Until the creditor proves, he has no *locus standi: in the matter of C. H., an arranging debtor*, 7 Ir. L. T. R. 70. Samuell never proved in the arrangement matter. Up to the registration of the mortgage, not only is there no evidence of assent by Samuell & Son, but there is evidence of dissent on his part. The very fact of his registering the judgment mortgage is an evidence that he was not an assenting party to the composition.

[SIR J. NAPIER, L.C.—The affirmative lies on the other side to prove that he did assent.]

That is so. In this case there is nothing to prove an election by Samuels; *Worthington* v. *Wiginton*, 20 Beav. 67. The intention in electing must be evident. The receipt of money is consistent with absolute ignorance of the facts, and does not evidence his intention to elect.

[CHRISTIAN, L.J.—Is there any case where a creditor who has got an unquestionable security has lost his security, in one way or another, on parol or outside evidence, without his having regularly come in and proved his debt?]

There is no such authority. This is not a case where there was a subsequent and larger proposal, which might show reasons for a subsequent modification of his intentions with regard to the acceptance of the composition.

[CHRISTIAN, L.J.—Down to the period when he secured his debt there is nothing as to which Samuels himself could answer, for anything that was alleged to be done in the way of assenting to the proposal was done by Fay.]

The proposal confirmed by the Court was a proposal to pay so much on unsecured debts, and he could not come in under that, as his debt was secured.

[CHRISTIAN, L.J.—Except that, having had notice of the preliminary meeting, he had notice that they were willing to pay on the whole of the £327]

They must be held to have had notice of the judgment being registered as a mortgage.

[CHRISTIAN, L.J.—I think that would be rather a violent extension of the doctrine of constructive notice.]

There is no case in which the mere receipt of a dividend from the Court of Bankruptcy has been held to deprive a creditor of a security legitimately obtained. The only question that remains is as to the effect of the certificate. It was in March, 1872, the arrangement matter was carried in the Court of Bankruptcy. Assuming the bills were paid, the arrangement would have been complete on the 25th November, 1872, and then the estate would have re-vested in the bankrupt, who then proceeded to sell in the Landed Estates Court for his own benefit, and there is no person now, nor was there any person then, interested in it save the debtor. It is open to us to contend that the certificate which he has obtained under the Act of 1872 is not applicable to cases under the former Act. Section 5 of the Act of 1872 excepts from repeal, "so far as said sections, and parts of sections, or any of them, repeal any former Act, or any part of an Act, and except also so far as may be necessary for the purpose of supporting and continuing any proceedings taken, or to be taken, after the commencement of this Act on any petition or order in bankruptcy or insolvency, filed or made before the commencement of this Act." In *Lambe's Estate*, at p. 302, the manner in which a certificate in arrangement operates is laid down. The certificate bears date the 12th August, 1873, the objection had been filed in June, 1873, and the matter was perfectly ripe for decision then; our rights in June could not be affected by a certificate obtained in August.

Mr. Kelly, in reply, relied on *In re Kennedy's Estate*, 17 Ir. Ch. R. 104; and referred to 20 and 21 Vict. c. 60, sec. 262.

SIR J. NAPIER, L.C.—In this case the appeal has been brought to reverse the order of Judge Flanagan of the 19th January, 1874. The case substantially turns on this—Whether Samuell and Son had a right to get the fruit of their judgment mortgage? It is scarcely denied, if at all, that the proceedings up to the time of the registration of the judgment were regular, and that there was nothing to legally interrupt the course of the proceedings up to the time of the registration; but, during a part of the course of proceedings towards the judgment mortgage, an arrangement under the B. & I. Act (Ir.) 1857, was going on, and it is said, on behalf of the appellant, that the effect of what took place with reference to this latter proceeding was to nullify the judgment mortgage proceedings and set them aside altogether. On the other hand, the respondent does not object to a certain variation in the order, which would allow to the estate what he received under the arrangement composition on his secured debt, be the amount of it what it may, so that he might not receive both the composition money and also all he could get under the security. With regard to the course of the proceedings by which he obtained the judgment mortgage, it seems to be clearly right unless it be shown firstly, that they were stayed in operation under the statute, or secondly, that by some general rule of law there was some satisfaction tending to satisfy the mortgage. A great deal of confusion has arisen from not keeping those two things distinct. As regards the first point, it is to be observed that the statute operates entirely irrespective of intention; the question of intention having reference only to the other point. This statutable defence must be made out pursuant to the statute, and it must be shown that the proceedings under the arrangement had by act and operation of law constituted a bar to the proceedings. In two cases the law is very well expounded, in *re Ferrall*, and in *re Lambe*. In the former case we have a very careful judgment delivered by Miller, J. The latter case is, of course, of higher authority, and the exposition of the law there pronounced renders it quite unnecessary for me to dwell much upon it. The distinction was well put by Mr. Purcell, between the arrangement under the statute, and a composition at common law where every one creditor has a right to a full disclosure of what is done as regards the other creditors, the arrangement being entered into on the faith that the advantages are equal to all. But, that has no bearing on the arrangement under the Act. In the arrangement under the Act there is a provision for enabling a certain set of creditors who have proved their debts to bind others compulsorily, and the other creditors only constructively assent. Sec. 348 of the Act of 1857 is to this effect:—"Any person duly authorized by writing under the hand of any creditor who has proved a debt to the amount of ten pounds and upwards, shall be entitled to vote on the question of assent or dissent to the proposal of such petitioning trader." It is only when creditors prove, that their assent or dissent becomes material, because in the voting such creditors can bind the others, though no matter whether individual

Digitized by Google

creditors assent or dissent, as the actual majority of the voters binds the whole—the whole body are supposed to give their assent or to dissent, but only constructively. Therefore, that question of assent or dissent has nothing to do with the case, as to this part of it. It is quite clear that Samuell was not a creditor who had proved, though he was returned as a creditor on the schedule. That is an act to which he is not a party, and his solicitor, who attended at the preliminary meeting, according to his account when they settled on a composition of 4s. intimated that was not satisfactory, and in his letter to Samuell he says:—"There is much darkness and confusion about the whole matter, and we consider that bankruptcy will be the best mode of throwing light on the matter, and obtaining a dividend which won't be a leap in the dark. As a matter of precaution, we consider it better to register a judgment mortgage against the houses, and send you an affidavit therefor." Certainly, as far as that letter has any value in the case, it is a confirmation showing that Fay is right in saying that he did not bind himself to accept the composition in discharge of all the debt, as he refers to having the judgment mortgage besides. Therefore, in that meeting there was nothing to interrupt or intercept the prosecution of the proceedings by Samuell. He might have acquired a lien on all the creditors' property, or have selected such portion as would suffice for his purposes, and proceed to realize in the Landed Estates Court. Now taking that to be the case, what is there done under the arrangement clauses to create a satisfaction or extinguishment, or to nullify the operation of the judgment mortgage? I can find nothing. Some reference has been made to the schedule; but I can discover no materials for a defence in bar to an action on this judgment. There being no defence on the statute, we come to the common law. It may be said to be a sharp proceeding; but every one has a right to do what the law allows in order as best he can to recover an honest debt. According to the old principle, the money must be paid and accepted as a satisfaction, and we must see if what was accepted by him was accepted in such a manner as that we may infer it was accepted in full discharge of his unsecured and of his secured debt for the full amount. We can hardly suppose the man could be such a fool that he intended to take that composition and give up his entire claim for his debt on foot of a security, the proceedings for obtaining which up to that point had been regularly carried on. Unless I could come to the conclusion on the evidence that that sum was accepted with the intention of its satisfying the *whole* demand, I do not see that it was an accord and satisfaction which would disentitle him to proceed on this mortgage. He had a vested right, a judgment regularly obtained, which he registered as a mortgage. He was not a creditor proving in the arrangement, or having acquired by proving a right to control other creditors; and it is unnecessary to say whether by so doing he would have concluded himself from relying on his special security. It might, of course, be a very sound distinction if by his acts, by proving, and by sharing in the voting, he had concluded himself. But there is nothing here except his having pocketed the full composition, though I do not think he could be taken as having accepted it for his full demand. Credit should be given for what the creditor has received, on the secured portion of his debt, under the composition in bankruptcy. The appellant, however, relied on a different contention; and I have no doubt, if that had been put before Judge Flanagan, it would have been allowed. Therefore, with the variation that that sum should be deducted, in my opinion the order should be affirmed, and the appeal dismissed with costs.

Lawson, L.C.—In this case, although during some parts of the argument I entertained some doubt, I have no doubt now that we are bound to affirm the order which is the subject of the present appeal. This case is substantially governed by the decision in *re Lambe's estate*. It was sought to distinguish this case by showing that in *Lambe's estate* the creditor had expressly dissented, but that here the creditor had assented. The evidence relied on for this is a transaction at the preliminary meeting, not at either of the subsequent ones. At that meeting Rooney swears that Fay was present, and concurred in the arrangement proposed; but Fay himself says he did not concur, and that he stated he would not advise his client to accept the arrangement. It is to be observed that the trader's solicitor does not contradict that statement, and taking into account this, and that letter of Fay to his client, I am bound to conclude that Fay did not then concur, and there is an absence of any other evidence of concurrence. This was the only part on which I had some doubt. But looking at the statute, we could not in any event act on such a parol assent; the only assent is such as is recognized by the Act of Parliament, by a creditor who has proved, and till a creditor has proved his debt it is not competent to him either to assent or dissent. If he had proved, said nothing, and voted, it would be a strong thing to hold that he would not be bound. But there is no evidence of such previous assent on the part of Samuell. Then, the case for the appellant rests on the fact that Samuell received the dividends, amounting to 4s. in the pound, on his entire debt of £327, of which £94 7s. was secured by a judgment mortgage on the lands of the debtor. That Samuell did receive the dividend of 4s. in the pound on the whole of his £327 there can be no doubt. How can we hold, upon that single act, that he agreed to waive and abandon his validly registered judgment mortgage security, and take under this arrangement? On a considerable portion of his debt he was entitled to that dividend of 4s. in the pound. The difference he must be taken, at the worst, to have known, and here all that can be alleged against him is that he received somewhat less than £20 too much; and that, it is to be observed, was not sent through his attorney, but direct to his own place of business in Liverpool, and received in the ordinary way. It would, in my opinion, be going altogether too far to hold that an acceptance under such circumstances amounts to a waiver of his vested right to enforce his security. I am of opinion that the order is substantially right, and the only variation (which would have been made originally if asked) that should be made is, that Samuell should give credit for the dividend which he received on the secured portion of his debt.

Christian, L.J.—I am of the same opinion, and I do not propose to enter, in any detail, into the case. It has been, in my opinion, conclusively shown that of the two classes into which the arrangement clauses divided the creditors—the assenting majority and the non-assenting minority—Samuell belonged to the latter. I am of opinion that the burthen of proof lay, not on Samuell that he dissented, but on Rooney to prove that Samuell assented. And though passages were cited from *in re Lambe's Estate*, to show that there the creditor was a dissenting creditor, and that stress was laid on the fact, yet that was relied on there, solely to show that the common law doctrine had no application to the case—the doctrine, namely, that where all the creditors join in a composition no one has any right to secure to himself a secret advantage. How has Rooney sustained the *onus probandi?* Merely by his own affidavit stating, in general terms, that at the first meeting Fay concurred. How is that met by Fay? In a circumstantial affidavit, not denying only in general terms, but stating that he distinctly told Rooney and his solicitor that he would not assent, or rather that he would advise his client that he ought not to do so. That was open to contradiction, were it possible, yet neither Rooney nor Rooney's solicitor has made any statement contradicting him. How do the facts which follow tell? Which has been corroborated—the general allegation of Rooney or the particular statement of Fay? Why, if Rooney's account is right, what was the possible meaning of that futile proceeding of Fay—of his going on to obtain the judgment, and of his then registering it as a mortgage? Why resort to that futile expense? On the supposition that he had agreed, it would have been simply worthless. Therefore, upon this matter of fact that down to the 20th February Samuell had not assented to the arrangement proceedings, I think that, not only has Rooney

Digitized by Google

failed to sustain his burthen of proof, but that Fay has proved dissent. What is the consequence? I do not propose to repeat at length what has been already said in *re Lambe's Estate*, but the organic difference between bankruptcy and arrangement is this: bankruptcy commences with a vesting order, which at once divests the property of the bankrupt and vests it in his assignees, preventing creditors from putting themselves in a better position as to it; but arrangement does not divest the property in the debtor till a late stage of the proceedings, at earliest upon the doing of the acts mentioned in the 20th & 21st Vic., c. 60, sec. 347, and the resolution vesting the estate in the assignees. Till then, at all events, the property remains in the debtor, and during all that time, and down to the granting of the certificate to the debtor under sec. 352 of the same Act, the non-assenting creditors are absolutely free, and may proceed in any way in which they could have proceeded before to put themselves in a better position, except in so far as they are restrained by an *ad interim* protection order. There was an order protecting the debtor's person and property from process in this case. But, did that prevent the creditor from going on to obtain and register judgment in his action which he had already properly commenced? Was the registration of the judgment as a mortgage a violation of the protection order? If the decision in *Lambe's Estate* was right, such registration was not a process within the protection order. To that decision I adhere; and it is fortified by section 62 of the Bankruptcy Amendment Act, 1872, a positive and not merely a declaratory enactment, that the word "process" shall now include an affidavit to register a judgment as a mortgage. The result is that when, on the 20th of February, Samuell made his judgment a judgment mortgage, the legal estate in Rooney's property passed into him as mortgagee under a valid and binding legal security, and he passed from the status of an unsecured creditor into that of a legally secured creditor. Has anything happened since to change his position? First, it is said that he accepted the promissory notes, which were sent over to him direct. Those notes were sent to him by post, and received by him in the absence of his attorney, and having no one to advise him. Of the debt which was owed him, £94 7s. was secured by the judgment mortgage, but, for the balance he was entitled in strict right to his composition. Moreover, he was entitled to payment of the rest of his debt as well; it was no less a debt because part of it was further secured, it retained its original quality of a debt. And being offered these bills for the whole amount, he did not look a gift horse in the mouth, but took what was offered. For that part of them already secured he must give credit. But, upon what principle it can be argued that this is to be held to be a destruction of his legal estate, vested under the mortgage, I am utterly at a loss to understand. I am fortified in this view by the careful decision of Miller, J., in *re Ferrall*. It is said, secondly, that after all this had been done—after he had got his mortgage, after he had received this payment—the certificate obtained under the 352nd secsection (which I may call certificate No. 2) destroyed his otherwise *prima facie* right. And here we are told by one gentleman at the bar that we are bound by *In re Kennedy*. I have utterly failed to perceive how *In re Kennedy* has the remotest bearing on the matter, or in what way it is worthy of being referred to as binding on any Court. What is the decision? It is a decision that it was not time to decide anything at all. But indeed, the report in the Irish Chancery Reports is a farrago of errors both of fact and in law. It ought never to have been reported at all, much less selected to the exclusion of many important decisions which have never been published. The only safe ground on which to act in reference to that case is the order which is given at the end of the report. What is the order? The Landed Estates Court had made absolute a conditional order for sale; there was pending in the Court of Bankruptcy a proceeding to get certificate No. 2; on appeal, the Court of Chancery Appeal simply held it to be premature, until they had ascertained whether certificate No. 2 would be granted at all, to entertain the question whether the order should be made absolute. They resolved to keep open the conditional order, so that when, after future events, that fact of the obtaining or failing to obtain certificate No. 2 was before them, they might be in a position to discharge or make absolute the conditional order. And then we are told that two experienced and long-sighted men (including the then Lord Justice of Appeal, Blackburne, J., one of the most cautious judges that ever lived) decided beforehand and prospectively that, in the event of the happening of a possible contingency, the conditional order should not be made absolute. The answer is to turn to the order which was made: "The Court doth order and declare that the making absolute the conditional order of the Landed Estates Court, dated the 22nd October last, by order of the said Court, dated the 16th January last, was premature; and accordingly it is further ordered that the said absolute order for sale be, and the same is hereby set aside. . . . This order to be without prejudice to the right of the said James Reid to renew his application to make absolute the said conditional order for sale, after any decision of the Court of Bankruptcy and Insolvency on any application which said Robert Kennedy may make for a certificate under the provisions of the Irish Bankruptcy and Insolvency Act, 1857." That is to say that, whether the decision should be against or in favour of giving certificate No. 2, the creditor was simply to be at liberty to renew his application to make absolute the conditional order before the judge of the Landed Estates Court, and, if necessary, to appeal from his decision. There was the *decision* in *re Kennedy*. What followed we do not know; but what we do know is this, that the very thing which the Court kept open and refused to decide in that case, was the very thing which came before this Court in *re Lambe's Estate*. In that case, on the very day on which the conditional order for sale was made absolute in the Landed Estates Court, certificate No. 2 was granted to the trader in the Court of Bankruptcy. Judge Dobbs refused to set aside the absolute order, and it was on that refusal the case was brought into the Court of Chancery Appeal. The Court of Appeal did there decide that the obtaining of this certificate No. 2, though having the effect of a certificate of conformity in bankruptcy, had not the operation of divesting the security which had been obtained pending the proceedings in arrangement; that it was not the less valid in consequence; and that this certificate had a prospective, not a retrospective, effect. They held that it could no more destroy the security already legally obtained, than the certificate in bankruptcy could destroy a legal security obtained before the bankruptcy proceedings commenced at all. That decision we are bound to follow. The next argument addressed to us was a curiosity in its way. It was based on the operation of the 262nd section. [His Lordship read same]. That section has no application here, for three all-sufficient reasons: (1) It relates to bankruptcy and insolvency, and has no application to arrangements. Although it was said that the 262nd section makes certificate No. 2 tantamount to a certificate of conformity in bankruptcy, the giving to certificate No. 2 the effect of a certificate of conformity does not bring into relation every clause referring to bankruptcy, and it has nothing to do with the effect of the 262nd section. (2). Samuell, though he received the money, never proved or was properly admitted a creditor under the proceedings at all. (3). What is it that the creditor loses by electing to prove under section 262? His right to proceed with his suit. The proof of debt is to be considered a relinquishment of the suit. Here the suit was at end long before he received the composition notes. Is there a word in the 262nd section to show that he is bound to relinquish the security he had previously obtained in the nature of a mortgage? On all those grounds, the appellant's case has failed. As to so much of the promissory notes received as would be applicable to the discharge of the £94 7s., credit shall be given in the Landed Estates Court, as against the sum which shall be found due on the judgment mortgage.

Appeal dismissed with costs.

Solicitor for the appellant, *Bourke*.
Solicitors for the respondent, *Fay & M'Gough*.

Digitized by Google

ROLLS COURT.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before SULLIVAN, M.R.)

HUGHES AND ANOTHER v. D'ARCY.

18th April and May 7th, 1874.—*Injunction—Action of trespass—Setting up tenancy, created by a receiver appointed to receive rents for a minor.—Assertion of doubtful equity.*

Where A, a former receiver over portion of a property, to another portion of which he was himself entitled, after an order directing division in a partition suit remained in possession of the entire property, and B, the person entitled to the other portion of the lands, before execution of the mutual conveyances attempted, by force, to oust A from that portion of the lands to which B was entitled, an application for an injunction against an action for trespass against B was refused; but an injunction was granted against A setting up a tenancy from year to year in himself to a portion of the lands, which he alleged was acquired by him while acting as receiver for the whole property for a minor under the Court of Chancery, notwithstanding the receipt of rent from him by the agent of the minor subsequent to his discharge as receiver, A having elected to accept a scheme for division proposed under the partition suit, in which the portion of the lands in question was treated as not in the occupation of any tenant.

Bill filed by John Hughes and Dillon Hughes against Dominick D'Arcy praying that the defendant be restrained from prosecuting an action at law for trespass as brought by him against the plaintiffs, or that he be restrained by injunction from relying in the action on the assignment to him of the tenancy of persons named Marne, and that it be declared that he has no estate as tenant in the lands of Church Park. The facts of the case were as follows: Joseph Lynch MacDonnell being absolutely entitled, under a lease for lives renewable for ever, to the lands of Doocastle, devised them to the plaintiff John Hughes in trust for the testator's sisters Sarah, Eleanor, and Mary Mac Donnell, as tenants in common. The testator died in 1856, at which time Eleanor and Mary were minors. Sarah married the defendant D'Arcy, and on her marriage her undivided one-third part of the lands was conveyed on trust for the use of D'Arcy for life, remainder to the issue of the marriage. In 1856, the two minors Eleanor and Mary were made wards of the Court of Chancery: D'Arcy was appointed guardian and receiver. Eleanor came of age in 1860, and was discharged from the wardship of the court; but D'Arcy was not discharged as her guardian and receiver until 1871. Eleanor died in 1868, having by her will left one-fourth of her share to Mary, and three-fourths to the children of Sarah by D'Arcy. Mary MacDonnell was, in consequence, entitled to five-twelfth's of the lands, the remaining seven-twelfth's going between D'Arcy and his children. D'Arcy filed an account as guardian and receiver in 1864, stating that a portion of the premises known as Church Park, was held by the representatives of a person named Marne, and accounted for the rents thereof. Mary MacDonnell was discharged from the wardship of the court 1st June, 1869. D'Arcy not having fully accounted, a summons was obtained in 1869 by Mary MacDonnell to compel him to do so, in consequence of which he lodged an account up to 1st May, 1869, and afterwards a supplemental account up 1st Nov., 1869, both of which accounts were subsequently passed. In the first account he stated that the field called Church Park was held by the representatives of persons of the name of Marne. In the column of observations in the supplemental account it was stated "Church Park is most of it in Mr. D'Arcy's possession at an outlay of over £100 for compensation to tenants and the parties thereon." Pending the passing of these accounts, on 20th December, 1869, Mary MacDonnell filed a bill for partition of the lands, and by the final decree of the Vice-Chancellor, it was ordered that the lands be divided into shares of five-twelfth's and seven-twelfth's, and that five-twelfth's be allotted in severalty to Mary MacDonnell, and the remainder to the defendants, D'Arcy and his children; that proposals for a partition be laid before the judge in chamber; and that the parties should hold their shares in severalty, and execute mutual assurances. A surveyor having been appointed to divide the lands, a two-fold division was presented. D'Arcy did not object to the Church Park being returned and treated in this partition as in the owners' possession unlet, and not paying rent. He did make certain other objections which were overruled; and D'Arcy was given his choice of lots, and he did thereupon make his election. The Chief Clerk made a certificate to that effect, which was approved of and signed by the Vice-Chancellor, 7th May, 1873. On 23rd Nov., 1871, Mary Mac Donnell died, pending the partition, having devised her share in the lands to John Hughes the plaintiff. Prior to her death, and subsequent to her attaining age, Mary MacDonnell appointed the plaintiff Dillon Hughes her agent. As such agent, the defendant paid him rent for three half years, for which Dillon Hughes gave him receipts as representative of Marne. In April, 1873, Hughes entered into possession of the lands; the evidence was conflicting as to whether D'Arcy's stewart delivered up possession of the lands to the plaintiffs servant. Hughes put a lock upon the gate; some days after D'Arcy re-asserted his possession of Church Park, and locked the gate on his own account. On the 1st of May, Dillon Hughes accompanied by 16 men, proceeded with some violence to break the lock and take possession of Church Park. For that an action of trespass was brought by D'Arcy, against the present plaintiffs, which was now sought to be restrained by injunction.

Mr. O'Hagan, Q.C., and *Mr. Monahan*, Q.C. (*Mr. O'Neill Burke*, with them), for the plaintiff, cited *Stannus* v. *French*, 13 Ir. Eg. 161; *Brooke* v. *Lord Hertford*, 2 P. Wms. 518; *Tuckfield* v. *Buller*, Amb. 198; *Boura* v. *Wright*, 4 De. G. & S. 265; *St. Leger* v. *Ferguson*, 10 Ir. Ch. Rep. 488.

Mr. Walsh, Q.C. (with him *Mr. Macdermot*), for the defendant. A Court of Equity will not interfere with a legal right upon the assertion of a merely doubtful equity, *Osborne* v. *Eales*, 2 Moore P. C. 158.

SULLIVAN, M. R. (after mentioning the facts of the case)—I cannot conceive a more mistaken proceeding than the forcible putting an end to D'Arcy's possession. It is for that act the action was brought. One of the questions in this case is whether D'Arcy had a right to maintain his possession as undivided owner by law, for if he had I have no right to restrain that action. It is the resumption of the right by Hughes that must be judged of as an original act, apart from the former giving up possession. It has been objected that the plaintiff was equitable owner of five-fifth's of the estate, and was clothed with a right of immediate possession. I do not concur in that proposition at all. In a partition suit, until conveyance executed, the parties retain the legal right, unless that right is put an end to by an order in the cause. It was attempted to show, on behalf of the plaintiff, that an equitable owner must be regarded as a potential owner at law—that is true in the

Digitized by Google

case of a purchaser, but I have never known that it carries with it the right of possession on the part of a purchaser. Before conveyance executed one of the co-owners should not turn the other out, until conveyance executed the legal estate remained in full force, and if either of the co-owners thinks he has a right, the proper mode of proceeding is by an order, and not by taking forcible possession. I must have a clear equity to found the injunction upon; the only equity I can see is that there was an election, but that should be the foundation of the order of the court. If Hughes, instead of this assertion of his right by force when he found the gate locked by D'Arcy, had taken proper legal advice, I venture to say he would have been advised to execute his conveyance, to compel D'Arcy to execute the deed, and then enter into possession. As to the general staying of the action, I am of opinion that I have no right to restrain the action on this branch of the case. As to the second branch of the case, as to D'Arcy setting up a tenancy from year to year in Church Park, I have not a shadow of doubt that the proposition that D'Arcy who was the guardian of these minors, should set up a tenancy from year to year, is one of the most absurd propositions that could be put forward. D'Arcy could not get his ward to make that contract either by confirmation or original contract; *Borrows* v. *Walls*, 5 De. G. M'N. & G. 233. As to Ellen the case is clear; as to Mary MacDonnell, when she reached her age of 21 years in 1869, she put herself into the hands of independent persons, she appointed her own agent, she filed a bill for partition and was in a hostile position to D'Arcy. Dillon Hughes was appointed her agent, and on 15th Nov., 1871, he gave a receipt for rent to D'Arcy himself by name, as representative of Marne, for Church Park. This acknowledges him to be tenant of Church Park. D'Arcy cannot rely on a tenancy created before Mary got into adverse hands, nor can he impart into his subsequent possession any portion of an equity acquired before she was of age, until the whole facts were laid bare to her. I will not allow D'Arcy to have the chance of obtaining a verdict by setting up this tenancy from year to year, by force of an original equity which he cannot set up in this court, and which is likely to lead astray. There is another equity, higher than the former one; in the partition suit he allowed the lands to be partitioned, on the supposition that he was not tenant of Church Park—can he keep seven-twelfth's of the estate, and then subsequently turn round and say he is tenant of Church Park; D'Arcy must be restrained from setting up any tenancy from year to year in the lands of Church Park. If the bill had not prayed for a general injunction, I would have made D'Arcy pay the costs, for there never was a more inequitable proceeding, than setting up this tenancy. Both parties must pay their own costs up to this hearing.

Solicitor for plaintiff, *O'Neill.*
Solicitor for defendant, *White.*

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J., O'BRIEN, and FITZGERALD, JJ.)

THE QUEEN *v.* THE MAYOR AND CORPORATION OF CORK.

May 2, 1874.—*Certiorari—Discretion as to issuing—3 & 4 Vic. c.* 108, *s.* 131—*Borough Fund—Surplus—Public benefit of inhabitants—Charitable infirmary—Cork Improvement Acts*, 1852, *s.* 37, *and* 1868, *s.* 159—*Constabulary—Waterworks.*

Borough Funds held by Municipal Corporations, to be applied under 3 & 4 Vic. c. 108, *s.* 131, *are impressed with the character of trust funds, to be disposed of for the purposes therein specified.*

There is no surplus of a Borough Fund, for the purpose of being applied for the public benefit of the inhabitants and improvement of the borough, under 3 & 4 Vic. c. 108, *s.* 131, *so long as any debt contracted after the passing of the Act remains due by the Corporation, while the balance of receipts over expenditure is less than the sum so due.*

A Borough Fund, after satisfying the purposes primarily defined in 3 & 4 Vic., c. 108, *s.* 131, *should be applied to the reduction of taxation, and the ultimate surplus disposed of for the public benefit of the inhabitants of the borough and the improvement of the borough.*

Quære, *whether a payment out of the surplus of a Borough Fund is "for the public benefit of the inhabitants" of the borough, within 3 & 4 Vict., c.* 108, *s.* 131, *where same is allocated to a charitable infirmary, to which all the inhabitants might resort, in order to recoup expenditure incurred in consequence of an epidemic extensively prevailing in the borough?* Semble (per O'BRIEN *and* FITZGERALD, JJ.), *it would be for public benefit of the inhabitants, within that section.*

Observations (per Cur.) *as to the necessity of greater circumspection by municipal corporations as regards the application of corporate funds, in order that payments to which the Borough Fund is primarily liable may not be allocated out of other rates.*

Motion to make absolute a conditional order for a *certiorari*, issued on the 13th of June, 1873, to remove into the Court, for the purpose of being quashed, the resolutions and proceedings of the defendants of the 5th of June previously, authorizing the payment of the sum of £200 to the trustees of the North Charitable Infirmary of the city of Cork, on the ground that such proceedings were illegal and void, were made without and in excess of jurisdiction, were wholly *ultra vires*, and not within the competence of the defendants.

The prosecutor, James M'Dougall, was by trade a cooper, residing in Cork, of which city he was a ratepayer and burgess. It appeared that, in pursuance of the authority conferred by the 37th section of the Cork Improvement Act of 1852, the Corporation allowed an application by the trustees of the North Charitable Infirmary of the city of Cork for a sum of £700, which was duly fiated by the recorder of the borough. A meeting of the corporation of Cork took place on the 5th of June, 1873, when it was proposed and seconded that a further sum of £200 be paid to the trustees of the infirmary to recoup them for the expenditure incurred in respect of the small-pox epidemic then prevailing. An amendment was moved and seconded to the effect, that while they deplored the unhealthy state of the North Infirmary treasury, they dare not violate the spirit and letter of the Act of Parliament, which fixed the maximum amount at £700 per annum for that duty, which sum had been paid to the treasurer, and the corporation should protect the pockets of the rate-payers, by rejecting the application for an extra grant, such being clearly illegal. Notwithstanding that amendment and protest, the resolution was passed, and the sum of £200 was given to the trustees of the infirmary. It further appeared, that there was an outstanding debt (£3,000) contracted after the passing of the Municipal Corporations Act; and that a surplus alleged was not realized, and was only apparent in consequence of the borough fund not having been charged with expenses to which it was liable.

G. Fitzgibbon, Q.C. (with him *Rooney*), in support of the order, cited *Attorney-General* v. *Mayor and Corporation of Norwich*, 2 M. & Cr. 429; *Queen* v. *Mayor and Council of Warwick*, 15 L. J. Q. B. 306; *Queen* v. *Corporation of Sheffield*, L. R. 6 Q. B. 652; *Parr* v. *Attorney-General*, 8 Cl. & F. 409; Grant, Corporations,

Digitized by Google

488; 3 & 4 Vict., ch. 108, s. 131; 6 & 7 Will. 4, ch. 116; Cork Improvement Act, 1852 (15 & 16 Vict., ch. 143, ss. 35, 37), and local Acts 1856, 1868, 1872.

W. Johnson, Q.C. (with him *O'Shaughnessy*), *contra*, cited *Queen* v. *Prest*, 16 Q. B. 32; *Queen* v. *Lord Newborough*, L. R. 4 Q. B. 585.

WHITESIDE, C.J.—We have heard this case most ably and fully discussed, and we do not think that any benefit would arise from postponing our judgment. It is a question of very great general importance as regards the management of the funds of the various corporations throughout the country. The applicant moves for a certiorari to dispute the validity of a particular order, which has allocated a sum of £200 to recoup a charitable institution in Cork. It has been asserted, on the part of the Corporation, upon whom I do not cast any censure, that the order should not be granted, and at the foot of their case lies the assumption of a fact, that they had a surplus. On the part of the applicant, it has been shown that there is nothing that has repealed the 131st section of the 3rd & 4th Victoria, chap. 108. That Act of Parliament provides how the funds, which, no doubt, are impressed with the character of the trust, are to be appropriated. The property of the Corporation is held in trust, not for the benefit of the corporators themselves, but of the rate payers, and these are entitled to have the protection of the Court in seeing that the funds shall be applied to the purposes designed by the statute. Now, in what manner are these funds to be applied? To the payment of the salaries of the mayor, the police magistrates, the recorder, the town clerk and treasurer, and other officers of the Corporation, the erection and maintenance of corporate buildings, and all other expenses necessarily incurred, and in case the borough fund should be more than sufficient for the purposes aforesaid, the surplus should be applied towards the paving, cleansing, and lighting the streets, or applied in cases where the power given to any of the trustees for paving, cleansing, and lighting the streets should not have been transferred to the council, "for the public benefit of the inhabitants, and the improvement of the borough." The whole argument in the case turns upon the right construction of the latter words. The learned counsel for the Corporation have not contended that the previously expressed purpose—the paving, lighting, and cleansing of the city—should not be first satisfied and carried out, but they have insisted upon, and quoted authorities to sustain their arguments (Grant's Law of Corporations; amongst others), that in case the borough fund shall be more than sufficient for the purposes (specified), the surplus shall be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough; but the public purposes are those of the borough, and not the general benefit of the community at large. This is very good so far, but it is plain we cannot advance an inch in the argument until we have *a surplus*. We experience in this case the same difficulty as that which is encountered sometimes in financial proceedings—we cannot be generous till we have a surplus. I was, in the early stage of the case, fascinated by the picture that was drawn of Cork, and I was quite charmed by the idea that, independent of the beautiful scenery of the county, the city was comparatively free from taxation; but it was explained to us with accuracy, and it was highly interesting to perceive that the city of Cork has not been deprived of the advantages enjoyed by the city of Dublin, of being subjected to a fair amount of local rates. A sum of £20,000, in the shape of a mortgage on city taxes, started up, and came to the front. I think that the counsel for the Corporation have established that, though this liability was primarily imposed upon the borough rate, practically, when we look at the clause as to the water rate, we find that the amount is to be discharged out of the water rate. The water works were completed by this fund, and the borough rate folk, who are primarily liable for the debt, have provided that it must be paid out of the water rates, and by instalments, as directed in the Act, and, to our great gratification, it appears that this debt is in process of reduction, but some-how or other it is still a debt; yet I would not wish to rest my judgment upon what I have heard as to this matter. It has been shown substantially that the money is to be paid out of the water rate, which is sufficient for the purpose, although between the lender and the borrower the mortgagee, to whom the debt is due, may come down upon the borough rate, so that it has been clearly made out that both borough rate and water rate are liable for this loan, although as between themselves the water rate must pay the whole mortgage. I am afraid that if counsel for the applicant had been allowed to proceed further in his address to us, by his industry he would have shown that the Corporation runs in debt to a still greater amount than that which, over and above the mortgage, has been clearly established to exist. Nobody can deny that it is the first duty of a Corporation to accomplish the reduction of local taxation, if it can. It is so rarely attempted, or accomplished, I refer to it as a legal theory, that if there be a fund available, you should apply it to pay your debts; if there be a surplus, it is only honest to pay what you owe before benevolence takes possession of your purse. But, here there was a considerable debt due by the borough fund, in addition to the mortgage, and the conclusion of law is clear—there was no warrant for the Corporation to do a thing that, however creditable to them as regards its philanthropy, did not come within their powers. It has been insisted that this applicant is a contumacious cooper, who has no *locus standi* here, to complain of what has been done; but a cooper has, like any other member of Society, a right to any legal satisfaction which he can obtain in the Court of Queen's Bench, and I cannot inquire into his views or vocation; I am merely dealing with his rights. I may say that artizans and coopers are of a class that we should respect, for at present they nearly govern the empire. Let us now inquire why was this sum of £200 voted to the infirmary? Mr. Johnson has told us that small-pox invaded Cork, and two hospitals were taken up with the patients. An application was made in a proper manner by a humane person to the Town Council, and they made the grant required to relieve crowded hospitals. It was a *bona fide* proceeding, and the party who applied was actuated by principles of humanity; but if it had only occurred to the Corporation that each member should put his hand into his pocket, and subscribe £10 to this charitable object, no question would have arisen as to the legality or the benevolence of the proceeding. I quite agree with Mr. Johnson in thinking that the motive was a laudable one, if they had authority to do what has been done; but it is necessary for us to hold a tight hand upon those who administer public trust funds, and we have not anything to do with purposes of benevolence unless they are justified by positive law. In our opinion, the positive law is with the applicant, and we think that the £200 was given by the Corporation at a time when debts were due by them, to the liquidation of which the funds arising from taxation should, in the first instance, have been applied. The cases which have been cited and the general law applicable to the matter give us a certain discretion; and Mr. Johnson read a case in which the Court said that where the fund had been appropriated by a corporate body, not contrary to morality, but, as regards technicality and legality, not properly or accurately, yet not done in a way amounting to a breach of faith, the Court would not interfere. Here what was done was done for a salutary purpose, and a sharp observation was made by Mr. Johnson—namely, that the allowance had been previously made to the hospital with the sanction of the applicant here, and that the item was inquired into before the Recorder, and allowed. It is not matter of surprise to us that the money was so applied, and, looking at the whole of the case, we think that the Corporation of Cork conceived that they had authority to do what they did in applying the money to this charitable purpose; but I beg it to be understood that, supposing they had a surplus, it is not the business of judges to encourage the application of money otherwise than as the law allows, nor is it our intention to say, whether or not, if they had the

Digitized by Google

surplus, that in the words of the Act, and connecting those words with the prior words of the sentence, this was the best purpose to which the money could be strictly applied. That is a matter for future consideration; for the present, we content ourselves with giving the opinion that the Corporation of Cork, and other bodies similarly circumstanced, must accept, that until there is a clear surplus, and that debt has been discharged, such an application of the fund as that which has occurred in the present case, however creditable it may be to the individual by whom it has been carried into effect, cannot in point of law be sustained. We content ourselves with giving expression to this opinion. We shall make absolute the conditional order for a certiorari. The money has been actually paid to the hospital, and we do not intend to do more than effectually give a judicial warning to this and every body similarly situated, and we are of opinion that the applicant must have his costs of the whole of these proceedings.

O'BRIEN, J.—I concur in the order pronounced by my Lord Chief Justice. The principles involved in this case are of some importance as regards the administration of municipal funds. It appears that there has not been any "borough rate" struck in the city of Cork; and counsel for the Corporation contend that the accounts produced before us show that for the year in question there was a surplus of the "borough fund," which, under the 131st section of the General Corporation Act of 1840 (3rd & 4th Vict., c. 108), the Corporation were entitled to apply "*for the public benefit of the inhabitants and improvement of the borough*," according to the concluding provision of that section; and counsel further contend that, considering the circumstances under which the disputed payment of £200 was made, and the purposes for which it was applied, it should be regarded as a payment made "*for the public benefit of the inhabitants*."

I shall, first, consider the question whether there was actually any surplus of the borough fund which was properly applicable under that concluding provision. It would appear from the Corporation account of this borough fund, that for the year the receipts exceeded the expenditure by a balance of £1,948 18s. 8d.; but, upon reference to some of the items and charges in that and the other accounts, I think it clear that such balance, or any part of it, cannot be considered as constituting a surplus of the borough fund. The 131st section refers to the case of debts due by a Corporation *at the passing of the Act*, and provides, with respect to them, that the Corporation, after paying the interest of such debts, may, if they think fit, leave unredeemed or outstanding such portions of the principal of those debts as they should not be required to pay, and may apply the borough fund for the other purposes mentioned in that section, instead of paying any part of the principal of those debts; but there is not any such provision with respect to debts contracted *after* the passing of the Act. It appears by the account before us that several hundred pounds are still due for debts contracted before the passing of the Act, and the interest thereon is included as part of the yearly expenditure. It also, however, appears from that account that a further sum of £3,000 (which it is admitted was borrowed by the Corporation on the security of the borough fund after the passing of the Act) is still due and unpaid. It follows, accordingly, that so long as that £3,000, or any part of it, remains due, there could be no actual surplus of the borough fund, except the balance of receipts over expenditure should exceed the amount so due. And on the account before us that balance is considerably less than the £3,000. It is clear, therefore, that, independent of any other objection to the account, there was no surplus to warrant the Corporation making the payment in dispute out of the borough fund.

Counsel for Mr. M'Dougal, the prosecutor, also rely on the fact that since the passing of said Act of 1840 another sum, of about £20,000, was borrowed by the Corporation on the security of the borough fund, and that about £15,000 is still due thereon. It appears from the 159th section of the Cork Improvement Act (1868) that this sum of £20,000 had been borrowed and expended for water works purposes; and that section provides that the water rates and revenue, should recoup and repay to the borough fund all sums paid from time to time out of said borough fund for the principal or interest of said mortgage, but that as between the Corporation and the persons who had advanced that £20,000 the borough fund should be the fund primarily liable for payment of such principal and interest. That Act of 1868, also, provides that part of such water rates and revenues should, after five years, be set apart from time to time as a sinking fund to pay off the sum so borrowed. It further appears by the accounts that this debt of £20,000 has been reduced to about £15,000 by payments made out of the water rates and revenues; that the interest of said mortgage has also been regularly paid thereout; and that such rates and revenues are amply sufficient to repay the entire of said debt without resorting to the borough fund. Mr. M'Dougall's counsel, however, contend that, as the parties entitled to this £15,000 may resort to the borough fund for its payment, it should be considered as one of the debts which, under the provisions of the 131st section of the General Act of 1840, the Corporation were bound to discharge before the borough fund could properly be applied for the other purposes mentioned in that section (excepting the debts), and before there would, in fact, be any surplus for such purposes. Considering, however, the circumstances connected with this debt, and that the water works rates and revenues are liable to indemnify the borough fund from all liability in respect of this £15,000, and are amply sufficient for that purpose, I do not think that the fact of its being still due would interfere with the powers of the Corporation to apply the borough fund for the other purposes mentioned in that 131st section; but it is not requisite for the purposes of the present case to decide that question.

Other objections to the accounts have been, also, relied on as showing the illegality of the payment in dispute. By that 131st section the borough fund (subject to the provision as to the Corporation's debts) is directed to be applied for various other purposes therein mentioned; and it is only the *ultimate surplus* of the fund, after satisfying those purposes, which is declared applicable "*for the public benefit of the inhabitants*." It appears, however, from the accounts before us that the payments required for some of those purposes have been made out of moneys realized by other rates, without any part of the borough fund contributing to such payments. I need refer only to one sum—namely, the charges of £1,152 for additional constabulary force, which appears to have been made out of the "*general purpose rate*," levied under the 37th section of the Cork Improvement Act of 1852, although under the 122nd and 131st sections of the Municipal Act of 1840 it was primarily payable out of the borough fund or out of the borough rate, which the Corporation were by that Act empowered to make. It is not necessary to refer to the other objections appearing on the accounts.

Mr. M'Dougall's counsel have further argued that, even if there were a surplus of the borough fund to which such concluding provisions of the 131st section would apply, yet that the disputed payment of £200 should not be considered as a payment made "*for the public benefit of the inhabitants*" within the meaning of that section. If that were the only objection to the payment, I think there would be strong grounds for sustaining its legality. The affidavits show that from the extent to which the epidemic of the small-pox then prevailed in Cork, the payment was really beneficial to the inhabitants—that it was made in support of a charitable infirmary to which they could all resort, and that, in fact, it saved an expenditure to a greater amount, which would have been otherwise thrown upon them. I may refer on the question to part of Lord Cottenham's judgment in *The Attorney-General* v. *The Mayor of Norwich*, 2 Myl. & Cr. 429, in which he clearly intimates his opinion that if a Corporation had a surplus of the corporate funds in their hands, to be applied according to their discretion to the public benefit of the inhabitants, they would properly exercise that discretion by applying a portion of that surplus to the payment of expenses incurred in proceed-

Digitized by Google

ings taken for the purpose of insuring the proper administration of certain charity funds also vested in them for the benefit of the town.

I think it clear, however, upon the other grounds I have stated, that the payment in dispute was not legally made; but I concur with my Lord Chief Justice in opinion that, under the circumstances of the case, and in the proper exercise of that discretion which the Court has with respect to writs of certiorari, we should not in the present case issue that writ for the purpose of quashing the resolutions or orders connected with this payment. Our doing so would, probably, cause considerable pecuniary loss to persons who acted perfectly *bonâ fide*, and under the erroneous impression that they were legally warranted in making a payment which was certainly beneficial to the inhabitants at large.

With respect to the irregularity complained of in paying out of other rates what was primarily payable out of the borough fund, that habit appears to have prevailed for several years without complaint or objection. I should infer from the affidavits that, before the Cork Improvement Act of 1852, the grand jury of that city, in levying rates, &c., for the purposes of the various presentments which they passed, did so without reference to the fact that, under the Municipal Act of 1840, part of the borough fund was primarily applicable for some of those purposes, and that, when the Cork Improvement Act of 1852 deprived the grand jury of the power of making presentments or levying rates, and empowered the Corporation to make a "rate for general purposes" (s. 37), and "an improvement rate" (ss. 118, 120), the Corporation, in like manner, made and levied those rates without reference to the primary liability of the borough fund for some of the purposes for which such rates were levied. But, whatever was the original cause of this erroneous mode of proceeding, it should no longer be continued, as it might lead to a misapplication of some of the corporate funds, and unduly increase the liability of the ratepayers; and what has transpired in the discussion of this case should impress upon the Corporation the necessity of applying their several rates and funds in the manner directed by the Municipal Act of 1840, and their several local Acts, so that one particular fund or rate should not be applied to pay what should properly be paid out of another.

Fitzgerald, J.—I concur in the judgment of the Court, and it is only the importance of the case that could excuse a word from me in addition to the observations that have fallen from the other members of the Court. At an early stage of the argument, I thought the case was a clear one; and it has been simplified by the argument of the applicant's counsel, which has converted a surplus into a deficiency. In reference to the legal ground of the judgment of the Court, we need not go beyond that, for when once it is proved that there is not a surplus but a deficiency, the order must go to bring up the resolutions and other proceedings, with a view to consider whether they should not be quashed. The legal ground upon which we proceed is a short one, but the case involves considerations which reach back further, and should be a warning to the Corporation of Cork and others, that when they come to dispose of corporate funds they ought to be well advised. They have in this case placed themselves in a position, I shall not say of legal liability, but of peril. As to the expenditure of the money, I think it was honestly and beneficially applied, and for a wise, public purpose; and if we had to decide whether this was an application of money "for the public benefit of the inhabitants and improvement of the borough," I would require strong argument before I could come to the conclusion that it was not. It is not necessary for us to consider that point. I may observe, in passing, that there are other items in the account not now questioned, but as to which I would probably take a very different view. The Corporation of Cork, who, I have no doubt, intended to exercise their powers for the public good, should be more upon their guard, or they may expose themselves to serious legal liability. If the question before us had arisen upon the 3rd and 4th of Victoria alone, it would have admitted of little doubt or argument. Lord Campbell has told us, in a case to which we have been referred, "that, before the Municipal Corporation Act corporations might do as they pleased with the corporate property, and no relief could be obtained for its misapplication." The greatest public abuses prevailed, and the only surprise is that any remnant of corporate property was left. Lord Campbell further says that the effect of the Municipal Corporation Act was to impress upon corporate property the character of a public trust for corporate purposes—first, for certain specified purposes, and when these were satisfied, and the corporate body came to deal with the surplus, they could apply it only for the public benefit and improvement of the borough. When the borough fund was more than sufficient for the purposes first specified in the Act, the Legislature defines other objects which must be satisfied before there can be any surplus with which to deal. The 131st section clearly defines the trust purposes to which the borough fund is to be applied. If the question had arisen under this Act alone, there would not be any question but that the balance, after providing for the carrying out of the defined objects, should be applied to the reduction of taxation occasioned by other rates, and the paving, cleaning, and lighting of the city. The borough fund, after satisfying the purposes specifically defined, should be applied to the reduction of taxation, and the final surplus, if any, for the public benefit of the inhabitants and improvement of the borough. Mr. Johnson has urged upon us, however, that as subsequent Acts of Parliament provided for the levying of rates specially devoted to local taxes, the Corporation was no longer under any obligation to apply the borough fund to purposes specially provided for by those subsequent enactments. Were we called upon to decide that question, which we are not, as there is not any surplus, I would hesitate before I came to the conclusion that the argument of Mr. Johnson was well founded. We do not decide that question, but advert to it by way of warning to the Corporation of Cork and other Corporations, that corporate property has been impressed with an ultimate trust for the reduction of taxation, to which it should be applied before it can be safely said that it is open to the corporate body to exercise any discretion on its application to other purposes. We therefore make absolute the conditional order for a certiorari; but as the money (£200) in this case has been honestly and beneficially applied for public purposes, and ought not to be recalled, we direct that the certiorari should not issue, but that can be done only by indemnifying the applicant from all costs.

Ordered, that cause shown be disallowed, and the conditional order made absolute, with costs to be paid out of the corporate funds: no writ, however, to issue.

Attorney for prosecutor, *Franklin.*
Attorney for defendants, *M'Carthy.*

Reported by Cecil R. Roche, Esq., Barrister-at-Law.

(Before O'Brien, J., in Chamber.)

The Queen at the prosecution of Anna Maria Murphy v. the Justices of County Dublin.

Dec. 2, 1873.—*Assault on a female—Justices declining jurisdiction*—12 *Vic.*, c. 16, s. 5—*Application to Justices of Petty Sessions—Order—Rehearing—Fresh evidence—Reducing to writing evidence tendered.*

Magistrates at Petty Sessions having heard an assault case, dismissed same; and subsequently a fresh summons was issued against the defendant on the same charge. The magistrates refused to rehear the case. The prosecutrix stated that she had fresh evidence, but did not tender the evidence reduced to writing,

Held, *that as no further informations were tendered, or statement made to the magistrates, on behalf of the prosecutrix, showing what would be proved besides what*

Digitized by Google

appeared on the previous informations, the Court would not, under 12 *Vic., c.* 16, *s.* 5, *compel the magistrates to rehear the case.*

Motion to make absolute a conditional order of the Queen's Bench, that the County Dublin justices should hear and determine, according to law and to their duty, in the matter of the summons or complaint of Anna Maria Murphy against W. B., at the Dundrum Petty Sessions District of the county, on the 28th April, 1873. The facts of the case, appearing on the affidavits, were as follows:—Anna Maria Murphy, the prosecutrix, went, on the 23rd March, 1873, about 9.30 p.m., to the Dundrum railway station, to see a friend off by the train. She came back accompanied by Anne Cunningham, and had got into the avenue leading to her master's house, when Cunningham called her attention to a man, apparently running from the direction of a broken wall towards where she was walking. Murphy called out "Is that Hackett?" (meaning the gardener), when the man jumped over the wire paling at one side of the road, and after asking a question of Murphy, rushed at her, threw her down, and made an attempt to take improper liberties with her. The two women resisted and called out, and the man ran away. According to the best of Murphy's opinion, the man was W. B. The prosecutrix went to the police station, and described the person who had assaulted her; the police arrested W. B., who was identified by the women as the man who had committed the assault. Informations were sworn against W. B., who was summoned to attend before the Petty Sessions, 31st March, 1873. Evidence was tendered on behalf of W. B., that Cunningham hesitated some time before identifying him; and that he had on a short coat, and had a large book under his arm, on the night in question; and the women swore that the man who attacked them had a long dark coat on. It was also deposed that W. B. was at the station at 10 o'clock p.m. on that night, and that he returned to his own house very shortly after. The majority of the bench were in favour of not sending the case to trial, and the chairman said he would mark in the book "Dismissed without prejudice." On 24th April the prosecutrix again summoned W. B. upon the same charge. The prosecutrix had since discovered three other persons who, she asserted, would give additional and important evidence in her behalf; these witnesses were present in court, but the prosecutrix did not state what the nature of the evidence was, nor were the names of the witnesses given, nor were any informations tendered or produced in court. The prosecutrix applied to have informations duly returned for trial against W. B. The magistrates read from the magistrates' book a statement that the case had been "dismissed upon the merits" The defendant objected to the case being reheard. The prosecutrix represented that it was the duty of the bench to hear the evidence to be offered in support of her application, and if they entertained any doubt as to their power, that they should take the opinion of the proper legal authorities. The magistrates refused to hear the case, or any evidence on the subject, and made the following order:—"The magistrates decline to hear this case, it having been heard and dismissed by this Court on 31st March, 1873." The affidavit of the majority of the magistrates stated that they did not act on the ground that they had no jurisdiction, but that they did not consider the facts of the case such as to warrant them in exercising it. In their discretion they refused to enter into the case a second time.

Waters, Q.C. (with him *Wall*), for the prosecutrix.—We apply to make absolute the conditional order for a rule obtained under 12 Vic., c. 16, sec. 5. The magistrates say that they have dismissed the case already; that is a declining of jurisdiction. The magistrates were under a misapprehension in point of law, that they could not entertain the complaint of the prosecutrix; that is shown by the words of the order. A mandamus will be granted to compel magistrates to hear a second information for breach of the excise laws, although they have already dismissed one for the same offence on a technical objection. *Commissioners of Excise* v. *Thomson*, 1 I. L. R. 5; *R.* v. *Justices of Kesteven*, 3 Q.B. 810; *R.* v. *Brown*, 7 E. & B. 757; *Queen* v. *Justices of Meath*, 2 Leg. R. 8.

Curran, for the defendant W. B.—The order was made, not under the idea that the magistrates had no jurisdiction, but because they thought it would not be fair to the defendant. The magistrates had heard the defence on the first hearing, and did not believe the identification was sufficient. The bringing forward the charge a second time looked like persecution. The prosecutrix did not, on the second occasion, tell who were her witnesses, or what was the nature of their evidence. "Written informations should be tendered, and on applications like the present, these informations should be brought before us that we may judge of their sufficiency. It is not enough that the substance of them should be stated to the magistrates, but having been reduced to writing, and tendered to them, if they refuse to take them, on coming before us we would, upon due consideration, grant or refuse the motion;" *Ex parte Hughes*, 1 I. L. R. 292, per Burton, J. So, *R.* v. *Gresson*, 3 Ir. L. R. 13; *R.* v. *Kelly*, 6 Ir. Jur. 276. The remedy under 12 Vic. c. 16 will not be granted in cases where a writ of mandamus would be refused. The writ of mandamus is not granted to give an easier or more expeditious remedy, but only where there is no other remedy, being both legal and specific; the Court has refused to grant (or, if granted, quashed) the writ in cases where there is a specific legal remedy, either at Common Law or by Act of Parliament; Tapping, mandamus, 18. There were other remedies in this case—under the Vexatious Indictments Act, 22 & 23 Vic. c. 17, when the justices refuse to commit or bail the person charged with any of the offences specified in the Act, then, in case the prosecutor desires to prefer an indictment, the justices may and are required to take the recognizance of such prosecutor to prosecute the said charge, and to transmit such recognizance, information, and depositions (if any) to the court in which such indictment ought to be preferred, as if they had committed the accused for trial. An indictment might have been preferred against the defendant for the offence, by the direction or consent in writing of a judge of the superior courts of law, or of the Attorney or Solicitor-General.

M'Kenna and *Monroe* for the justices.

O'BRIEN, J.—The proceedings here appear to have originated on the 31st March, 1873, when the case was brought before the magistrates to send for trial. The entry made on that occasion should have been made in the words of the Petty Sessions Act. The question was one of identification, and the magistrates (after having had the case before them for some considerable time) came to the conclusion that the evidence was not so satisfactory as to warrant them to act upon it. I cannot review the decision of the magistrates on the case as it stood on 31st March. The evidence may have been mistaken, and the magistrates had a right to come to the conclusion that it was not sufficient upon which to allow them to send the case to trial. Then was issued

Digitized by Google

the other summons, and then a miscarriage took place, the magistrates being under some misconception as to the effect of what they had done before. The previous decision which they had pronounced did not preclude them from going into the case upon fresh evidence being produced. But the prosecutrix did not tender any further informations, or disclose what the nature of her fresh evidence was. The magistrates were under a misapprehension; but were they bound, as the matter stood, to go into the case again? I assume that the former informations were in court upon which they had already exercised their discretion. The cases referred to by Mr. Curran clearly establish that the Court must have something before it. Upon what were they to go into the case? It must be considered that the parties charged are not to be exposed to the chance of being brought forward again and again. If any additional evidence were brought forward, the parties should have reduced their evidence to writing, and have said to the magistrates "We will swear this, and we require you to take the informations." The conditional order cannot be sustained. If there is any further evidence, there is a remedy under the Vexatious Prosecution Act. I shall take care that the order made by me does not prejudice the right of the prosecutrix to go on.

The magistrates say that they are willing to act on the suggestion of this Court; if any fresh evidence is produced by the prosecutrix, I suggest that it should be heard. I will give no costs, as I think a miscarriage certainly took place.

Cause shown allowed.

Attorney for prosecutrix, *Creagh.*
Attorney for defendant, *Ennis.*
Attorney for the magistrates, *Oldham.*

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before the FULL COURT.)

MORONEY v. MORONEY.

January 23, 31, 1874.—*Construction of will—The word "property" passing real estate—23 & 24 Vict., c. 154, s. 72—Ejectment in Civil Bill Court against over-holding tenant—Notice to quit not signed by each of two tenants in common.*

A testator, possessed of real and personal property, by his will appointed executors, ordering "that they, my executors, should act fairly, &c., in the several divisions of my property between my beloved wife and my legitimate children."

Held, *that the word "property" passed the testator's real estate to his wife and children, as tenants in common.*

A notice to quit was signed by one of two tenants in common in her own right and on behalf of the other, who was residing abroad. Although a written consent of the absent tenant in common was given subsequent to the service of the notice,

Held, *that the notice was insufficient, and that an ejectment brought upon it under 23 & 24 Vict., c. 154, s. 72, would not lie.*

Case stated:—The plaintiffs brought an ejectment at the Limerick Quarter Sessions, January, 1873, against the defendant as an over-holding tenant. It appeared at the trial that in 1848, Barry being then possessed of the house and lands, the subject-matter of the suit, under a lease for three lives, made his will, the material portion of which was as follows:—

"And for the fulfilment of my intentions I hereby appoint my brother-in-law, Mr. Kirkey, and the Rev. Mr. Hayden, P.P., as executors to this will, in order that they, my executors, should act fairly and impartially in the several divisions of my property between my beloved wife Margaret Barry, *alias* Kirkey, and my legitimate children," &c.

The testator died within the same year, without having altered or revoked the will. At the time of his death his wife and six children were alive. His eldest son afterwards died unmarried and under age. Two other sons emigrated—one about 1859, the other about 1866; neither was married when leaving, nor had any information been obtained about them since they left Ireland. Of the testator's remaining three children, all daughters, one died under age and unmarried. The others, Margaret Moroney, widow, and Helena Ford, resident in India with her husband, were the plaintiffs. The defendant was the brother-in-law of Margaret Moroney, and occupied as a yearly tenant the house and lands comprised in the lease. In 1872 Margaret Moroney served the defendant with a notice to quit "on behalf of herself and her sister." The notice was signed by Margaret Moroney alone, but after the service Helena Ford, joined by her husband, sued a full authority to Margaret to take all such steps as were necessary to eject the defendant.

The ejectment was dismissed, and, on appeal, the matter was brought before Deasy, B., at the Limerick Summer Assizes, 1873, when a special case, setting out the above facts was stated under the 27 & 28 Vict., c. 99, s. 35.

G. Fitzgibbon, Q.C. (with him *Blackall*), for plaintiffs.—There has been no disposition by the will of the testator's real estate. As to it, he died intestate. The word "executors" suggests the proper construction to be put on the word property—viz., personal estate. The plaintiffs, accordingly, are joint tenants, their father having made no testamentary disposition of his real estate, and they being the only surviving members of the family. The plaintiffs are not co-parceners. Being joint tenants, the notice to quit as signed was sufficient to determine the tenancy. They cited 1 Jar. Wills, pp. 613–15, ed. 1855; Co Litt., s. 254, Butler's ed.; 1 Steph. Com. Black 357, 6th ed.; Woodf. L. & T. 295, 8th ed.; Cole Ejectment, pp. 45–286; *Doe d. Astin* v. *Summersett*, 1 B. & Ad. 135, 140; *Doe d. Kindersley* v. *Hughes*, 7 M. & W. 141; *Alford* v. *Vickery*, Car. & M. 280.

Heron, Q.C. (with him *R. O'Shaughnessy* and *U. Bourke*), for defendants.—The will of testator passed his real estate, for "property" means "estate," and "estate" passes realty. The legatees, on testator's death, became tenants in common, and the plaintiffs have that and no other title. A notice to quit, by tenants in common, is not sufficient if signed by one of them only. The notice applies only to a share of the tenancy in common, and will not terminate the tenancy as required by the 23 & 24 Vict., c. 154, s. 72. They cited *Lynch* v. *Lynch*, Ir. Cir. R. 662; *Corboy* v. *Corboy*, 1 Cr. & Dix. 572.

MORRIS, J.—This is a special case reserved for the opinion of this Court by Deasy, B., at the last Limerick Summer Assizes. An ejectment for over-holding was brought by the plaintiffs, to recover possession of certain premises to which they are entitled under a lease of 1832. Margaret Moroney and Helena Ford allege that they derive their title to the premises from their father as joint tenants, because on the death of their last brother the title vested in them as surviving joint tenants. The notice to quit, which was intended to terminate the tenancy of the defendant, is signed by Margaret Moroney, for herself and on behalf of her sister. Now, if we considered Margaret and her sister were seised as joint tenants, we would hold the notice signed by one of the two as sufficient; but the question of the validity of the notice to quit is founded on

Digitized by Google

the supposition of an intestacy as to the real estate. The will of Michael Barry is short and informal. After mentioning some matters of no importance to the issue, its words run thus:—"For the fulfilment of my intentions I hereby appoint my brother-in-law, Mr. Joseph Kirkey, and the Rev. Mr. Hayden, P.P., as executors to this will, in order that they, my executors, should act fairly and impartially in the several divisions of my property between my beloved wife, Margaret Barry, and my legitimate children, of her begotten." The question is, did the interest of the testator, the lessee, being real estate, pass under this will? It is settled law that a gift of "my property" in a will passes real estate. Now, here there is no gift of property, but only a general direction to executors as to how they should divide property among a class of the testator's family. Considering the nature of the property and the language of the will, we are of opinion that the real estate passed thereunder. This being so, the plaintiffs are tenants in common merely, and the notice to quit, signed by Margaret Moroney, only ends half the tenancy. In the Superior Courts she might recover her share, but she could not do so in the Civil Bill Court, on the authority of *Corboy* v. *Corboy*, 1 Cr. & Dix. 572, or upon the proper construction of 23 & 24 Vic., c. 154, s. 72.

It is unnecessary to consider what would be the effect of the condition against assignment and sub-letting in the lease of 1832.

Dismiss affirmed.

Attorney for plaintiff, *Blackhall.*
Attorney for defendant, *Connolly.*

COURT OF CHANCERY APPEAL.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

In re DE SERANCOURT, a Bankrupt.

May 1; June 1, 2, 1874.—*Adjudication—Time for showing cause against validity of—Laches in applying to annul—Jurisdiction to rehear, vary, and rescind orders—Bankrupt applying, although not having surrendered—20 & 21 Vict., c.* 60, *ss.* 29, 129, 358—35 *& 36 Vict., c.* 58, *s.* 6—50 *G. O.* 1872.

Although a bankrupt does not contest the validity of his adjudication, within the period prescribed by 20 *&* 21 *Vic., c.* 60, *s.* 129, *the Court has jurisdiction afterwards to entertain an application to rescind it, under* 35 *&* 36 *Vic., c.* 58, *s.* 6. *But the Court will not in general, in its discretion, entertain an application for such purpose after the periods limited for showing cause under* 20 *&* 21 *Vic., c.* 60, *s.* 129, *and for appealing under s.* 29 *of that Act, have elapsed, unless under special and peculiar circumstances.*

Appeal from an order made by Judge Miller, dismissing a petition filed by Paul Emile de Serancourt, to have his adjudication as a bankrupt annulled.

On the 2nd December, 1873, Thomas Blackwell (the now respondent) presented a petition to the Court of Bankruptcy, praying that Paul Emile de Serancourt (the appellant) should be adjudicated a bankrupt, alleging that the appellant was a trader, was indebted to the respondent in the sum of £62 17s. 1d., and had committed an act of bankruptcy by remaining out of Ireland to defeat and delay said debt. On that petition the Court, on the 2nd December, 1873, adjudged the appellant a bankrupt. The adjudication was advertised in the *Dublin Gazette* on the 12th December, 1873. A duplicate of the order of adjudication was served at the appellant's residence on the 2nd December, 1873. The appellant did not, within three days from the service of the said order of adjudication, show cause to the said Court against the validity thereof, and did not obtain or apply for any extended time, for the purpose of showing such cause. The appellant did not within thirty days from the date of said order of adjudication enter an appeal against the same, nor did he obtain, or apply to the Court of Bankruptcy for any extension of time for such appeal. On the 9th January, 1874, the appellant filed in the Court of Bankruptcy a petition to have said adjudication annulled, on the ground that he was not a trader within the meaning of the statutes relating to bankrupts in Ireland, and that he had not committed an act of bankruptcy, as alleged. In support of said petition, affidavits were filed by the appellant and his wife, in which it was stated that the appellant, by birth a Frenchman, became a naturalized British subject in 1864; that he never carried on any business in Dublin, but was a merchant, residing in Dublin, and trading exclusively on the continent; that in September, 1873, he was laid up by an attack of illness, and on November 4th, 1873, went, by his doctor's directions, to England, for the benefit of his health, as the respondent well knew; that the appellant did not depart or remain out of Ireland for the purpose of defeating or delaying the respondent, or any other creditor; that when he heard of the adjudication he was still in England, but was prevented by his state of health from proceeding to have the said adjudication annulled within the three days allowed by the statute; and that in his absence negociations were going on between appellant's wife and the respondent, for the settlement of the matter. The appellant produced a verified certificate from his doctor, corroborating the foregoing statements as to the appellant's illness and necessary departure for England. For the respondent two facts mainly were put forward—viz., that the appellant, by his own admission, heard of the order of adjudication, and of the time limited for showing cause against same, on the 3rd December, 1873; that although he took no action till the 9th January, 1874, he returned from England on the 24th December, 1873. Various affidavits and counter affidavits were filed bearing on the question as to whether appellant was a trader or not within the meaning of the Irish Bankrupt Acts, but they did not affect the decision, and need not be further referred to. The matter of the said petition to annul the adjudication came on for hearing before Judge Miller on the 23rd January, 1874, and counsel for the respondent having raised a preliminary objection to the jurisdiction of the Court to entertain the application, the case was argued on that point alone, without going into any of the evidence. By order made on the 30th January, 1874, in said matter, Judge Miller refused the application, on the ground that he had no jurisdiction to entertain same, as reported *ante* 8 IR. L. T. R. 60. The bankrupt, at the time of the hearing of the said petition and of the making of the said order, had not surrendered, nor did he up to the time of the hearing of the appeal surrender.

Mr. Purcell, Q.C., for the respondent.—There are two preliminary objections to this appeal. Firstly, that the bankrupt has not surrendered, and is in contempt. Secondly, that the official assignees are not parties to the suit. The other creditors ought to be represented by the assignees in whom the property of the bankrupt has been vested.

Mr. Porter, Q.C., for the appellant.—Although the order refusing the application to annul the adjudication does represent the assignees as having appeared, they did not as a matter of fact appear, and our sole opponent was the petitioning creditor, who is the person really interested. The assignees were served with notice of the motion in the Court below. Why should the assignees oppose, when there was nothing to pay them

Digitized by Google

their costs? The only creditor who has intervened is the respondent, and practically this proceeding must be carried on at his expense.

The Court directed the assignees to be served with notice of the appeal, in order that they might, if they wished, appear; reserving the question of costs.

The appeal having again been set down for hearing, and it being now stated that the assignees declined to appear, but that they would be bound by the result of the proceedings to annul the adjudication, the case accordingly proceeded.

Mr. Walker, Q.C. (with him *Mr. Houston*), for the appellant.—The judgment of the Court below, 8 Ir. L. T. R. 60, proceeded not upon the merits, but on the ground that the Court had no jurisdiction in the matter. The question will be whether there is anything in the B. A. Act (Ir.), 1872, to control that 29th section of the B. & I. Act, 1857. Section 6 of the Act of 1872 provides that:—"The Court of Bankruptcy in Ireland shall continue to be a Court of Law and Equity and a principal Court of Record, and may review, rescind, or vary any order made by it in pursuance of the said Act, or of this Act." There is no time limited within which the order to rescind must be made. There is no similar provision in the Act of 1857; nor was there in the English Act of 1849, upon which *Carter* v. *Dimmock*, 4 H. L. 337, was decided.

[Christian, L.J.—Is there not an inherent power in every Court to undo an *ex parte* order made improvidently, on a mistaken or misrepresented view of facts?]

The only way that decision presses me is, that if that inherent power did exist under the Act of 1849, *Carter* v. *Dimmock* would be an adverse authority. However, there is since then this 6th section of the Act of 1872 expressly dealing with the matter.

[Sir J Napier, L.C.—According to your view of the 6th section, the Court could deal with any order at all.]

No; the power must be exercised by analogy to the appeal powers given by other portions of the statute.

[Christian, L.J.—The question is whether, on the fourth day after that order was made, the Court had an inherent power to undo an order made, on an *ex parte* application, under a misrepresentation of facts. Suppose that the Master of the Rolls has been entrapped into making some improper order, touching the property or liberty of an individual, and suppose three months elapsed, would not the Master of the Rolls have power to undo that order? Sir J. Napier, L.C.—Is not that the very ground of giving the three days? Christian, L.J.—The language of the 129th section is not that the order shall be at the end of three days final and conclusive, but that it shall be advertised.]

By section 8 of the English Act of 1869 the same powers are given as by the 6th section of the Act of 1872. *Carter* v. *Dimmock* decided that there could be then no re-hearing of an order of adjudication. But the Court of Bankruptcy, since the Act of 1869, has the power to rehear on such orders; *ex parte Meyer, in re Stephany*, L. R. 7 Ch. 188; *ex p. Brown, in re Jeavons*, L. R. 9 Ch. 304.

[Christian, L.J.—The question is whether you ought not to exercise your new power of rehearing within the same time within which, formerly, a bankrupt had the power of appeal under the Act of 1857, that being taken as a fair measure of discretion.]

It would be for the Court below to exercise that discretion. Although the bankrupt has not surrendered, he is not in contempt, as he was not served with a summons to surrender under 50, 108 G. O., 1872; and so, the time for surrendering not having arrived, he is not barred from petitioning; *ex p. Austin*, 1 M. D. & De G. 247. The judge below did not consider the non-surrender fatal; 8 Ir. L. T. R. 62.

He also referred to B. & I. Act, 1857, ss. 116, 127, 129; B. A. Act, 1872, s. 17; 42, 46, 47, 48, 49 G. O., 1872.

Mr. Purcell, Q.C. (with him *Mr. Carton*), for the respondent.—We contend that the judge had no jurisdiction; that assuming he had jurisdiction, the bankrupt has, by his laches, disentitled himself to any relief; that the bankrupt, being in contempt, had no right to be heard then, nor has he any such right now. Unless there is something in the Act of 1872 to displace the effect of *Carter* v. *Dimmock*, that decision is conclusive on the present case, showing that when the time provided by the Act of Parliament for showing cause had expired, the Judge was *functus officio* in the matter, and that the only course then open to the bankrupt was to appeal. *Carter* v. *Dimmock* is reported under the name of *ex parte Carter*, in 1 D. M'N. & G. 221, where Lord Truro indicates the policy and object had in view by the Legislature, in limiting the time for disputing the validity of adjudications. That policy is, still, to have an early decision on the question. Sections 29, 129, 358 of the Act of 1857 still subsist, and so the 6th section of the Act of 1872 must be taken in conjunction with them. The 6th section merely provides that the court shall have statutable power to do what it had been in the habit of doing before, but with questionable authority—namely, rescinding interlocutory orders and other such orders—there being some doubt as to whether the Court had power, under the statute, once an order was made to reverse it, and the 6th section of the Act of 1872 was passed to remove that doubt. *Ex parte Brown, in re Jeavons* confirms that view. Under the Act of 1869 the procedure to obtain an adjudication is no longer *ex parte*, for, on a *prima facie* case being shown, it is ordered that the party shall have notice of the application, so that he may come in and show cause; and on his failing to show cause, or if he does show cause, and it is disallowed, the adjudication is made. The 71st section of the English Act places orders for adjudications in the same category as other orders, save in two special cases. The 143rd General Rule (English), limits the time within which an appeal may be brought. In the English Act there is nothing equivalent to s. 129 of the Act of 1857, and nothing corresponding to 47, 48, 49, 50, G. Rs. 1872. In *ex parte Brown, in re Jeavons*, it was argued that the rehearing had been improperly granted.

[Christian, L.J.—The jurisdiction to rehear is assumed in that case to exist.]

There was no limitation in the Act of 1869. It is contrary to the policy of the statutes that, under the name of a rehearing, an appeal from an adjudication could be had at any time; it would be sweeping away all the limitations of the time for appealing.

[Christian, L.J.—It does not sweep them away in this sense, that, assuming the jurisdiction to exist, those considerations which you put forward would be very powerful in particular cases, to induce the Court not to exercise it; but here the question is whether there is jurisdiction at all, no matter what the affidavits disclose.]

It has been pressed that it would be a hardship that a party could not come forward to correct a decision obtained by misrepresentation or mistake. But this Court could hear further evidence; *ex parte Miller, in re Miller*, 32 L. J. Ba. 45.

Digitized by Google

[CHRISTIAN, L.J.—As to that, you need not go beyond the 29th section of the Act of 1857.]

The bankrupt is disentitled to relief by reason of his laches. He takes no step at all till the 9th January to set aside this adjudication, though he knew of it on the 3rd of December, the very day after the order of adjudication was made. It was gazetted on December 12th. He says he did nothing, not knowing that he could show cause, though he was over here on the 24th of December, and consulted his solicitor. How strictly the limitation as to time is upheld is shown by *in re West*, 3 De G. M'N. & G. 198, where even infancy was held to be no reason for not presenting a petition to annul the adjudication within the proper time. Moreover, the bankrupt is in contempt, and has no right to be heard here at all; *ex parte Jones*, 11 Ves. 409; *ex parte Wilkinson*, 1 Gl. & Jam. 387.

They also cited *in re Thorold*, 1 Phil. 239.

Mr. Houston in reply. There has not been such laches shown as would disentitle the bankrupt to the benefit of this 6th section of the Act of 1872, which is studiously silent as to any time within which this power should be exercised. Nothing would have been easier, if the Legislature intended that an order of adjudication should not come under this section, than to insert a few words excluding orders of adjudication from its operation.

[LAWSON, L.C.—You might have argued that as *ex parte Meyer*, *in re Stephany*, was the law in England when the Irish Act was passed, it was intended by the 6th section of that Act to give the same powers to the Irish Courts. CHRISTIAN, L.J.—And, as it was there held that where there was an order *inter partes* the judge could rehear the case, that case is therefore an *a fortiori* one, for here the order was *ex parte*.]

Sir JOSEPH NAPIER, L.C.—In this case of De Serancourt, a bankrupt, we have considered the questions arising; we have looked into the material sections of the various Acts bearing on the matter, and into the authorities cited. The question arises on the two Acts of 1857 and 1872, construed as one Act. The order of adjudication was made on the 2nd December, 1873, and the notice of it under the 129th section was served on the 3rd December. The 129th section of the Act of 1857 (always remembering that both that Act and the Act of 1872 are to be read together), governs the point as to how the adjudication is to be dealt with. In the first instance, it is *ex parte;* and then there is provision for the service of a duplicate of the adjudication upon the person adjudged bankrupt, and such person has got three days to show cause to the Court against the validity of the adjudication, or he might apply for an extension of time to show cause. If that time lapses, then come the provisions for appeal regulated by the 29th section of the Act of 1857, which provides that every order or decision of the Court shall be subject to appeal, but that such appeal must be entered within thirty days, from the date of the decision or order, unless the time be extended by the Court; and then, if that petition of appeal is not entered and proceeded with, the decision or order is so far final, unless afterwards a suit have been commenced, as provided by another section. Here the petition to the Court of Bankruptcy was presented after the expiration of both the period limited for appealing and that limited for applying to the Court itself by motion to show cause. The judge below thought he had no jurisdiction, that he was controlled by the decision of the House of Lords in *Carter* v. *Dimmock*. The case of *Carter* v. *Dimmock* was decided on the 12 & 13 Vict. c. 106, and there, according to the decision of the Court, it was held that there was only the one mode of dealing with adjudication, namely, by appeal, that so far as the Judge below was concerned, he had no more to do once he pronounced his decision, or, to use the words of Lord Cranworth :—"When the Commissioner has adjudicated, he is *functus officio* as to the existence or non-existence of the order." Certainly, under that Act the powers of the Court were very meagre. Every Court of Record has an inherent power over its own proceedings before they have become final, and as regards mere procedure, it is the servant of the Court; even its definitive judgment may be set aside, as against good faith, &c., by the Court, as being a Court of Record. But, whatever doubt may have existed before the late Act, there can be no doubt as to the plenary powers given under the 6th section of the Act of 1872, in which many powers are mentioned, and others perhaps necessarily implied. The express power is given to the Court to vary and rescind all its orders; and one of the powers exercisable by a Court of Equity is to rehear its own decisions, in its discretion, for the furtherance of justice in proper cases, as, for instance, in cases of fatality or mistake, before they have become final. Now in England, under the early Act, the Court was not in express terms so armed with the power of dealing with its own orders. The adjudication is an order. There are no doubt two classes of orders, interlocutory and definitive, or final, but the words of the 6th section are "any order," and the form of order of adjudication is, "it ordered and adjudged, etc." Now, in that view of it, the question is whether under this section of the Act, with those large and express powers, an order of adjudication is not included. There is, besides, power to show cause; but suppose a case where the application was made between the end of the time limited for showing cause, and the termination of the period for appealing, suppose a clear case upon which of a certainty this Court would order a rehearing, why should not the Court below under the large powers of this section deal with that question? In that case, where there is a proper case for rehearing, in reason and under the language of the Act the Court ought to possess the power, and to exercise it. There is a very apt case on this matter, *in re Ashe*, 6 IR. Ch. R. 33. But all the authorities agree, that assuming that power of rehearing is to be exercised, it ought to be exercised within the time limited for appealing, and that the Courts should regulate their course by reference to the time for appealing, because after the time for appeal the order is final. After that time the order becomes the property of the party. Under those circumstances, the Judge below was so far wrong in saying that he had no right to rehear; because he still possessed a discretionary power. Dealing with the words of the English Act, in *ex parte Brown, in re Jeavons*, Lord Cairns—who, I know, entertains a strong opinion as to the propriety of not deciding anything not necessary for the decision of the case—says :—"He must have brought his appeal within twenty-one days; and it appears to me that we should be departing from our duty if we did not adopt as our guide the intention of the Legislature, shown in fixing that limit in the case of appeals. I do not say that the Court is bound by any express enactments, because rehearings are not mentioned in the Act; but the granting of a rehearing is a matter of indulgence, and must be carefully guarded, otherwise parties would gain by indirect means the benefit of an appeal after the time for appealing had expired." That is a guide for us in this case. Assuming that there was a power of re-hearing, the application should be made within the ordinary time for appealing. In that view of it, though we think that the case was not presented to the Judge below according to the law, that it was not presented within the proper time, we think also that he was so far wrong as to go upon the ground that he had not jurisdiction at all, and that he was *functus officio* as soon as the time for showing cause had expired. We do not agree with that view of it. He was still invested with all the inherent powers of a Judge of a Court of Record. The appeal must be dismissed, but without costs.

LAWSON, L.C.—The first question is whether the case of *Carter* v. *Dimmock* governs this case. Judge Miller was of opinion that it did. There is no Judge less disposed than I am to draw fine distinctions, so as not to follow loyally cases which have the weight of a decision of the House of Lords. But, having regard to what has occurred

Digitized by Google

since, that case is no longer applicable. *Ex parte Meyer, in re Stephany*, shows that it is clear that *Carter* v. *Dimmock* does not now govern bankruptcy cases in England. That being the state of the law in England in 1872, when this Irish Act was passed—namely, that by reason of subsequent legislation, especially section 71 of the Act of 1869, that case was no longer applicable to bankruptcy proceedings of this nature—what, then, is the meaning of the 6th section of the Act of 1872? Are we to say that the larger powers given by that section do not apply to orders of adjudication? Are we at liberty to introduce exceptions? We must hold that the order of adjudication is subject, like other orders, to be reversed by the Judge in his discretion. He had, therefore, jurisdiction to entertain the application. But, I am equally of opinion that the applicant was quite late in making his application to have the case reheard. On that question, *ex parte Brown, in re Jeavons*, is in point. He was adjudicated a bankrupt on December 2nd, and heard of it on the 3rd. He took no step till the 9th of January following, when his time had elapsed. No excuse has been sustained for his not having proceeded at once. Following the rule laid down by Lord Cairns, his application ought to have been dismissed below; and his appeal must now be dismissed.

CHRISTIAN, L.J.—There are two material questions—first, whether there was jurisdiction in the abstract; and second, whether, assuming the jurisdiction to have existed, the proper mode of exercising it would have been to grant the appellant's application. The learned judge below held that he had no jurisdiction to entertain that motion at all, and if that was the only ground on which we could decide, I should hold that the appeal ought to be allowed. Were we still governed only by the Act of 1857, *Carter* v. *Dimmock* would be conclusive. It was decided on the Bankruptcy Act of 1849, the sections of which dealing with these matters cannot be materially distinguished from the corresponding sections of the Irish Act of 1857. In that case it was decided that, if the party against whom an order of adjudication is made does not come within the very limited time allowed by both the Acts (the judge of the Bankrupt Court being *functus officio*, as Lord Cranworth put it, after seven days have passed in England, and three in Ireland), the remedy is not by an application to rescind the order by the authority who made it, but by appeal brought within the limited time to a higher authority. That decision would be plainly binding if we had only to deal with the Act of 1857. If the question were still open to us, I would myself say that Lord Justice Knight Bruce, whose opinion was of peculiar weight in bankruptcy cases, was right. He decided that there did exist in the judge of the Bankrupt Court that inherent power to reverse his own decision, made on a false statement of facts. As far as authority goes, it is Lords Truro and Cranworth against Lord Justice Knight Bruce, on a bankruptcy question; but it is a House of Lords decision, and binding as such. However, since then Acts have been passed for both countries, for England the Act of 1869, for Ireland the Act of 1872. Now, the English Act of 1869 made this change in the mode of obtaining an adjudication, that, whereas under the English Act of 1849 (like the Irish Act of 1857) the order was an *ex parte* order, with a power within a very limited time for the bankrupt to show cause, under the Act of 1869 it is an order *inter partes*, for the obtaining of which notice must be served; and I need not say that an order of that kind is at least as difficult to rescind as an order *ex parte*, such as that under the Act of 1849. By the 71st section of the English Act of 1869 it is provided that an appeal shall lie to the chief judge in bankruptcy from orders made by a local judge, and from the chief judge to the Court of Appeal in Chancery. If there were no more than I have mentioned, *Carter* v. *Dimmock* would be an authority, as once an adjudication was made in solemn form it was final, and the judge was powerless to deal with his own order; but there is something more in section 71, for it is there enacted that, "Every Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it in pursuance of this Act." Now, what is established in England to be the effect of that? That *Carter* v. *Dimmock* is an antiquated authority, no longer of the slightest value, because it is only applicable to an obsolete code. *Ex parte Meyer, in re Stephany*, and *ex parte Brown, in re Jeavons*, are quite distinct upon that. In *ex parte Meyer, in re Stephany*, it never occurred to the judge to doubt that he had full authority to rescind his own previous order of adjudication. The case was brought to the Court of Appeal in Chancery; it never entered into anybody's mind that the Court had not ample jurisdiction to entertain the application, and the judges heard the appeal on its merits. *Ex p. Brown* is quite to the same effect. The law, therefore, under the Act of 1869 is the reverse of what it was under *Carter* v. *Dimmock*. Well then, that being the state of the law in England under the Act of 1869, what has since taken place in Ireland? The Act of 1872 has introduced into Ireland that which was made law in England by the Act of 1869, and the terms of the 6th section of the Irish Act are copied from the 71st section of the Act of 1869—"The Court of Bankruptcy in Ireland shall continue to be a Court of Law and Equity, and a principal Court of Record, and may review, rescind, or vary any order made by it in pursuance of the said Act, or of this Act." Therefore, the law now is precisely as the cases cited shows it to have been in England after the passing of the Act of 1869, and *Carter* v. *Dimmock* is obsolete. Consequently, the decision below could not be supported on the sole ground that the judge had no jurisdiction to entertain the application.

But secondly, we are called on to consider whether the order asked for ought to have been granted. It is said that, if so, the proper course would be to remit the case to the Court below, in order that it might have the opportunity of exercising that jurisdiction which we have decided it possesses. To do so would be superfluous. We have the jurisdiction of the Court of Bankruptcy, and have the right to do whatever we think the judge below ought to have done on that motion now before us. Can we doubt what would result, if we did send back the case into the Court below? It will be an act of mercy to the appellant himself not to send back this case, but to decide the motion ourselves, and not put parties to further expense. In that respect we have a guide in the authority of *ex parte Brown, in re Jeavons*. Assuming the jurisdiction to exist, Lord Cairns says:—"It appears to me we should be departing from our duty if we did not adopt as our guide the intention of the Legislature, shown in fixing that limit in the case of appeals. I do not say that the Court is bound by express enactment, because rehearings are not mentioned in the Act, but the granting of a rehearing is a matter of indulgence, and must be carefully guarded, otherwise parties would gain by indirect means the benefit of an appeal after the time for appealing had expired." The way I understand that is this, that although the Court has an unlimited jurisdiction, that although it is not bound by any strict law to exercise its powers within the time limited for appealing, and, therefore, the limitation of time for the one is not necessarily the same as that for the other proceeding, yet that, in the exercise of discretion, the Court should hold that the bankrupt ought to bring on his motion within the time within which he ought to have appealed under the former law, unless he can show some strong peculiar circumstances, to relieve him from that analogy, and take him out of the operation of that discretion. Has De Serancourt shown that ground for special intervention? He has not. That matter of the negociation ended on the 5th of December. He had his wife in this country, and his solicitor. He himself returned on the 24th, yet he took no steps till the 9th of January, when the application was made. There is, therefore, no ground for extending his time beyond the limits to be drawn by analogy from the limitation of time for appealing. On that ground, I think we ought to affirm the order of the Court below, but inasmuch as we differ from the Court below, and dismiss the appeal on a ground different from those brought forward and argued in the Court below, we will give no costs.

Solicitors for the appellant, *Bloomfield & Benner*.
Solicitor for the respondent, *John Louis Scallan*.

Digitized by Google

LANDED ESTATES COURT.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Flanagan, J.)

Estate of Dooley, Owner and Petitioner.

June 23, 1874.—*Voluntary deed—Effect of marriage of person taking interest under a voluntary deed—Ex post facto consideration—Registry Acts.*

D. in 1840, *by a voluntary deed, duly registered, charged certain sums of money on land in favour of his three daughters. M. subsequently married one of them, being aware of the charge in her favour, and understanding it was to be paid, and a settlement, unregistered, granting said charge to M. on trust, was executed in* 1848, *on the marriage. D. in* 1871, *by a registered lease, demised the lands to his son at a gross undervalue.*

Held, (1) *That the marriage imported valuable consideration into the voluntary deed of* 1840, *and that the lessee was not a purchaser for value so as to entitle him to defeat the prior voluntary deed.*

(2) *That, assuming the lessee under the registered lease of* 1871 *to have been a purchaser for value, he was not entitled to priority, as the purchaser for value under the unregistered settlement of* 1848 *was entitled to fall back on the registered deed of* 1840. In re *Flood's Estate*, 13 *Ir. Ch. R.* 315, *followed.*

Charge and discharge. The petition was filed for the sale of certain leasehold lands, for the residue of the respective terms for which the same were held. Thomas Dooley, the father of the petitioner, Jonathan Edwin Dooley, had previously been owner of the premises, and being such owner, he, by a voluntary deed, bearing date the 24th December, 1840, assigned the premises, for the residue of the respective terms, to two trustees, upon trust to permit the said Thomas Dooley to hold the same during his life, and after his decease to raise by sale or mortgage the sum of £2,800, with interest at 6 per cent., for his three daughters, in the following shares, viz., for Charlotte Anne Dooley, £1,000; for Emily Georgina Dooley, £1,000; and for Sophia Mary Dooley, £800. That deed was registered on the 15th May, 1841. Charlotte Anne Dooley died in 1859, having by her will, dated the 2nd November in that year, bequeathed one moiety of the said sum of £1,000 to the petitioner, and the other moiety thereof to her brother, Edwin Arthur Dooley, and her sister, Emily Georgina Dooley; and she appointed the petitioner sole executor of her will. Emily Georgina Dooley was married in 1848 to John Mason, one of the chargeants. On the 29th April, 1871, Thomas Dooley granted a lease of the premises to his son, at a rent of £2 12s. 8d. an acre, and shortly afterwards, in the same year, Thomas Dooley died, having by his will, dated the 25th May, 1866, appointed the petitioner his sole executor, of which will probate was granted to the petitioner. The absolute order for sale was made, and the consolidated final notice to tenants was filed in May, 1874. An objection thereto was filed by John H. S. Mason, John Mason, and Emily Georgina Mason, otherwise Dooley, incumbrancers on the lands: and subsequently, on the 18th May, 1874, a charge was filed by the objectors. The charge stated, in substance, that the chargeants objected to the lease of the 29th April, 1871, from Thomas Dooley to Jonathan Edwin Dooley, the owner, being set out in the rental, and to the lands therein mentioned being sold subject to said lease, and charged that the lands should be stated to be in the occupation of the owner. The reasons assigned were that, by the deed of December, 1840, Thomas Dooley granted the lands in this matter to the trustees upon trust amongst others to raise thereout the sum of £1,000 for Emily Georgina Mason, otherwise Dooley; that, by the settlement made on the marriage of John Mason with the said Emily Georgina Dooley, the said charge of £1,000 was granted to John H. S. Mason, upon the trusts therein mentioned; that the deed of 1840 reserved to the said Thomas Dooley a power to lease the lands at the best rent that could be had for the same, but that the lease of the 29th April, 1871, was made at a gross undervalue, and that the rent thereby reserved was not the best rent, and that, if said lease should be declared valid and binding on said lands, the charge of £1,000 would not be paid in full. The chargeants, also, stated that John Mason married Miss Dooley on the faith of the charge of £1,000 being paid to him, and charged that the marriage of 1848 should be declared a sufficient consideration for the voluntary deed of December, 1840. To this charge Jonathan Edwin Dooley, the owner, on the 22nd May, filed a discharge, and stated therein that he did not know that the sum of £1,000 was promised to John Mason at the time of the treaty of marriage with his sister, and that he was ignorant of the alleged settlement of 1848; that the lease of April, 1871 was made to him at a fair letting value by his father, and for valuable consideration, and was therefore a valid execution of the leasing power in the deed of December, 1840, and that the lease of April, 1871, was registered and ought not, therefore, to be affected by the previous unregistered settlement, of which he averred that he had no notice.

Richey, Q.C. (with him *Meredith*), for the chargeants.—The lands should be sold discharged of the lease of April, 1871. There are two questions—1st. Is the lease of 1871 a deed for valuable consideration, which would override the deed of December, 1840? 2nd. If it is not, then is it a good execution of the power of leasing contained in the deed of December, 1840? The provision made by a voluntary deed, and afterwards acted upon, as in this case by the marriage and the settlement, operates retrospectively upon the original deed and makes it a contract for value: *Guardian Assurance Company* v. *Lord Avonmore*, Ir. Rep. 6 Eq. 391; May, Fraud. Conv. 300, 302. This case is stronger than the *Guardian Assurance Company* v. *Lord Avonmore*, for here there is not only the marriage to make the prior deed a contract for value, but there is also the marriage settlement. The deed of 1840 was known to John Mason, and he was aware of its contents and the gifts which it conferred. On the other hand, it is contended that the lease was registered and obtained *bonâ fide* and for value, and that the settlement was not registered. But the contest here is not between the settlement and the lease, but between the deed of 1840 and the lease. Now, the deed of 1840 is registered, and by means of the settlement and the marriage it became a deed for valuable consideration. The only way that Jonathan Dooley could claim to establish this lease is under the leasing power of the deed of 1840. But the power contained in that deed provides that the best rent shall be reserved, which has not been done here. The average head-rent is £5 5s. 10d. per acre (exclusive of the house, garden, &c.), so that the rent, being £2 12s. 8d., is just one-half of the head-rent. This includes all the lands, except the house, garden, avenue, &c., which, on account of their ruinous condition, are unsaleable.

Fitzgibbon, Q.C. (with him *Kaye*), *contra*.—The owner has a right to priority over the voluntary deed of 1840.

Digitized by Google

It has been stated that by the marriage settlement, an *ex post facto* consideration was created by the deed; but that cannot affect a purchaser who had no notice. If it could it would open a door to great fraud. Suppose a voluntary deed were registered, and the deed making it a valuable contract were not registered, a person could thus be bound by something not on the registry. In Lord Avonmore's case there was no registration. This is a case of purchase for value without notice, and the lease was registered. Takers under voluntary settlements, to which *ex post facto* considerations attach, are not purchasers: May, Fraud. Conv. 206. The deed of 1840 can only be dealt with as a contract for value if the rights of third parties are not interfered with.

[Flanagan, J.—The settlement was a charge on the land, though it does not convey the land, and it has never been decided whether it is necessary to register such deeds.]

But they ought to have registered the settlement when it was an *ex post facto* consideration for the deed of December, 1840. We are purchasers for value, and, this being a *bona fide* transaction, ought not to be disturbed on account of a small difference. The head-rent is £175 0s. 6d.; deducting this from £188 7s. 9d., there remains £13 7s. 3d., and to that has to be added the house, garden, &c., which are found by valuation to be worth about £50 a-year. There is about £63 7s. 3d. a-year to be sold. We have affidavits of several farmers, who reside in the vicinity, to show that the rent is a fair one. Therefore, we can hold under the leasing power of the deed of December, 1840; and by our registered lease for value are entitled to priority over their voluntary deed: *Owen* v. *Owen*, 3 H. & C. 88; May Fraud. Conv. 203.

Flanagan, J.—This case comes before me on an objection to the consolidated notice to tenants. On that notice Jonathan E. Dooley was returned as entitled to a lease of a holding, from his father, for thirty-five years. To this notice an objection has been filed by John Mason, the point of which is that the lease was made at a gross undervalue, and that if it be allowed to stand, the funds would not be enough to pay the charges. The petition was filed by J. E. Dooley to raise the charges of £1,000 each, which were put on by the father, Thomas Dooley, by a deed of December, 1840. Thomas Dooley, by the deed of December, 1840, assigned to trustees all the lands ordered to be sold in this matter upon trust for himself for life, and then to raise portions for each of his daughters; and the deed contained a power of leasing the lands at the best rent. It is not necessary to trace these to each daughter; the owner is entitled beneficially to some part, and as a trustee to another part. In 1848 John Mason married one daughter, for whom £1,000 was provided, and a settlement was executed upon the marriage. It appears that J. E. Dooley lived with his father and managed his property, and this being so, in 1871 Thomas Dooley granted to his son the lease which is now objected to; and the objection is that the lease was made at a gross undervalue, and that it brought in a less sum than the head-rent payable out of the lands. J. E. Dooley says that the deed of December, 1840, is a voluntary deed, and that he is a purchaser for value, under a registered lease, and therefore that he is entitled as against parties claiming under a prior unregistered deed. As to the evidence concerning the value, I have no hesitation in holding that the lands were leased at a gross undervalue, and that the rent of £70 a-year was a totally inadequate letting value of the lands. It appears from the map that J. E. Dooley got all the interest in the land, except a very inconsiderable portion, and except also a small plot on which some cottages are built, and also the court-house and constabulary barrack, and the piece of ground on which they are built. The property is held under five different leases under the Corporation of Dublin, and the rent reserved to the Corporation is double the amount of the rent paid by J. E. Dooley. The rent reserved to the Corporation is £5 an acre, and it is manifest to me that (on the valuation of Messrs. Brassington and Gale) the rent now paid is not the best rent obtainable. Assuming this to be so, the question arises, Is this a *bonâ fide* purchase for value, so as to enable the purchaser to defeat a prior unregistered deed? I am of opinion that it is not; and I do not think that a party getting a lease at one-half the value of the lands is a purchaser for value within that class of cases which enable such purchaser to defeat a prior voluntary deed. In my opinion the lease is as voluntary as the prior deed, and is in fact a settlement by the father upon the son. Looking at the lease in that way, it cannot be said that J. E. Dooley was a purchaser for value. Now the settlement of 1848 was made upon the marriage, and imported a valuable consideration to the deed of 1840; though it could not, of course, defeat intermediate purchasers between 1840 and 1848. That principle was established in *O'Donovan* v. *Rogers*, 7 Ir. Ch. 1. Assuming J. E. Dooley to have been a purchaser for value under the deed of 1871, the further question arises under the Registry Acts—there being, 1st, a voluntary deed of 1840, registered; 2nd, a settlement of 1848, unregistered; and 3rd, a lease of 1871, registered—whether the lease of 1871, registered before the settlement of 1848 but after the deed of 1840, obtains priority thereby? The case of *In re Flood's Estate*, 13 Ir. Ch. Rep. 315, is identical with the present one, and governs it. In that case, Mr. Edward Flood, by a deed of the 16th January, 1853, conveyed the inheritance in remainder expectant on his own decease (subject to a charge for his children, raisable at his death) to Edward Flood, junior. That deed was registered two days afterwards. Prior to this date (on the 18th October, 1852) Mr. Edward Flood demised part of the lands to William Roe, for three lives or thirty-one years, at the rent of £110. That lease was not registered until the 25th of May, 1854, and it appeared that Edward Flood, junior, had notice of that lease at the time of the execution of the lease of 1853. Then, by a deed of November, 1857, Edward Flood, junior, mortgaged his reversion to Allen and Thomas Leech, who had not notice of the lease. It was decided by Judge Hargreave that, whether the deed of January, 1853, was a voluntary deed or a deed for value, the mortgagees were entitled to priority over the lease of 1852, and that their title was not affected by the intermediate registration of the lease. If that case is sound law—and it is not for me to question it—that is an *a fortiori* case to this, because in that case the deed for value was prior to the voluntary deed, whereas here the lease for value was executed long after the voluntary deed. Therefore, even treating the lease as a deed for value, the purchaser for value under the settlement of 1848 can fall back on the registered deed of 1840. Whether, then, it is a question of purchase for value, or of registration, I hold that the lease must be postponed to the deed of 1840. I therefore direct that the lands shall be sold discharged of the lease; nor will that injure Mr. J. E. Dooley, as he is interested beneficially in the lands himself. Each party is entitled to his costs, but Mr. Mason to have the priority.

Solicitor for objector, *W. R. Meredith.*
Solicitor having carriage, *J. D. Elliot.*

COURT OF EXCHEQUER CHAMBER.

Reported by Miles V. Kehoe, Esq., Barrister-at-law.

Wright v. Tracey.

(Before Whiteside, C.J., Palles, C.B., O'Brien, and Fitzgerald, J.J.; Fitzgerald, Deasy, and Dowse, B.B.)

April 27, June 22, 1874.—*Tenancy for a year certain—Contract—Notice to quit—Landlord and Tenant Act*, 1870, s. 69.

Digitized by Google

By a contract in writing, entered into after the passing of "The Landlord and Tenant Act, 1870," lands were let "for the term of one year certain, to commence on the 25th of March, 1871, *and to end on the 25th of March,* 1872."

Held, *affirming the judgment of the Court of Common Pleas* (per *Whiteside, C.J., Palles, C.B., Fitzgerald, J., and Fitzgerald, B.,* diss. *O'Brien, J., Deasy, and Dowse, B.B.*), *that section* 69 *of that Act did not apply, and that the tenant was not entitled to notice to quit.*

Appeal from an order of the Court of Common Pleas, allowing the cause shown, on behalf of the plaintiff, against a conditional order obtained on behalf of the defendant, to change the verdict had for the plaintiff into a verdict for the defendant, pursuant to leave reserved.

The action was in ejectment on the title, to recover part of the lands of Ballynagran, with the dwelling-house and out-offices thereon, and part of the lands of Ballyflanagan, in the County of Wicklow. The statutable defence was pleaded. At the trial, at the Wicklow Summer Assizes, 1872, it appeared that the defendant, Morgan Tracey, held the premises in the summons and plaint mentioned from the plaintiff, Francis Wright, for one year, under the following agreement:—"Memorandum of an agreement made the 8th day of March, in the year 1871, between Francis Richard Wright, of Whitechurch, in the County of Kildare, of the one part, and Morgan Tracey, of Ballynagran, in the County of Wicklow, Dairyman, of the other part. The said Francis Richard Wright doth set unto the said Morgan Tracey, the grass of part of the lands of Ballynagran, and part of the lands of Ballyflanagan, containing in the whole fifty acres, late Irish plantation measure, or thereabouts, be the same more or less, together with the use of the dwelling-house, out-offices, and all appurtenances thereunto belonging, as a temporary convenience to such letting; all which premises are now in the possession or occupation of the said Morgan Tracey. And it is hereby agreed between said parties, that this letting is and is to be solely a pasture farm, and for a dairy and dairy accommodation, and for the term of one year certain, to commence on the 25th day of March next, 1871, and to end on the 25th day of March, 1872. The rent thereof is to be the sum of £200 sterling, payable to said Francis Richard Wright, his executors, administrators or assigns, by four equal quarterly payments, on the following days respectively—that is to say, on the 25th day of June next, on the 25th day of September next, on the 25th day of December next, and on the 25th day of March, 1872. For the payment of which sums the said Morgan Tracey and William Murphy, of Coolnakilly, in said County of Wicklow, have, of this date, passed their joint several bills or promissory notes, payable on the said respective days above mentioned. The said Morgan Tracey is to have for tillage the Minister's Hill Field, free of rent, as a temporary convenience during the period of said tenancy. The said Morgan Tracey is not to have, use, or remove any manure which shall or may be made on said premises during said period; it being expressly understood that all such manure is and is to be the absolute property of the said Francis Richard Wright. The said Morgan Tracey is to keep all fences in the same state of repair as they are at present, as also the churning machine, and all gates and fixtures in said premises, together with the dwelling-house and out-offices, in tenantable repair, order, and condition, and to deliver up same in like good repair, order and condition, on the said 25th day of March, 1872, it being distinctly understood, that the said Morgan Tracey is to have no liberty of getting firing of any kind whatsoever, on or from any part of said holding; the said Francis Richard Wright giving him four tons of coal in lieu thereof. The said Morgan Tracey is to have for meadowing this year, the three fields on Ballyflanagan and the Pier field on Ballynagran; and the said Morgan Tracey is to fence the said fields up, and not to allow any stock on same from and after the 1st day of January, 1872; or if the said Francis Richard Wright should wish to name or point out any other field containing a like quantity of land, or as near as the fields will admit of, in lieu of them, he shall have power so to do. The said Francis Richard Wright further reserves to himself the right to cut down any timber or trees growing in and upon said land at any time, with full power to enter with horses, carts and attendants, on said lands, and to remove same free of all cost for damage. The said Morgan Tracey further undertakes not to let, under-let, assign, or part with possession of any part of said lands or premises, nor to let same or any part thereof for con-acre or cropping; and in case the said Morgan Tracey shall not fulfil or shall commit a breach of all or any of the conditions or agreements herein contained, then and in such case, the said Morgan Tracey shall pay unto the said Francis Richard Wright, his executors, administrators, or assigns, the additional or penal rent or sum of £200 sterling, over and above the said rent of £200 hereinbefore mentioned; which additional or penal rent is to be recovered by distress or otherwise, as the said rent hereinbefore mentioned is now recoverable by law as between landlord and tenant. In witness, &c.,

"Francis R. Wright,
"Morgan Tracey."

It appeared that the rent had been duly paid up to the 25th March, 1872. At the close of the case defendant's counsel submitted that the defendant was entitled to notice to quit under the Land Act, as tenant under a tenancy which was less than a tenancy from year to year, and asked the judge to direct a verdict for the defendant, or to nonsuit the plaintiff. Fitzgerald, J., refused to do so, and directed a verdict for the plaintiff, but stayed execution, and reserved liberty to the defendant to apply to have the verdict changed into one for him, or to non-suit the plaintiff. A conditional order to enter a verdict for the defendant having been obtained, cause was shown on behalf of the plaintiff against making it absolute; and by order of the 24th January, 1873, the cause shown was allowed with costs. From that order the present appeal was brought.

Hemphill, Q.C. (*Coates* with him), for the appellant, contended (1), That a tenancy for a year certain is less than a tenancy from year to year. (2), That the tenancy having been made after the passing of the Land Act (1870), the tenant was entitled to a notice to quit under sec. 69. They cited the following authorities:—*Cattley* v. *Arnold*, 1 J. & H. 651, 661; *Hayes* v. *Fitzgibbon*, Ir. R. 4 C. L. 500; *Birch* v. *Wright*, 1 T. R. 378, and *Bellasis* v. *Burbrick*, cited therein; *Doe d Jacklin* v. *Cartwright*, 4 East. 29; *Doe d Chadborn* v. *Green*, 9 Ad. & E. 658; *Oxley* v. *James*, 13 M. & W. 209; *Doe d Hull* v. *Wood*, 14 M. & W. 682; *Tayleur* v. *Wildin*, L. R. 3 Ex. 303; *Gandy* v. *Jubber*, 9 B. & S. 15; ——— v. *Cooper*, 2 Will. 375; *Curtis* v. *Wheeler*. Mood. & Mal. 493; *Francomb* v. *Freeman*, 9 B. & S. 10,

Armstrong, Sergeant (*D. Lynch* with him), *contra*. *Gandy* v. *Jubber*, 5 B. & S. 78, decides that every

Digitized by Google

tenancy from year to year ends at the end of the first year, and that then a new tenancy for another year commences, founded on the implied agreement between the parties for a new tenancy. A tenancy from year to year is not necessarily greater than a tenancy for a year certain, because a tenancy from year to year may be terminated at the end of the first year, *Doe d. Plumer* v. *Mainby*, 10 Q. B. 473; and it is a rule of logic, of mechanics, and of law, that you cannot predicate, with certainty, of any subject anything higher than its lowest quality. It follows, therefore, as a matter of strict inference, independent of authority, that the Court cannot hold that a tenancy for a year certain is universally, or necessarily, less than a tenancy from year to year; and, therefore, the contention of the defendant must fail. But, even if the Court were to hold that a tenancy for a year certain was less than a tenancy from year to year, yet a tenancy for a year certain does not fall within the provisions of the 69th section of the Act, which, it can be shown, deals exclusively with tenancies *uncertain* in their duration. The 69th section of the Land Act confers two rights upon the class of tenants (whoever they may be) who are thereby legislated for—viz., a right (1) to notice to quit, and (2) to compensation. If, therefore, it can be determined who are the tenants thereby entitled to compensation, it becomes consequently determined who are the tenants thereby entitled to notice to quit, because they are the same persons, and not other, or different. In determining who are the tenants entitled to compensation under the 69th section, it is necessary to bear in mind that the 69th is, practically speaking, the last section of the Land Act, and it is only reasonable to conclude that the tenants declared entitled to compensation under that section are such tenants as have not been so declared entitled under the previous sections. Under the previous sections the tenants so entitled are those the duration of whose interest, no matter how short, is *fixed and determined*, while tenancies of *uncertain* duration are excluded from the provisions of these sections. If for the word "tenant" in the 3rd, 4th, 7th, and other sections of the Act, where the word occurs unqualified by other words of tenure, the definition of "tenant," as given by the 70th section, be substituted, it becomes manifest that the sections of the Act previous to the 69th section deal exclusively with tenancies of certain duration, however great or however small, but do not at all provide for tenancies of *uncertain* duration. A tenancy for a year certain, for six or three months certain, for one month certain, for ten days certain, is provided for—because the definition says that a tenant shall mean "a tenant for a term of years," and a tenant for any number of years, months, or days *certain* has a "term of years;" Shepherds' Touchstone, Lease 265; Littleton's Tenures, 67; Blackstone, Estates less than Freehold; *Phillips* v. *Roe*, 5 B. & A. 766. But tenants' interests, however great or small, of "*uncertain*" duration do not come within the expression "term of years." Therefore, the tenants declared entitled to compensation by all the sections of the Act previous to the 69th, being tenants of interests certain in their duration, it became necessary for the Legislature to make provision for tenants with interests of *uncertain* duration, and this the Legislature did by the 69th section. But as these are the class of tenants alone entitled to compensation under that section, so they are the only class entitled to notice to quit under that section; and therefore the defendant in this case, being a tenant for "a year certain," and having therefore a tenancy of certain duration, is not entitled to notice to quit under the 69th section of the Land Act, which deals exclusively with tenancies of uncertain duration.

They cited *Tomkins* v *Lawrance*, 8 C. & P. 729; *Doe d Shore* v. *Porter*, 3 T. R. 16.

Coates, in reply. *Cur. adv. vult.*

Dowse, B.—The question to be decided in this case is whether, within the true construction of the 69th section of the Landlord and Tenant (Ireland) Act, 1870, a tenancy for a year certain is less than a tenancy from year to year. The tenancy here is for a year certain. The landlord says he can evict the tenant without notice to quit, though the tenancy has been created after the passing of the Act; but this the tenant denies. In my opinion the decision of the Court of Common Pleas is wrong, and should be reversed. The effect of that decision is, that although a tenancy for a year certain is less than a tenancy from year to year, it should be excluded from the operation of the section. I feel a difficulty in thinking that if a tenancy for a year certain is less than one from year to year, the other proposition—viz., that it is within the operation of the 69th section of the Land Act, does not follow. The question was dealt with in the Court of Common Pleas as if it were less. Lord Coke says in *Heydon's case*, 3 Rep. 7 a b, it is a fair rule in construing a statute to consider, "firstly, what was the Common Law before the making of the Act. Secondly, what was the mischief and defect for which the Common Law did not provide. Thirdly, what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. Fourthly, the true reason of the remedy." These are the words of a lawyer and a statesman. As to the Common Law before the passing of the Act, a tenancy for a year certain did not require a notice to quit in order to determine it, a tenancy from year to year did require such a notice. In my opinion, the remedy provided by Parliament was that no person shall be at liberty to defeat the benefits that the statute annexes to tenancies from year to year, properly so called, by turning them into tenancies ending with each year certain, and with the hope of beginning again for another year certain to end in the same way, and so on from year to year. But it may be said—Is a tenancy for a year certain less than a tenancy from year to year? If a person were asked whether he would prefer a tenancy for a year certain, to a tenancy from year to year, can there be a doubt that he would not rather have a tenancy from year to year, for while both must last for a year at least, the tenancy from year to year must last a year longer than the other, unless a notice to quit be served six months before the last gale day of the calendar year. "The true nature of a tenancy from year to year is a lease for two years certain, and every year after it is a springing interest arising upon the first contract and parcel of it, so that if the lessee occupies for a number of years, these years, by computation from the time past, make an entire lease for so many years, and after the commencement of each new year, it becomes an entire lease certain for the years past, and also for the year so entered on, and it is not a reletting at the commencement of the third and subsequent years. We think this is the true nature of a tenancy from year to year created by express words, and that there is not in contemplation of law a recommencing or reletting at the beginning of each year."—*Gandy* v. *Jubber*, 9 B. & S. 15. In that case the Court seems to think that a tenancy from year to year must last for two years; that, however, is a mistake. In the present case, I hold the plaintiff in the ejectment fails. The contract was made after the passing of the statute, and I do not think that the words of the statute can admit of doubt.

Deasy, B.—I am of the same opinion as my brother Dowse. I think this tenancy is less than a tenancy from year to year, and that under the 69th section defendant was entitled to notice to quit. The nature of this tenancy is defined in *Oxley* v. *James*, 13 M. & W. 214, by Parke, B.:—"a lease for a year certain with a growing interest

Digitized by Google

during every year thereafter, springing out of the original contract and parcel of it. A demise, therefore, by such a person, for a term of years, is no assignment; he never means to part with the whole benefit of that interest. It is a term for so many years, subject to determination by the cessation of the original interest." And Pollock, C.B., says:—"It is clear, according to the cases of *Pike* v. *Eyre*, and *Curtis* v. *Wheeler*, that if a tenant from year to year demises for a term of years, and the original tenancy from year to year lasts beyond that term, such a demise is not an assignment, but there is a reversion on which covenant may be maintained."

Besides, we are here considering the construction of an Act of Parliament, which is framed not in precise or technical language, but in loose and popular phraseology, and dealing with a subject of popular interest, and no one but a lawyer would have any doubt that a tenancy from year to year, which may last for an indefinite number of years, is a greater tenancy than a tenancy limited to a year certain, and which must terminate at the expiration of that year. It is right also to consider what was the object which was sought to be effected by this section, and it was plainly this. The Legislature had provided compensation for tenants from year to year—for lives and for terms of years. It was apprehended, however, that those provisions might be defeated by arrangements, and according to which the tenant would hold in law as a tenant at will only, or as here for a year certain, or for a period less than a year. That object would to a great extent be defeated if it were to be held that an agreement for a year certain were not within the provisions of the 69th section.

It follows from that, that the defendant was entitled to notice to quit, because the section says that the tenant under such tenancy shall, on quitting, be entitled to notice to quit and compensation in the same manner in all respects as if he had been tenant from year to year. It is obvious the word "on" is used in the sense of before, because he was to get notice to quit as if he were tenant from year to year. An ordinary tenant from year to year gets notice not "on," but six months before quitting his holding. The object sought to be effected by the section was to put the class of tenants included in it in the same position as to notice to quit as ordinary yearly tenants. This section of the Act of Parliament will be nullified unless that construction be adopted. My brother, O'Brien, instructs me to state that he concurs in the opinion entertained by the minority of the Court.

Fitzgerald, J.—The question to be here decided is of great general importance. The plaintiff let to the defendant the grass of part of the lands of Ballynagran and part of the lands of Ballyflanagan, containing in the whole 50 acres, together with the use of the dwelling-house and out-offices, as a temporary convenience to such letting, all which premises were then in the possession of the defendant, and it was agreed between the parties that the letting was to be solely as a pasture farm, and for a dairy and dairy accommodation, and for the term of one year certain, to commence on the 25th day of March, 1871, and to end on the 25th of March, 1872. The rent was to be £200, and the agreement provided he was to keep the premises in repair. That is the agreement in reference to which we are to determine the question now arising. It is contended on the part of the defendant that he was entitled to have a notice to quit. The contract belongs to the class of cases commonly called dairy agreements. It appears there had been a previous course of similar dealing. Possession was demanded 25th March, 1872, and refused. The defendant insisted he could not be put out without a notice to quit. The decision of the Court of Common Pleas may carry with it serious consequences. Should this Court hold the defendant cannot be put out without a notice to quit, an end must be put to that class of cases known as dairy agreements. The 69th section of the Land Act deals with tenancies being less than a tenancy from year to year. Littleton takes a distinction between a tenant for a term of years, and a tenant at will:—"Tenant for a term of years is where a man letteth lands or tenements to another for a term of certain years, after the number of years that is accorded between the lessor and lessee, and where the lessee entereth by force of the lease, then he is tenant for a term of years."—Littleton, section 58. In section 67 he says:—"Also, if tenements be let to a man for term of half a year, or for a quarter of a year, in this case if the lessee commit waste the lessor shall have a writ of waste against him, and the writ shall say *quod tenet ad terminum annorum*." A tenancy from year to year seems to have been unknown. In section 72 he says:—"If the lessor upon a lease at will reserve to him a yearly rent, he may distrain, &c." But the ordinary modern tenancy had its origin in the tenancy defined by Littleton. In popular language the two tenancies are still confounded, a yearly tenancy is a tenancy at will. "In the country, leases at will in the strict legal notion of a lease at will, being found extremely inconvenient, exist only notionally, and were succeeded by another species of contract which was less inconvenient. At first, indeed, it was settled to be for a year certain, and then the landlord might turn the tenant out at the end of the year. It is now established that if a tenant takes from year to year, either party must give a reasonable notice before the end of the year, though that reasonable notice varies according to the custom of different countries."—*Timmons* v. *Robinson*, 3 Bur. 1609. The Judges inclined strongly against them, the Courts objecting to indefinite holding. But tenancies from year to year, unknown in the time of Edward III., were recognised in the time of Henry VIII. There are even instances where parties have by contract created a relationship which is in effect a tenancy for two years certain; *Birch* v. *Wright*, 1 T. R. 378; *Chadborn* v. *Green*, 9 A. & E. 658. But a yearly tenancy is legally and technically a tenancy for one year certain, and no more. This has been expressed by Denman, C.J., in *Doe d. Clarke* v. *Swaridge*, 7 Q.B. 958: "A tenancy from year to year lasts only so long as both parties please; that is, it is determinable by either party at the end of the year, by giving notice to quit half a year before the end of the year. There is no reason why it should not be determined at the end of any subsequent year, unless the parties have by express contract prevented such determination." An ordinary tenancy from year to year is a tenancy for one year certain only, and in that light not greater than the tenancy now before us. The legislature in passing the enactment was dealing with matters legal and technical, it was altering in most important particulars one portion of the law of real property, and we must assume it to have understood what was the legal effect of the language it made use of. After due consideration, I have come to the conclusion that the tenancy created was not less than a tenancy from year to year, and therefore does not require a notice to quit. I admit, however, that it is not easy to put a satisfactory construction on the 69th section. I have arrived at a similar decision to that of the Common Pleas, but for different reasons.

Fitzgerald, B.—I think the judgment of the Court of Common Pleas must be affirmed. I think a tenancy for a year certain and no more is not a tenancy less than a tenancy from year to year within the Landlord and Tenant (Ireland) Amendment Act, 1870. A tenancy from year to year may be created by express contract, or by implication of law. In both class of cases the estate is an estate for one year certain, determinable at the end of one year. In its nature a tenancy from year to year is a tenancy at will, but it cannot be determined without a notice to quit. The legislation in this act dealing with a tenancy from year to year deals with it according to its true legal nature.

Palles, C.J.—The order of the Court of Common Pleas must be affirmed. The only question upon which I think it necessary to offer an opinion is, as to whether a tenancy for a year certain is less than a tenancy from year to year within the 69th section of the Land Act, 1870. In order to ascertain the meaning of a tenancy from year to year, regard must be had to what are the incidents to every

Digitized by Google

tenancy from year to year. I think there is little difference of opinion among the members of the Court as to the meaning of a tenancy from year to year; it is for one year certain, with a springing interest arising out of the original contract. If we look to the possible duration, I do not see where a line is to be drawn. We lose every limit which is necessary.

WHITESIDE, C.J.—The great question in this case is whether a tenancy for a year certain is less than a tenancy from year to year within the meaning of the 69th section of the Landlord and Tenant (Ireland) Amendment Act, 1870. The learned judges in the Court below expressed the opinion that the tenancy created in this case was less than a tenancy from year to year. The Chief Justice having adopted the theory that the tenancy being created for a year certain was less than a tenancy from year to year, without reference to any authorities, and without entering on any train of reasoning, observes:—"I am satisfied that the tenancy in this case is less than a tenancy from year to year, and it appears that it was created after the passing of the Act. This being so, I do not see how I can get rid of the effect of the plain words of the statute, because they lead, or seem to lead, to an unreasonable result. I am not at liberty to consider the reasonableness of the section, the sole question is what is its fair construction." Mr. Justice Lawson, having laid it down first that the tenancy was less than a tenancy from year to year, found himself much embarrassed in holding that the 69th section did not then apply, and that the unreasonable and inconvenient consequences stated by Chief Justice Monahan did not logically follow. His method of escaping difficulties is highly ingenious, but he seems rather to establish what the section should be than what it is literally. In Butt's Landlord and Tenant (Ireland) Act, 1870, page 826, a tenancy for a year certain is stated to be less than one from year to year. He adds with becoming caution.—"The strange consequence appears to follow that such a tenancy will require a six months' notice to determine it, and if that notice be not given it will become a tenancy from year to year." In such a state of things, and with such difficulties to contend against, and such inconvenient and unreasonable consequences flowing from adopting the construction of the section contended for by the defendant, several of my learned brethren have prudently, I think, raised a previous question—namely, whether in legal contemplation a tenancy for a year certain is less in law than a tenancy from year to year. I think they have proved it is not. All the difficulties conjured up to embarrass and alarm us vanish, dispelled by reason, logic, and law. Reason is shocked by the demand upon us, not to maintain contracts between man and man, but to defeat and destroy them; and it is consoling to find law enough in the books to enable us to confirm the contract here made between the parties. The tenancy from year to year is a term; each year of the tenancy as it elapses is considered as a prolongation of the original term. "Such leases," it is observed by Mr. Preston, "may appear at first view to give several distinct estates, in truth they give only one time of continuance; that time may be confined to one year, or extended to several years. In the first place, the lease is for one year certain, after the commencement of every year it is a lease for the second year. So that the lease which in the first instance is only for one year certain, may in the event be a term for 1000 years."—3 Preston, a 76 & 77. And the principle here put explains how it is that a tenancy from year to year may be considered as beginning each year, and may be pleaded as having commenced on the first day of the current year, although the tenant may have entered several years previously. Mr. Justice Patterson, in *Tomkins* v. *Lawrence*, 8 C. & P. 729, lays down that a tenancy from year to year is considered as recommencing every year. If so, how can a tenancy created for a year certain be in legal contemplation less than a tenancy which began afresh each year that it exists? What the judges decided as to these tenancies is not to be forgotten, and their opinions on this very subject are authorities; and if such a tenancy recommences every year, can it legally differ from a tenancy which by its creation lasts in like manner for a year? It may terminate at the end of the year. So, a tenancy from year to year as long as both parties please is determinable at the end of the first as well as of any subsequent year. The judgment of Patterson, J., is thus noticed in *Gandy* v. *Jubber*, 5 B. & S. 83:—"This means a yearly tenancy such as treated by Patterson, J., in *Tomkins* v. *Lawrence*, as recommencing every year, and to the same effect is the judgment of Wood, V.C., in *Cattley* v. *Arnold*, 1 J. & H. 651, citing *Tomkins* v. *Lawrence*." Blackburn, J., in his judgment directly affirms the propositions we now affirm, that a tenancy from year to year is to be treated as recommencing every year, as laid down by Patterson, J., in *Tomkins* v. *Lawrence*. The very proposition of the Court was that the tenancy was not to be treated as continuous, but as recommencing every year. In the first instance, it is only for a year certain, and after the commencement of every year it is a lease for the second year, but that it may so last for many years does not alter its qualities or legal character. The argument of Mr. Lynch should not be unnoticed. He contended that this case was not to be decided by a narrow view of the 59th section only, but on the general frame and purview of the statute; that notice to quit and compensation be regarded in connexion, and that whoever was entitled to the compensation should also get the notice. The idea here suggested is supported by a passage in Mr. Justice Lawson's judgment. The argument was, in effect, that the intention of the Act as appears from the sections and subsections, is that the tenant holding under such an agreement as permitted him to get compensation, should alone be entitled to a notice to quit. The argument was ingenious, and was not answered. The legislation which is to bind me to fetter the plain engagements into which parties capable of contracting have entered, must be clear and coercive. Freedom of contract is the right of civilized man. This novel legislation must be unmistakably expressed and plainly applicable to the matter in hand. I am of opinion that judgment must be given for the plaintiff.

Judgment affirmed.

Solicitor for the plaintiff: *A. Nesbitt.*
Solicitor for the defendant: *V. Duff.*

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J., O'BRIEN, and FITZGERALD, JJ.)

CLEARY v. LENIHAN.

June 2, 1874.—*Libel—Justification—Libellous matter contained in a Municipal Election petition, prepared, but not presented and adjudicated upon—Publication in a newspaper—Truth of statements in petition not alleged.*

To an action of libel, charging that the defendant published in a newspaper a statement that a petition, against the election of the plaintiff to the office of mayor, on the grounds of intimidation and undue influence, was about to be lodged by the defeated candidate for the mayoralty, it is not a justification to plead that the defeated candidate had in fact, and being duly qualified, caused a petition on those grounds to be prepared, which he was about to lodge and present to the proper legal tribunal, for the purpose of having the validity of the plaintiff's election investigated and determined, but not averring that the matters imputed by the petition were in fact true, or that the petition had been made in fact the subject of judicial inquiry and adjudication.

Demurrer.—The sixth paragraph of the summons and plaint was as follows:—"For that before the committing of the grievances hereinafter mentioned, an election of mayor for the City of Limerick was held,

Digitized by Google

and the plaintiff was, at the said election, elected mayor for the city, and, subsequently to the said election, the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper called *The Limerick Reporter*, the words following:—"If the authoritative statements of the sixteen members of the Town Council are to be taken as a sufficient guarantee, the last election of mayor will be rendered memorable for many years to come. A petition, it is stated, is about to be lodged by Mr. Thomas MacMahon Cregan, T.C., the dissatisfied candidate for the mayoralty, in the Court of Common Pleas, against the re-election of Mr. J. J. Cleary to the civic chair, on the 1st instant, on the ground of intimidation and undue influence, which it is alleged was employed on behalf of the mayor, Mr. Cleary, and by his friends and supporters acting as his agents. It is, also, stated in the petition that drink was supplied in great abundance by the mayor previous to the election, which was partaken of by a large number of friends and supporters, who entered the Town Hall under the influence of drink. The scene which the chamber presented during the record of votes is, also, described in the petition.'" The defendant pleaded by way of defence "that the plaintiff and said T. M. Cregan were candidates for the mayoralty, and that the plaintiff was duly elected, and T. MacMahon Cregan defeated: that said T. M. Cregan being duly qualified in that behalf, caused a petition to be prepared against the re-election of the plaintiff, on the grounds, and containing the allegations, statements, and matters in the publication stated; and before and at the time of the publication, it was the intention of said Cregan to present the petition, and lodge it in the Court of Common Pleas, and said petition was then about being presented, in accordance with the provisions of the statute, for the purpose of having the validity of said election investigated and determined according to law."

The plaintiff demurred to the defence, on the grounds that it appeared that the defendant published and gave circulation to libellous matter which was contained in the petition, but which petition was never presented; and because the defence did not aver that the charges alleged to be contained in the petition, and published and circulated by the defendant, were in fact true; and because the defence did not in any way justify, or purport to justify the statement in the libellous matter complained of, "that the last election of mayor would be rendered memorable for many years to come."

Peter O'Brien in support of the demurrer.

Gerald Fitzgibbon, Q.C., *contra*, cited *Hunt* v. *Algar*, 6 C. & P. 245.

Whiteside, C.J.—This case comes before the Court on demurrer to a defence in an action for libel. [His Lordship read the paragraph of the summons and plaint to which the defence was pleaded.] If that is not defamatory of the plaintiff in his office as mayor, I do not know what can be. The answer to it is:—[His Lordship read the plea.] That defence has been demurred to. No petition was presented to the proper tribunal. The case, then, resolves itself into one of a communication appearing in a newspaper. The law on this subject has been laid down by Best, C.J., in *De Crespigny* v. *Wellesley*, 5 Bing. 404 (cited in Starkie on Slander 295):—"If a man receive a letter with authority of the author to publish it, the person receiving it will not be justified, if it contain libellous matter, in inserting it in a newspaper. For if the person receiving a libel may publish it at all, he may publish it in whatever manner he pleases: he may insert it in all the journals, and thus circulate the calumny through every region of the globe. The effect of this is very different from that of the repetition of oral slander. In the latter case what has been said is known only to a few persons, and, if the statement be untrue, the imputation may be got rid of. The report is not heard of beyond the circle in which all the parties are known, and the veracity of the accuser, and the previous character of the accused, will be properly estimated. But if the report is to be spread over the world by means of the Press, the malignant falsehoods of the vilest of mankind, which would not receive the least credit where the author is known, would make an impression which it would require much time and trouble to erase, and which it might be difficult, if not impossible, ever completely to remove. He who prints and publishes what was given to him in manuscript has to answer for by far the greatest part of the mischief that the statement has occasioned. Before giving it general notoriety, by circulating it in print, the defendant should satisfy himself that it was true, and should be prepared to prove its truth to the letter; for he can have no more right to take away the character of the plaintiff, without being able to prove the truth of the charge that he makes against him, than to take his property, without being able to justify the act by which he possessed himself of it.'" There is a simplicity and directness of statement as to the law of libel in that passage that commends itself to our approval; and, under the circumstances of this case, we think that the demurrer should be allowed.

O'Brien and Fitzgerald, J.J., concurred.

Demurrer allowed.

Attorney for plaintiff: *John Ellard.*
Attorneys for defendant: *Kenny & Murphy.*

COURT OF COMMON PLEAS.

Reported by J. R. Stritch, Esq., Barrister-at-law.

(Before Monahan, C.J., and Morris, J.)

Campion v. Campion and Others.

April 20, June 3, 1874.—*Pleading—Ejectment for non-payment—Demurrer—Traverse of tenancy—C. L. P. Act*, 1853, *ss.* 194, 195—*L. & T. Act*, 1860, *s.* 53.

A summons and plaint in ejectment for non-payment of rent, directed to "W. L. Campion and others, defendants," averred that E. Stack held the lands as tenant to the plaintiff, under a contract of tenancy. W. L. Campion having demurred, on the grounds that no contract of tenancy between him and the plaintiff was disclosed, nor was it alleged in terms that he was a tenant in possession.

Held, *that the writ was good in law, and complied with the requirements of C. L. P. Act*, 1853, *s.* 195.

Billing v. Arnold, Ir. R. 7 C. L. 529; Keene v. M'Blaine, 17 Ir. C.L. 654; *commented upon.*

Ejectment for non-payment of rent.—The action was brought against "W. L. Campion and others, defendants," and the summons and plaint averred "that one Edmond Stack holds all that and those part of the lands of ———," "as tenant to the plaintiffs under a contract of tenancy at the yearly rent of £—," &c. To this writ W. L. Campion filed a demurrer, on the grounds that it did not thereby appear that he held the lands under any contract of tenancy from the plaintiff, or that he was tenant in possession under any contract of tenancy between the plaintiff and any person or persons, and because it did not appear by the writ that any privity of contract existed between the plaintiffs and defendant.

John Roche (with him *O'Brien*, Q.C.), for the defendant.—The relation of landlord and tenant is founded on contract, and ejectment for non-payment of rent is the statutable remedy for breach of a term of that contract; 23 & 24 Vict., c. 134, s. 52. The remedy applies only where that relation exists. In order to disclose a good cause of action, which in this case means a right

Digitized by Google

to avail himself of the statutable remedy, the plaintiff must allege and prove the relation of landlord and tenant between him and defendant, or, at least, between him and a person on whose title defendant's possession must be shown to depend; L. & T. Act, 1860, s. 53. To that effect is the judgment of Fitzgerald, B., in *Billing* v. *Arnold*; Ir. R. 7 C. L. 531. To the same effect is the decision in *Keene* v. *M'Blaine*, 17 Ir. C. L. 654. This view harmonizes with the provisions of the Common Law Procedure Act, 1853, as to proceedings in ejectment. Section 194 of that Act requires the writ to be directed to the "immediate tenant," or any one tenant in possession. The form of a summons and plaint in ejectment in the schedule contains an express allegation of tenancy. This appears to mean a contract of tenancy between the plaintiff and defendant. But, giving to the words "immediate tenant" and "any one tenant in possession," the effect suggested by Fitzgerald, B., in *Billing* v. *Arnold*, this writ does not show that the defendant fills either of these capacities. The Court cannot presume that he does. The section appears to require a distinct allegation of the character in which the defendant is sought to be charged, by the words "particulars hereinbefore required."

Hickson (with him *James Murphy*, Q.C.), *contra.*—This is a valid writ, and is sufficient to recover possession of the lands. The argument in support of the demurrer proceeds on the fallacy that the judgment in an ejectment goes, like a judgment for damages, against the person of the defendant. The effect of such a judgment is shown in *Riordon* v. *Walshe*, 7 Ir. L. T. R. 93, Ir. R. 8, C. L. 13. No costs or damages are recovered by this proceeding, nothing but possession of the land. Notice of the proceeding is given to all the tenants, and if they have any right to possession they may come in as defendants, without incurring any personal liability by the judgment, which may go against them; so, C. L. P. Act, 1853, s. 201. If, then, no privity exist between plaintiff and defendant, what *locus standi* has he here? The proper course for the defendant to have adopted is that directed by C. L. P. A. 1853, s. 16.

O'Brien, Q.C., in reply.—As to the argument for the plaintiff founded on the case of *Riordon* v. *Walshe* that decision was made on the ground that a married woman has no legal estate whatever in her husband's land, and the observation of Fitzgerald, J., applies only to persons not named in the writ. Here the defendant is named in the writ, and the judgment on the record will go against him personally. Thence it is idle to contend that he would not be affected by it. But again, suppose that in this case the defendant had been over 20 years in adverse possession, he then could claim by title paramount. That being so, if he neglected to appear he would clearly be affected by the judgment, for it would simply dispossess him. Privity with the plaintiff is not, therefore, necessary in an ejectment proceeding, in order to render the judgment for possession of the lands a matter of indifference to the defendant, in every instance.

Cur. adv. vult.

Morris, J.—A demurrer has been taken in this case by the defendant, W. L. Campion, to a summons and plaint in ejectment for non-payment of rent. The title of the plaint is, "Jeremiah Campion, John A. Hanrahan, Henry S. Noblett, and John Moriarty, plaintiffs, William Lane Campion and another, defendants." The writ, directed to W. L. Campion, then calls upon him to answer the complaint of the plaintiffs, who complain that one Edward Stack, the other defendant, holds the lands the subject of the ejectment, as tenant to the plaintiffs under a contract of tenancy, at the yearly rent of £121 18s., and that three years' rent is due; and judgment is then prayed to recover possession of the lands from the defendant, Edward Stack. The defendant Campion, by his demurrer contends, that no contract of tenancy is disclosed between him and the plaintiffs, and that it is not alleged in terms that he is a "tenant in possession" of the lands. The 194th section of the Common Law Procedure Act of 1853 enacts:—[His lordship read the section.] In other words, from that enactment I conclude that the writ should be directed to either "the immediate tenant," by which description I understand the tenant holding immediately from the plaintiff; or to any one "tenant in possession," by which I understand any tenant in the actual possession whose tenancy is dependant on the "immediate tenant's" right of possession. The object of the section is to enable the landlord to be always in a position of certainty as to how he should bring his ejectment, although he could not and ought not to be expected to be always in a position to determine who was legally his immediate tenant. Now, for myself, I must confess that I fail to perceive the analogy between ejectment for non-payment of rent—in which merely possession of the land is sought—and an action of covenant for rent against an assignee, where the rent is sought as a debt due by the alleged assignee. Nevertheless, some such analogy seems to be the ground of the decision in *Keene* v. *M'Blaine*, 17 I. C. L. R. 658, a case which has led to a considerable amount of technical and unmeritorious litigation. Any person served with a copy of the plaint in ejectment for non-payment of rent, though not named in it, thereupon becomes a defendant, and is entitled to take defence. What statement in the plaint is he entitled to traverse? The statement that the defendant held as tenant does not necessarily mean that the defendant is the "immediate tenant," but is an allegation that there is a contract of an existing tenancy held under the plaintiff. The traverse should be of that allegation so understood, and this mode of pleading was decided by the Chief Justice in *Bell* v. *Beatty*, 6 Ir. C. L. R. 399, to be the proper form. At all events, the traverse of the allegation that the defendant held as tenant to the plaintiffs should be construed to mean that the defendant did not hold either as plaintiff's "immediate tenant," or by a possession dependant on the tenancy of the immediate tenant. We were, also. referred to the case of *Billing* v. *Arnold*, which decision appears to be founded altogether on the necessity of following *Keene* v. *M'Blaine*. One of the learned Barons, as reported, declines to express an opinion as to what should be the form of future plaints in ejectment for non-payment of rent. Thus the process of the recovery of the possession of land for non-payment of rent becomes judicially paralyzed. Another learned Baron states "he wishes to say no more than that *Keene* v. *M'Blaine* is binding on him," and he regrets that the former method of pleading is departed from. For myself, sitting in this Court, I should be quite prepared to decline to follow *Keene* v. *M'Blaine* or *Billing* v. *Arnold*; and I regret that neither case reached the Court of Exchequer Chamber. I find that the latter case failed to do so by an oversight of the plaintiff's attorney in not lodging his notice in proper time, and that liberty to appeal notwithstanding was refused by the Court of Exchequer. But is the present case ruled by these decisions in the Court of Exchequer referred to? The pleader in the present case has named W. L. Campion as defendant, but in order to avoid the effect of those decisions he alleges, in the body of the writ, not that W. L. Campion holds as plaintiff's tenant, but that Edward Stack holds as plaintiff's tenant, by which statement of tenancy, according to the decisions, he would allege that Edward Stack was plaintiff's immediate tenant. We must therefore assume that W. L. Campion, to whom the writ is directed, is a tenant in possession.

I am not aware of any previous attempt to demur to a plaint in ejectment for non-payment of rent.* The writ

* In *Gray* v. *Lauder*, Q. B., April 17, 1874, a demurrer taken to an ejectment for non-payment of rent was heard, and overruled. It was not contended that a demurrer does not lie in that action. [Ed. *I. L. T. Rep.*]

Digitized by Google

is regular on the face of it, and complies with the requirements of the Common Law Procedure Act, section 195, is not, or if the defendant was embarrassed, he should have applied to have the plaint amended or set aside. We are of opinion that the demurrer should be overruled.

Monahan, C. J., concurred.

Demurrer overruled.

Attorney for plaintiff: *J. G. M'Carthy.*
Attorney for defendant: *Thomas Rice.*

(Before the Same.)

Ramsay v. Quinn and Another.

June 11, 29, 1874.—*Master and servant—Negligence of Captain of merchant-ship—Injury to sailor on board—Liability of owner of vessel.*

To render an employer liable for injury to one in his employ, through the negligence of another person also in his employ, it must be shown that the latter was not merely a fellow-workman, but was placed in a position of such authority as fairly to represent the employer himself.

The captain of a merchant-ship, under his control and management, is not a mere fellow-workman of the seamen on board, bound to obey him, but is such an agent or representative of the owner of the vessel that the latter, by whom he has been appointed, will be liable for an injury to a seaman sustained by him through the captain's negligence during the voyage, while the seaman is acting in obedience to an order given by the captain.

Demurrer.—The first count of the summons and plaint was as follows:—"For that, at the time of the committing of the grievances hereinafter mentioned, the defendants were possessed of a certain ship called "The Vespa," then being navigated by their servants under the sole control and management of one William M'Cullagh, who was captain of said ship, appointed in that behalf by the defendants, and as such captain governed and directed the said ship and the seamen and servants thereof, and whose orders as such captain the said seamen and servants were bound to obey. And one John Ramsay, for certain hire and reward therefor to be paid to him, agreed with the defendants to serve and do the work and duties of an able-bodied seaman on board the said ship, under the control and orders of the said captain, during a certain voyage from Troon to Belfast, and the said John Ramsay thereupon entered on board the said ship as such seaman upon the terms aforesaid, and the plaintiff says that, whilst said ship was on said voyage and the said William M'Cullagh was captain of said ship as aforesaid, the defendants' said captain negligently, unskilfully, and improperly ordered the said John Ramsay and the other seamen on board the said ship to abandon said ship, and the said John Ramsay and the other seamen did, in obedience to the said orders, and as they were bound to do, then proceed to abandon the said ship, by reason whereof the said John Ramsay, whilst he was in the act of so abandoning said ship, in obedience to and in execution of said order so unskilfully and improperly given as aforesaid by the defendants' said captain, was drowned, and within twelve calendar months next before this suit lost his life."

Demurrer, on the grounds that the above count disclosed no personal negligence on the part of the defendants; that the captain and John Ramsay were fellow-servants, and that the only negligence averred was that of the captain; that the count did not state, or show any obligation on Ramsay to obey the order; that the facts alleged disclosed no obligation on the defendants; that if the order were unlawful Ramsay was not bound to obey it, and if lawful the defendants were not liable.

Boyd, in support of the demurrer. The defendants are not liable unless they have been guilty of negligence in the selection of the captain of the vessel, and yet no such negligent selection is averred. When one fellow-servant has been injured by another fellow-servant the master is not liable, unless he has been guilty of negligence in selecting an unskilful or incapable servant in the person who has done the injury; *Tarrant* v. *Webb*, 25 L. J. C. P. 261; *Wilson* v. *Merry and Another*, L. R. 1 Sc. App. 327; *Bartonshill Coal Co.* v. *Reid*, 3 Macq. H. L. 282. The captain of the vessel and a seaman, notwithstanding the difference of their social positions and the nature of their employment, are fellow-servants; *Tarrant* v. *Webb*. Again, the plaint alleges that the captain "negligently, unskilfully, and improperly ordered" the deceased to abandon the ship, and that while acting "in obedience to said order," and as he "was bound to do," he was drowned. Now, if this order were such as described, the deceased was not bound to obey it, and if the order was a proper one, and in obeying it the deceased lost his life, the defendants were not liable.

M'Mahon, Q.C. (with him *Frazer*), *contra*. The captain of the vessel is the agent of the defendants, and for an act negligently done by him resulting in the death of the deceased, they are liable. He is not a mere fellow-servant of each member of his crew. In Story on Agency (7th Ed. p. 124–128), the peculiar official position of the captain of a vessel is defined. He can hypothecate the ship; he is treated not as an ordinary agent, but as a special employer or the owner of the ship; he unites in himself the double powers of the absolute and temporary owner or charterer of the ship; the law treats him as having a special property in, and charge of the ship. The master of a ship is the person entrusted with the care and management of it, and the employers or owners of a ship are responsible for the contracts of their captains, while they are not responsible for the contracts of their mariners, because these latter are not appointed for the purpose of conducting the business of the ship, but only for labouring in its navigation under the orders of the master; Abbott, Shipping Laws, 11th ed. 93, 101–2. If a captain of a vessel be guilty of any default of duty, his employers are responsible for his acts in those things that respect his duty under them, though they are not answerable for his conduct in those things which do not respect his duty to them, *e.g.*, if he commit an assault on the voyage; *Ellis* v. *Turner*, 8 T. R. 531. Again, the mariner is bound to obey every lawful order of his captain. Once the voyage commences it is his duty to navigate the ship at all perils. No matter what danger he may incur he is entitled to no special remuneration, because he simply performs his duty; Abbott, Shipping Law, 153. Even when an order to abandon the ship has been given *bonâ fide* to the crew, although the danger did not justify such an order, yet the crew is justified, and therefore bound to leave her; "The Florence," 16 Jur. 573.

Boyd, in reply.

Cur. adv. vult.

Morris, J.—The defendants have demurred in this case to the first count of the summons and plaint. The widow of a seaman, named John Ramsay, has brought this action against the owners of a vessel called "The Vespa," to recover damages for the death of her husband. The count which has been demurred to states that the ship was under

Digitized by Google

the sole control of one William M'Cullagh, who was the captain of the ship and appointed to that post by the defendants, that acting in that capacity he governed the ship and the crew, and that the crew were bound to obey all orders given by him as captain. It then states that the deceased, Ramsay, entered into the defendants' service as an able-bodied seaman, and that as such he went on board "The Vespa," commanded by said William M'Cullagh. It next states that the deceased started on a voyage, and that during that voyage the captain negligently, unskilfully, and improperly ordered the said Ramsay and other seamen to abandon the ship, and that in obedience to such order, and as they were bound, the deceased Ramsay and the rest of the crew proceeded to abandon the ship, and in the execution of the order Ramsay lost his life. The demurrer is taken on the ground that no action will lie against the owners of the ship upon the authority of a great number of authorities, commencing with *Priestly* v. *Fowler*, 3 M. & W., and culminating with *Wilson* v. *Merry*, L. R. 1 Sc. App. 326. All these cases establish that no action will lie against an employer for injuries to one fellow-servant through the negligence or want of skill of another fellow-servant, no matter in what capacity he may be, provided both are the servants of the same person. The distinction between the ordinary case of fellow-workmen and that where one of the parties employed occupies a position superior to that of the other—being, for example, a foreman or superintendent—appears to have been removed by *Wilson* v. *Merry*. But in that case I find nothing repugnant to the principles laid down in *Murphy* v. *Smith*, 19 C. B. N. S. 361, that when an employer has an agent or representative, held to be so by the jury, and who is not merely a fellow-workman of the party sustaining the injury, the employer is liable for an injury to his servants occasioned by the neglect or unskilfulness of his agent or representative.*

Now, in what class are we to place the captain or master of the vessel in this case? Is he merely the fellow-servant of the deceased, or the agent and representative of the defendants? In my opinion he comes within the latter class. He is the agent and representative of the owners during the voyage. His position is thus defined in the best books on the subject. So he has authority to bind the owners for repairs and necessaries, and it is within his competence to settle claims for demurrage.

That being so, and coupled with the statements in the summons and plaint, that the ship was under the control and management of the captain, that he was appointed by the defendants, that he governed and directed the ship, and that the seamen on board were bound to obey his orders, we consider that, the liability of the defendants depending on the question whether the captain was the agent or representative, that question cannot be decided in their favour on demurrer to the count. The demurrer must be overruled. Any other question the defendants wish to raise must be raised by a plea to the Court.

Monahan, C.J.—I quite concur with my brother Morris in the judgment he has given. But I would prefer to rest my opinion on the averments in the summons and plaint as to the authority delegated by the defendants to the captain, all which averments the demurrer admits. Resting my opinion on those averments, the demurrer must be overruled.

Demurrer disallowed.

Plaintiff's attorney: *John Rea.*
Defendants' attorney: *W. Harper.*

* See the cases fully collected, 2 Tay. Ev. 6th Ed., 1,027; Smith, M. & S. 3rd Ed., 207-8.—[Ed., *I. L. T. Rep.*]

LIMERICK LAND SESSIONS.

(Before John Leahy, Esq., Q.C.)

Kinnerk v. Hall.

April 18, 24, 1874.—*L. & T. Act*, 1870, *ss.* 3, 4, 18—*Tenancy from year to year, created after passing of Act—Improvements effected during previous tenancy under lease—Unexhausted manure—Demand of increased rent—Offer of arbitration—Compensation for disturbance—Unreasonable conduct of landlord or tenant, what constitutes.*

A landlord, upon his having become purchaser of a property, demanded "a fair increase of rent" from a tenant on the land. The tenant had held under a lease, upon the expiration of which he was left in possession under a yearly tenancy, created after the passing of the L. & T. Act, 1870, *at the former rent, which, having regard to the increased value of the holding, was inadequate. But the landlord did not specify what increase in the rent he would require; and the tenant refused to pay any increase, but insisted on a reduction, and endeavoured to intimidate the landlord. The landlord proposed to leave to arbitration, upon a fair basis, the question by what amount the rent should be increased; but the landlord did not strongly press for arbitration, and the negociation was broken off by the tenant without sufficient reason. The tenant having been evicted, and claiming compensation for disturbance and improvements,*

Held, *that the conduct of both parties was unreasonable, within* 33 *&* 34 *Vict., c.* 46, *s.* 18; *and that the tenant should be allowed only the amount of two years' rent, as compensation for disturbance, besides* £22 10*s. for unexhausted manures.*

Leonard v. Smith (*unreported*) *discussed.*

Claim for compensation for disturbance and improvements. The facts are fully detailed in the judgment of the Court.

Blackhall, for the claimant.

Cleary, contra.

The Chairman.—This case involves some questions of law, arising under the L. and T. Act, 1870, the bearing of which does not seem to have been clearly apprehended. Before applying myself, however, to the consideration of those questions, I shall recapitulate the facts of the case appearing in evidence before me. It appeared that a lease was made on the 20th March, 1851, between Mr. Evans and the father of the claimant, Denis Kinnerk, of the lands in question, comprising four and a half acres, for a term of 21 years, at a rent of £1 per Irish acre. There was no reservation of royalties, or of quarries, but there was at the time an open limestone quarry on the lands. It was a common farming lease. There was no pretence that the lands were town fields, but at the time of the lease there were three dwelling-houses, as mentioned in it, two of which had since disappeared, but the other remained, and had been occupied from time to time. Ever since 1857, instead of the place being farmed in the ordinary agricultural way, it was let every alternate year in con-acre, at a rent varying from £5 to £9 an acre, the average rent being say £5 10s. an acre. But though the claimant had to plough the land, he had each alternate year a crop of oats or barley, which were worth, perhaps, on an average, £10 per acre, so that he got for the twenty-one years it was in his occupation, in round numbers, about £40 a year profit rent out of the lease, out of which, of course, was paid the rent, cost of ploughing, and seed, but then he had the straw and manure as a set off to that outlay. In addition to that the claimant, it appears, had been using the quarry, as he had a right to do, there being no reservation in the lease, and he being a road contractor. Thus he derived a large benefit out of his holding until the lease terminated in March, 1872. When the lease terminated, the tenant would be entitled to compensation, not for disturbance, but for im-

Digitized by Google

provements. What was the condition of the farm at the expiration of the lease? I have myself had an opportunity of seeing the place lately; and in whatever state the land may have been in 1851, the greater part appeared to me to be exceedingly good land; it could never have been waste land. What had been done for it during all that time? It appeared that at the time he took the land, old Kinnerk had an adjoining farm on which he lived, and at the time of taking out the lease there was a comfortable dwelling-house, one for a labourer or small farmer; but having his own house on the adjoining farm, he converted the dwelling on the small one, which ought to have been kept as a dwelling, into a barn, until his son married, and then the latter went to live in it, but when the old man died the claimant again turned it into a barn. With regard to the repairs, or what it would require to repair it with, Mr. Corbett gave material evidence; when I went to the place, I must say, I never saw a greater wreck. I asked Mr. Corbett what it would take to repair the place, and he said it would take about £12 10s. or perhaps £16. Judging from the appearance of the place presented to me, I have no hesitation in saying that if it had happened that Mr. Hall, who bought the interest in the place, had put out claimant at the end of the lease, not only would he not have been entitled to a shilling for disturbance under the Land Act, but it could not be shown that there had been a single improvement made in the place, except the building of a wall about the quarry. Mr. Hall said that the wall in question could be erected for about £4 10s., but I myself believe that it would cost £6 10s. That was the only improvement effected on the farm during twenty-one years; and against that Mr. Hall would have a claim for dilapidation for certainly not less than £15. In walking along the place, I observed walls there nearly all down, or with gaps in them, in most parts being only two feet high, and in other parts only three feet. But upon the view I have taken of the case, there is an end to the claim by Mr. Hall for dilapidation, and the claimant cannot sustain his claim for any works done while the lease was in existence. The legal position of the case has been altogether altered by the fact that before Mr. Hall got the land Kinnerk had been recognized as a yearly tenant, he was treated as such by Mr. Hall, and as such I must deal with him. For that reason, Mr. Hall not being entitled to claim for dilapidation, I shall strike out his set off, and also Kinnerk's claim for £6 10s. in respect of the wall alleged to have been built to him—other improvements there were none. Then comes the question as to the claim for disturbance.

Now, as to the claim for disturbance, we must see what passed between the claimant and Mr. Hall, and what was the extent of the liability of Mr. Hall to the claimant. Mr. Hall having bought the land from Mr. Evans, brought a process of ejectment against the claimant and succeeded, but previous to this he accepted from the tenant a half year's rent, and thus created a yearly tenancy. Therefore, he came within the legal definition of a tenant from year to year, as defined by the 3rd section of the Act, the tenancy having been so created after the passing of the Act, and, therefore, the case must be dealt with as one of disturbance of a yearly tenant. Now, upon becoming owner of the land, Mr. Hall, in my opinion, acted very fairly, and any attempt to hold him up as an exterminating landlord is quite without foundation. He was quite disposed, from anything that had transpired during the hearing of the case, to deal fairly, and even generously with his tenant; but according to a very strange idea, ventilated sometimes in the newspapers, it is actually thought by some that a landlord is bound to take an unreasonably low rent. I have to consider whether, under the 18th section of the Act, in the dealings between Mr. Hall and the claimant, there was what is called unreasonable conduct on the part of either. After he bought the land he went to the claimant and said—"You know I bought this land, and I expect a fair rise of rent. It was let in the famine times, and at a very low rent, and now that you have a considerable profit out of it, I expect a fair rise, but I don't want to put you out—I merely want a fair rise of rent." There is nothing better established than that at the expiration of a lease, if a landlord demanded an increase of rent and the tenant refused, the main question to be decided is whether the landlord was asking a fair and reasonable rent. Many judges have decided that if the tenant refused a reasonable rise of rent, he is disentitled to claim compensation for disturbance, under the 18th section. At the expiration of a lease there is no claim for disturbance, but if there have been a renewal of the original letting, and the landlord put a tenant out after refusing to pay a fair rent, the tenant would have no claim except for improvements. Now, in the present case, the man being in the position of a yearly tenant, the question arises, was his conduct unreasonable in refusing to give Mr. Hall the increased rent. Mr. Kinnerk admitted in evidence that Mr. Hall said he did not want to put him out, and merely asked for an increase of rent; but the tenant not only refused to give the rise, but claimed to get a reduction. Now-a-days tenants when asked for an increase of rent, insist that, instead of paying the rise, they ought to get a reduction. That conversation took place in the beginning of the present year. What was the next thing done? Mr. Hall persevering in his demand, the other brought to bear on him threatening proceedings. Mr. Hall at that time thought it a very good thing to belong to a Farmers' Club. He has left it since, for some reason of which I am not aware. And then Kinnerk very cleverly got up an agitation on the subject, and threatened to summon Mr. Hall, not before the courts of justice, but before this new tribunal, and to show him up. Some member of the Farmers' Club, a Mr. O'Halloran, who lived close to Kinnerk, and whose rent also had recently been raised by his landlord, a Dublin gentleman named Mackay, took an active part with Kinnerk in the matter. He took the trouble of composing a letter, which was printed at his expense, and submitted to the Farmers' Club. It appears that Mr. Hall did get frightened a little, and offered to leave the case to arbitration, which was very proper, and accordingly he went to his solicitor to draw up a memorandum of agreement. I suppose there was some meeting of the club about to be held, with Halloran to be one of the judges, and so Mr. Hall determined to evade this dreadful tribunal, and proposed the agreement for arbitration, than which, with one exception, nothing could be more fair or reasonable. Mr. Hall put in the agreement of arbitration that Kinnerk was to pay a fair rent. My opinion is that the man ought to pay a fair rent, and get a lease as offered. I shall not offer my opinion as to what would have been a fair rise; respondent ought, in my opinion, have got what Mr. Cochrane had said—£5 an acre. The arbitrators, though bound to increase the rent, might have increased it by 6d. in the acre, and no more, if they chose. There was also a clause in the agreement that the arbitrators were to take into account and decide what in future Kinnerk should pay over and above the present rent, taking into account the present price of land as compared with what it was in 1846; but Mr. Blackhall, on the part of Kinnerk, objected to that clause. There were three arbitrators (one of them a Farmers' Club man, Mr. Meehan), nominated; but, in consequence of Mr. Blackhall's objection, Mr. Hall said he would strike out the clause from 1846 to the present year, and insert instead from 1855 to the present time. That came within the terms of the Act of Parliament, and was fair. But Kinnerk refused to accept that, and then Mr. Hall said, "Let there be an end to the arbitration—I will have nothing to do with it." I consider that Mr. Hall's conduct was quite reasonable. Of course, arbitrators should have a basis to work upon, and it was only reasonable to say to them, "consider the prices of land and of labour at the time this land was let before, and see what they are now; take all altogether and strike a fair medium." So that really Mr. Hall offered a fair arbitration. I do not think either was anxious to go before the Farmers' Club at all, and they had just as well have stayed away, in my belief. Kinnerk's great supporter was Halloran, and though he was in Court for a long time, he was not called in to give evidence, for

Digitized by Google

probably on cross-examination he would have to admit that his rent had been raised higher than Kinnerk's by his landlord, and that the land was not as good. Now, the question is, what has been the conduct of the parties at either side of the case? A yearly tenancy had been created, certainly, by the payment of rent. It was continued by Mr. Hall under the peculiar circumstances that he did not want to put out Kinnerk, but wanted an increase of rent. Kinnerk was a yearly tenant, and therefore he should get compensation for disturbance It would be very well to have it known what constitutes unreasonable conduct between landlord and tenant. On that subject I shall read an extract from a work recently published by a great advocate for tenant-right, and a gentleman of some eminence, too. I refer to Mr. Donnell's "Practical Guide to the Land Act"—a book which, in my opinion, contains a great deal of good sense, and good law. Treating of "default or unreasonable conduct" on the part of either landlord or tenant, he says—"The enlightened jurisprudence of modern times tends to sweep away all the technical restrictions on the reception of any evidence calculated to throw light on the matter in dispute. By this section the court, whether civil bill court or court of arbitration, is to have regard to every legal or moral consideration which can affect the issue between the parties. It is not, however, to extend its cognisance to default of either party not affecting the matter in dispute. For instance, a tenant's moral character is not to be adjudicated upon because the landlord evicts him for suspicions entertained about it. On the other hand, it might well be considered unreasonable conduct for a landlord to assume the functions of a criminal or ecclesiastical judge, and to punish the tenant after investigation, or perhaps on suspicion, by ejectment decree, or increase of rent, for criminal conduct, or moral delinquency." Then the writer goes into political economy, and says, on the subject of just and reasonable terms, that the "amount of rent will necessarily have to be considered. What, then, is to be the test of a reasonable rent? The Act gives no direct assistance in the determination of this difficult question. It is designedly left for the court to settle it as best it may." So that the question has been left entirely to the judgment of judges, some of whom may know very little about land, and they have to settle the difficult question according to the best of their judgments. One judge may give a decision the opposite of another judge. The writer next defines rent as that "portion of the value of the whole produce which remains to the owner of the land after all the out-goings belonging to its cultivation, of whatever kind have been paid, including the profits of the capital employed, according to the usual and ordinary rate of agricultural capital at the time being." That definition is quoted from Malthus. Then he says that "two ready tests may be given, or suggested—the tenement valuation, and the evidence of persons in the neighbourhood as to what is a fair rent. The tenement valuation of Ireland is worthless as a test; owing to the previous state of the law, it could not take account of the tenant's improvements or good will, and the evidence of persons in the neighbourhood is only of value when it takes into account the considerations here advanced." The tenement valuation in this case was but £11 5s. No doubt it is worthless as a test in this case, for there is no doubt, as Mr. Hall said, he would get £6 an acre for it, and if let out as a butcher's field he would get £7 an acre. I believe it to be worth £5 an acre; but the claimant would not offer such a rent as £5 an acre, and therefore, on that head, there was unreasonable conduct on the part of the tenant. Then I have to consider what is unreasonable conduct on the part of the landlord. When Mr. Hall found he could not get the increased rent, it would have been better to put the tenant out at once, but he acted from a kind motive, thinking that the claimant would yield, but he would not. This is somewhat like a case that came before me some time ago. Mr. Hall was guilty to some extent of unreasonable conduct, in not specifying what rent he asked. The whole matter might have been settled, and the reference to the Farmers' Club avoided, if he had said, "will you give me £5 an acre?" But, instead of doing that, Mr. Hall played fast and loose. It would seem that he was intimidated by the Farmers' Club. Mr. Hall, for his own sake, ought to have insisted more strongly than he did in carrying out the terms of the arbitration. He did not take steps to do so, neither did Kinnerk, therefore both were guilty of unreasonable conduct more or less.

The only question remaining, then, is as to the amount of compensation for disturbance. The only case analogous in principle and law to the present is that which came before me on the claim of a tenant named Leonard against his landlord, Mr. Wilmot Smith, and as that case may be sought to be acted on as a precedent, I shall state the facts. The judgment of the Judge of Assizes, on appeal in that case has never yet been published. I am aware that other judges have decided contrary to the principle laid down in it, and have not followed it, and such was the opinion of the judges at the last and preceding Assizes at Limerick. In the case to which I have referred it appeared that the lease had been made fifty years ago by the Earl of Kingston. The estate was a large one, on which there were over thirty tenants, and the lease expired just before the Land Act passed, either at the end of 1869 or the beginning of 1870. Lord Kingston's interest in the estate had been purchased, in 1852, by Mr. Wilmott Smith, one of the proprietors of this county. Mr. Smith received the rent from them down to the death of Lord Kingston; and on the death of the Earl of Kingston the (last life in the lease), the owner intimated his intention of rising the rent, without, however, having any desire to put out the tenants. But they refused to meet him, and would not listen to his representations. Time passed on, and two gales of rent fell due. Mr. Cox, the engineer and valuator, had made a valuation of the lands, and Mr. Smith said, "Unless you come to terms with me you will not continue on the property. But I only want a fair rise of rent at the end of the lease." What was the result? The tenants agreed amongst themselves not to pay more than they had been giving for land (except in certain instances in which a shilling or two per acre of an increase was offered), and required that Mr. Smith should agree to give a 31 years' lease at such low rents. Inflammatory meetings were held; the whole neighbourhood in the county was in a state of terror; a meeting was held, with a clergyman in the chair, at which allusions were made as to how landlords were treated in Tipperary; Mr. Smith was served with a threatening notice, and had to be guarded by policemen, his life being in danger; people were taken up for combining to murder him; his bailiff was shot in the arm. Of course, the tenants could not be charged with that crime, but it shows the state of the county at the time. Mr. Cox had deposed that Leonard's son, who was getting the land from his father, was active at those meetings. It was proposed to lay the matter before two arbitrators, one being a gentleman of the county Cork. Mr. Smith, however, had said that he would not accept the valuation of any others but the valuators he had appointed himself. Then it was proved that Leonard's son had threatened Mr. Smith, and, the week after, the bailiff of the estate was shot at. I understand that at the Assizes it was urged that that criminal act had been put forward as a means of influencing my judgment; but it never did influence me, and had no legal bearing on the case. Young Leonard, it had been proved, had spent six months in gaol for writing a threatening letter to Mr. Smith. I held that Leonard ought not get any compensation under the circumstance; but that, if the respondent did not object, I would allow one year's rent, then due, as compensation, which I accordingly granted. The Judge of Assize, on hearing the case on appeal, granted a decree for four years' rent for disturbance, besides compensation for improvements, as to which, both in the land court and on appeal, the amount was admitted, and no question arose. The case did not go to the Court of Land Cases Reserved. In that case, however, the parties could have appealed from the decision of the judge to the Court for Land Cases Reserved, but they did not do so.

Digitized by Google

In the present case of *Kinnerk* v. *Hall*, I shall give a decree for two years' rent for disturbance; and for the unexhausted manures on the land I shall allow £22 10s. Of course I allow Mr. Hall £3 10s. 6d., the costs of his ejectment, and a half year's rent due at present. Either party, if dissatisfied, can, of course, appeal from my decree.

*Decree accordingly.**

Attorney for the claimant: *Jonas Blackhall.*
Attorney for the respondent: *Patrick S. Connolly.*

COURT OF CHANCERY APPEAL.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

In re DENNY'S ESTATE.

January 20, 21, 26, 1874.—*Deed—Construction—Limitation of estate tail—Jurisdiction of the Landed Estates Court.*

The X. estates were limited by deed to A. for life, and after his decease "then to the use of the first son of the body of the said A., lawfully to be begotten, not being entitled to the Y. estates or any part thereof, by any limitation made or to be made thereof or by descent, until he shall become entitled to said Y. estates by any limitation thereof, or by descent, or remainder to the use of the second, third, and every other son in succession of the body of the said A., until such second, third, or any other son of the body of the said B. (the then owner of the Y. estates), shall become so entitled to said Y. estates, or any part thereof, according to priority of birth, and to the heirs male of their bodies, not being so entitled to said Y. estates, and in default of such issue to the use of the grantor, his heirs and assigns." There was a subsequent and separate proviso that, if A. or any of his issue or their heirs male should become entitled to the Y. estates, the X. estates should revert to the grantor. The Judge of the Landed Estates Court having refused to make absolute a conditional order for the sale of the X. estates, at the suit of the eldest son of A.,

Held (1), *That the first son of A. took an estate tail, and not merely an estate for life in the X. estates.*

(2), *That the words "being so entitled" did not constitute an attempt to specialize the estate tail, but were merely a reference by anticipation to the effect of the subsequent shifting clause.*

(3), *That the Landed Estates Court had power to decide the question of title arising on the construction of the deed, and should have declared what estate the first son of A. took in the X. estate, and have ordered a sale thereof.*

Appeal from an order of Flanagan, J., dated 1st August, 1873, allowing the cause shown against the making absolute of a conditional order for the sale of the lands of Dunmaniheen, in the county of Kerry, made in the matter of Robert Arthur Denny, owner and petitioner.

In 1816, the Right Hon. Robert Day was seized in fee of lands known as the Dunmaniheen estate. He was twice married; by his first wife he left one daughter, Elizabeth, and by the second, two sons, John Robert Fitzgerald and another. Elizabeth Day intermarried with Sir Edward Denny, and there was issue of that marriage Edward Denny, the eldest son, Robert Day Denny, three other sons and two daughters. Robert Day Denny was twice married; by his first wife he left issue Robert Arthur Denny (the petitioner in the matter), and one daughter; and by his second wife he had issue two sons and two daughters. By indenture dated 18th February, 1816, between Robert Day of the first part, Sir Edward Denny and his wife of the second part, and John and Robert Franks of the third part, it was witnessed that the said Robert Day, in consideration of the natural love and affection which he bore to the said Robert Day Denny his grandson, granted, released, and confirmed unto the said John and Robert Franklin the said lands of Dunmaniheen, to hold the same with the appurtenances unto the said John and Robert Franks, their heirs and assigns, for ever, to the uses and for the purposes, and subject to the provisoes thereinafter mentioned (that is to say)—To the use of the said Robert Day and his assigns for his life without impeachment of waste, and from and after the determination of that estate, then to the use of the said John and Robert Franks, their heirs and assigns, during the life of the said Robert Day in trust to preserve contingent remainders, and from and after his decease to the use of the said John Franks and Robert Franks, their heirs and assigns, during the life of the said Mary Day, then the wife of the said Robert Day, in trust to receive the rents of the said lands, and pay thereout a jointure of £800 a year to the said Mary Day for her life in lieu of dower, and, subject to said jointure, to pay the residue of said rents in such manner and to such purposes as the said Robert Day should by his last will direct and appoint, and, in default of such appointment, to pay the said residue above said £800 a year to the said Robert Day Denny and his assigns during the life of the said Mary Day, "and after the decease of the said Robert Day and Mary Day, then to the use of the said Robert Day Denny and his assigns during his life, whilst he shall be a younger son of the said Sir Edward Denny, and not entitled to the estates of the said Sir Edward Denny or any of them, by virtue of any limitation made or to be made thereof, or by descent and no longer, and from and after the determination of that estate to the use of the said John and Robert Franks, their heirs and assigns, during the life of the said Robert Day Denny, on trust, to preserve the contingent limitations hereinafter limited from being defeated, and for that purpose to make entries and bring actions as the case shall require, and from and after the decease of the said Robert Day, Mary Day, and Robert Day Denny, being such younger son and not becoming an elder or eldest son of the said Sir Edward Denny, then to the use of the first son of the body of the said Robert Day Denny, lawfully to be begotten, not being entitled to the said Denny estates or any part thereof, by any limitation made or to be made thereof or by descent, until he shall become entitled to said Denny estates by any limitation thereof or by descent, or remainder to the use of the second, third, and every other son in succession of the body of the said Robert Day Denny, until such second, third, or any other son of the body of the said Sir Edward Denny shall become so entitled to the said Denny estates, or any part thereof, according to priority of birth, and to the heirs male of their bodies not being so entitled to said Denny estates, and in default of such issue, to the use of the said Robert Day, his heirs and assigns. Provided, however, and it is hereby declared by the said Robert Day, that the said Robert Day Denny shall, within one year after the decease of the said Robert Day, take the surname and arms of Day, as now borne by the said Robert Day, and none other, and that the first and other sons of the said Robert Day Denny, and the heirs male of their bodies, whilst entitled to said lands hereby conveyed, shall bear the

* As to the discretion vested in the Chairmen with regard to determining the amount of compensation to be awarded, and as to reviewing the award on appeal, see *Lord Mountmorris* v. *Hamilton* and *Kyne*, Notanda, 8 Ir. L. T. 486.—[ED., *I. L. T. Rep.*]

Digitized by Google

said surname and arms, and none other. And further, that in case the said Robert Day Denny shall by the death of the said Edward Denny, his elder brother, without issue male or otherwise, become entitled to the said Denny estates, or any part thereof, by any limitation made or to be made thereof, or if any of the issue of the body of the said Robert Day Denny, or any of the heirs male of the body of any of the said issue, shall by any limitation made or to be made thereof, or any part thereof, or by descent, being at the time the heirs male of said Sir Edward Denny, become entitled to said Denny estates, that in such case the said John and Robert Franks, their heirs and assigns, shall stand seized of said lands hereby granted to them and their heirs, to the use of the said Robert Day, his heirs and assigns. And it is hereby further declared and agreed, that in case the said Robert Day Denny shall not, within one year after the decease of the said Robert Day and Mary Day, adopt such measures as shall be necessary to use and bear the surname and arms of Day, as now used and borne by the said Robert Day and none other, and that if the first and every other son in succession of the said Robert Day Denny, and the heirs male of their bodies being entitled to the estates hereby limited on bearing said name and arms, shall not bear the said name and arms, and none other, then and in such case also that the said John and Robert Franks, their heirs and assigns, shall stand seized of said lands so to them hereby limited, to the use of the said Robert Day, his heirs and assigns." There followed clauses giving leasing powers to Robert Day and his successors, and authorizing Robert Day Denny to charge the lands with a jointure for his wife, and portions for his younger children. By a deed of the year 1830, Robert Day Denny was released from the condition binding him and his issue male to take the name and arms of "Day."

Robert Day, by his will, dated 26th January, 1832, after reciting the provisions of the deed of 1816, and the remainder to himself in fee, declared that the trustees, and the survivor of them, should stand seized of the lands of Dunmaniheen, in case, by the death or failure of issue male of his eldest brother, the said Robert should become entitled to the Denny estates to the use of the testator's son, the Rev. John Robert Fitzgerald, for life, with remainder to his first and other sons successively in tail male, and in default of such issue to the use of his second son, the Rev. Edward Fitzgerald, for life, with remainder to his first and other sons successively in tail male. By a codicil the testator, after declaring that by the said will he had disposed of his reversion in only one of the events by the happening of which he would become entitled to it—namely, by the said Robert Day Denny becoming entitled to the Denny estates by the death or failure of issue male of his elder brother—declared it to be his will that, in case at any time by the failure of issue male of the said Robert Day Denny himself, the said reversion reserved to him, the testator, and his heirs by the said deed should take effect, and that the trustees should in that event stand seized thereof to and for the same uses and trusts as were declared in the event of the said Robert Day or his issue male becoming entitled to the Denny estates. Robert Day died in 1841, and thereupon Robert Day Denny entered into possession of the estate of Dunmaniheen, and so continued till his death in July, 1864. In 1862, Robert Day Denny and Robert Arthur Denny joined in executing a disentailing deed, barring the entail in the lands of Dunmaniheen. Doubts having arisen as to the validity of that deed, a further deed was executed by Robert Arthur Denny, barring the entail in the lands of Dunmaniheen, and purporting to give Robert Arthur Denny an estate in fee simple therein.

In November, 1869, Daniel Keane, claiming to be an incumbrancer on the said lands of Dunmaniheen, presented a petition for the sale thereof to the Landed Estates Court. An absolute order for sale was made, but subsequently, after argument, Lynch, J., by an order of the 23rd February, 1872, declined to proceed to a sale, it was further ordered, that the proceedings should be suspended for three months, or until further order, and the learned Judge stated that in his opinion Robert Arthur Denny took only an estate for life in the said lands under the deed of 1816. The period of three months was from time to time extended, but the petition was not dismissed, nor the absolute order discharged, nor the sale had. The amount due to the said Daniel Keane was paid off, and by an order of the 28th of July, 1870, the carriage of the proceedings in said matter was transferred to the said Robert Arthur Denny as owner. Robert Arthur Denny, on the 2nd November, 1872, presented a petition to the Landed Estates Court, praying that the said lands might be sold for the discharge of the incumbrances thereon, and that the said petition might be treated as supplemental to the petition of Daniel Keane. Cecil and Herbert Denny, and John Robert Fitzgerald and Robert John Fitzgerald Day, as against making absolute the conditional order for sale, which had been obtained, showed cause, on the ground that Robert Arthur Denny took only an estate for life in the lands. By an order of Flanagan, J., of the 1st of August, 1873, the cause shown was allowed, with costs. The learned Judge said that he held himself bound by the decision of Lynch, J., but that if the matter were *res nova* he would have decided otherwise; and he, also, stated that he considered he had full jurisdiction to decide as to what estate was taken by Robert Arthur Denny. In the answer of Cecil Denny and Robert Denny, it was stated that the present owner of the Denny estates was over seventy-five years of age, that he had no issue, and that the appellant was heir-at-law presumptive of the owner, and would probably succeed to the Denny estates on his death.

Mr. Jellett, Q.C., and *Mr. Jackson*, Q.C. (with them *Mr. T. P. Lynch*), for the appellant, referred to the following authorities:—On the construction of the deed, Comyns' Digest, Parol A. 14; *Doe* v. *Martin*, 4 T. R. 39; *Owen* v. *Smith*, 2 H. Bl. 595; *Galley* v. *Barrington*, 2 Bing. 387; *Langston* v. *Langston*, 2 Cl. & Fin. 194; *Barton* v. *Fitzgerald*, 15 East. 541; *Wright* v. *Dixon*, 1 Dow. P. C. 141; *Doe d. Scarborough* v. *Savile*, 3 Ad. & El. 897; *Goodtitle dem. Weston* v. *Burtenshaw*, 1 Fearne Con. Rem. 570; Powell on Mortgages, 975a; Sugden's Real Property Statutes, 92, 193. As to the jurisdiction of the Landed Estates Court, *Batty's Estate*, Ir. R. 6 Eq. 469; Landed Estates Court Act, sec. 37.

Mr. May, Q.C., and *Mr. G. Fitzgibbon*, Q.C. (with them *Mr. Hickson* and *Mr. Kenny*), for the different respondents, cited the following cases:—On the construction of the deed, Coke Littleton, 143a; *Doe d. Clift* v. *Birkhead*, 4 Ex. 124; *Barnacle* v. *Nightingale*, 14 Sim. 456; *Harris* v. *Taylor*, 10 Q. B. 7, 8; *Bevan* v. *White*, 7 Ir. Eq. 473; *Foster* v. *Lord Romney*, 11 East. 594; Anon. 2 Ch. Cas. 244; *Pyrke* v. *Waddingham*, 10 Hare 1; *Proctor* v. *Bishop of Bath*, 2 H. Bl. 358; *Lewis* v. *Rees*, 3 K. & J. 132; *Middleton* v. *Barker*, W. N., 1873, p. 231; *Devonshire* v. *Newenham*, 2 Sch. & Lef. 210; 1 Jar. Conv. 261. As to the jurisdiction of the Landed Estates Court, *Cuthbert's Estate*, 4 Ir. L. T.

Digitized by Google

86, Ir. R. 4 Eq. 572;* *Carr's Estate*, 2 Ir. Jur. 6; *Ronayne's Estate*, 13 Ir. Ch. 444; *Acheson's Estate*, Ir. R. 4 Eq. 105; *Malcolmson* v. *O'Dea*, 10 H. L. C. 593; *Bermingham's Estate*, 1 Ir. L. T. 761, Ir. R. 1 Eq. 550.

Lord O'HAGAN, C.—In my opinion the ruling of the Landed Estates Court was erroneous, and ought to be reversed. An absolute order for the sale of those lands was made in 1871 on the petition of Daniel Keane, but the learned Judge of the Landed Estates Court coming to consider the abstract of title, and having heard argument, on the 23rd February, 1872, declined to proceed to a sale of the lands. Several orders were afterwards made by Lynch, J., and on the 2nd November, 1872, he allowed the present petition for sale to be filed. After the death of Lynch, J., Flanagan, J., held that Robert Arthur Denny was only tenant for life, and that the cause shown against making absolute the conditional order for sale should be allowed. The appellant contended that he was entitled to an estate tail in the lands, and that by the deeds of 1862 and 1865 he had acquired an estate in fee simple. The question of construction presents the only difficulty. It was said, indeed, that the question was one for a Court of Law, but the Landed Estates Court has the fullest powers for deciding on such matters as this, and ought to exercise them, and if the case is free from complication the suitor is entitled to the exercise of these powers. It was urged that the Court should suspend its action till the death of Robert Arthur Denny; but the question is not here as to the future right of the owner dependent on any contingency, but as to the validity of a present estate claimed by him. He is entitled to have the actual right adjudicated on, and no lapse of time would make the cause more ripe for hearing than it is now. It is said that, as the order of Judge Lynch of the 23rd February, 1872, merely suspended the sale, no new order can be made by us. But Lynch, J., subsequently authorised the filing of a further petition, for the purpose of ascertaining more conclusively the estate of Robert Arthur Denny. I do not think that any of those considerations should prevent us from adjudicating. I come shortly to consider the one question for our determination—what is the true estate of the petitioner? I have little difficulty on the subject. Flanagan, J., yielded to the opinion of the learned Judge who preceded him, and if the matter had been *res integra* he would have decided otherwise. Whether reading the clause in dispute alone, or with the rest of the instrument, the case is simple, and the title of the appellant clear. This is a voluntary settlement made by Judge Day [His Lordship here read the provisions of the deed of 1816. Referring to the portion limiting estates to Robert Day, Denny and his children, he proceeded:—] On this clause the question arises, did it limit to the first son of Robert Day Denny an estate tail, or only an estate for life? That the second, third, and other sons were to take an estate tail is clear. It would be curious, if this contention were to be upheld, that the settlor must be deemed to have meant a less estate to be taken by the eldest son. There is no intention apparent to make the settlement to enure for the benefit of the younger children, whereas the deed was made out of natural love and affection for Robert Day Denny. If there is anything equivocal we must look before and after, in order to ascertain its meaning. I have failed to find anything to make my construction impossible, or even difficult. I think the words heirs male of their bodies may be held to apply to the first, as well as to the second, third, and other sons, rather than that, contrary to reason and probability and the experience of conveyancers, we should have a different and less estate given to the eldest son. The deed, certainly, is ill-drawn. As to the argument offered at the bar, that "remainder" is not one of the words usually commencing a limitation over, and that there seems no reason for making it commence here, probably the word "and" was meant to be inserted, but was left out, and "remainder" applies to all the sons. But that word "and" does not appear to me necessary; there is nothing in the collocation to show that the words "heirs male of their bodies" were not to apply to all the members of the same class. The clause seems to me in its phraseology *per se* to have the meaning given to it by the appellant. But several very apt authorities were cited. There was the case of *Galley* v. *Barrington*. [His Lordship stated the provisions of the deed there in dispute.] The Vice-Chancellor sent the case for the opinion of the Court of Common Pleas. The question was as to what estate the eldest son took, and the answer was, that he took an estate tail, though there, as here, it was urged that there could be no application of the words "heirs male" to the eldest child, but only to the younger children, and there the words "heirs male" were much more applicable to the younger children alone than they are here. In Comyns' Digest, title Parol 14, it is said: "Relative words, generally, are referred to the next antecedent, where the intent on the whole deed does not appear to the contrary." That justifies the construction in this case, which will reconcile various other difficulties in the deed. I shall not discuss the other cases at length—*Owen* v. *Smith*, 2 H. Bl. 599; *Doe d. Willis* v. *Martin*, 14 T. R. 65; *Langston* v. *Langston*, 2 Cl. & Fin. 246—which all maintain the principles of construction acted on in *Galley* v. *Barrington*, and I think warrant the conclusion I have come to. So the matter would have stood if there were no other clause; I should have refused, in the words of Lord Kenyon (*Doe d. Willis* v. *Martin*, 4 T. R. 66), "to defeat the manifest intention of the parties, and the object of the settlement, which was to give the children estates of inheritance." But on looking at the rest of the deed, any remaining difficulty seems removed. In his book "On the Law of Property," at page 92, Lord St. Leonards notices the case of *Wight* v. *Dixon*, 1 Dow. 141, and says: "Where in a deed a particular passage has a distinct operation, yet if other words in the instrument cannot have their proper effect without the introduction of a word in the first passage, it may be supplied by construction on the ground of mistake." We do not need to take that strong course in this case, but that extract is valuable as showing that we are to look to other clauses, and that the sense and meaning of parties is to be collected *ex antecedentibus et consequentibus*. Now, immediately after the clause we have been considering there are other provisions. [His Lordship read the provision as to Robert Day Denny taking the name and arms of Robert Day.] That passage is clear, and it contemplates that the first and other sons of Robert Day Denny and their heirs male shall bear the surname of Day when entitled to the lands therein limited. No language could to me more clearly indicate that the eldest and other sons were to take the same estate, for if they did not this clause would necessarily be inoperative. To the same effect are the succeeding provisoes, the power of jointuring and the rest. Taking them all, they furnish irresistible indications of the intention of the settlor. Therefore, we have after that clause a number of clauses only reconcilable with the contention of the appellant; but it seems to me, moreover, that the clause itself is capable of the appellant's construction.

CHRISTIAN, L.J.—I cannot share in the scruple which prevented the learned Judge of the Landed Estates Court from dealing with this case according to his own opinion. The order of Lynch, J., was not final, and in my opinion the case came before Flanagan, J. as *res nova*; and I am not at all sure that the proper course for us would not have been to have sent back this case and stopped the argument early. Cases in which, on one punctilio or another, more or less satisfactory, the Judge below has sent up matters for decision here, as if this were a court of first instance, are too frequent; the responsibility of its position should be assumed by the Court below. It is too late now to act upon that view of the case, which has now come on for judgment, and therefore I proceed to state my view of it. The first objection raised is one by far the most important, namely, whether this case presents circumstances which ought to induce the Landed Estates Court to refuse to sell? It is not a question of jurisdiction, but whether the circumstances are such as that in the exercise of its discretion the Court ought not to refuse to act. It is impossible not to see the largeness of application which the

* See s.c., subsequently, 6 Ir. L. T. R. 76.—[ED. *I. L. T. Rep.*]

Digitized by Google

decision of this Court, that the Landed Estates Court in this case should not act, would have, and how much it would cripple the Landed Estates Court. I have said before that we should take care that that Court should act within its jurisdiction, and that it should not in cases within its jurisdiction usurp the office of another Court. But where, as in this case, the application for sale is *bonâ fide*, it is not only competent for the Landed Estates Court, but it is its duty, to discharge every function which is necessary to enable it to exercise its peculiar jurisdiction, and it must even decide points of law when it is necessary. In *Ronayne's* estate, Hargreave, J., set aside a deed, and in his judgment he said:—"The Court has no original jurisdiction to set aside deeds; but it has a jurisdiction to dispose of all questions which arise incidentally in reference to any estate or fund under its control, no matter what the nature of these questions may be." Two cases were relied on which were in this Court itself—*Cuthbert's* estate and *Acheson's* estate, which latter was cited by Mr. Fitzgibbon as final. But, in *Cuthbert's* estate, the Landed Estates Court had exceeded its jurisdiction altogether. The Judge had adjudicated as to the right to a legacy where there was no personal representative before the Court at all. The passage cited by Mr. May was startling at first, but inapplicable when considered with the context. *Acheson's* estate was said by Mr. Fitzgibbon to be a decision which would render it impossible to sell in this case without overruling that. It was a petition filed to obtain a declaration of title. What was the declaration required? In the ordinary sense of a declaration of title, there was no necessity for a declaration of title at all. But what was sought was this—the subject matter was a fishery; it was only described in the schedule as the D. fishery; and the effort there was to obtain from the Court a declaration which would bind the whole world as to the limits of the fishery. Every inch of it was in dispute; the public, the riparian proprietors were up in arms; other parties said they had the right of fishing if any existed; and no step had been taken by the purchaser to ascertain his rights. I cite from my own judgment in that case:—"A laboured argument was addressed to us by Mr. Acheson's leading counsel, professedly for the purpose of establishing that the Landed Estates Court exercises a jurisdiction over two distinct subjects; one, the points of law which the abstract may present; the other, the part and parcel questions which the settlement of boundaries may involve. No one doubts the Court's full authority to deal with both those subjects, which, in fact, taken together, constitute the business that it is discharging, I suppose, nearly every day it sits. But there are no points of law upon the abstract here; the applicant's title is as clear and free from speck or blemish now as it was on the day when he received it forth of the Estates Court. Neither is there any question of part and parcel. These very questions imply the existence of a known and visible subject in drawing the boundary line of which a doubt or dispute has arisen. But the peculiarity of the present case is that the doubt, the dispute, the uncertainty, affect the *whole* of the subject. There is not one square inch of the Dowris waters of which it can be predicated that dispute and denial of the claimant's rights are less rife, less contentious, less active than upon any other. And the quality of the hereditament—whether it is a several fishery, or a free fishery, or a common of fishery—is also unsettled. So that what the Court would have to determine would not be the law of an abstract, or the bounds of its known subject, but whether any subject at all existed *in rerum natura*. What is it? Where is it?" That is the case we are told is to bind us. What is the case now before the Court? There is an old estate, the person petitioning has been for ten years in the actual possession of it, encumbering it and making charges on it. Having come into the Landed Estates Court he produces his title; under one deed he says he is a tenant in tail, under the other he turns that into an estate in fee simple. The learned judge makes an order that proceedings be suspended. He never for one moment says that he has no discretion to sell. Afterwards an application is made for leave to file a new petition. Flanagan, J., also goes into the question of title; he declines to adjudicate, and hands the matter over to the Court of Appeal in Chancery, who ought to have declined it. The suggestion is futile as to this case being like *Acheson's* case.

I disclaim the notion of dealing with this case on speculations as to what the settlor ought to have done. I utterly disclaim the notion of introducing words into this deed—words of limitation; and unless I can find in this deed, not by implication, but, by construing the words themselves according to their natural sense, that an estate tail is given to Robert Arthur Denny, the case must fail. The words are, "to the heirs male of their bodies." Who are the subject matter of the word "their?" In *Galley* v. *Barrington*, the Court aided themselves by introducing punctuation. Let us put a break in the sentence, "Then to the use of the first son of the body of the said Robert Day Denny lawfully to be begotten, not being entitled to the said Denny estates or any part thereof by any limitation made or to be made thereof or by descent until he shall become entitled to the said Denny estates, by any limitation thereof or by descent." Draw the line there; that would give him only an estate for life. "Or remainder to the use of the second, third, and every other son in succession of the body of Robert Day Denny, until such second, third, or any other son of the body of Sir Edward Denny shall become so entitled to said Denny estates, or any part thereof, according to priority of birth." Pause again. "And to the heirs male of their bodies not being so entitled to the said Denny estates." The two first parenthesis deal with particular persons, and the third deals with both, and is applicable to both. That is a very simple grammatical construction which would bring the clause within the meaning contended for by the appellant. Suppose it is capable of the other construction—if so, nothing can be more legitimate than to refer to the subsequent clauses of the deed to see which of the two classes is meant. I do not lay any stress upon the first clause as to the taking of the surname and arms of Day—it is ambiguous. But what can be said to the *reductio ad absurdum* caused by the following clause:—"If any of the issue of the body of the said Robert Day Denny, or any of the heirs male of the body of any of the said issue, shall by any limitation made or to be made thereof or any part thereof or by descent, being at the time the heirs male of said Sir Edward Denny, become entitled to said Denny estates, that in such case the said John Franks and Robert Franks, their heirs and assigns, shall stand seized of said lands hereby granted to them and their heirs, to the use of the said Honourable Robert Day, his heirs and assigns." Suppose the first son of Robert Day Denny dies leaving sons—then these sons must be passed over and the estate must go to the second son, and if the Denny estates are devised to him, then the Day estate would come to the sons of the eldest who have already been passed over. But all this can be avoided by putting on the previous clause the meaning contended for by the appellants.

The real difficulty is whether an attempt has been made to create a new sort of estate tail special. The words are "to the heirs male of their bodies not being so entitled to the said Denny estates." So that the not being entitled to the Denny estates is made a part of the description of the heirs male of their bodies who are to take the Day estates. It has been said that those words of qualification were not intended to have effect on the vesting of the estates tail, but merely were to divest that estate if it did vest—thus that they would have the operation of a shifting clause. If that was contemplated on a certain devolution of the Denny estates, the Day estates should pass on *per formam doni* to the next succeeding brother or son of the original donee who would be within the terms of the gift. That would be an attempt to specialize the heirs in a way which I hold cannot be done in law, and the effect of which would be that all the sons would only have taken estates for life. I do not think that was their intention. I did not follow Mr. Jackson in his interpretation founded on the codicil to the will, dealing with the remainder to Judge Day himself.

Digitized by Google

He says that, even were it true that any estates are created by the deed, the limitation, after failure of heirs male, would be void for remoteness, and that consequently the Fitzgerald Days would take nothing. If the devise were void, the reversion would go to the heir-at-law. Judge Day was twice married. By his first wife he left a daughter, the wife of Mr. Jackson's client; by his second wife he left two sons. I do not know what we may come to when some projected laws of inheritance are brought in, but at present a son of a second marriage takes before a daughter of the first. The introduction of the shifting clause shows that a qualified estate tail was not intended to be created. What was really meant by the words "being so entitled," was merely a reference by anticipation to the effect of the shifting clause afterwards expressed. I think that there is an interest in the appellant which entitles him to a sale of those lands.

Solicitor for the appellant: *T. F. O'Connell.*

Solicitors for the respondents: *J. D. Meldon and Sons, Davis and Montfort.*

ROLLS COURT.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before SULLIVAN, M.R.)

WATSON v. KNILANS AND OTHERS.

April 15, 1874.—*Practice—Appointment of guardian* ad litem *for a person of unsound mind, not so found—Evidence of unsoundness—Sufficiency of affidavits.*

On an application by a plaintiff, that a guardian ad litem *be appointed for one of the defendants in the suit, who was alleged to be of unsound mind, although not so found by commission,*

Held, *that a statement in the affidavit of the plaintiff, repeating an allegation in the answer of the other defendants, that the defendant was "imbecile," was insufficient evidence that the defendant was of unsound mind.*

Motion, on behalf of the plaintiff, that Mr. Allen Nesbitt, one of the solicitors, should be assigned to be the guardian of the defendant, Letitia Knilans, a person of unsound mind, not so found by commission, by whom she might appear and defend the suit. The affidavit of the plaintiff, Henry Watson, set out a paragraph of the answer of the defendants, John James Knilans, Mary Jane Knilans, and George Gregory Knilans, filed in the cause 24th April, 1873, "that Letitia Knilans, one of the defendants in the bill in the cause, is and always has been imbecile." The affidavit of the process server stated that he served the defendant, Letitia Knilans, who, as he was informed and believed, was an imbecile, with a copy of the amended bill, by delivering it to Mary Jane Knilans, a sister of the defendant, Letitia Knilans, &c.

Mr. Hart in support of the motion.

SULLIVAN, M.R.—This is an application to the discretion of the Court. There is a great responsibility in making such an order as is now sought. There are the gravest reasons why the Court should not make it without evidence of the clearest nature. I do not think the affidavits before the Court are sufficient. There is no affidavit by a doctor as to the defendant's state of mind. The allegations of the defendant's relatives do not go to the extent of stating that she is of unsound mind. The word "imbecile" is not at all sufficient. There are many terms of that character, which do not directly state that the mind is unsound; for example, "simple" is a common expression, but such terms are not enough. It has been held in England that substantial evidence should be required. I should be satisfied on the evidence that she is a person of unsound mind. As I am not so satisfied, the motion must be refused.

Motion refused.

Solicitor for plaintiff: *Watson.*

Solicitor for defendants: *Riordan.*

KEARNEY v. O'FLAHERTY.

July 9, 1874.—*Practice—Appointment of receiver—Delay—Eve of the long vacation.*

The plaintiff in a bill for foreclosure, filed May 19, 1874, moved on July 9, 1874, to have a Receiver appointed, alleging that the premises in question were falling into disrepair, and that the occupying tenants were committing dilapidations.

Held *that, the motion having been delayed until the eve of the long vacation, a Receiver should not be appointed.*

Motion for the appointment of a Receiver. The motion made on behalf of the plaintiff, who on May 19, 1874, had filed a bill praying for foreclosure, was grounded on an affidavit of the plaintiff stating that the annual rental of the property over which a Receiver was sought to be appointed was £100, clear of quit rent; that the defendant was at present confined in Galway gaol for debt; that the tenants of the premises in question owed large arrears of rent, and were taking advantage of the defendant's circumstances for the purpose of injuring the premises and allowing them to become dilapidated; that one of the tenants was burning the flooring of his house for firewood; that if some of the premises were let, and the rest put in good repair, the value of the property would be much increased.

Mr. O'Shaughnessy in support of the motion.

SULLIVAN, M.R.—It is a rule of this Court never to appoint a Receiver on the eve of the long vacation. The plaintiff deliberately put his bill on the file on the 19th of May, stating facts which required immediate action if true, and then he waits to the last moment to make this motion for a receiver. The rule laid down by the late Master of the Rolls, Mr. Smith, stands on the first principles of justice and common sense—the party seeking to appoint a Receiver is not to wait till the last moment, when he puts it out of the power of the other side to come in.

Motion refused.

VICE-CHANCELLOR'S COURT.

Reported by EDWARD F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

SANKEY v. ALEXANDER. (1.)

January 13, 15, 1874.—*Practice — Production of documents — Co-defendants — Privilege — Solicitor and client—Communications before dispute.*

A filed a bill to obtain a declaration that the defendants B, a solicitor, together with C, D, and E, were jointly and severally liable to pay a sum of money which A had advanced, through the means of B, on a mortgage to C. The bill charged a breach of trust by D and E (the trustees of C's marriage settlement), as the result of which the security proved insufficient, and imputed fraud to all the defendants. B had acted in relation to the transaction as solicitor for A, D, and E. Upon motion by A, that D and E should produce all letters and copies of letters which had passed between them and B,

Held, *that all letters and copies of letters written in reference to the subject of the suit, and before the dispute arose which superinduced the litigation, should be produced, save such as should be shown, upon affidavit, to contain legal advice and opinions merely.*

Motion, on behalf of the plaintiff, that John Alexander and Richard Farrer (two of the defendants) should be ordered to produce, and leave with the Clerk of the

Digitized by Google

Records and Writs, certain books, letters, documents, and copies of letters set out in the schedule annexed to the affidavit of documents filed by the defendants; that the plaintiff, her solicitor, and agents should be at liberty to inspect and peruse them, and to take extracts at her expense; and that the Clerk of the Records and Writs should produce the letters and documents upon any examination of witnesses during the cause, or at the hearing.

In 1863 the plaintiff, Mrs. Sankey, informed her solicitor, Hartstonge, one of the defendants, that she had £1,000 which she wished to invest in real security, and was apprised by him that a client of his, Richard Brinkley (another defendant), wanted to borrow money on an estate in the county of Sligo. The plaintiff, understanding from Hartstonge that Brinkley was owner of the estate in fee, and that the investment would be safe, advanced the money upon a mortgage of the estate, executed May 18, 1863, and registered on the 28th.

The plaintiff, by her bill, charged that the defendants John Alexander and Richard Farrer, the trustees of Brinkley's marriage settlement, had been guilty of a breach of trust, and imputed fraud to all the defendants, alleging that in the result the estate proved an insufficient security; and prayed for an account of the principal and interest, and that the defendants should be declared jointly and severally liable for the payment thereof, inasmuch as they had induced her, by their conduct, to lend the money on the property, of which, in fact, Brinkley was not owner in fee, as had been represented. It appeared that on Brinkley's marriage, in 1845, certain property in the county of Meath was settled upon him for life, remainder to his children as he should appoint, with a power of sale to the trustee. In 1851 the surviving trustee of the settlement executed that power, and realized by the sale £12,000, which, with other moneys, making altogether £14,945, was invested in the purchase of the said estate in the county of Sligo. In 1862 John Alexander and Richard Farrer were appointed trustees of the marriage settlement of 1845. In 1863 Brinkley, becoming embarrassed, induced, with the assistance of Hartstonge, these trustees to execute a deed conveying to him the Sligo property for the sum of £13,000, after which the mortgage to the plaintiff was executed; and then Brinkley mortgaged the property to the trustees for £13,000. For some years the interest on these mortgages was duly paid, but eventually the payment ceased. By an order of June 9, 1873, in the suit, the defendants were directed to make an affidavit, stating whether they had in their possession respectively any documents relating to the matters in question; and the present motion was grounded on affidavits by Alexander and Farrer setting out, *inter alia*, letters between them and Hartstonge, to the production of which objection was made on the ground of privilege.

Mr. W. Johnston, Q.C. (*Mr. Robert Dames* with him), contended, on behalf of the plaintiff, that the present case fell within that class of cases which decide that, when client and solicitor compound to do an illegal act, the privilege which usually protects their dealing with each other is ousted; that from the statements in the bill (which should be assumed to be true for the purposes of the motion), it must be inferred that there was collusion between the defendants; that at the time Brinkley bought the estate it was worth a sum much greater than was paid for it, and that Brinkley, in this transaction, was acting with the full knowledge of his trustees; that the letters were not written for the purposes of the present suit; and that delay in making the motion was no answer to it.

Mr. Ryan, Q.C. (*Mr. Bewley* with him), on behalf of Farrer and Alexander, denied there was any misrepresentation of facts, or collusion, by which the plaintiff was induced to lend her money, and that every statement put forward in the plaintiff's bill was to be taken for granted. And contended that the letters, &c., had passed between the parties subsequent to the dispute, and were privileged; that the fact that the bill charged fraud did not operate to waive the privilege; and further, that the motion was too late, as the plaintiff's evidence had been closed, and a replication had been filed.

The following authorities were cited:—*Gresley* v. *Mousley*, 2 K. & J. 292; *Russell* v. *Jackson*, 9 Hare 387; *Phillips* v. *Holmer*, 15 W. R. 578; *Feaver* v. *Williams*, 11 Jur. N. S. 902; *Walsingham* v. *Goodricke*, 3 Hare 122; *Rashdall* v. *Ford*, L. R. 2 Eq. 750; *Follett* v. *Jefferies*, 1 Sim. N. S. 1; *Gartside* v. *Outram*, 3 Jur. N. S. 39; *Paddon* v. *Winch*, L. R. 9 Eq. 666; *Rochdale Canal Co.* v. *King*, 15 Beav. 11; *Greenough* v. *Gaskell*, 1 M. & K. 98; Daniel Ch. Pr., 5th ed., 1678.

CHATTERTON, V.C.—The defendants' objections cannot be sustained. It is said that these were confidential communications between solicitor and client, and privileged as such; but the objection of privilege fails, inasmuch as the defendants do not allege that the communications passed after the dispute had arisen which led to this litigation. I fully concur in the judicial opinions so often expressed with respect to the rule of law as to the privilege of clients, in regard to communications with their legal advisers; and for my own part, I regret, though I must not disregard the distinction that still obtains between the cases where the client himself, and where his legal adviser is the person called upon to produce documents. It is with reluctance I follow the rule, and hold that the defendants must produce the letters and copies of letters in reference to the subject of the suit which were written before any dispute which led to the litigation had arisen, save such as contain merely legal advice or opinions, in which case they need not be produced. I found my decision solely on the time at which the letters appear to have been written.

Ordered, "That the said defendants, John Alexander and Richard Henry Farrer, do, within seven days of the service of this order upon them respectively, produce and leave with the Clerk of the Records and Writs of this Court the letters and copies of letters mentioned respectively in the second parts of the schedules to the affidavits of the said defendants, John Alexander and Richard Henry Farrer, except such of them, if any, as the said defendants, John Alexander and Richard Henry Farrer shall show, by affidavit, to contain legal advice or opinions merely; and the plaintiff, her solicitor and agent, are to be at liberty to inspect and peruse the documents so produced and left, and to take copies and extracts thereof, and extracts therefrom, as the plaintiff shall be advised, at her expense; and the Clerk of the Records and Writs is to produce the same upon any examination of witnesses in this cause, and at the hearing thereof, as the plaintiff shall require; and the plaintiff is to be at liberty to make such further application as to any of the documents mentioned aforesaid as she may be advised. And this Court doth declare the plaintiff and the said defendants, John Alexander and Richard Henry Farrer, respectively entitled to their costs of this motion as part of their costs in this cause."

Solicitor for the plaintiff: *Tarleton*.

Solicitors for the defendants: *Goddard*, *De Moleyns*, *Stokes*.

Digitized by Google

SANKEY v. ALEXANDER AND OTHERS. (2.)

April 20, 1874.—*Practice—Evidence—Witness out of the jurisdiction—Cross-examination—Special examiner—Chancery Regulation Act*, 1867, *s.* 96.

Where a party to a suit examines a witness ex parte *before the examiner of the Court, and the opposite party serves notice of his intention to cross-examine such witness at the hearing, the party on whose behalf the direct evidence is given must, in order to be enabled to use it, submit the witness for cross-examination. The witness is to be considered as under the dominion of the party on whose behalf he gives evidence. The Court will not appoint a special examiner for the purpose of taking the cross-examination, under the Chancery Regulation Act,* 1867, *s.* 96, *except under very special circumstances; and if the witness has left the jurisdiction it must be shown, to the full satisfaction of the Court, that it is out of the power of the party applying for such appointment to produce the witness at the hearing of the suit.*

Motion, on behalf of the plaintiff, that Robert Carson, Q.C., be appointed examiner, for the purpose of taking the cross-examination of Lorenzo Weld Hartstonge, one of the defendants, on his depositions filed in this cause on the 10th day of February, 1874, at either Paris, Brussels, or Boulogne, as might be agreed upon by the parties in the suit.

The motion was grounded on an affidavit made by Mr. Tarleton, solicitor for the plaintiff, who deposed that, having been advised in November, 1873, to take the depositions of the defendant Hartstonge upon an examination in the usual way, before the examiner of the Court, he obtained an order that the examiner might be at liberty to attend at his residence in Kingstown, and accordingly the examiner, M. Quinan, Esq., attended from the 17th to the 21st November, 1873, and took the depositions which had been filed in the usual way; that the said Hartstonge, about the month of September, 1872, was taken ill with fever, and while he was recovering from the fever had a severe attack of jaundice; that during the progress of the examination he told the deponent that he was about to give up his then residence, and intended to go for some months to Ardavilling, in the county of Cork; that the deponent fully believed that he intended, as soon as his health permitted, to go to Ardavilling, and to reside there at all events until the hearing of this cause, and that he intended to be present in order to be cross-examined at the hearing, and that the deponent never had the slightest suspicion that he did not intend to do so, even after he had heard he had gone to France, until the deponent was informed by Mr. De Moleyns, the solicitor for the defendant, John Alexander, on the 13th March, 1874, that he had received a notice from Mr. Goddard, stating he would be absent at the hearing; that the deponent did not know he had left Ireland until the 26th December, 1873; that, had the deponent had the least idea before the said L. W. Hartstonge left Ireland that he did not intend to be present at the hearing of the cause, he would have consulted counsel with the view of being advised whether the plaintiff could not enforce his remaining in Ireland until after such hearing; that Mr. Goddard subsequently led the deponent to think that if this cause could be postponed until Trinity Term, 1874, in that case, as the weather would then probably be fine, the said L. W. Hartstonge (who was still, as he had been informed by Mr. Goddard and believed, in a very delicate state of health), would come over to be cross-examined; that the deponent accordingly arranged with Messrs. De Moleyns and Stokes, the respective solicitors for the defendants, J. Alexander and R. H. Farrer, that an application should be made to the Court to allow this cause to stand over until then, provided Mr. Goddard gave an undertaking that said defendant, L. W. Hartstonge, would then attend, but this Mr. Goddard refused to do; that the deponent had not any means of compelling or inducing L. W. Hartstonge to attend for cross-examination; that he was advised and believed that his deposition was necessary to the plaintiff's case, and that she could not safely proceed to a hearing unless she were in a position to use such deposition at the hearing as part of her evidence; and the deponent positively deposed that the application was perfectly *bonâ fide*, and not made for the purpose of delay, or with any object whatever other than that of enabling the plaintiff to use the deposition of the said L. W. Hartstonge at the hearing.

Mr. Jackson, Q.C. (with him *Mr. W. M. Johnstone*, Q.C.), for the plaintiff, Mrs. Sankey.—We apply under the Chancery Regulation Act, 1867, s. 96. As Hartstonge's deposition was taken on behalf of the plaintiff, and as a notice was served requiring his presence at the hearing of the suit for cross-examination, the onus lay upon us to produce him. In order to be able to read Mr. Hartstonge's depositions at the hearing, the present application has become necessary.

Mr. Hewitt, *P. Jellett*, Q.C. (with him *Mr. G. A. C. May*, Q.C.), for the defendant John Alexander.—This suit instituted by Mrs. Sankey against Mr. L. W. Hartstonge is, in point of fact, put forward by Mr. Hartstonge. The plaintiff's solicitor is Hartstonge's nephew, and the suit has been instituted on materials furnished by Hartstonge. If satisfied that the witness can attend for his cross-examination, the Court will be very slow in exercising the discretion allowed by s. 96; *Brocas* v. *Lloyd*, 21. Beav. 519.

Mr. Ryan, Q.C., for the defendant Richard H. Farrer.—Hartstonge is primarily liable in the suit, but the use of his deposition is to make a case against Farrer and Alexander. A witness should be considered as under the dominion of the party in whose behalf he gives evidence; *Richards* v. *Goddard*, L. R. 13 Eq. 240.

Mr. W. M. Johnstone, Q.C., in reply.

CHATTERTON, V.C.—This motion is correct in point of form. It is an application to the discretion of the Court which the Court has power to grant or refuse. Undoubtedly, the plaintiff is bound to produce the witness, and the practice has always been as stated by Hall, V.C., in *Richards* v. *Goddard* (L. R. 13 Eq. 240), to consider a witness as under the dominion of the party in whose behalf he gives evidence. I should, therefore, require to be satisfied to the fullest extent that it is out of the power of the plaintiff to produce this witness. The illness under which Mr. Hartstonge laboured was not such as to lead to a permanent delicacy on his part. Mr. Hartstonge left this country, leaving Mr. Tarleton—a person likely to know all his movements—under the impression that he would be present for cross-examination. The plaintiff must suffer the penalty if the witness is not duly produced. The case will be heard in the present term if she can secure the witness's presence. I must refuse the motion now made. It is very important to observe the demeanour of witnesses, and I shall certainly not allow a cross-examination to be dispensed with except in cases of absolute necessity.

Motion refused.

Solicitor for the plaintiff: *Tarleton.*

Solicitors for the several defendants: *Goddard*, *De Moleyns*, *Stokes.*

Digitized by Google

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before MILLER, J.)

In re J. L., an Arranging Debtor.

April 11, March 27, 1874.—*Arranging trader—Apprentice—Return of fee*—20 *&* 21 *Vict*., *c*. 60, *s*. 250—35 *&* 36 *Vict*., *c*. 58, *s*. 66.

The Court has not jurisdiction under 20 *&* 21 *Vict*., *c*. 60, *s*. 250, 35 *&* 36 *Vict*., *c*. 58, *s*. 66, *to order that a fee paid, on the binding of an apprentice, to an arranging trader, should be returned, where the arrangement has been concluded, providing for the complete distribution of his assets, without having made any provision for the payment of such apprentice fee.*

Motion, on behalf of an apprentice to an arranging trader, that the fee, or a portion thereof, paid on his being bound, should be returned.

Mr. M. J. White, solicitor for the applicant.—The fee paid was £15, and the apprentice was to be bound, boarded, and maintained for two years, but has been so for only five months. Under the arrangement, the trader's property has been vested in the assignee in like manner as in bankruptcy, and has been realized. To all intents it is as if the trader were a bankrupt; and the application may be sustained under 20 & 21 Vict., c. 60, s. 250. In one case, where an arrangement was turned into bankruptcy, a similar order was made. At all events, under 35 & 36 Vict., c. 58, s. 66, the Court has ample power, for the purpose of doing complete justice, to order the return of at least a portion of the fee, where the trader has denuded himself of all property to which the apprentice could have resorted.

[MILLER, J.—That section should be read as referring to cases *properly* "coming within the cognizance of the court." This case does not do so, as s. 250 of the Act of 1857 does not apply to arrangements. You ought to have opposed the arrangement.]

We were not returned on the schedule, and got no notice.

MILLER, J.—An application has been made on behalf of an apprentice to the arranging trader, that I should return, at all events, a portion of the fee which was paid upon his being bound as an apprentice to the trader, upon a state of facts under which I would, if I had the power, comply with the application. Under the 250th section of the 20th and 21st Vict., chap. 60, it is provided:—"Where any person shall have been an apprentice to a bankrupt or insolvent at the time of the filing of a petition of bankruptcy or insolvency, the filing of such petition shall be and ensure as a complete discharge of the indenture whereby such apprentice was bound; and if any sum shall have been really and *bona fide* paid by, or on the behalf of such apprentice to the bankrupt or insolvent as an apprentice fee, it shall be lawful for the Court, upon proof thereof, to order any sum to be paid out of the estate of the said bankrupt or insolvent, to or for the use of such apprentice, which such Court shall think reasonable, regard being had in estimating such sum to the amount of the sum so paid by or on behalf of such apprentice, and to the time during which such apprentice shall have resided with the bankrupt or insolvent, and to the other circumstances of the case." That clause is strictly confined to the case of apprentices to bankrupts and insolvents, and for a very obvious reason—namely, that arrangements by a trader were supposed to contemplate the continuance in trade by the trader who proposed to make an arrangement, or, in the event of the trader not proposing to continue in trade, it was not likely that any such arrangement could be made without the knowledge of the apprentice or those interested for him, and under such latter circumstances proper provision should have been made in the proposal for arrangement in the spirit of the 250th section referred to, which would have been infallibly done in this case if the circumstances had been brought under the notice of this Court at the proper time, the arrangement being for a complete distribution of all the assets of the trader among his creditors. But it is alleged that under the 35th & 36th Vict., chap. 58, sec. 66, it is provided that:—"Subject to the provisions of the said Act (20th & 21st Vict., chap. 60), and this Act, and in addition to the powers conferred by the said Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy or arrangement coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case," and that under that provision I have power, notwithstanding the limited nature of the power conferred upon this Court by the 250th section of the former Act, to return the apprentice fee in this case. It is plain, however, that the two statutes must be read together, and that the terms used in the 66th section of the 35 & 36 Vic., chap. 58, namely—"All other questions whatsoever, whether of law or fact, arising in any case of bankruptcy or arrangement coming within the cognizance of the Court," &c.—must mean, if applied to this case, *properly coming within the cognizance of the Court*, and that a fee paid to an arranging debtor, whose arrangement has been concluded and provides for a complete distribution of his assets, without having made any provision for the payment of such apprentice fee, does not properly come within the cognizance of this Court, inasmuch as the power conferred by the 250th section of the 25 & 26 Vic., chap. 60, is strictly confined, and as it appears to me, for the very sufficient reasons which I have stated, to such fees when paid to "*bankrupts or insolvents*" alone.

Having disposed of the question as a matter of strict right on the part of the applicant, I think that I can accede to the application as far as it could have been acceded to under any circumstances, by giving to the applicant the only balance which would remain for distribution among the creditors after payment of the costs and expenses in the matter, inasmuch as that balance is stated to me only to amount altogether to a very few pounds, and is too small for distribution by way of dividend among the creditors. The balance which I propose thus to apply, would, if not so applied, be transferred to the unclaimed dividend account, and may fairly be considered as under the control of this Court, so far as to enable it to remedy to that extent a hardship like the present.

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J., O'BRIEN, and FITZGERALD, JJ.)

CLEARY *v.* LENIHAN. (2).

June 12, 1874.—*Practice—Amendment—Leave to file additional defence—Libel—Justification, in addition to pleas filed, of no libel, and traverses of the publication and the sense imputed.*

A defendant in an action of libel, in which a criminal offence was imputed to the plaintiff, having pleaded no libel, traverses of the publication and the defamatory sense imputed, and another plea to which a demurrer was allowed, moved for leave to file, in addition, a defence of justification, on the eve of the Assizes to which, on his own application, the venue had been changed, and when the plaintiff might, in the result, be thrown out of a trial.

Held, *that the motion should be refused.*

Hogan *v.* Sutton, 2 Ir. L. T. 24, *distinguished.*

Motion, on behalf of the defendant, for liberty to plead a defence in justification of the defamatory matter alleged in several counts of the summons and

Digitized by Google

plaint, in addition to the defences already filed, namely, traverses of the publication of the libel, of the sense imputed, and a plea of no libel. The same case on demurrer has been reported *ante*, p. 146 (which see.).

The defendant, in support of the motion, deposed that, in consequence of there having been a successful demurrer, he believed that it would not be safe to go to trial without pleading a justification of the various matters alleged to be imputed to the plaintiff; that he was in a position to prove that the plaintiff and his friends were, at the election, guilty of intimidation, undue influence, and treating, and that some of the plaintiff's friends and supporters actually entered the Town Hall, where the election was about to proceed, under the influence of drink.

W. O'Brien, Q.C. (with him *Kenny*), in support of the motion, cited *Hogan* v. *Sutton*, 2 Ir. L. T. 24.

Peter O'Brien, contra.—The defendant attributed a criminal offence to the plaintiff, that of unduly influencing the electors. The first five paragraphs contain innuendoes expressly imputing a criminal meaning to the libel. The venue was changed from Dublin to Limerick on the application of the defendant, and now, on the eve of the Assizes, he seeks in effect to throw the plaintiff out of a trial. The defendant pleaded a defence previously, to which the Court allowed a demurrer; and if this application be granted a similar result may follow; and so the plaintiff may be debarred from proceeding with his action at the ensuing Assizes. There is no case in which after issue joined, where a demurrer has been allowed, and where a criminal offence was imputed, a defendant has been permitted to put in a plea of justification as here sought.

WHITESIDE, C.J.—There is a case, decided in England, in which a practitioner of the Court was suspended from practice, and a newspaper published an article asserting that he had been three times suspended. The plea of justification was that the plaintiff had been once suspended. The Court ruled that to be a bad plea, but they afterwards allowed the defendant to justify his allegation of suspension by pleading that the plaintiff had been three times suspended. We do not mean to say that, in a proper case, a party might not originally apply to be allowed to plead a justification with other pleas, as here; and we are very far from saying that *Hogan* v *Sutton* (2 Ir. L. T. 24), should not be held to be a good authority under similar circumstances. There are, indeed, very good reports in THE IRISH LAW TIMES, but the case cited does not govern the present. Here the defendant pleaded a defence to which the plaintiff demurred, and the Court ruled in his favour, 8 Ir. L. T. R. 146. Then the defendant applied to change the venue, and succeeded in his application. The Assizes are approaching, and the defendant wants to put in another plea, which might be demurred to; the result of which might be that the plaintiff would be thrown out of a trial till some other Assizes. We must have regard to the real nature of motions of this kind, made on the eve of the circuits going out, and must watch such applications very closely. In this case we think that the motion must be refused.

*Motion refused.**

Attorney for plaintiff, *John Ellard.*
Attorneys for defendant, *Kenny* and *Murphy.*

* See *Bone* v. *Smith*, 2 Ir. L. T. 42; *Mitchell* v. *Rodgers*, 8 ib. 136.—[ED. *Ir. L. T. Rep.*]

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before MONAHAN, C.J., and MORRIS, J.)

GOGARTY *v.* THE GREAT SOUTHERN AND WESTERN RAILWAY CO.

June 9, 10, 29, 1874.—*Carriers' Act,* (11 *G. IV.*, & 1 *Wm. IV. c.* 68), *ss.* 1, 2, 3, 8—*Loss of passenger's luggage—Jewellery over* £10 *in value—Non-declaration of value—Felony by carrier's servants—Evidence—Liability of carrier under Carriers' Act, s.* 8.

In an action against carriers for loss of the plaintiff's goods, upon an issue that the loss arose from the felonious acts of the defendants' servants, it is sufficient for the plaintiff, under the Carriers' Act, section 8, to prove facts which render it more probable that the felony was committed by a servant of the defendants than by any one not in their employ. Vaughan v. London and North Western Railway Company, *L. R.* 9 *Ex.* 93, *followed.*

The summons and plaint in this action contained three counts. In the first count, the plaintiff complained that the defendants were carriers of passengers and luggage from Cork to Tullamore, and that the plaintiff was a passenger, with her luggage, to be by them as such carriers securely and safely carried on their railway from Cork to Tullamore, and the said luggage to be delivered by the plaintiff to the defendants at Tullamore on her arrival there; [general averment of performance of conditions precedent]; yet the defendants did not safely and securely carry the said luggage and deliver the same to the plaintiff, whereby the said luggage was lost to plaintiff. The second count was for the conversion, and the third count was for the detention of the said luggage; damages being laid at £550.

The defendants pleaded to the first count, that they did safely and securely carry the luggage mentioned from Cork to Tullamore, and there delivered it to the plaintiff. For a further defence, to so much of the first count as related to the goods hereinafter mentioned, the defendants pleaded that part of the luggage in the second count mentioned, and which was delivered by the plaintiff to the defendants as alleged, was a box which contained certain goods which were articles and property of the description mentioned in the 1st section of the 11 Geo. IV. and 1 Wm. IV., c. 68, framed for the more effectual protection of common carriers; that said luggage was delivered to the defendants as common carriers at a railway terminus of the defendants, for the purpose of being carried along with the plaintiff, as her luggage, on a railway of the defendants, and that the value of said goods then exceeded the value of £10, &c.; averments that the notice required by the statute was affixed in a conspicuous and public part of the said terminus of the defendants at the time of the delivery of the said goods, whereby was notified the increased charge over the ordinary fare required by the defendants, to compensate them for the greater risk and care to be taken for the safe conveyance of goods and property of such value and description; and that at the time of the delivery of the said goods to the defendants the value and nature of the said goods were not declared by the plaintiff, nor by any one on her behalf, neither was such increased charge paid, nor any engagement to pay the same accepted. Traverses of the second and third counts.

The plaintiff took issue on the special defence; and, by way of replication to that defence, pleaded that the loss of the goods in the said plea mentioned arose from the felonious acts of servants in the employ of the defendants, and not otherwise.

Digitized by Google

The following facts appeared in evidence at the trial before Monahan, C.J. and a jury, at the sittings after Easter Term, 1874. On July 24, 1873, the plaintiff was travelling on the defendants' line from Cork to Tullamore, along with Colonel and Mrs. Cooper. The plaintiff had with her a large, yellow tin box, fastened by two straps and a padlock. She had herself packed the box, and had written the proper direction on it. The luggage of the entire party consisted of 13 parcels, all of which were delivered at the Military Barracks, Cork, by Mrs. Cooper, to a carrier, who conveyed them to the railway station, where they were delivered to the Co's servants by Alvoso, Colonel Cooper's servant. At the station Alvoso came up, along with a railway porter, to the carriage in which the plaintiff had taken her seat, and told her, and Colonel and Mrs. Cooper, that he had put their luggage consisting of 13 parcels into the luggage van. When the train reached Portarlington, which is Junction station, the plaintiff and the Coopers had to cross the line in order to get into another carriage. Colonel and Mrs. Cooper, after reaching the carriage, saw the luggage being transferred from one side of the line to the other, and, among other parcels the box, subsequently lost, was seen on the back of a railway porter, being carried across with the rest of the luggage; and Mrs. Cooper said to Miss Gogarty, "there goes your tin box." On reaching Tullamore, Mrs. Cooper and the plaintiff drove off at once to Colonel Cooper's residence, taking no luggage with them. Colonel Cooper and the maid-servant remained at the station to get the luggage, as Alvoso had been left in Cork. On the luggage being counted out by the railway guard, there were but 12 parcels to be found. Colonel Cooper, immediately, told the guard that there should have been 13 parcels. The twelve parcels were then sent home. No trace of the box or of its contents was afterwards discovered. The box contained jewellery to the value of £150, and clothing to the value of £60. The contents of the box were apparently unknown to Colonel Cooper's servants. It, also, appeared that Col. Cooper at Portarlington had pointed out certain luggage as being his to the station master, who had what was so pointed out conveyed across the line to the Tullamore van; that the railway guard from Cork had no luggage for Tullamore except Colonel Cooper's, the entire of which he placed apart, and handed out at Portarlington. The railway guard, who had charge of the luggage from Portarlington to Athlone, swore that he left all the Tullamore luggage at that station. The station master swore that he was on the platform seeing the luggage taken across the line, and that nothing could have been taken without his seeing it. A detective in the Co's service swore that he had made every inquiry, and that in his opinion the tin box had reached Tullamore, and was lost between Tullamore and Dumboden.

At the close of the defendants' case, the attention of their counsel was called to the fact that no evidence had been given of the posting in their office of the notice required by the Carriers Act; but he stated he was not in a position to offer such evidence. The jury found that the value of the jewellery in the box was £150, and of the clothes £60; that the box was delivered in Cork to the railway officials and placed in the van; that it was not delivered in Tullamore; that it was stolen by the Co's servants on the line between Cork and Tullamore; and that no notice was posted as required under the Carriers Act. On these findings, his lordship directed a verdict for the plaintiff for £210, but reserved liberty to the defendants to move to have the verdict reduced to £60. A conditional order having been obtained by the defendants pursuant to the leave reserved,

Armstrong, Sergeant (with him *Monahan*, Q.C. and *Houston*), showed cause. Two points arise for the consideration of the Court. In the first place, the company is not protected by the Carriers Act, because no evidence was given that the notice required by the Carriers Act was posted in the office of the defendants, and the special defence has not been proved. The Carriers Act was passed to protect carriers from liability for the loss of goods of a special nature and value, entrusted to them. The 2nd section of the Act requires a carrier to publish the notice; the 3rd requires that a receipt should be given when the extra charge is paid, and enacts that in case the notice is not published or the receipt given, "such common carrier shall not have or be entitled to any benefit or advantage under this Act, but shall be liable, &c. as at Common Law." In this case the notice was pleaded, and not proved. The notice was not posted, and therefore the company is liable. It is true that at pp. 548, 549 of Roscoe's N. P. (12th Ed.), the law is laid down somewhat differently, on the authority of *Hart* v. *Baxendale*, 6 Exch. 769, 21 L. J. Exch. 123 (Ex. Ch.). But the report seems incorrect. The marginal note of the report declares that, even though a common carrier neglect to post the notice required by the Act, yet he is protected if the bailor neglect to declare the value and nature of the bailment. That was the ruling of Pollock, C.B., at Nisi Prius. The plaintiff having moved the Court above, Parke, B., in giving judgment, says: "In this case we are all of opinion that the rule should be made absolute." Afterwards in the Exch. Chamber, Patterson, J., says that the Court was of opinion the ruling of the Chief Baron was not correct. But, however the law may have been laid down in that case, it does not affect us, because there the notice was affixed, and here it was not. In the second place, evidence was here given for the plaintiff from which it appeared that the loss was more probably occasioned by the felonious acts of the defendants' servants, than otherwise; and if so, under the 8th section the defendants are liable. We proved the loss of the box while in the exclusive possession of the defendants, who offered no explanation of the loss through themselves. *Vaughton* v. *The London and North Western Railway Co.*, L. R. 9 Ex. 93,* rules this case. It is sufficient to prove facts showing that it was more probable that a larceny was committed by the Co's servants, than that the box was otherwise lost. Here the box was peculiar and conspicuous, legibly directed, accessible only to the Co's servants, and was last seen on the back of one of them. It must have been lost through foul play, and the Co's servants, alone had access to it, upon the defendants' own evidence. Even the Co's detective was mislead in his investigations, for he came to the conclusion that all the luggage was given out at Tullamore, which was not the case. Some only of the railway porters who transferred the luggage from one train to the other, at Portarlington, were produced.

James Murphy, Q.C (with him *G. Fitzgibbon*, Q.C. and *Perry*), *contra*—The defendants are protected by the Carriers Act, although no evidence was given of the posting of the notice, because no declaration as to value was made by the plaintiff; *Hart* v. *Baxendale*, *ubi sup.* The ruling of Pollock, C.B., to that effect, though reversed by the Court of Exchequer, was upheld in the

* See Com., 8 Ir. L. T. 198—[Ed., *I. L. T. Rep.*]

Digitized by Google

Exchequer Chamber. The notice is required merely in order to fix the greater charge to which the carrier is entitled, for the conveyance of goods within the Carriers Act.

[MORRIS, J.—What did you plead?]

The plea averred a notice affixed in the office. It was not necessary to prove it. We proved that the goods were within the Carriers Act, and that no declaration as to their value or nature was made. As to the other question, under s. 8, it must have been proved—1st, that in point of fact, the goods had been lost through a felonious act; 2nd, that the act was committed by the Co's servants. The *onus probandi* lies on the plaintiff. In *Vaughton* v. *London and North Western Railway Co.*, *ante*, a felony was proved to have been committed, and committed upon the Railway Co's premises.

They cited *Metcalf* v. *London & Brighton Railway Co.*, 4 C. B. N. S. 311; *Gt. N. R. Co.* (app.) v. *Remmell* (Res.), 18 C. B. 575.

Cur. adv. vult.

MONAHAN, C.J.—This case, which was tried before me during the after sitting following last Easter Term, resulted in a verdict for the plaintiff for £210. Subsequently, the defendants obtained a conditional order to have the verdict reduced to £60, on the ground that the evidence did not support the finding. [His lordship having referred to the facts of the case, proceeded :—] The action was brought to recover the value of the box so lost by the company, and resulted, as I said, in a verdict for the full amount claimed, £210. In answer to the claim for £150, the value of the jewellery contained in the box, the defendants contended that they were protected from any liability for the contents, by the Carriers Act (11 G. IV., & 1 Wm IV., c. 68), because the plaintiff, when delivering the parcel to them, had not made the necessary declaration as to value. Upon this point, pursuant to leave reserved, the Court granted a conditional order, and the question argued was :—Did the evidence bring the plaintiff within the 8th section? The plaintiff, by the replication filed, admitted that the goods came within the Carriers Act, but maintained that, although no declaration of value was made, yet, inasmuch as the goods had been stolen by the company's servants, the company was liable for the loss occurring through that felonious act. The question we have to decide is whether the evidence, as to the commission of a felony by the company's servants, was sufficient to justify the verdict of the jury?

Now, the Carriers Act was passed to provide a protection for common carriers, and it requires a declaration to be made as to the value, when over £10, of certain classes of goods, set out in the Act. This declaration being made on delivery, the company become liable for the declared value of the goods, and entitled to an increased rate of payment, to be set out by a notice, required by the Act to be posted on the premises. But, by the 8th section of the same Act it is enacted, "That nothing in this Act shall be deemed to protect any" common carrier "for hire from liability to answer for loss, or injury to any goods, or articles whatsoever, arising from the felonious acts of any coachman," &c., "or other servant in his or their employ." In the case with which we have to deal, the plaintiff proved the delivery of the box to the servants of the defendants in Cork, and that she saw it put into the van. The nature of the contents of the box, and the value of the contents were also proved. When the train reached Portarlington, the plaintiff's luggage was removed from the train which conveyed it from Cork to the train by which it was to be conveyed to Tullamore. Colonel and Mrs. Cooper, who were travelling with the plaintiff, proved that they saw the box, on a porter's back, being carried across the railway from one train to another, at Portarlington. The box was not again seen, nor could any trace of it, afterwards, be discovered. Now, inasmuch as it was clearly proved that the box was last seen in the possession of a porter in the employment of the defendants, who have not given an account of it in any way, and further, inasmuch as no case was made at the trial of any other kind of loss, except the case of the plaintiff as to a loss by the felonious taking of the box, we are of opinion that the verdict for the plaintiff should not be disturbed. At the trial, the case made by the defendants was that the box was safely conveyed from Cork, through Portarlington, to Tullamore, the plaintiff's destination; that it was there delivered to her servants, and that if it were lost it was after that delivery. That case was completely disproved at the trial; and then the defendants shifted the ground of their defence, and contended that there was not sufficient evidence that the box had been delivered to them at all in Cork. That question I left to the jury. No suggestion had been made by the defendants that the box was taken by a stranger, nor had there been any such explanation offered. This case is similar to *Vaughton* v. *The London and North Western Railway Company*, L. R. 9, Ex. 93. In that case it was ruled that, in an action against a common carrier, on the issue as to whether the loss had been occasioned by the felonious act of his servant, it was sufficient to give such evidence as would render it more probable that the felony was committed by some one in his employment, and that evidence which would bring home guilt to one particular servant was not necessary. Now, the evidence in this case strongly leads to the presumption that the porter, who carried the box across the railway line, feloniously appropriated it. The defendants endeavoured to prove that they took such care of the box as resulted in its safe delivery, in Tullamore, to the plaintiff's servants, thus suggesting the impossibility of its having been taken by any other passenger on the entire route.

The circumstances of the case being such, we would not be justified in interfering with the verdict, and we consider that the evidence on which the jury found was sufficient. We entertain no doubt on this matter, and therefore we must allow the cause shown with costs.

Conditional Order discharged

Attorney for plaintiff: *H. Greene Kelly.*
Attorneys for defendants: *Barrington & Co.*

(Before the Same.)

WALLACE v. DUBLIN AND BELFAST JUNCTION RAILWAY COMPANY.

June 11, 1874.—*Carriers' Act* (1 *W.* 4, *c.* 68), *s.* 1—*Carriage, by common carrier, of goods exceeding* £10 *in value—Non-declaration of value, and non-payment of increased rate—Delay in carriage, caused by temporary loss of goods by carrier—Exemption of carrier from liability.*

Where goods exceeding £10 *in value, and of the description specified in the* 1*st section of the Carriers' Act* (1 *W.* 4, *c.* 68), *are delivered to a common carrier, without declaring their nature and value, and paying an increased rate for carriage, as notified and required, the carrier is exempted by the statute from liability for delay, in the carriage, caused by his having temporarily lost the goods.*

Demurrer.—The first paragraph in the summons and plaint was as follows:—"That the plaintiff delivered to the defendants, as and being carriers of goods from Portadown to Birmingham, certain goods of the plaintiff, to be by them carried from Portadown to Birmingham aforesaid, and there delivered for the plaintiff, within a reasonable time in that behalf, for reward to the defendants, and the defendants, as such carriers, received the said goods for the purpose and on the terms aforesaid, and a reasonable time for carrying and delivering the same as aforesaid elapsed, yet the defendants neglected for a long and unreasonable time in that behalf to carry and deliver the said goods as aforesaid, whereby the said goods were diminished in value, and the plaintiff sustained loss and damage in respect thereof." The second paragraph was as follows:—

Digitized by Google

"That in consideration that the plaintiff would deliver to the defendants, as and being carriers of goods for hire, certain goods to be by the defendants carried from Portadown to Birmingham, and there delivered for the plaintiff, for reward to the defendants, the defendants promised the plaintiff to carry the said goods from Portadown to Birmingham aforesaid, and there deliver the same for the plaintiff, within a reasonable time in that behalf, and the plaintiff delivered the said goods to the the defendants, and the defendants received the same for the purpose and on the terms aforesaid; [general averment of performance of conditions precedent]; yet the defendants did not carry and deliver the said goods for the plaintiff as aforesaid, within a reasonable time in that behalf, whereby the plaintiff was deprived of the use of said goods, and the same were diminished in value." The defendant pleaded, thirdly, by way of defence to each of the said paragraphs, "That the said goods were articles and property of the description mentioned in the 1st section of the statute, 1 Wm. 4, c. 68, for the more effectual protection of common carriers for hire, and were contained in a parcel which, with the said goods therein contained, was delivered by the plaintiff to the defendants, as and being common carriers by land for hire, at a certain office or receiving house of the defendants, for the purpose of being by them, as such carriers, carried for hire, as in the summons and plaint mentioned, in a public conveyance, and the value of the said goods then exceeded the sum of £10, and, at the time of the delivery of the said parcel and goods as aforesaid, there was affixed, in legible characters, in a public and conspicuous part of the said office or receiving house of the defendants, being an office or receiving house of the defendants in which such parcels were then received by the defendants for the purpose of conveyance, a notice within the meaning of the said statute, whereby the defendants notified that an increased rate of charge, in the said notice mentioned, was required to be paid to them, over and above the ordinary rate of carriage, as a compensation for the greater risk and care to be taken for the safe conveyance of articles and property of the description in the 1st section of the said statute mentioned, and, at the time of the delivery of the said parcel and goods at the said office or receiving house of the defendants as aforesaid, for the purpose aforesaid, the value and nature of the said goods were not declared by the person sending or delivering the same, and whether such increased charge as aforesaid, or any engagement to pay the same was accepted by the person receiving the said parcel and goods; and that, after the delivery of the said parcel and goods to the defendants, and while the said parcel and goods were being carried by the defendants by land in and along that railway, and before any delay had occurred, the said parcel and goods became and were wholly lost and misplaced by and to the defendants, and so continued for a considerable time; and that afterwards the defendants recovered possession of the said parcel and goods, and the defendants then carried the said parcel and goods to Birmingham, and there delivered the same, within a reasonable time in that behalf after such recovery of the possession of the said parcel and goods by the defendants; and that the delay in the carriage and delivery of the said goods complained of arose, and was wholly caused by such loss and mislaying of the said parcel and goods, and not otherwise." Demurrer to the defence.

Boyd (with him *Porter*, Q.C.), in support of the demurrer.—The protection conferred by the Carriers' Act only applies as regards liability for a loss of the goods by the carrier, not as regards loss or inconvenience sustained by a passenger whose luggage was lost; *Hearne* v. *London and South Western Railway Co.*, 10 Ex. 793. A carrier is not exempted by the Act from liability for delay in the carriage of goods. The loss mentioned in the Act, and from liability in respect of which the carrier is exempted, means actual and not merely temporary loss. Here the loss is pleaded as temporary only, which has never been held to come within the protection of the statute.

Pakenham Law (*Armstrong*, Sergeant, with him), *contra.* The plea alleges, and the demurrer admits that the goods were, in fact, lost by the defendants, though only temporarily. Are the company to be punished for activity in getting back the goods, when they would be safe if they never did get them back? Parke, B., in *Hearne* v. *London and South Western Railway Company*, suggests this plea, and that case was decided on the ground that the defence was not pleaded as here. In *Pianciani* v. *London and South Western Railway*, 18 C. B. 226, the defence was pleaded, and though demurred to on the point now in question, that point of the demurrer was not argued, and the defence was sustained.

Morris, J.—In this case we consider that the defence is well pleaded. Damages are claimed by the plaintiff for unreasonable delay in the delivery of certain goods by the defendants, as common carriers. [His Lordship read the paragraphs of the summons and plaint.] Now, the plea demurred to says that, before any delay had occurred, the said parcel and goods became and were wholly lost and mislaid by and to the defendants, and so continued for a considerable time, and afterwards the defendants recovered possession of the said parcel and goods, &c., and "delivered the said parcel and goods within a reasonable time in that behalf after such recovery of the possession," &c. To this plea a demurrer has been entered. I am clearly of opinion that the demurrer should be overruled.

In *Hearne* v. *London South Western Railway Company*, 10 Ex. 793, such a plea was held bad, but on the grounds that an averment as to a loss was omitted. Here the goods are averred to have been substantially lost out of the possession of the defendants. In *Pianciani* v. *The London South Western Railway Company*, 18 C. B. 226, a plea similar to this was pleaded, was challenged, and the point was directly raised, yet the plea was held good. Now, if the goods had been wholly lost, and never delivered, the defendants would have been protected by the Carriers' Act, and a plea of the loss would have been good. But, are we to say that the defendants, who would not have been liable had they taken no steps to recover the goods, are to be liable because they succeeded in doing so? It was urged that, were we to yield to the defendants' contention here, our ruling would be so pushed that in all cases in which delays occurred in the transmission of goods, within the 1st section of the Carriers' Act, the value of the goods not having been declared, Railway Companies would be protected from delays occurring through their own negligence; but, although our decision may enable carriers to plead temporary loss as a defence to unreasonable delay, it will not, at the trial, be any protection unless the evidence supports it. On the authority of the two cases cited, and for the reasons mentioned, I am of opinion that the defence, as here pleaded, is good in law; but, whether it be true in fact is a question for another tribunal.

Monahan, C.J.—I entertain no doubt but that the Act affords a protection from liability for delay caused by a loss of the goods, whether the loss be temporary or final; and, for the reasons stated by my brother Morris, I am of opinion that the demurrer should be overruled.

Demurrer overruled.

Attorneys for plaintiff: *Carleton & Atkinson.*
Attorney for defendants: *S. Davis.*

Digitized by Google

(Before the same.)

MOORE v. THE MIDLAND RAILWAY COMPANY.

May 5th, 1874.—*The Railway and Canal Traffic Act*, 1854, 17 *&* 18 *Vict*., c. 31, *s*. 7—*The Regulation of Railways Act*, 1868, 31 *&* 32 *Vict*., c. 119—*The Regulation of Railways Amendment Act*, 34 *&* 35 *Vict*., c. 78, *s*. 12—*Carriers by sea*—*Conditions limiting carrier's liability*—*Reasonableness of conditions, when to be decided*—*Demurrer*—*Pleading*—*Statute.*

In an action for loss of and injury to goods, booked at "through" rates, for conveyance by land and by sea, the railway company with whom the contract was made pleaded conditions in the contract, exempting them from liability—firstly, where the loss and injury occurred while shipping, during the voyage, or the landing; and secondly, where it occurred through the default of the master and crew of the vessel by which the goods had been conveyed during a part of the transit. Upon demurrer to the pleas,

Held, *that the conditions were null and void under the 7th section of the* 17 *&* 18 *Vict*., c. 31, *as limiting the liability of the defendants for the default of them or their servants, no facts appearing on the pleadings to show that the conditions were "just and reasonable, within the concluding proviso of the section."*

Demurrer.—The first paragraph of the summons and plaint was as follows:—"That the plaintiff did, after the passing and coming into operation of the several statutes hereinafter mentioned—that is to say, the Act of the Session of Parliament held in the 17th and 18th years of the reign, &c., cap. 31, being the Railway and Canal Traffic Act, 1854, and the Acts of the Session of Parliament held in the 33rd and 34th years of the reign, &c., cap. 71, being the Regulation of Railways Act of the year 1871—delivered to the defendants, and they received, certain goods of the plaintiff, to wit, 69 head of cattle, to be shipped on board the steamship "St. Columba," and safely and securely carried from Dublin to Liverpool, and from thence by railway to St. Ives, and there delivered for the plaintiff, for certain freight paid by the plaintiff to the defendants; [general averment of performance of conditions precedent]; yet the defendants did not safely and securely carry the said goods, but, on the contrary, acted so negligently, carelessly, and improperly in and about the carrying of the said goods, that portion thereof, to wit, 43 head of the said cattle, were lost, and other portion thereof were killed and injured, and deteriorated in value, during the voyage from Dublin to Liverpool; whereby," &c. 2nd paragraph—"That the defendants were carriers of goods for hire from Dublin to St. Ives in England, and the plaintiff, after the passing and carrying into operation of the several statutes in the first count more particularly mentioned, delivered, and the defendants received, as such carriers, certain goods of the plaintiff, to wit, 69 head of cattle, to be by the defendants taken care of, and safely and securely carried from Dublin to St. Ives aforesaid, and there delivered within a reasonable time, for certain freight to be paid by the plaintiff to the defendant; [general averment of performance of conditions precedent]; yet, although a reasonable time for the carrying of the said goods had elapsed, the defendants did not safely and securely carry and deliver the said goods, but, on the contrary, acted so carelessly and improperly, in and about the carrying of the said goods, that portion of the said goods was lost, and the residue thereof were bruised and deteriorated in value; whereby," &c. 3rd. paragraph.—"That heretofore, to wit after the passing and coming into operation of the several statutes in the first count more particularly mentioned, in consideration that the plaintiff would deliver to the defendants 69 head of cattle, to be carried by the defendants from Dublin to St. Ives in England, and there delivered to the plaintiff for reward to the defendants, the defendants promised the plaintiff to use proper care and skill in and about the carrying of the said cattle; and the plaintiff delivered the said cattle to the defendants, and the defendants received and had the same for the purpose and on the terms aforesaid; [general averment of performance of conditions precedent]; yet the defendants did not use due or proper care and skill in and about the carrying of the said cattle; whereby," &c.

Pleas to the first Paragraph;—2ndly —"That the cattle in the said paragraph mentioned, were delivered by the plaintiff to the defendants, and by them received upon the terms and conditions that the defendants would not be accountable for any injury to cattle while shipping, during the sea passage, or landing, but would give free passage by sea to the owners or others sent to take charge of such on the passage; and that the loss, injury, or deterioration, in the said first count complained of, were an injury to the said cattle while shipping, during the sea passage, or landing." 3rdly.—"That the goods, in the first paragraph mentioned, were delivered by the plaintiff to the defendants, and by them received upon the terms and conditions that the defendants would not be accountable or responsible for loss of, or any damage or injury to the said goods, arising from any default or negligence of the master or any of the officers or crews of the Company's vessels; and that the loss, injury, and the deterioration in the said count complained of, were respectively loss, injury, and damage to the said goods arising from the default or negligence of the master, or some of the officers or crew of the vessel in the said first count mentioned." The defences pleaded to the 2nd and 3rd paragraphs were substantially the same as the foregoing. To those defences the plaintiff demurred. The points of the demurrer were:—1st. That the said defences did not disclose any answer good in substance. 2nd. That the terms or conditions therein relied on were neither reasonable or just. 3rd. That said terms and conditions were unreasonable and unjust, and void in law.

Molloy (with him *Armstrong*, Serjeant, and *Byrne*, Q.C.), in support of the demurrer. The question turns entirely upon the 7th section of the Railway and Canal Traffic Act of 1854 (17 & 18 Vict., c. 31), and although that section did not apply to carriers by sea, all its provisions have been extended by subsequent Acts of Parliament so as to include them. The liability of carriers at common law could, formerly, have been limited by such a publication of the conditions under which alone they would carry goods, as would bring those conditions to the knowledge of the consignor or consignee. However, by the 7th section of the Railway and Canal Act, 1854, all such conditions, declarations, and notices limiting the carrier's liability, are declared null and void, subject to the proviso that nothing in the Act shall be construed to prevent the carrier from making a special contract containing such conditions as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried, to be just and reasonable. In *Simons* v. *The Great Western Railway Company*, 18 C. B. 805, Jervis, C.J., states that the object of the Act was to place the whole railway system under the power of the Court. That Act, if it were not extended, would not have assisted the plaintiff, because, where there is one entire contract

Digitized by Google

to carry, partly by land and partly sea, the contract is divisible, and, as to the land journey, the carrier is within the protection of the Carriers Act, 11 Geo. IV., and 1 Wm. IV., c. 68; *Le Conteur* v. *The London and South Western Railway Company*, L. R. 1 Q. B. 54. Section 14 of the Regulation of Railways Act, 1868, prescribes the limitation which, by published conditions, a carrier can impose on his liability for loss of, or injury to goods "booked through," when the injury occurs during a voyage; and by the second part of the 16th section the provisions of the Act of 1854 are extended to "steam vessels, and to the traffic carried on thereby." This latter section, however, was only applicable to cases in which the Railway Company was "authorized to build, buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on communication between towns and ports." At length, in 1871, by the 12th section of 34 & 35 Vict., c. 78, it was enacted, that Railway Companies, where, under a contract for carrying persons, animals, and goods by sea, they procure the same to be carried in a vessel not belonging to them, shall be answerable in damages similarly as if the vessel belonged to them. By this last Act the legislation was completed, and the 7th section of the Act of 1854 became applicable. This being so, are the conditions, as pleaded in the defences demurred to, just and reasonable? That is a question for the Court; and it should be held that they are unreasonable; *Simons* v. *G. W. Railway Company*, *ubi supra; Peek* v. *The North Staffordshire Railway Company*, 10 H. L. C. 473; *Lloyd* v. *The Waterford and Limerick Railway Company*, 15 Ir. C. L. 37; *Garton* v. *The Bristol and Exeter Railway Company*, 1 B. & S, 112; *Wyld* v. *Pickford*, 8. M. & W., 443.

Robertson (with him *Dames*, Q C.) *contra*.—The question as to the reasonableness of those conditions cannot be decided upon demurrer. Before the Court can decide that the conditions are void, the circumstances under which they were imposed and agreed to should be fully before it. Although *Simons* v. *The Great Western Railway Co.* (*ante*) was decided upon demurrer, Jervis, C.J., says, "I think the matter is *sufficiently brought before the Court to enable us to decide it.*;" and in *The London North Western Railway Co.* v. *Dunham*, 18 C. B. 826, the same learned Judge observes, that the case came before the Court to say whether or not certain conditions limiting the liability of the defendants were unjust or unreasonable, without their being told of the circumstances under which the contract was made, or what was the nature or the reason of the particular risk; and that, therefore, as he did not think enough had been disclosed to enable the Court to come to a conclusion, the case should go back for the purpose of being more fully stated. The better and proper way to raise the question is upon motion for a new trial, or by special case. By these methods all the facts would come before the Court. If the plaintiff got advantages by accepting those conditions, and had the fair option of refusing them, the conditions would be valid. The question might be raised upon replication, as in *Lloyd* v. *The Waterford and Limerick Railway Co.* (*ante*). Then the necessary facts would be presented to the Court.

Byrne, Q.C., in reply.—The question here is merely one of pleading. The conditions, as they appear in the defence, are not just or reasonable, and are, therefore, void. *The London North Western Railway Co.* v. *Dunham* (*ante*) came before the Court on appeal from the County Court, and the facts were not sufficiently before the Court. There are no pleadings in the County Court, and there were none before the Court of Appeal. Therefore, on both grounds, that case does not apply. In *Lloyd* v. *The Waterford and Limerick Railway Co.* (*ante*) conditions similar to those set out here were held unreasonable, and held to be so upon demurrer. The 7th section (17 & 18 Vict. c. 31,) says that the Judge or Court before whom any question relating to the reasonableness of a condition shall arise shall decide upon its legality. In here raising the question by demurrer, the meaning of the statute and the practice which has heretofore obtained has been followed.

[Monahan, C. J.—If the question of the reasonableness of the conditions were to be raised by amendment, leave to amend would be granted only upon an affidavit setting out the facts on which the defendants rest their defence.]

Prima facie, the conditions are void. The entire special contract is in writing and set out, so far as it exists, in writing, and, upon demurrer, its legality may be questioned.

Morris, J.—If an Act of Parliament declare anything to be illegal, and contains a proviso making certain exceptions, the pleadings should set out such averments as would bring a person, claiming exemption from the full force of the Act, within that proviso. Here, while the condition would be void under the enacting clause (17 & 18 Vict. c. 31, s. 7), as being a condition limiting the defendants' liability for the default of them or their servants, the defendants have not, in their plea, averred facts which would enable us to say that the conditions were reasonable within the concluding proviso of the section. The demurrer must, therefore, be allowed.

Demurrer allowed.

Attorney for plaintiff: *V. B. Dillon & Co.*
Attorney for defendants: *John Hone.*

M'Mullen v. Greene.

Reported by Cecil R. Roche, Esq., Barrister-at-law.

(Before Monahan, C.J., Keogh and Lawson, JJ.)

Nov. 22, 1873.—*Interpretation of written agreement—Ambiguity in the meaning of a word of art—"Salesman"—Parol evidence to explain meaning—Question for jury.*

An agreement was entered into between the plaintiff and the defendant, that the plaintiff should enter the defendant's service, as "salesman," in the tea-trade, the plaintiff understanding that he was only to be employed as traveller. The plaintiff afterwards acted for some time in the capacity of traveller; but was ultimately required by the defendant to act in the wholesale warehouse of the defendant. In an action for breach of contract thereupon,

Held, *that evidence to explain the meaning of the word "salesman," in the written agreement, was admissible.*

Action to recover damages for the breach of an agreement, under which the plaintiff entered the defendant's employment. The case was tried before Monahan, C.J., and a special jury, on June 17th, 1873. The facts of the case were as follows:—The plaintiff was in the defendant's employment as traveller in the tea trade, from the month of August, 1850. The plaintiff's salary was £250 per annum. An interview took place between the plaintiff and the defendant, on the occasion of the partnership, of which the defendant was a member, being dissolved, and an agreement was made in writing, by which the plaintiff was to enter the defendant's service as "*a salesman*," at a salary of £600 a year, and was also to obtain a commission of 2s. on every chest of tea sold. The plaintiff, before signing the agreement, objected to the use of the word "salesman,"

Digitized by Google

the defendant told him that it meant traveller, and that he did not mean to make any change in his position. The plaintiff continued to act as traveller for some time, but ultimately he was recalled from travelling, and put to a counter in the wholesale department, the defendant declaring that he would act on the word "salesman" in the agreement. Evidence was admitted, at the trial, to prove that the word "salesman" means traveller in the tea trade, and that the words salesman and traveller are synonymous. Counsel for the plaintiff objected to evidence being received as to the meaning of the word salesman in the written agreement, and requested the learned judge to direct a verdict for the defendant; but the direction was refused, as the word was a word of art which the jury should determine. The case was left to the jury, who found for the plaintiff, with £100 damages. Liberty was reserved to the defendant to have the verdict entered for him, in case the learned judge should have so directed, and also to have the damages reduced to a nominal sum. A conditional order having been obtained, in pursuance of the leave reserved,

Andrews, Q.C. (with him *Porter*, Q.C.,) for the plaintiff, shewed cause. The question is whether evidence was rightly admitted to establish the meaning of the word salesman. It is a word of art. "The true interpretation of every instrument being that which will make the instrument speak the intention of the party at the time it was made, where any doubt arises upon the true sense and meaning of the words themselves, or any difficulty as to their application under the surrounding circumstances, the sense and meaning of the language may be investigated and ascertained by evidence *dehors* the instrument itself, for by no other means can the instrument be made to speak the real mind of the parties;" *Shore* v. *Wilson*, 9 Cl. & F. 567 (*per* Tindal, C.J.); *Evans* v. *Pratt*, 3 M. & G. 759; *Clayton* v. *Gregson*, 6 A. & E. 302; *Smith* v. *Wilson*, 3 B. & Ad. 728; *Price* v. *Mouat*, 11 C. B. N. S. 508.

Falkiner, Q.C. (with him *Carton*), for the defendant, *contra*.—There is nothing in the agreement to warrant the word salesman being taken as an ambiguous expression. The meaning of the word is perfectly clear—in the wholesale department it means the person who sells, it may also mean a person who sells as a traveller. The jury thought only one meaning belonged to the word—in logical language they took the particular for the universal. There was at most only a scintilla of evidence to attach this meaning to the word; there was no sufficient evidence to go to the jury to prove that it meant a traveller only.

[Monahan, C.J.—The question as to the insufficiency of the evidence which went to the jury is not open to you; not a word was said about it at the trial; the only question which was raised was as to the admissibility of the evidence.]

If we are excluded on that point by the language of the certificate, we rely on the fact that there was no sufficient foundation laid for the reception of the evidence. Even if it is a word of art, the true construction should have been put upon the agreement by the Court, and not by the jury. The jury should have been asked specifically to say what the meaning of the word was, and the judge should then have construed the document.

Lawson, J.—The question is, when a word is used in reference to a contract of this kind, what does it mean? It was left to the jury to say in what sense it was used. We should overrule a vast number of authorities if we held that such a question was not rightly left to the jury. The evidence showed that the plaintiff was a traveller, and the defendant told him he did not mean to make any change in his position. *Price* v. *Mouat*, 11 C. B. N. S. 508, shows that this evidence was admissible. The term in the agreement itself is ambiguous, and that places the evidence, with all the surrounding circumstances, before the jury.

Keogh, J.—I think that the word *salesman* itself was ambiguous, and that necessitated the giving of evidence in order to explain its meaning.

Monahan, C.J.—Concurred.

Cause shown allowed.

Attorney for plaintiff: *M'Combe.*
Attorney for defendant: *Buckley.*

CONSOLIDATED CHAMBER.

Reported by E. N. Blake, Esq., Barrister-at-law.

(Before Fitzgerald, J.)

Catherine Stamp v. Joseph W. Hickey.

Sept. 4, 1874.—*Practice*—*C. L. P. A. Act*, 1870, s. 6—*Remitting detinue*—*Visible means.*

Where, on a motion to remit to the Civil Bill Court an action in detinue, in which the plaintiff prayed for a return of the goods and for damages, the defendant offered to return the goods, and the plaintiff was willing to take them back, the Court ordered that, upon the terms of the defendant giving up the possession of the goods to the plaintiff, the action be remitted, unless the plaintiff should give security for costs.

Where, in answer to affidavits that the plaintiff was looking for a situation as milliner's assistant, and had no visible means of paying costs, the plaintiff deposed that she was entitled to a share in a valuable leasehold interest in a house and twenty acres of land, the Court was not satisfied that the plaintiff was possessed of "visible means," as the value or extent of the share was not stated.

Motion that, unless the plaintiff give security for costs, the action be remitted to the Recorder of the City of Dublin, or for such other order as the judge should think fit.

The action was in detinue for a trunk, two cloaks, two quilts, three gowns, one jacket, one muff, two skirts, one hat, four ear-rings, three scarfs, eight collars, eight wrist-cuffs, ten inside dresses, three pairs of boots, one book, and 15s. deposited in the trunk; and the plaintiff prayed judgment to recover the goods and money, or £40 in lieu thereof, and £10 damages for their detention. The motion was grounded on an affidavit by the defendant, that he never detained, and was not detaining the goods in the plaint mentioned, which he still continued ready to deliver up to the plaintiff; and that the plaintiff had no visible means of paying the costs. In reply, an affidavit was made by the plaintiff, and Sylvester Stamp, her brother. The latter deposed that, by the plaintiff's direction, he went to get the goods which had been left by her at the defendant's residence, 2, Lower Pembroke-street, but that, on demanding them from the defendant's wife, she refused to give them, alleging that the plaintiff owed £2 for her lodging. The plaintiff, on her part, deposed that she did not owe any money to the defendant, or his wife, for lodging or otherwise, having slept at the house as a visitor; and that she was entitled to a share in a valuable leasehold interest in a house, and twenty acres of land, at Garrymoyle, Co. Wexford. The defendant's wife rejoined that, when Sylvester Stamp called for the trunk, he did not say he came by his sister's directions; that she told him he could not

Digitized by Google

get it then, but to let his sister come for it, and that his sister should pay what she owed; that he began to abuse, but the deponent shut the door, and again told him to send his sister for the things; that she was informed by the plaintiff that she (the plaintiff) was not going to leave Dublin, but was looking for a situation as milliner's assistant.

Perry, in support of the motion. As regards the plaintiff's ability to pay costs, it appears that she is seeking employment as a milliner's assistant, and the statement as to her alleged share in a leasehold interest is not satisfactory. On a previous motion, in another action, brought by the same plaintiff against the present defendant and two others, the same statement as to her visible means has been ruled to be insufficient, as, in like manner, the extent or value of her share was not stated; *Stamp* v. *Hickey*, *Notanda*, 8 Ir. L. T. 485.

[FITZGERALD, J.—Of course, therefore, the same rule applies.]

The two actions ought to be tried before the same tribunal.

Plunkett, *contra*. This being an action in detinue, claiming a return of the chattels, it cannot be remitted to the Recorder; *Ludlow* v. *Headley*, 7 Ir. L. T. R. 136, and cases there cited.

[FITZGERALD, J.—If the goods are returned are you willing to take them?]

Certainly; but we are entitled, besides, to damages for the detention, which should be determined by the Superior Court. The plaintiff should have moved to stay the action, on the terms of returning the goods and paying a sum for damages.

Perry, in reply. The plaintiff prays for a return of the goods *or* £40 in lieu thereof—a sum which it would be within the jurisdiction of the Recorder to award.

[FITZGERALD, J.—*Ludlow* v. *Headley*, 7 Ir. L. T. R. 136, is an authority against you as to remitting detinue.]

That decision only applies where the return of the goods is the substantial claim, and where it is *bona fide* made. The defendant here swears that he never detained, and is not detaining the goods. The goods are such that their return in *specie* cannot be essential, and £10 would be more than their entire value.

[FITZGERALD, J.—Are you willing to return the goods?]

The defendant swears that he is ready to deliver them up. No special damage is alleged.

FITZGERALD, J.—The plaintiff being willing to take back the goods, and the defendant to return them, what I shall do is this:—I shall let the plaintiff proceed with the action before the Recorder for the recovery of damages, and let the action be remitted to him, unless the plaintiff give security, the defendant agreeing now to deliver up the goods in question.

Ordered that, upon the terms of the defendant giving up to the plaintiff the possession of the goods, the subject-matter of the action, the case be remitted for trial before the Recorder, unless the plaintiff give security for the costs of the action.*

Attorney for the plaintiff: *O'Beirne*.
Attorney for the defendant: *J. Mathews*.

* The case was in the Common Pleas, but that was not referred to in connexion with the decisions of that Court as to remitting detinue: see *Barry* v. *Cass*, 8 IR. L. T. R. 124. As to the question of visible means, see *Hunter* v. *D'Arcy*, 8 IR. L. T. R. 95.—[*Rep.*]

HOLLAND v. READ.

Sept. 25, 1874.—*Practice—Debtors Act*, 1872—*Costs of non-suit—Order for payment—Discretion as to granting—Jurisdiction in Consolidated Chamber.*

A plaintiff not having proceeded to trial, the defendant, after the lapse of three terms, obtained an order directing him to proceed, or that, in default, the action be dismissed with costs. The plaintiff neglecting to proceed, the action was, by a subsequent order, dismissed with costs. On motion by the defendant, the Court, holding that the costs constituted a debt within the Debtors Act (Ir.), 1872, *s.* 6, *ordered that the costs as taxed, together with the costs of the motion, be paid by monthly instalments.*

Quære, *whether a Judge has jurisdiction, in Consolidated Chamber, to make an order for payment under the Debtors Act (Ir.)*, 1872, *s.* 6?

Motion, on behalf of the defendant, for an order that the plaintiff do pay to the defendant, at such time and in such manner, or in such instalments as the Judge should think fit, the sum of £12 11s. 6d., the amount of an order of the Court of Exchequer, dated March 4, 1874, recovered in respect of a debt which accrued due since the passing of the Debtors Act (Ir.), 1872; and that the costs of the motion be paid by the plaintiff to the defendant in the same time and manner.

The motion was grounded on an affidavit, in which the defendant deposed that the action had been brought against him, on Jan. 8, 1873, for £300 damages, for slander, alleged to have been spoken of the plaintiff in relation to his business as clerk in Her Majesty's Customs; that a defence was filed Jan. 18, 1873; that the plaintiff not having proceeded to trial, and having allowed three terms to elapse without taking any further steps, the defendant obtained an order of the Court, Jan. 5, 1874, directing that the plaintiff do proceed to trial at the Nisi Prius Sittings next after the expiration of twenty days from the service of the order, or that, in default, the defendant be dismissed with his costs of suit; that the plaintiff did not proceed to trial, and that on March 4, 1874, the defendant obtained an absolute order dismissing the suit, and directing that the plaintiff should pay defendant's costs, when taxed and ascertained; that the costs had been taxed under the order and certified, March 28, 1874, to the sum of £12 11s. 6d.; that the costs not having been paid, a writ of *fi. fa.* was issued, but that a return was made of *nulla bona*; that he was advised and believed that the plaintiff had ample means to pay the costs, but that he was wilfully evading payment; that plaintiff was in receipt of a salary of £160 per annum, with a prospect of an increase to £170; and that the costs were still due and unpaid. In reply, the plaintiff deposed that, shortly after the service of the summons and plaint, Mr. Eyre, his attorney died, and the plaintiff's papers were still in Mr. Eyre's office; that about July 12, 1873, Mr. Hodson, to whom the defendant spoke the slander, died, and that he was the only witness plaintiff had who heard the words spoken; that the proceedings taken by the defendant were unnecessary, and were resorted to in order to accumulate costs, the defendant knowing that plaintiff's attorney and witness had died; that the plaintiff's wife was in delicate health, and that he had four children, and was obliged to practise rigid economy in order to support his family; that out of his salary he had to pay an allocation of £15 per annum to the Insolvency Court, together with about £4 per annum, premium on a policy of life insurance.

O'Sullivan, in support of the motion, cited *Hewetson* v. *Sherwin*, L. R. 10 Eq. 53.

Digitized by Google

Keogh, *contra*. There is no jurisdiction to make the order, as the costs of a judgment of non-suit do not constitute a "debt" within the meaning of the Debtors Act, s. 6. There should be a debt in the ordinary and popular sense. The case cited *contra* is distinguishable, as the terms of the equivalent section of the English Act are different from those of the Irish, which, after the words "competent court," adds the words "made or recovered, after the passing of the Act, in respect of a *debt* contracted after the passing of this Act."

[FITZGERALD, B.—As I read it, the "debt" may be in respect of a "liability incurred," as defined by the interpretation clause. And, in reason and good sense, it should be so read, for, otherwise, no claim for costs under a judgment or decree would be within the statute, and a writ of *ca. sa.* might be issued as to such without any application for the purpose.* You appear to be in this dilemma—either it is a debt, contracted after the passing of the Act, within the meaning of the Act, or else the defendant may issue a *ca. sa.* without applying for leave.]

Even if the debt be within the Act, yet, on the merits, the application ought not to be entertained. The Act was intended to be applied in the case of fraudulent debtors. The circumstances under which the plaintiff was obliged to suffer himself to be non-suited, should be considered; and the defendant has not denied that the slander was spoken. The defendant heaped up costs unnecessarily, knowing that the plaintiff's attorney and principal witness were dead; the defendant could have protected himself sufficiently by serving notice, asking whether the plaintiff would proceed; and though the application may be granted as to the first part of the costs, it ought not as to the costs attendant on the orders of Jan. 5, and March 4. It is discretionary with the Court to grant or refuse the application, the statute expressly using the word "may" in that behalf.

Sullivan, in reply.

FITZGERALD, J.—I cannot go into the merits on this motion. It is not within the intention of the Act that I should do so, or that I should sever the costs. The only question is, in what manner and time I should order the debt to be paid. Though the Act says I "may" make the order, I read it that I *shall* make the order, where the other requirements of the section "are proved to the satisfaction of the Court." In this case I shall grant the motion. Let the debt, together with £3, costs of the motion,† be paid by instalments of £2 each—the first instalment to be paid on the first of November next.

Keogh.—There is another objection which has been overlooked, namely, that this jurisdiction can only be exercised *in camerâ*, and not by a Judge in Consolidated Chamber; *O'Donnell* v. *Smith*, 8 IR. L. T. R., 32.

Amicus curiæ mentioned that, in a subsequent case, BARRY, J., held that he had this jurisdiction; *Reardon* v. *Hayes*, 8 IR. L. T. R., 116.

FITZGERALD, J.—I shall let the order stand. I offer no opinion as to the latter point; the plaintiff can appeal and have the question fully considered, if he think fit.

Order accordingly.

Attorney for the plaintiff: *Tincler*.
Attorney for the defendant: *Scallan*.

* See *Wogan* v. *Chamney*, 8 Ir. L. T. Notanda, 220; *Sturgeon* v. *Robinson*, 8 Ir. L. T. R. 13.—[*Rep.*]
† See *White* v. *Power*, 8 Ir. L. T. Notanda, 375.—[*Rep.*]

COURT OF APPEAL IN CHANCERY.

Reported by MILES V. KEHOE, Esq., Barrister-at-Law.

Ex-parte CROKER; *in re* BROWNE *v.* ROBERTS.

April 20, 1874.—*Administration suits—Concurrent suits in the English and Irish Courts—Removal of assets by administrator—Personal liability of administrator—Conflict of jurisdiction.*

M., a creditor of an intestate, and plaintiff in an administration suit, "M. v. R.," in the English Court of Chancery, obtained therein a decree to account against R., the defendant, and administrator of the intestate. Subsequently B., the widow of the intestate, instituted an administration suit, "B. v. R.," and obtained therein a decree to account in the Irish Court of Chancery, against R. as administrator, B. undertaking to abide any order that might be made in reference to the Irish suit by the English Court in the suit of "M. v. R." An order was afterwards made in the suit of "M. v. R," with B.'s consent, that all further proceedings in the suit of "B. v. R." should be stayed till the chief clerk should have made his certificate under the decree in the suit of "M. v. R." Subsequently C., an Irish creditor of the intestate, served R. with a writ of summons and plaint for the amount of his debt, and (the Irish Court of Chancery having refused to restrain C. from proceeding at law) marked judgment for the amount of his debt, with interest and costs. Nearly all the available assets had been transferred, in the meantime, from Ireland to the credit of the English suit of "M. v. R." On appeal from an order of Chatterton, V.C., refusing a motion by C. in the suit of "B. v. R.," that R. should be declared personally liable to pay him the amount of his claim on foot of the judgment he had obtained,

Held, *having regard to the condition in the decree in "B. v. R.," and it not having been shown that R. had done any act save in obedience to the orders of the English Court of Chancery, that R. was not personally liable to B. for the amount due on foot of the judgment.*

Appeal from an order of Chatterton, V.C., dated 4th June, 1873.

The facts appearing were as follows:—Robert Browne, who died intestate in October, 1869, had carried on business as a tailor, and resided in Dublin down to the time of his death. On the 1st November, 1869, Henry Roberts, a creditor of the intestate, obtained administration from the Court of Probate in England to the effects of the intestate, which grant of administration was afterwards re-sealed by the Court of Probate in Ireland. The assets of the intestate consisted of two houses in Sackville-street, Dublin, his stock-in-trade, and furniture, the good will of his business, and a policy of insurance for £500. On the 1st December, 1869, a suit was instituted in the Court of Chancery in England by James Harrison Milton, a creditor of the intestate, against Henry Roberts, to administer the assets of the deceased, and a decree to account was made therein by Stuart, V.C., on the 4th December, 1869, with notice of which decree Joseph Croker (the now appellant) was served on the 18th December. The appellant had commenced two actions at law in Dublin—one on the 7th December, 1869, to recover £159 18s. 6d.; another on the 14th December, to recover £109 2s. 9d.—against the defendant, as personal representative of the said Robert Browne. On the 22nd December following, Stuart, V.C., ordered "That the said Joseph Croker, his attorneys and agents, be restrained until further order from further prosecuting the action brought by him in her Majesty's Court of Exchequer, at Dublin, against the defendant, Henry Roberts, as the administrator of Robert Browne,

Digitized by Google

the intestate above-named, to recover a debt alleged to be due to the said Joseph Croker, from the estate of the said Robert Browne, and the said Joseph Croker is to be at liberty to go in under the said decree in this cause, dated the 4th December, 1869, and prove the claim for which the said action is brought." The appellant afterwards marked judgments, and enforced payment of the amounts claimed in the said actions. On the 4th January, 1870, Margaret Browne, the widow of the intestate, filed the present bill in the Court of Chancery in Ireland against the said Henry Roberts, praying an administration of the assets of the deceased, and on the 31st January, 1870, Chatterton, V.C., made a decree therein to account, "the defendant, as personal representative of the said Robert Browne, deceased, consenting to a decree being made, and the plaintiff undertaking to abide any order that may be made in reference to this suit by the Court of Chancery in England, in the said cause of *Milton* v. *Roberts*." No further steps being taken to administer the assets in the suit of *Browne* v. *Roberts*, the appellant, being a creditor of the intestate, resident and domiciled in Ireland, on the 12th March, 1870, served a notice upon Margaret Browne, requiring her within a week to bring the decree into the chief clerk's office in that suit, and proceed thereon, or that he would take such steps for the recovery of his debt as he might be advised. In reply thereto, the appellant was served with a copy of an order of Stuart, V.C., of the 16th March, 1870, in the suit of *Milton* v. *Roberts*, by which, upon the application of Henry Roberts, and by consent of Margaret Browne, it was ordered that all further proceedings in the cause of *Browne* v. *Roberts* should be stayed until the chief clerk should have made his certificate under the decree in *Milton* v. *Roberts*. Thereupon, on the 31st March, 1870, the appellant served Henry Roberts with a writ of summons and plaint in the Court of Common Pleas in Ireland, for a debt of £86 5s. 7d. Henry Roberts, thereupon, applied to Chatterton, V.C., for an injunction to restrain the appellant, and by an order of the Vice-Chancellor of the 23rd April, 1870, in the suit of *Browne* v. *Roberts*, it was ordered that the appellant should be restrained from further prosecuting the said action, and that he should pay the costs of the motion. The appellant subsequenly applied to the Vice-Chancellor for an order, that Margaret Browne should bring the decree into the chief clerk's office within a week, and proceed thereon, and that in the event of the said Margaret Browne neglecting or refusing to do so, the appellant, as a creditor of the said intestate, should be at liberty to bring in the decree, and have the carriage of, and prosecute same. That motion was heard on the 3rd May, 1870, and refused with costs. From those orders the appellant now appealed, and on the 8th November, 1870, the Court of Appeal in Chancery reversed the order of the 23rd April, and affirmed the order of the 3rd May. On the 17th November, 1870, Croker marked judgment for the amount of his third debt, which appeared on the chief clerk's certificate in the cause of *Browne* v. *Roberts*, under the head of "debts allowed under decree in this cause, and not proved or allowed in *Milton* v. *Roberts*." Croker made several applications to the solicitor for Henry Roberts for payment of the amount of the last-mentioned judgment, but was refused, on the ground that there were no assets standing to the credit of *Browne* v. *Roberts*, but that, according as the debts due to the intestate were recovered, they were at once handed over to the receiver in the English suit of *Milton* v. *Roberts*, to the amount of £4,000, and that only about £50 remained to be collected out of the debts due to the intestate. Liberty was reserved to Joseph Croker to apply in the suit of *Milton* v. *Roberts* for payment of his demand, as set out in the chief clerk's certificate in the cause of *Browne* v. *Roberts*, but he did not think it prudent to do so, lest he should be compelled to bring the amount of his two former judgments into hotch-pot. On the 25th May, 1873, Joseph Croker served notice of motion in the cause of *Browne* v. *Roberts*, for an order that the administrator, Henry Roberts, should be ordered to pay to the said Joseph Croker the amount due to him on foot of the judgment of the 17th November, 1870, as set forth in the schedule to the chief clerk's certificate for principal and interest up to the date of same, or to bring in and lodge to the credit of the cause a sum sufficient to meet the claims of said Joseph Croker on foot of that judgment, and to abide such order as the Court might make in respect thereto, and that Henry Roberts should be ordered to pay the costs of the motion. On the 4th June, 1873, Chatterton, V.C., made an order refusing that application, with costs, from which order the present appeal was brought.

Mr. Richey, Q.C. (with him *Mr. Anderson*), for the appellant, cited *Parnell* v. *Parnell*, 8 Ir. Ch. 556; *Preston* v. *Viscount Melville*, 8 Cl. & Fin. 1; *Cook* v. *Gregson*, 2 Drew. 286; *Parker* v. *Ringham*, 33 Beav. 535.

Mr. Gibson, Q.C. (with him *Mr. J. Gibson*), for the respondent, *contra*.

Sir Joseph Napier, Lord Commissioner.—In this case the material facts seem very few and simple, and the result that we ought to arrive at we are agreed upon. Mr. Croker, who was a creditor of the intestate, was at liberty to prosecute his action for the amount of the debt; any restraint that had been supposed to exist was removed by the decision of this Court. He brought that action and obtained a judgment. Then, finding that he could not realize, and that the judgment itself was insufficient to work out the payment of his debt, he took advantage of the suit instituted in this Court, which proceeded to a decree to account—not an ordinary creditor's decree, but with a clause inserted to make the parties subject to the conditions of the English suit. He took that step for better or worse. If he did not think that the suit gave him equivalent advantages, he should have filed a bill on his own behalf; for a creditor's bill will not be stopped by another bill, if he can gain any special advantage by filing his own bill. Mr. Croker went on to make the most he could of his judgment. He went in before the Vice-Chancellor to get an order that the administrator should be required to pay to him the amount due on foot of the judgment of 1870, or to bring in so much to the credit of the cause in this country—that is, to make the administrator personally liable to him for the debt, and, where an administration suit was going on in England, to have the administrator, who was defendant in that suit, at once directed to pay the full amount of the debt, whether the assets were sufficient or not. I do not think we have any power to do such a thing. The Irish creditor is not to be prejudiced, and I take it that the duty of the courts here is to give him complete protection as far as they can. On the other hand, the English courts would have no right to control the proceedings here; all that they could do would be to restrain any creditor within their jurisdiction from taking a proceeding, in Ireland, which would hinder the administration of the assets. But the Court here will endeavour to co-operate with the English Court, to secure what is generally convenient for the creditors. If there should be a conflict between the Courts of the two countries, each must stand on its strict rights. It makes no real difference, that I can see, that the same person is Irish and English administrator; the Irish administrator is responsible to this Court for the assets in Ireland. It is well settled that where the assets are transferred, as in this case, there is a

Digitized by Google

reciprocity observed, and the *lex fori* is the same in both countries. However, we are not obliged to go into that question here—what we have to do is to consider whether, in the state of facts now before us, this motion ought to be granted. [His Lordship here read the notice of motion.] So that Mr. Croker claims in the Irish suit, and he must be bound by the Irish suit. I cannot see any argument against the Vice-Chancellor's refusing that motion with costs; I do not see how he could have made this order which Mr. Croker asks for. I must say of the whole proceeding that where, in such circumstances, there are a number of creditors, and some one of them tries to get a special advantage for himself, it almost always leads to this waste of money, and he finds, in the end, that he has only put himself to useless expense.

LAWSON, Lord Commissioner.—In this case I concur with Lord Commissioner NAPIER. It appears to me that there is no foundation for attaching personal liability to Roberts. The suit in England was first instituted; Roberts had a large stake in the estate, and it is not pretended that he did anything except in obedience to the Court of Chancery in England. It would be a most extraordinary proceeding for us to make Roberts liable, or the Receiver under the English Court of Chancery liable, both of whom only did their duty. No one ever came forward, in the suit of *Browne* v. *Roberts*, to restrain the defendant from proceeding under the order of the English Court. No man can serve two masters. If he had been told to do different things by the two Courts this case would be different. Such is the position of Roberts; but Croker's position is not one entitling him to any favour from this Court. He had a great horror of the Court of Chancery in England. If he thought that the assets would be better administered here, the moment he heard of the English suit he could have filed a bill to administer the assets in this country, and, having regard to the decision in *Parnell* v. *Parnell*, he would probably have succeeded. His dislike of the English Court of Chancery extended, however, to the Court of Chancery here; he took his common law remedies, and he must abide by that course. He had got his full demand on foot of two judgments, and was proceeding to recover a third—that was the position in which he stood when the suit of *Browne* v. *Roberts* began; and the Vice-Chancellor of this country restrained him from proceeding on foot of that last demand. The order reversing the decision of the Vice-Chancellor was quite good, for a plaintiff cannot be restrained from proceeding at law unless there is a suit in equity in which he can have a complete remedy. But when he comes here to have the benefit of this suit, under which he could not, he said, get any remedy before, I cannot see how he is entitled to succeed. The only ground on which we could have been asked to decide against this administrator would be that he had done something wrong in his character of administrator; but we find that he has only acted in accordance with the orders of the Court of Chancery in England. So far as the present application is concerned, I think that it ought to be refused.

CHRISTIAN, L.J.—I am of a similar opinion. I am desirous that it shall be quite understood what it was that the Lord Chancellor and myself decided on the occasion of the former appeal, and to show that what we do now is consequential on that decision. We had two orders before us, one of which was an order restraining Croker from prosecuting his action, without pointing out on the face of the order any other remedy at law or in equity—an order unprecedented in form. The Vice-Chancellor made that order on the ground that there was a remedy open to this creditor, by reason of a decree to account having been pronounced in England. I was of opinion that this was not a remedy which the Irish creditor was bound to accept. We were of opinion that the Vice Chancellor had no right to restrain that action because a decree to account had been made in the Court of Chancery in England. But there was another decree to account made in the Court of Chancery in Ireland. The suit of Roberts, brought forward in this country in Mrs. Browne's name, was merely of course. A decree was made on consent, and, on condition of Roberts submitting to a decree to account, the plaintiff undertook to abide any order which Vice-Chancellor STUART might make in the English suit of *Milton* v. *Roberts*. Well, I was of opinion, and in holding that opinion we agreed with the learned Vice-Chancellor, that the decree in *Browne* v. *Roberts* was not a decree of which the carriage should be given to a creditor. Vice-Chancellor STUART made an order restraining the plaintiff from further proceedings in *Browne* v. *Roberts*, and therefore that cause had come to a stand-still. But, to let any creditor come in and have the carriage of the decree would have been an actual fraud on the defendant, Roberts. The Court thought that the order of the 23rd April was altogether untenable, because neither of the decrees might give the creditor any remedy; and all that this Court did was to remove the obstruction in his way, which, the Court was of opinion, had been illegally interposed. Judgment was obtained against the administrator in the ordinary form. It was very properly thrown out by counsel, that, although the plaintiff stopped there, he might have gone on by action on the judgment, or by *scire facias* suggesting a *devastavit*. And I think it is laid down that the very fact of the administrator's allowing judgment to go by default was conclusive evidence against him of a *devastavit*. But the plaintiff brought the matter back into the Court of Equity; he came in to obtain an order against the administrator to pay, in that suit which he had already treated as a *caput mortuum*. He asked us to treat that as a living remedy under which he could get this personal order. If there had not been that order tying up this suit and making it subordinate to the English Court, if it had been an ordinary decree, and the administrator had gone on removing the assets, I should, myself, be disposed to say that that would be a *devastavit*, so that he could be called upon personally to restore the assets. But it is not an ordinary decree The only thing against Roberts was that, after the Irish suit had been treated as non-existent, the parties proceeded to treat it as a real proceeding, they proceeded to have the Chief Clerk's certificate made up; and the question occurred to me whether it was not a dispensing by the parties in *Browne* v. *Roberts* and *Milton* v. *Roberts* with the clause which subordinated the Irish to the English proceeding. I think, however, it is plain that CHATTERTON, V.C., in making his decree, thought that he was acting under the English decree. The clause is still in operation, and even if the parties did depart from the decree of Stuart, V.C., in the English suit, what is there to prevent them from acting now on the clause in the decree in *Browne* v. *Roberts*; and, supposing we did make this order for the appellant, what is there to prevent the Court of Chancery in England from restraining any further proceedings in this suit of *Browne* v. *Roberts*? I therefore concur in the views of the Lords Commissioners. It is difficult to see what is Croker's remedy now. There is the prosecution of his law suit to its ultimate result, but he might be restrained from any further proceeding in that by injunction. Possibly, though having allowed the time to pass for making his claim in the English suit, he might still obtain a separate report of his own debt, at his own expense, and thus put himself *pari passu* with the other creditors; then would arise the question whether he could be compelled to bring into hotch pot what he had realized on the two judgments he obtained at first. It is said that he cannot proceed to do anything in England because he is in contempt. I do not understand that. That can only be based on the idea that Vice-Chancellor STUART *per incuriam* made an order restraining a person who was no party to the English suit at all from proceeding at law here, in Ireland. Vice-Chancellor STUART had no more jurisdiction to make that order against Croker than he had to make it against a French subject. With all deference, I do not think Vice-Chancellor STUART had jurisdiction to make that order. If Croker has any remedy it must be by getting himself into privity with the cause in which the fund is.

Solicitor for the appellant: *E. Nugent.*
Solicitor for the respondent: *A. L. Barlee.*

Digitized by Google

ROLLS COURT.

Reported by CECIL R. ROCHE, Esq., Barrister-at-Law.

(Before SULLIVAN, M.R.)

AHERN and ANOTHER v. M'SWINEY.

May 16, July 11, 1874.—*Non-payment of head rent by landlord—Salvage—Head-rent paid by tenant declared a charge on the estate—Order for sale of landlord's interest on non-payment to tenant—23 & 24 Vic., c. 154, secs. 20 & 21.*

Where lands, sub-let to tenants who had duly paid the rent reserved to their immediate landlord, were evicted for non-payment of a head-rent payable by him, and a habere was about being executed, the sub-tenants, in order to save their own interests and that of their immediate landlord, redeemed the premises, paying the head-rent and costs of the ejectment.

Held, *that the head-rent and costs should be declared a charge on the immediate landlord's interest in the lands, and that, in the event of default in payment thereof, his interest should be sold.* Locke v. Evans, 11 *Ir. Eq.* 52, *followed.*

Bill praying that an account be taken of sums paid by plaintiffs to defendant's landlord, for redemption of the lands of Maghlin, in the County Cork, and that the sums so paid be declared well charged on defendant's interest in the lands, and that the said interest be sold for the purpose of paying said sums.

The facts of the case were as follows:—In 1783, Edward Walsh demised the lands in question to P. & J. Linehan and their representatives, for 679 years, subject to £207 8s. 8d. per annum. The lands were subject to a head rent of £174 17s. 8d., payable by Walsh and his representatives. The interest of Walsh became vested in Morgan M'Swiney the defendant, and the interest of the Linehans became vested in the plaintiffs. The plaintiffs punctually paid their rent to the defendant. The defendant not having paid the head rent of £174 17s. 8d. to the head landlord, an ejectment was brought against him for non-payment of rent, and judgment was recovered against him on 29th July, 1873, and an *habere* issued for the possession of the lands. The plaintiffs, in order to save their interest in the lands, were obliged to pay to the plaintiffs in the ejectment proceedings a sum for rent and costs, amounting to £191 9s. 4d. The defendant again neglected to pay the half-year's head-rent, due 29th September, 1873, and the plaintiffs had to pay it to the head landlord. The sum now sought to be charged on the defendant's interest, was the above-mentioned sum of £191 9s. 4d.

Mr. Exham, Q.C. (with him *Mr. O'Riordan*), for the plaintiff, cited *Locke* v. *Evans*, 11 Ir. Eq. 52; *Fetherston* v. *Michell*, 11 Ir. Eq. 35.

Mr. O'Brien, Q.C. (with him *Mr. O'Hea*), for the defendant, cited *Burrowes* v. *Molloy*, 2 Jo. & Lat. 521, s.c. 8 Ir. Eq. Rep. 482; *Gill* v. *Downing*, L. R. 17 Eq. 316.

Judgment reserved.

SULLIVAN, M.R.—In this case the plaintiffs submit that they paid the sum in question in order to save the interest of their landlord, and that as salvage creditors they are entitled to be repaid by a sale of the defendant's interest in the lands. In the answer of the defendant the substantial facts of the case are not disputed, but the defendant relies on a point of law, and submits that the plaintiff has no equity. The plaintiffs show that it was the practice of the defendant to demand the rent immediately after it accrued due; the defendant was therefore put in funds by the plaintiff, and yet he allowed a year's head-rent to remain unpaid. The defendant maintains that there is a covenant for quiet enjoyment in the lease, and that the proper course would be for the plaintiffs to proceed on this and have a judgment entered against him. It was contended that by 23 & 24 Vic. c. 154 ss. 20, 21, there is an adequate remedy provided, by the provisions which enable the sub-tenant to pay the head landlord; but if this equity existed before the passing of that statute it is not done away with by it. *Locke* v. *Evans*, 11 Ir. Eq. 52, is a decision on this very point, where such a tenant having made advances, was held entitled to file a bill. It is said that there was no report of that case contemporaneous with that decision—that is true, it was only then inserted in the reports in connexion with the case of *Fetherstone* v. *Michell*, 11 Ir. Eq. 35. But there has been a lapse of 26 years during which it was never impugned, but has been followed. The doctrine laid down in *Locke* v. *Evans* is most reasonable; if the advance was not made by the sub-tenant the interest of both would be lost for ever, and the effect of that judgment is to protect the interest of the tenant, and also of the landlord. There are many heads of equity which do not rest on grounds as reasonable. If necessary, I should be prepared to adopt the view taken by the majority of the court in *Fetherstone* v. *Michell*. My judgment is that the sum of £191 9s. 9d. is to be charged on the defendant's interest in the lands; that interest on this sum be allowed at the rate of 4 *per cent.*, and that the defendant pay costs—the principal sum, with interest and costs to be paid within three months, and in default the defendant's interest in the lands to be sold.

Solicitor for plaintiff: *Creagh.*
Solicitor for defendant: *Gillman.*

FARRAR v. CARROLL.

July 10, 1874.—*Practice—Administration—Misconduct of Executor—Costs—Writ of* ne exeat regno.

An executor, who had drawn out of bank a sum of money, forming portion of the assets of the testator, wrote to a legatee of the testator, claiming 6 per cent. on his portion and that of the other legatees, and informed him that he was about to emigrate from the kingdom. A bill to administer assets was thereupon filed, and a writ of ne exeat regno *was issued against him. In his answer, the executor admitted being in possession of the assets, and gave a full account thereof.*

Held, *that the costs of the proceedings up to and including the answer must be paid by the executor, but that he was entitled to the subsequent costs.*

Bill to administer the personal estate of Patrick Byrne. The testator died 9th March, 1873, leaving assets to the amount of £563 12s. 8d. By his will he disposed of the greater portion of that sum in legacies, including, among others, the sum of £300 to his nephew, Thomas Farrar, the present plaintiff. The debts of the testator were of a trifling amount. On May 9th, 1873, the defendant (the testator's executor) wrote to the plaintiff the following letter:—"Dear Sir, in regard to the will affair of your uncle, I have gone through it with great trouble and cost. I have down every shilling to satisfy all parties. I had to pay the witnesses a pound a day, and also for the copies of the will. People thought there was nothing to do with the money only to throw it here and there, the whole cost on me. Now, again, for a memory also; I have agreed for a grand headstone, by his request, which amounts to a sum of £89. I also must get 6 per cent. out of every one's portion. I intend to emigrate. In short, I would wish to settle it in honesty before I start. If all parties are not satisfied they must wait; I will pay them some time, if God spares me." The sum of £550, which had been lodged by the testator in

Digitized by Google

the Bank of Ireland, was drawn out by the executor. An application was made to the Master of the Rolls in the matter of an administration summons for an order that a writ of *ne exeat regno* should issue against the defendant, but was refused on the ground that such an application should be made upon a bill of complaint. The present bill was then filed, the writ issued, and the defendant was arrested. In his answer, the defendant admitted the assets to the amount claimed.

Mr. W. O'Brien, Q.C., and another, for plaintiff, cited *Springett* v. *Dashwood*, 2 Giff. 521; *Kemp* v. *Burn*, 4 Giff. 348; *Hide* v. *Heywood*, 2 Atk. 125.

Mr. G. Foley for the defendant.

SULLIVAN, M. R.—The only question I have to determine is as to costs. The will was proved on 8th April; the defendant, on 13th April, drew the money out of the Bank of Ireland, and lodged it at a private bank in his own name, where he could get it in a moment's notice. I have no doubt he was planning a most flagrant fraud. It is impossible to conceive a more dishonest letter than he wrote to the plaintiff. He now admits that the statement as to his intending to emigrate was a falsehood. The plaintiff made an effort to secure the assets, and sought a writ of *ne exeat regno* on a summons, which application I then had to refuse. The writ of *ne exeat regno* had, I have no doubt, the effect of securing the money. No matter how bad the conduct of the defendant was before, I think his answer put him straight. He admitted he had the assets, and gave a full account of them, and was not asked afterwards to give any further account of the assets. The rule as to costs is that the executor is entitled to his costs of suit if his own conduct be fair and honest, more particularly where the assets have suffered no diminution. But the executor who is only made honest by the process of the law must pay for his folly or fraud. I am perfectly clear that, having regard to the letter of 9th May, the defendant must pay the costs up to and including his answer, but he is entitled to costs from that period down to and including this appearance.

Solicitor for plaintiff: *O'Callaghan.*
Solicitor for defendant: *Corcoran.*

VICE-CHANCELLOR'S COURT.

Reported by EDWARD F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

KELLY *v.* KELLY.

Jan. 20, 1874.—*Fiduciary relationship—Administratrix of yearly tenant procuring a lease to herself—Ulster tenant-right—Landlord and Tenant (Ireland) Act*, 1870—*Graft in equity.*

Where the widow of a tenant from year to year entered into possession of the premises, as administratrix to her husband, and procured a lease to be granted to her in her personal capacity, the Court held that the benefit so obtained by her, while occupying a fiduciary position as administratrix, should be held by her in trust for the next of kin of the intestate, and that, accordingly, the lease should be deemed a graft on the original tenancy for their benefit.

This was a suit to have a lease of a farm, which had been demised to the defendant, of which, prior to the lease, she had possession as administratrix, declared to be a graft, and to be held by her for the benefit of the next of kin. The bill set forth that Hugh Kelly, at the time of his decease, was possessed of a farm of land at Cloughcor, in the county of Tyrone, containing about fifty acres, under the Duke of Abercorn, as tenant from year to year, at a rent of £51 9s., of which the value at his death was estimated at £600. He died on the 23rd Jan., 1863, intestate, leaving his wife, Sarah Kelly, the defendant, and the children of two sisters, him surviving, some of whom were the plaintiffs in the bill. On the 14th March the defendant obtained letters of administration, and thereby obtained possession of all the intestate's personal estate, including the farm. The plaintiffs, and other next of kin, not wishing to disturb the defendant during her lifetime, permitted her to occupy the farm, intending at her decease to make it available for the next of kin, being satisfied that the selling value of the tenant-right in the farm would, in the meantime, become more valuable. The defendant continued to reside there till May, 1872, when, without the knowledge of the plaintiffs, she sold, or agreed to sell the tenant-right in the farm, for the sum of £1,500. On the 30th April, 1872, the defendant was called upon, on behalf of the plaintiffs, to account for the assets, and a notice was served on the land agent, claiming the farm on the part of the plaintiffs, and it became necessary to apply to the Court to administer them. The affidavit of the defendant, upon the administration summons, alleged that she had administered the assets, and that they were insufficient to pay the debts, and referred to a schedule annexed thereto, but which contained no reference at all to the farm. The plaintiff not being satisfied obtained an order on the 22nd June, 1872, for an inquiry to be made as to who were the next of kin, and for an account of the intestate's personal estate come to the hands of the defendant. In the defendant's affidavit verifying her accounts, she stated that a civil bill ejectment had been brought on a notice to quit, and a decree obtained for the possession of the farm, in June, 1865, after which a new lease was granted to her by the Duke of Abercorn. That was the first intimation the plaintiffs had of this transaction, and on the 9th June, 1873, they filed a bill in this Court praying as above stated.

Mr. *J. S. Byrne*, Q.C. (with him Mr. *R. Donnell*), on behalf of the plaintiffs, contended, that if the defendant had really been ejected from the farm, it was at her own instance and request, either to assist her in getting rid of some cottier tenants, or with the intention of depriving the next of kin of the intestate of their rights; that, under the circumstances, the tenancy of the defendant after the said ejectment should be considered as a graft on the original tenancy, for the benefit of the next of kin; and that the defendant was bound to account for the value, and the rents and profits of the farm from the death of the intestate to the present time. That at the time of the ejectment the defendant knew she would be immediately reinstated; that she was never actually dispossessed, nor were her cattle driven off the land, nor her chattels disturbed; and in fact, that if it was not actually a collusive transaction, in order to obtain a greater interest for herself in the lands, nevertheless, from the fact of her being in possession as administratrix, she was prevented on grounds of public policy from deriving thereby any benefit for herself.

Mr. R. Carson, Q.C. (with him *Mr. D. Colquhoun*), for the defendant, *contra*, maintained that the intestate was only a tenant from year to year, and that it has long been the custom on the Duke of Abercorn's estate, when a tenant dies intestate, to accept his widow as tenant, and not to sub-divide the farm among his next of kin, and this whether the widow is or is not the intestate's personal representative. That the ejectment was put in force without the defendant's solicitation, but, at the same time, she believed she would be immediately reinstated. That upon such reinstatement, she held the same in her own right. That had any other

Digitized by Google

person taken out administration, such person would have been compelled to put her in possession of the intestate's farm. And that even if the plaintiffs ever had any right, they had lost it long since by *laches*.

The following cases were cited:—*Nesbitt* v. *Tredennick*, 1 Ball & Beatty 29; *Jones* v. *Kearney*, 1 Dr. & W. 134; *Griffin* v. *Griffin*, 1 Sch. & Lef. 352; *Randal* v. *Russell*, 3 Mer. 190; *Rawe* v. *Chichester*, Ambler 715; *Keech* v. *Sandford*, 1 Tudor's L. C. Eq. 44; *James* v. *Dean*, 11 Ves. 383; *Holt* v. *Holt*, 1 Chan. cas. 190; *Archbold* v. *Scully*, 9 H. L. 360.

Chatterton, V.C., granted the prayer of the bill, and stated that the question he had to decide bore no reference to the Land Act, or any tenant-right custom, but was the simple case of a tenancy from year to year, of which the defendant obtained possession as administratrix of the intestate, and while so in possession, obtained from the landlord a lease of the premises. That he grounded his decision on that principle of public policy which prevents any person in a fiduciary capacity obtaining any benefit by reason of that capacity, from holding such for his own use instead of for that of the person for whom he is trustee. That as he did not consider the defendant had been guilty of fraud, she should not be visited with costs.

Jackson's Trusts.

1874, Jan. 26.—*Appointment of new Trustees—Trustee Acts—Husband of* cestui que trust.

The husband of a cestui que trust *will not be appointed trustee of a settlement, in the absence of special circumstances.*

Petition to appoint two new trustees in the place of two others who were deceased, and also to transfer to them certain stock which was standing in the names of the deceased trustees and of another trustee, who was surviving. In the settlement, under which the deceased and surviving trustees had been appointed, there was no power to appoint new trustees. One of the proposed new trustees was the husband of one of the *cestui que trusts*. The petitioner had tried to get some one else to act for her, but could prevail upon no one to do so.

Mr. R. Griffin, in support of the petition.

Chatterton, V.C., refused to allow the husband of the *cestui que trust* to be appointed, saying that such a course was only permitted under very special circumstances, and that as the other proposed trustee was eligible, he and the surviving trustee would be sufficient to carry out the trusts of the settlement.

LANDED ESTATES COURT.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Flanagan, J.)

Estate of David S. Ker, Owner; Charles F. Ker, Petitioner.

June 8, 1874.—*Bankruptcy—Sale of bankrupt's estate—Annulment of adjudication—Intermediate execution, by the bankrupt, of a power of appointment.*

K., having an estate for life in certain lands, which were settled in strict settlement, and a power to appoint portions for younger children (the power of appointment being secured by a term of years), was adjudicated bankrupt, and, in conjunction with his assignees, sold and conveyed to a purchaser his life interest in the lands, the subject of the charge and term for years. He afterwards, during the bankruptcy proceedings, executed the power of appointment. The bankruptcy was finally annulled.

Held, *that the deed of appointment was void, as being in fraud of the purchaser of the bankrupt's interest in the lands.*

Motion to make absolute a conditional order for sale.

The petition in this matter was presented by Charles F. Ker on the 25th November, 1873, and showed that David S. Ker was entitled to a life estate in the lands sought to be sold. It appeared that, by a settlement bearing date the 28th Feb., 1842, executed on the marriage of David S. Ker with the Honourable Dorothea Blackwood, the lands were vested in trustees upon trust for the said David S. Ker for life, with remainder to the use of the trustees for 1,000 years, from the death of said David S. Ker, with certain remainders over in tail; and the trusts of the term of 1,000 years were declared to be, amongst other things, that, in case there should be any child or children issue of the marriage, the trustees of the survivor of them should, either in the lifetime of David S. Ker, with his consent in writing, or after his decease, by selling, mortgaging, or otherwise disposing of said lands, or any part thereof, for said term of 1,000 years, raise the sum of £20,000 for the portions of one or more of such younger children, in such shares as David S. Ker should, by deed or will, appoint, and, in default of appointment, equally to be paid to the sons at the age of twenty-one, and to the daughters at the age of twenty-one, or marriage. David S. Ker and David A. Ker, his eldest son, by deed bearing date the 8th March, 1869, barred the estate tail created by the settlement of 1842; and by deed of the 9th July, 1869, the lands were settled in accordance with the terms of the disentailing deed, restoring the life estate of David S. Ker, under the settlement of 1842, and subject thereto to such uses as David A. Ker should appoint, and in default of appointment, there were certain remainders in tail specified. There were eight sons and four daughters issue of the marriage; and David S. Ker appointed £5,000 each to two of his daughters respectively on their marriages, and a third sum of £5,000 to one of his sons, portion of said sum of £20,000. On the 16th July, 1872, David S. Ker was adjudicated a bankrupt; and, by a certificate of the Court of Bankruptcy, dated the 30th July, 1872, all his estate was vested in the official and trade assignees. The said properties, including the estate of David S. Ker, were sold, and David A. Ker became the purchaser for £40,270; the sale was approved by the creditors, and, on the 10th December, 1872, was confirmed by an order of the Court. By deed of the 21st January, 1873, the official and trade assignees, and David S. Ker, conveyed all the estate of David S. Ker, and of the assignees in the lands, to Henry Crawford, as a trustee for Mr. David A. Ker, of the life or other estate of the bankrupt; and, by an order of the 8th April, 1873, the bankruptcy was annulled. On the 1st November, 1872, during the bankruptcy proceedings, David S. Ker appointed a portion of £6,000, and one-tenth of the fortune of the Honourable Anna Dorothea Ker, comprised in the settlement of 1842, to Charles F. Ker, the petitioner, a younger son of said David S. Ker, who was aware of the bankruptcy proceedings. By the terms of the deed of appointment, David S. Ker appointed the sum of £6,000, to be payable immediately upon his decease, and that it should bear interest, payable from the day of date of the deed, or from the earliest date that it was in his power to direct interest to be payable.

Ryan, Q.C. (with him *A. H. Grayden*), in support of the motion. The power of appointment was not destroyed by the vesting of the bankrupt's property

Digitized by Google

in the official and trade assignees; *Jones* v. *Winwood*, 3 M. & W. 653, and therefore David S. Ker had power to appoint to the petitioner. During the bankruptcy, and before the certificate, all that the assignees had was a defeasible title; consequently, under the power of appointment, executed after the date of the certificate, the petitioner became entitled to the whole fund as against the assignees; *Lee* v. *Olding*, 2 Jur., N. S. 850. Under the old bankruptcy practice, everything done under the commission became void when the writ of *supersedeas* took effect; *ex parte Brown*, 1 Rose, 433; *ex parte King*, 2 Ves. jun. 40; *Bartlett* v. *Tuchin*, 6 Taunt. 259.

Lawless, Q.C., *contra*. The power to appoint was destroyed by the bankruptcy, and the estate was thereby taken out of the power of the bankrupt; *Hole* v. *Escott*, 2 Keen, 444. In England, the Court of Chancery will sell, under 15 & 16 Vic., c. 86, in precisely the same manner as this Court; but it will never exercise that power so as to operate injuriously or oppressively to any person interested; *Hurst* v. *Hurst*, 16 Beav., 372. By selling the land in this case the Court would act most unfairly towards the owner, in lessening the estate which he purchased *bona fide*. But in principle this case is governed by *Smallcombe* v. *Olivier*, 13 M. & W. 77, where the rule was established that the previous proceedings, under a bankruptcy, were not invalidated by an order annulling the fiat in bankruptcy, unless where the annulment was on some ground which rendered the fiat originally void.

FLANAGAN, J.—This is an application to make the conditional order for sale absolute, notwithstanding cause shown to the contrary by the owner. The facts of the case are abundantly simple. The petition for sale was presented by Charles F. Ker, and it prayed for a sale of certain estates, which it is not necessary at present to specify. The estates were originally the property of David Stuart Ker; and in the year 1842 they were put into settlement, together with certain other lands, the deed of settlement limiting to David Stuart Ker an estate for life, with certain remainders over. Power was also given by this settlement to the tenant for life to appoint £20,000 for younger children; and there was also a power given (and I assume now that it was a power) to accelerate that charge, with certain formalities, as provided by the settlement. Without referring to the subsequent dealing of David Stuart Ker and David Alfred Ker, his eldest son, the first tenant in tail, it is sufficient to say that David Stuart Ker was, on the 6th July, 1872, adjudicated a bankrupt, and his real and personal estate was all vested in the assignees in bankruptcy—first in the official assignees, and then in the official and trade assignees. In October, 1872, there was a proposal for a composition tendered, under the 149th section of the Bankruptcy Act, and as the terms of it were extremely moderate, it was accepted by the creditors. The substance of the proposal was this—to pay 20s. in the pound, and all interest due to the creditors; and this was to be secured by promissory notes given by his son, David Alfred Ker—the amount for which the notes were issued being about £40,000. That offer was first made in October, 1872; it was approved on the 8th November, and ratified on the 10th December. After this, on the 21st January, 1873, the deed of conveyance was executed, in pursuance of the agreement, by the official and trade assignees and by David Stuart Ker. By that deed there was conveyed to Mr. Crawford, as a trustee for David Alfred Ker, all the life estate of David Stuart Ker in the lands, the subject matter of the settlement of 1842. Now, of course, there was a condition that, on David Alfred Ker giving the promissory notes as agreed, the bankruptcy of his father was to be annulled; and accordingly, an order was made on the 8th of April, 1873, annulling the bankruptcy, the result of which was that David Stuart Ker was, thereupon, returned to his former position, so far as that had not been affected by any intermediate dealings. The petitioner's title was under a deed of appointment of 1st November, 1872, which was executed by David Stuart Ker under the power reserved in the deed of settlement of 1842, whereby David Stuart Ker appointed £6,000 to his son, Charles F. Ker, the petitioner, and professed to make the same payable immediately. The question of construction I need not enter into.

The question now before me is, having regard to the bankruptcy of David Stuart Ker, and the deed of 1873, whether that deed of appointment, so far as it professed to accelerate the payment of the charge, is or is not a malefact by David Stuart Ker? I entertain no doubt on the question. In the bankruptcy matter, it is impossible for David Stuart Ker, by the execution of a power of appointment, to interfere with the estate, and to derogate from the estate vested in the assignees; or, in other words, the property which he was possessed of could not be touched by him, so long as the bankruptcy proceedings continued. It was argued, on the other hand, that the effect of the order of April, 1873, was to render imperative all the acts of the assignees from the month of July, 1872, to April, 1873; and a number of old cases, determined by Lord Hardwicke and Lord Eldon, were cited in support of this view. But the case of *Smallcombe* v. *Olivier*, 13 M. & W. 77, is to my mind final and conclusive to show that an order made, annulling a fiat in bankruptcy, does not invalidate the previous proceedings under the fiat, unless where the annulment was on some ground which rendered the fiat originally void. And the effect of the writ of *supersedeas* under the old law was, simply, that of ordering the party to whom it was directed to cease from further proceedings in the matter to which it relates; it did not annul all the prior proceedings. I do not intend to go through all the facts of that case, but the principle on which it was decided seems to be unanswerable. It may be argued, as it was before me, that that case may be supported on other grounds; but the judges who decided that case evidently meant to include a case such as the present; and the rule of that case is plainly at present sound and good law. If the law in that case be correct—and I adopt it—the deed of January, 1873, is a perfectly valid and operative deed, and the deed of November, 1872, was a perfectly inoperative act, and would be a fraud on the son, David Alfred Ker, who contracted to pay £40,000 in consideration of getting an assignment of the life estate, which his father had in the lands. It would be an open violation of the contract, and a monstrous proceeding, amounting to nothing short of a fraud on the son, if David Stuart Ker were to be allowed to lessen the value of the life estate. The frame of the deed of January, 1873, is that the conveyance was executed by David Stuart Ker to David Alfred Ker, to hold the estate for life, free from incumbrances other than those existing at the date of the adjudication; that being so, the attempt of David Stuart Ker to onerate the estate subsequently to the adjudication is unsustainable. I have, therefore, no hesitation in allowing the cause shown against the conditional order, and with costs.

Solicitor for petitioner: *William Ellis.*
Solicitors for owner: *Crawford* and *Lockhart.*

NENAGH ASSIZES.

Reported by JOHN E. WALSH, Esq., Barrister-at-law.

(Before MONAHAN, C.J.)

In re HALL'S PRESENTMENT.

July 7, 21, 1874.—6 & 7 *Wm. IV.*, *c.* 116, *s.* 135—*Malicious injury—Notice of application for compensation.*

A malicious injury having been committed in a parish containing two police stations, H. served and posted, at the nearest station only, a notice of her intention to apply for

Digitized by Google

compensation, omitting to serve and post any formal notice of application.

Held, *sufficient notice to entitle her to compensation, under the* 135*th section of the Grand Jury Act.*

In re Herbert's *presentment* (*Ir. Rep.* 3 *C. L.*, 556), *not followed.*

This was an objection to several presentments made by the Grand Jury, as compensation for the loss occasioned by the malicious poisoning of a number of sheep, the property of Mrs. Hall, of Merton Hall, in the parish of Modreeny, barony of Lower Ormond, and county of Tipperary. There are two police stations in the parish, distant three miles from each other, and called respectively Clash and Cloughjordan. Clash is nearer to Merton Hall, but Cloughjordan is the more important station. The objection was made to the presentments upon the ground (amongst other reasons) that no notice of the *application* had been ever given or posted in the manner prescribed by the 135th section of the Grand Jury Act (6 & 7 Wm. IV., c. 116). It was admitted that the only notices served and posted were posted at Clash merely, and not at the Cloughjordan station. The following is a copy of one of these notices:—

"Notice for malicious injury. Petty sessions district of Cloughjordan, county of Tipperary, North Riding. Gentlemen, please take notice that, between the 17th day of February, 1874, and the 19th day of March, 1874, at Merton Hall, parish of Modreeny, barony of Lower Ormond, and county of Tipperary, twenty-one sheep and eighteen lambs, my property, were wilfully, maliciously, and feloniously killed and rendered of no use; and that I intend to apply, by presentment, at the next or any subsequent Assizes, to be held at Nenagh, in said county, for compensation for the loss and injury I have sustained thereby. Dated this 21st day of March, 1874. Signed, Mary Anna Hall, of Merton Hall. To the High Constable for the barony of Lower Ormond. To the churchwardens of the parish of Modreeny. To the secretary of the Grand Jury, Nenagh; and to the constabulary stationed at Clash."

All the other requisites of the 135th section had been complied with.

John Gibson, in support of the objection.—The only notice here is the preliminary notice of *intention* to apply, which must be served within six days, and there is no notice of *application*, which must contain certain particulars, not in the present notice, and which are clearly essential to the plaintiff's right to compensation. The point is covered by the authority of *In re Herbert's Presentment*, Ir. R. 3 C. L. 556.* Even treating this as a notice of *application*, a notice of any application within the 135th section of the Grand Jury Act should, by the 11th section, be posted at every police station, or barrack, in the parish; but these notices were only served and posted at Clash, the nearest of the two police stations.

Edward Gibson, Q.C. (with him *Lyster*) in support of the presentment.—The notices are sufficient. The language of the 135th section, with regard to the posting, only refers to the manner of posting, and has no application to the place where the notices are to be posted.

Monahan, C.J.—I do not consider myself bound by *In re Herbert's Presentment*, in which it was considered advisable to pronounce no judgment, on account of the conflict in the views of the members of the Court. I shall reserve my opinion.

* See also *In re Codd*, 4 Ir. Jur. 243; *In re The Ecclesiastical Commissioners*, 1 C. & D. C. C. 17.—[Rep.]

The case was afterwards re-argued at Waterford, at his Lordship's request, when, without pronouncing any judgment, he overruled the objection, and the presentments were fiated.

Attorney for Mrs. Hall: *George Bolton.*

Attorney for the rate-payers: *Frank Sheppard.*

HIGH COURT OF ADMIRALTY.

Reported by R. D. Murray, Esq., Barrister-at-law.

(Before Townsend, J.)

"The Belvidere."

Jan. 23, 1874.—*Corporation dues—Payment of, by master—Necessaries—Fee for reporting ship—Smallness of amount in suit.*

Corporation dues paid on a ship in the Port of Dublin are not such necessaries as create a lien in this Court.

This was a suit for necessaries, brought by William Scott against the master of "The Belvidere." The facts appear in the judgment of the Court.

Dr. Todd, Q.C. (with him *Dr. Boyd*), for the plaintiff.

Dr. Elrington, Q.C. (with him *Dr. Corrigan*), for the defendant.

Townsend, J.—This is a suit brought by Mr. William Scott, of Dublin, ship-broker, and is described in his petition as a cause for necessaries supplied by him to "The Belvidere" in the month of June, 1873. It was rightly stated by Dr. Todd, in opening this petition, that the suit was brought, rather for the purpose of establishing the principle than for the amount of money involved in it, which is undoubtedly small. The case has been fully argued, and the evidence is neither long nor intricate. I do not entertain any doubt of the accuracy of the plaintiff's statement, nor of that of Mr. O'Meara (the defendant's witness). I need not, therefore, reserve judgment on the question before me. It appears that the "Belvidere" was a full-rigged ship, of 1,300 tons register, which brought from San Francisco a cargo of wheat. She arrived in Dublin in June last. Her charter-party provided (under a penalty of £200), that her master should report with the charterer's agent at the Custom House of the port of discharge, and that she should be consigned (in word only) to the charterer's agent, to whom a commission of 2½ per cent. on the amount of freight was to be paid by the captain. It appears that Mr. Darcy was the consignee of the cargo, and in anticipation of the ship's arrival Mr. Darcy had given the plaintiff a copy of the charter-party and a letter to the captain, requesting him to allow the plaintiff to report the ship. On her arrival she was boarded by a clerk of Mr. Scott's, armed with the copy of the charter and that letter. The captain was bound to report with Mr. Darcy at Dublin. Mr. Darcy had, by the letter, directed that the plaintiff should be employed to report the ship. Accordingly, the captain came to the plaintiff's office with the plaintiff's clerk, and there the necessary documents for reporting the ship were prepared. They then went to the Custom House, made the report, and paid the Corporation dues of 5s. 6d. Then the vessel was at liberty to discharge her cargo. Now, I have not a doubt that Mr. Darcy was the charterer's agent at the port of discharge, nor that the captain was bound to report to him, nor that he had directed that the plaintiff should be employed for the purpose; but I do not see that the captain was bound to employ the plaintiff further as his ship agent. In fact, the captain does not appear to have applied further to the plaintiff; he applied to Mr. O'Meara, another ship-broker, who acted for the ship during her stay. The plaintiff subsequently furnished his account to the captain, claiming five guineas as a fee for reporting the ship, also 5s. 6d. for the Corporation dues, and some small items, which (no evidence having been offered in their support) are out of the

Digitized by Google

case. That account has never been paid. It has been urged that there were other and less expensive tribunals to which the plaintiff might have had recourse, to which it is answered—first, that they were not available at the moment, and second, that, at a port where many vessels are arriving and departing, the case presents features of general interest and importance beyond the money involved in it. There does not appear to have been any hardship suffered by the ship. Indeed, she can hardly be said to have been arrested, as her proctor's offer of bail was accepted, and she was allowed to proceed with but a few hours' delay. Now, assuming that the plaintiff's charge of five guineas was a just and fair debt, and one which ought to have been paid long ago, and that the 5s. 6d. was a proper outlay on behalf of the ship, and that, according to the plaintiff's evidence (of which I have no doubt), where a charter-party contains no special agreement for reporting a vessel, the charges are to be paid by the master. Assuming all this, the question arises, are these "necessaries" within the scope of the authorities, by which this case must be governed? There is no hard and fast definition of what the term "necessaries" comprises. In Williams and Bruce's very useful compendium it is laid down, at p. 158—"The term necessaries strictly applies to anchors, cables, rigging, and matters of that description, but it has been extended to include all things actually needed for the service of the ship. It is, however, incumbent on the party setting up the claim to establish the existence of a necessity. The things supplied must be necessary at the time, and under existing circumstances. But the articles need not be absolutely and unconditionally necessary for the ship. It is enough that they are reasonably necessary. The term necessaries may include money advanced for procuring necessaries; but a distinction has been drawn where the claim is simply advanced to discharge a debt, or liability already incurred. But in a case where a master abroad obtained money to procure necessaries, by means of a bill drawn upon the plaintiff in this country, who afterwards accepted the bill and paid it, it was held that the plaintiff might enforce a claim for necessaries against the ship." Again, in "The Ouni," Lushington Ad. Rep. 154, we have a case of considerable importance. It was in that case decided that a firm in England, having accepted and paid a bill of exchange drawn on them, by the master of a foreign ship abroad, to procure necessaries, may sue the ship in the Admiralty Court, as for necessaries within the statute 3 & 4 Vict., c. 65, s. 6. In "The Alexander," 1 Wm. Rob. 361, it is considered that "necessaries" include whatever is fit and proper for the service in which a vessel is engaged, and which a prudent owner, if present, would have ordered. I dismiss altogether the consideration of the very small sum involved in this case, because I do not know that its small amount would of itself hinder the plaintiff from having recourse to this Court. It does not appear that the plaintiff was personally liable for these Corporation dues, even though he entered the ship. There is not any instance of the collector's having proceeded to recover them. It was, no doubt, unwarrantable in the master not to have paid them, but still they may not have been "necessaries" in the acceptation of that term. Now, it was admitted by Dr. Todd that the fee of five guineas can be recovered only as a sort of adjunct to the Corporation fees, as commission is sometimes allowed in addition to expenses; and it, surely, cannot be argued that the payment of this fee was a precedent necessity to the discharge of the ship; it was merely a personal debt due to Mr. Scott from the master. Therefore, as I cannot come to the conclusion that I should deem the 5s. 6d. a "necessary" for the ship, and as the fee cannot stand on higher ground, I must hold that the plaintiff has not shown that any necessaries were supplied by him which would enable or entitle him to maintain this suit, and I must dismiss the petition, and, of course, with costs.

Petition dismissed.

COURT OF QUEEN'S BENCH.

Reported by S. N. ELRINGTON, Esq., Barrister-at-law.

(Before WHITESIDE, C.J., O'BRIEN, FITZGERALD, and BARRY, JJ.)

JAMES, *et al.*, ASSIGNEES OF YOUNG *v.* MORIARTY.

January 20, 21; June 12, 1874.—*Act of Bankruptcy—Defeating and delaying creditors—Transfer of trader's whole property — Consideration — Pre-existing debt—Advances made on faith of agreement for transfer*—20 *&* 21 *Vict.*, c. 60, *s.* 92.

Where a trader, in embarrassed circumstances, transfers the entire of his property, with a nominal exception, to a creditor, in consideration of pre-existing debts and liabilities, he thereby, ipso facto, *commits an act of bankruptcy, within* 20 *&* 21 *Vict.*, *c.* 60, *s.* 92, *notwithstanding that his actual intention may not have been to defeat or delay his general creditors.*

Per O'BRIEN, J.—*A transfer of all a trader's effects, in consideration partly of a substantial present advance and partly of an antecedent debt, is not necessarily,* ipso facto, *an act of bankruptcy, within* 20 *&* 21 *Vict.*, c. 60, *s.* 92. *It would be for the jury to determine whether the intent and object of the parties to the transfer was* bona fide, *or whether it was executed for the purpose, or had the effect of defeating or delaying the trader's general creditors, taking into consideration the circumstances connected with the transfer, and the adequacy of the present advance in proportion to the value of the property. If the jury believe that, upon the faith of an agreement for such transfer, subsequent payments are made to the trader, the transfer afterwards executed, should be considered as made as of the date of the original agreement and such payments as equivalent to a present advance.*

This action was brought by the official and creditors' assignees of Young, a bankrupt. The summons and plaint contained five paragraphs, viz.:—For wrongful seizure of the bankrupt's property, before he became bankrupt; for wrongful seizure of the goods of the plaintiffs, as assignees, after Young's bankruptcy; for wrongful conversion of Young's goods, before his bankruptcy; for wrongful conversion of the plaintiffs' goods, as assignees of Young; and for money received for the use of the plaintiffs, as assignees. The defendant pleaded traverses, of the doing of the acts complained of; of the property in the goods as laid; and of the receipt of the money.

The trial took place before Barry, J., and a jury, at the sittings after Easter Term, when the following facts appeared in evidence:—The defendant, who was a brother-in-law of Young, a hotel-keeper and farmer, had become liable as his surety on bills of exchange and promissory notes. In September, 1872, the defendant, being alarmed by the embarrassed state of Young's affairs, asked him for security, whereupon Young gave him up possession of his land (upon which there were prior charges), household furniture, and other effects, except his stock-in-trade, in order to secure the defendant against liability. The defendant kept the possession of the goods and the land, but Young continued to carry on trade up to November 21, 1872. Two or three days before that date, the defendant was informed by Young that, in consequence of the state of his affairs, he was going to America. The defendant asked him what he could do in order to secure him, the defendant, whereupon Young offered to give him a bill of sale of his chattels and conveyance of his lands. Accordingly, on the 21st of November, Young executed an absolute bill of sale to the defen-

Digitized by Google

dant of all his household furniture, farm stock, and other effects, except his stock-in-trade as hotel-keeper; and, also, executed a conveyance of his lands to the defendant. The conveyance, by way of sale, of the land purported to be executed in consideration of £50, and the bill of sale in consideration of £250, for £200 of which, it was recited, the defendant was security for Young. and the remaining £50 of which, it was also recited, was paid by the defendant to him on that date. Only £23 was, however, in fact paid by the defendant to Young on that date; and the defendant was then liable as his surety for debts amounting to £200, thereby secured: besides which, the defendant had, in the interval between the transaction of September, 1872, and the execution of the deeds, advanced a further sum of £20, in respect of an execution on a judgment against Young. On the day that the bill of sale was executed, the defendant assumed absolute possession thereunder. Young was at that date possessed of no other property, save his hotel stock-in-trade, which was of little more than £5 value. On the 22nd of November Young went to America, having, as aforesaid, previously received the £23 from the defendant on the execution of the deeds. Some four or five days before the 28th of November the defendant wrote to an auctioneer, instructing him that he wished to have Young's property sold. On November 28th and 29th the auctioneer sold all the furniture, farm stock, and effects included in the bill of sale. They produced £280 6s. 4d., being the fair value of the goods. On January 3rd, 1873, a creditor's petition was filed, upon which Young was adjudicated bankrupt. The money realized by the sale was handed by the auctioneer to the defendant, except some £42 paid into the Court of Bankruptcy on foot of an execution, which had been levied by the sheriff prior to the auction, and £52, rent of the hotel, paid to Young's landlord. The defendant applied all the proceeds that reached his hands in payment of debts due by Young to his creditors, and had paid in the same way other moneys of his own, and remained still further liable. At the close of the evidence for the plaintiffs, counsel, on their behalf, called upon the learned Judge to direct a verdict for them, upon the ground that, on the conceded facts, the deeds assigned the entire, or practically the entire estate of the trader, and that the execution of them under the circumstances constituted an act of bankruptcy. Counsel for the defendant, *contra*, relied upon *Bell* v. *Simpson*, 2 H. & N. 410. His Lordship's inclination of opinion was that the transaction was an act of bankruptcy, but he thought it better to leave the case to the jury, and declined to direct as required. Evidence for the defendant having then been gone into, the learned Judge, at the close thereof, upon the authority of *Brown* v. *Kempton*, 19 L. J. C. P. 169, and *Bell* v. *Simpson*, *ante*, and on the requisition of defendant's counsel, told the jury that, if the bill of sale and conveyance of the land comprised all the bankrupt's property, with a colourable exception, and were executed with a view of his absconding, they should find for the plaintiffs; but that, in considering that question, they should have regard to the evidence, if they believed it, that the agreement for the sale had been made, and possession given under it two or three months previously. The jury found for the defendant on the issues raised on the pleadings—no other question being left to them. The learned Judge reserved liberty for the plaintiffs to move to have a verdict entered for them if he should have so directed. A conditional order having been obtained, pursuant to the leave reserved, that the verdict had for the defendant be turned into a verdict for the plaintiffs,

O'Brien, Q.C. (with him *Peter O'Brien*), for the defendant, showing cause, cited *De Mattos* v. *Worseley*, 1 Bur. 478; *Lindon* v. *Sharp*, 6 M. & Gr 895; *Bell* v. *Simpson*, 2 H. & N. 410 (*s. c.* 26 L. J. Ex. 363, 5 W. R. 688, 29 L. T. Rep. 202); *Young* v. *Fletcher*, 3 H. & C. 732; *Hutton* v. *Cruttwell*, 1 E. & Bl. 17; *Pennell* v. *Reynolds*, 11 C. B. N. S. 709; *Cannon* v. *Smith*, 2 E. & Bl. 35, 44; *Shrubsole* v. *Sussams*, 16 C. B. N. S. 452; *in re Gass*, 2 Ir. L. T. 40, Ir. R. 2, Eq. 310; *Brown* v. *Kempton*, 19 L. J. C. P. 169; 20 & 21 Vict., c. 60, s. 92.

Heron, Q.C. (with him *Perry*), for the plaintiffs, *contra*, cited *Siebert* v. *Spooner*, 1 M. & W. 718; *Woodhouse* v. *Murray*, L. R. 2, Q. B. 638; *ex parte Foxley*, *in re Nurse*, L. R. 3, Ch. 520; *Twyne's Case*, 1 Sm. L. C. 1; *Leake* v. *Young*, 2 E. & B. 955; *Bittlestone* v. *Cook*, 6 E. & B. 296; *in re Wood*, L. R. 7, Ch. 302; *Compton* v. *Bedford*, 1 W. B. 362; *Graham* v. *Chapman*, 12 C. B. 85; *Newton* v. *Chandler*, 7 East. 185; *James* v. *Ebbitt*, Ir. R. 6, C. L. 553.

Peter O'Brien, in reply, cited *Rose* v. *Haycock*, 1 A. & E. 460; *Fowler* v. *Padget*, 7 T. R. 509. He, also, referred to the report of *James* v. *Ebbitt*, 7 Ir. L. T. R. 7, as being the fullest report of that case, and as giving the questions of fact which were there left to the jury.

Cur. adv. vult.

Whiteside C.J.—The facts of this case appear in the Report of my brother Barry, by whom it was tried. The question arising, which is one of general importance, is whether an assignment of property, under the circumstances so appearing, constitutes an act of bankruptcy? It appears that a bill of sale and an assignment of land were executed by the bankrupt (Young) to the defendant (Moriarty), on the going of the former to America. The bankrupt left Ireland on the 22nd of November. The bill of sale and conveyance assigned all the bankrupt's property in consideration of an antecedent debt. The deeds were executed and dated Nov. 21st; but the defendant had been, previously, in actual possession of the lands and goods. The goods were sold by auction, at the defendant's instance, on Nov. 28th and 29th. The deposition of the defendant, dated Jan. 21, 1873, in the bankruptcy proceedings, containing a statement of the circumstances attending the assignments, was read at the trial. The plaintiff's counsel demanded of the learned Judge to direct a verdict on the admitted facts, insisting that the execution of the deeds, upon those facts, was *per se* an act of bankruptcy; the whole consideration being an antecedent debt, and the entire property of the bankrupt having been transferred for no other consideration to the defendant. The defendant's counsel contended that the question should have been left to the jury as to the "intent" of the bankrupt, and cited in support of their proposition the case of *Bell* v. *Simpson* (2 H. & N. 410). The learned Judge (Barry, J.) left the case to the jury as required by defendant's counsel—his own opinion, however, inclining to the view that the execution of the deeds amounted to an act of bankruptcy. The question chiefly argued before the learned Judge was that the intent of the bankrupt was a question of fact for the jury, and not a conclusion of law. The case was left to the jury upon the authority of the decision so cited—liberty being reserved to enter up a verdict for the plaintiff, if the judge should have so directed at the trial. The jury found for the defendant, and the application was made to the Court by the plaintiff's counsel, to enter up a verdict for them, pursuant to the leave reserved. A conditional order having been obtained, the case for the plaintiff, in showing cause, rested chiefly on the decision in *Ex parte Foxley*, *In re Nurse* (L. R. 3 Ch. 515), where it was held, on appeal from the Commissioner, that where a trader conveyed all his property, except his furniture and book debts, to a creditor

Digitized by Google

for a previously existing debt, the deed, notwithstanding the reservation, was fraudulent and void, inasmuch as it placed the bulk of the bankrupt's property out of the reach of his creditors. That case was decided in 1863. At page 520, Page Wood, L.J., says, "There cannot be any difference in the mode of judging of such an assignment in the Courts of Common Law and Equity. Where a trader assigns everything (being at the time sued by two creditors, and with an execution put in by a third), and reserves only his furniture and book debts, I cannot doubt to what conclusion the Court ought to come." That decision was grounded on the judgment of Cockburn, C.J., in *Woodhouse* v. *Murray* (L. R. 2, Q. B. 638). There the jury found, upon the question being left to them, that the transaction impeached was *bona fide;* yet, under a reservation as in this case, the verdict, after full consideration of the facts, was changed into one for the assignees of the bankrupt. Cockburn, C.J., observes, "I think that this rule should be made absolute. It is well established law that the assignment of the whole of the estate and effects of a trader is void, and constitutes an act of bankruptcy, because it is contrary to the policy of the Bankrupt Law; and this is based upon the principle that, where a man is in insolvent circumstances, his property must be divided *pro ratâ* among the body of his creditors." Referring to what is laid down by Parke, B., in *Siebert* v. *Spooner* (1 M. & W. 718), the Lord Chief Justice says, "The meaning of the learned judge, and the principle upon which the cases have been decided is, that though there may have been an absence of *fraud* in fact—that is, *intentional* fraud—yet, when the *effect* of such a conveyance is to put it entirely out of a man's power to go on with his business, and to meet his creditors, there be must be taken to have intended the consequence of what he has done, and, though not guilty of *intentional fraud*, or as we call it *moral fraud*, yet he is guilty of fraud against the policy of the Bankrupt Law, which is, that there should be an equal distribution among all the creditors." That judgment is applicable to the present case. In *Worseley* v. *De Mattos* (1 Bur. 478), Lord Mansfield says, "There is a great difference between the conveyance of *all* and of a *part*. A conveyance of a *part* may be public, fair and honest: as a trader may *sell*; so he may openly transfer many kinds of property, by way of security; but a conveyance of *all* must either be fraudulently kept secret, or produce an immediate absolute bankruptcy." Again, in *Wilson* v. *Day* (2 Bur. 831), the same learned Judge says, "An assignment of his whole estate is of very different consideration; that tends to defeat the whole system of the bankruptcy laws." The facts are somewhat varied, but the principle asserted is the same in the case of *Young* v. *Fletcher* (3 H. & C. 732). There the trader assigned *part* only of his property, by bill of sale, under pressure, yet Martin, B., left this question (p. 736) to the jury:—"Did the property comprised in the bill of sale *substantially* comprise all the property of the bankrupt available in order to enable him to carry on his trade; and did the defendants know that, by putting in force the bill of sale, they would disable him from carrying on his trade?"—telling the jury that, if their answer was in the affirmative, the bill of sale was an act of bankruptcy. The verdict in that case was for the assignees, and was upheld by the Court. It is observable that Manisty, of counsel for the plaintiffs, in arguing, said, "The learned judge was right in not withdrawing the case from the consideration of the jury, since the question involved was one of fact. It is true that where, in consideration of a pre-existing debt, a trader transfers all his property, or all with a mere colourable exception, that is, *per se*, an act of bankruptcy, for it necessarily defeats the great body of creditors." At page 744, *in notis*, the case of *Pennell* v. *Reynolds* (11 C. B., N. S., 709, 722), is mentioned: "That," it is said, "was the case of an assignment by a trader of all his property, but made in consideration of a present substantial advance; and this the Court considered as putting the transaction upon the same footing as an assignment containing a substantial exception of part of the trader's property." In the case lastly referred to (p. 722), in considering whether in such case a fraudulent intention should be shown, Willes, J., observes that the Court had not been able to come to an unanimous conclusion on the subject. In the present case, my brother Barry stated, during the argument, that he would amend his Report, if necessary, by stating that the case was tried on the admission that the whole property of the bankrupt, except about £5 worth of shop goods, was included in the bill of sale and assignment of the 21st of Nov. It is apparent, also, from the deposition of the defendant in bankruptcy, that the only consideration therefor was an antecedent debt due to him by the bankrupt. The construction of 20 & 21 Vic., ch. 60, s. 92, that a fraudulent conveyance by a bankrupt of goods and chattels, "with intent to defeat or delay creditors," is an act of bankruptcy, is established to be that a trader necessarily commits an act of bankruptcy by the conveyance of all his property to one creditor, on the eve of bankruptcy. If this be so, it is difficult to understand how the finding of a jury that there was no fraud contemplated, or that the intent was not to defraud, can create a difference, and affect the question, when it is the act itself of conveying, in consideration of an antecedent debt, *all* his property to one creditor, which *per se* is, without inquiring into the intention, an act of bankruptcy. Now, the argument pressed upon us by defendant's counsel was that, according to a series of authorities, the case must be left to the jury, as a question of intent, or as a mixed question of law and fact, and it was urged that even where a conveyance was impeached on the ground of its including all the property of the trader, yet the case was, with judicial directions, submitted to a jury. Two cases were especially relied on by the defendant's counsel—*Bell* v. *Simpson* (2 H. & N. 410), and *Browne* v. *Kempton* (19 L. J. C. P. 169). As to the former, which is not a very complete or satisfactory case, it is enough to say that it is only a case in which the bankrupt sold a considerable quantity of his property immediately before his bankruptcy, the consideration for which was partly an antecedent debt and partly cash, £50 being the debt, and £70, only, being the present advance in cash. Now, here the consideration was wholly the antecedent debt, and the conveyances embraced all the trader's property, so that he could not continue trading one hour after they were acted upon. The distinction between the cases is most clear and obvious. Nor do I see how it makes any difference in principle whether, in the present case, *all* the property was transferred to one creditor, the defendant, in September or in November—the nature of the act is the same. In *Brown* v. *Kempton* the Court held that a direction to the jury was right that, where a bankrupt paid a particular debt to a creditor, the payment, if induced by fair pressure, would not amount to a fraudulent preference; that was a question properly left to a jury. In *Young* v. *Waud* (8 Exch. 230) Parke, B., cites and upholds the passage from Lord Mansfield's judgment in *Worsley* v. *De Mattos*, which I have already quoted, and distinguishes the case before him as, being a conveyance of a moiety only of the bankrupt's property, the deed was not *per se* an act of bankruptcy, and, therefore, the case upon its circumstances was properly left to the jury. The case of *Graham* v. *Chapman* (12 C. B. 85) is a leading case upon the subject—all the authorities up to that date (1852), are there examined, and the princiciples which pervade them considered. The verdict for the defendant was changed into one for the plaintiffs, the assignees. There only part of the consideration was an antecedent debt, and part a present advance in cash. The facts were peculiar, inasmuch as the deed transferred all after-acquired property of the bankrupt, even although purchased by the cash then advanced, but, as the traders got no real equivalent for the deed, the bankrupt's transfer of all his property, it was ruled, necessarily defeated and delayed his creditors, and was, therefore, an act of bankruptcy, without fraud in fact. The counsel for the defendant there relied on the circumstance that the deed, impeached as an act of bankruptcy, was not executed for a bygone debt, but, as found by the jury, in consideration of a further advance. Jervis, C.J., delivers an exhaustive judgment, concluding thus:—

Digitized by Google

"The deed here is not for future advances, but for a present payment, and a bygone debt; it conveys all the trader's property, including the advance; it necessarily defeats and delays creditors, and is, therefore, an act of bankruptcy." And, notwithstanding the finding of the jury for the defendant, the verdict was entered for the plaintiffs, the assignees, pursuant to the leave reserved. I think that the principle of the law of bankruptcy applicable to this case, and the distinctions therein, are well put and explained in the case of *Hale* v. *Alnutt* (18 C. B. 505). Many of the cases cited in the argument before us are there noticed and observed upon. What is said by Lord Abinger in *Siebert* v. *Spooner* is dwelt upon in argument, and applies here—"If a man assigns the whole of his effects, not for a new consideration, but for an outstanding debt, that is an act of bankruptcy; because the very nature of the transaction prevents him from carrying on his trade." A question of fraudulent preference would be for the jury. No such case of fraudulent preference was proved, and from the nature of the deed it would be void, notwithstanding pressure. The cases, I believe I might say all the cases, where the assignment of his property by the trader has been held void, or an act of bankruptcy, are cases where the assignment was made either without consideration, or for an antecedent debt. That is explained in a case relied upon by the defendant, *Hutton* v. *Cruttwell* (1 E. & B. 15), where Lord Campbell laid it down (p. 19) that, "if the deed was executed in pursuance of a previous understanding, and the trader received at the time of such understanding an adequate consideration, it is as if the deed had been executed at that time." There the loan was in April, and the deed, according to the agreement for the loan, was executed in June. There the case was, under the circumstances, left to the jury, who found for the defendant. In the judgment (p. 21) Lord Campbell, C.J., states, "So far this is the common case of a bill of sale *bona fide* given to secure an advance made, on the faith of the security, to enable a trader to carry on his business; and it is well established law that such a bill of sale is not an act of bankruptcy, although it would be an act of bankruptcy, if the consideration were either wholly or partly an antecedent debt, contracted without security;" and that, he says, was the foundation of the judgment in *Graham* v. *Chapman*. In the course of the argument in the latter case (p. 94), Jervis, C.J., asks, "When did it first become a settled matter of law that an assignment of all a trader's property was an act of bankruptcy?" It was answered by Bramwell and Willes, *arguendo*, "in *Worseley* v. *De Mattos*, 1 Bur. 461." The Chief Justice referred to *Devon* v. *Watts* (1 Doug. 86). In a note to *Graham* v. *Chapman* it is said to have been decided earlier in *Law* v. *Skinner* (2 W. B. 996), which is there asserted to have been decided in Easter Term 15 Geo. II. Now, when we examine the books we find *Worseley* v. *De Mattos* (1 Bur. 478) to have been decided in Hilary Term, 31 Geo. II. (where it is that Lord Mansfield lays it down emphatically, that "a conveyance of *all* must either be fraudulently kept secret, or produce an immediate absolute bankruptcy,") and *Law* v. *Skinner* was decided in Easter Term, 15 Geo. III. The latter case is a very direct authority on the point. There Appleford, the trader, in consideration of £300, assigned to the plaintiff two messuages and all his stock-in-trade, by way of mortgage; but his household goods and debts, both of which were very trifling, were not included in the assignment. The £300 was not paid at the day, so that the mortgage became absolute. It was insisted that this mortgage of the houses, being accompanied by an assignment of *all* the bankrupt's stock-in-trade, was *ipso facto* an act of bankruptcy. *Worseley* v. *De Mattos* was cited in support of that proposition. De Grey, C.J., said, "The question here turns upon this, whether the deed does not *ipso facto* create an insolvency in the trader. If so, it is clearly an act of bankruptcy, and void against creditors. And I think it creates an insolvency. It is an assignment of *all* his stock-in-trade, without which he can carry on no business. It is of all his substance, except his household goods and debts, which alone were insufficient to discharge his incumbrances, and, therefore, made him insolvent. And if the deed be in itself an act of bankruptcy, the mortgage of the houses in the same deed is equally void and fraudulent." It is observable, that nothing is there said of the intent with which the act—*i.e.*, the mortgage—was executed, nor even of the consideration, the act itself—*i.e.*, the assignment of all his stock-in-trade—being ruled to be an act of bankruptcy. *Devon* v. *Watts* (1 Doug. 87) was decided in the 19th year of Geo. III., and the ruling was that an assignment of a lease of a bankrupt's estate (made in contemplation of a bankruptcy) to some of the creditors is an act of bankruptcy. It is in the case of *Hassells* v. *Simpson* (fully reported in the note to *Devon* v. *Watts*, from page 88 to 92) that the law is fully and explicitly laid down, as already stated. In this latter case the language of De Grey, C.J., in *Law* v. *Skinner*, is questioned, and objected to, for the counsel in argument for the defendant says, "As to the case of *Law* v. *Skinner*, it was decided on a principle which certainly is not law, for the Chief Justice is there made to say, that the question turned upon this, 'whether the deed did not *ipso facto* create an insolvency in the trader; that if so, it was clearly an act of bankruptcy.'" Lord Mansfield interposes, "You are right; a man may be insolvent without being a bankrupt, and a man may become a bankrupt, and yet be able to pay 25s. in the £1. The reason why a man becomes a bankrupt who conveys away all his property is, that he thereby becomes totally incapable of trading." Then, in delivering judgment, Lord Mansfield states, "It has been settled over and over, that if a trader makes a conveyance of *all* his property, that is instantly an act of bankruptcy. It is fraudulent; it destroys the capacity of trading." Those decisions justify the statement by Cockburn, C.J., in the case of *Woodhouse* v. *Murray*, already referred to, that the law had, years ago, been so laid down. It was long ago decided, in *Siebert* v. *Spooner* (1 M. & W. 714), that an assignment of the whole of the property of a trader is an act of bankruptcy, without actual fraud. I have shown that the same principle was determined a century before the case of *Siebert* v. *Spooner*, and cannot be disputed now. Therefore, upon those authorities, which we are not disposed to question or disturb, the verdict must be entered for the plaintiffs, pursuant to the leave reserved.

O'Brien, J.—In this case, having regard to the evidence given at the trial, to the questions left to the jury and their findings thereon, I am of opinion that the plaintiffs are not entitled to have the verdict entered for them, pursuant to the liberty reserved. My brother Barry, at the trial, directed the jury to the effect, that, if they should be of opinion that the sale and conveyance were of all the bankrupt's property with a colorable exception, and were made with a view of his absconding, they should find for the plaintiffs, and that, in considering that question, they should have regard to the evidence of the agreement for the sale having been made, and the possession given under it two or three months previously. That direction involved two questions:—1st, whether all Young's property, with a colorable exception only, was included in those deeds—and 2nd, whether the deeds were made with a view of Young's absconding. On that direction, the jury found a verdict for the defendant. It was contended by the plaintiff's counsel during the argument that, from the evidence and the course taken at the trial, it clearly appeared that all the property of Young, with only a colorable exception (namely, his stock in trade, of a very trifling amount), was included in the two deeds of sale and conveyance. Assuming that to be the case, the finding of the jury would necessarily import that, in their opinion, the deeds were not made with the view of Young's absconding. Plaintiffs' counsel called at the trial for a direction; they did not require any other questions to be left to the jury; and they now contend, not merely that the finding of the jury was against the weight of evidence, but also, that plaintiffs were entitled to have a verdict directed for them, without any question whatever having been left to the jury. There was evidence, from defendant's examination at the trial, and from his depositions in bankruptcy

Digitized by Google

(which were given in evidence by the plaintiffs), that about the month of September (two months previous to the date of those deeds), the defendant, having gone security for Young and lent him money, to the amount altogether of about £200, and being alarmed at his position, had urged Young to give him some security, and that Young then agreed to execute the bill of sale and conveyance, and then gave defendant the possession both of the furniture and land, which were subsequently included in the bill of sale and conveyance; that defendant had such possession from the time of that agreement till the execution of the bill of sale and conveyance; and that, in the interval, he had (on the faith of said agreement) advanced Young two further sums, one of £20 and the other (paid on the execution of the deed) of £23, making together a further advance of £43. Another witness (Mr. Buckeley) stated that he was present in September, when Young gave defendant the possession of the furniture and land. It was for the jury to decide whether such evidence was to be believed, and whether they were satisfied of the truth of defendant's statements as to the previous agreement, the giving up of possession, and the advance of the £20 and £23. And in considering the question, whether a verdict should have been directed for the plaintiffs, without taking the opinion of the jury on the evidence, the truth of those statements must be assumed. Supposing then (as contended for by plaintiffs' counsel), that all Young's property, with a colourable exception only, was included in the bill of sale and conveyance, we have then to consider the effect of the previous agreement, and of the payment of the £43 upon the faith of that agreement. In *Hutton* v. *Crutwell* (5 E. & B. 16), the bill of sale (which comprised *all* the trader's property) was executed in pursuance of an agreement made about two months previously. And Lord Campbell stated in his judgment (p. 20) that the bill of sale should have the same effect with respect to the trader's creditors, as if it had been executed when the agreement was made. And in the recent case of *Ex-parte Fisher* (L. R. 7 Ch. 636), Lord Justice Mellish states (p. 642), as a general rule from the authorities, that where a sum of money is advanced upon the faith of a contract to give a bill of sale, such sum should be treated as advanced upon the credit of the bill of sale, and not as a past debt. In considering plaintiffs' right to have a verdict entered for them in the present case, we must (as I have already said) assume the truth of defendant's evidence, as to the pecuniary dealing between him and Young, and as to the bill of sale and conveyance having been executed, and the £43 paid in pursuance of the previous agreement. It follows, therefore, from the authorities to which I have referred, that we should deal with the bill of sale and conveyance as having been executed at the time of the agreement, in consideration of Young's antecedent debt or liability for £200, and of the further advance of £43. There was much discussion, during the argument, upon the general question, whether an assignment by a trader of all his property in consideration partly of an antecedent debt, and partly of a further advance, should be held to be necessarily *per se* an act of bankruptcy, without any regard to the intent of the parties, the circumstances of the case, or the proportion of the further advance to the value of the said property. In *Hutton* v. *Crutwell* Lord Campbell states his opinion, that such an assignment would be of itself an act of bankruptcy; but, in that case the question did not arise for decision, as the entire consideration for the bill of sale was money advanced at the time of the previous agreement, and the opinion expressed by Lord Campbell is altogether inconsistent with the subsequent decisions of the Court of Common Pleas in *Pennell* v. *Reynolds* (11 C. B. N. S., 709), and *Shrubsole* v. *Sussams* (16 C. B. N. S., 432). In each of those cases the assignment executed by the trader included *all* his property, and was made in consideration partly of an antecedent debt and partly of a subsequent advance. It has been decided in several cases that, if a trader assign, for valuable consideration, not the whole of his property, but a part only, reserving to himself a real and substantial portion, such a transaction (in the absence of fraud) would not necessarily be an act of bankruptcy. In *Pennell* v. *Reynolds*, Willes, J., after stating that proposition, further states (p. 722), "that a present substantial advance of money put the transaction upon the same footing as an assignment with a substantial exception of part of the property, and was not necessarily an act of bankruptcy." And he, also, states that, if the present advance bore a substantial proportion to the value of the property assigned, the Court, before holding the deed invalid, "must be satisfied that there existed an intention to defeat and delay, and, consequently, to defraud the creditors," and that such should be "the object, not only of the bankrupt, but also of the party dealing with him." In the subsequent case of *Shrubsole* v. *Sussams*, Erle, C.J., states (p. 457), that the fact of the bill of sale assigning *all* the bankrupt's property would not alone avoid the transaction, if value was given first. And Willes, J. (p. 458), states expressly that he adhered to what he had said in *Pennell* v. *Reynolds*, "that an assignment, by a trader, of all his property and effects, for a present advance of part of their value, was not necessarily an act of bankruptcy, and that it was for the jury to say whether, under all the circumstances, the effect of the assignment was to defeat or delay creditors." In the previous case of *Bell* v. *Simpson* (2 H. & N. 410), where the assignment included substantially the entire of the trader's property, and was executed in consideration partly of an antecedent debt and partly of a further advance, and the trader was adjudged a bankrupt in nine days afterwards, the Court held that there was no evidence to show that the assignment was an act of bankruptcy. With respect to the cases of *Graham* v. *Chapman* (12 C. B. 85), and *Woodhouse* v. *Murray* (L. R. 2 Q. B. 634), on which plaintiffs' counsel have relied, they are clearly distinguishable from that before us. In the former case an assignment of all the trader's property was held by the Court to be, in itself, an act of bankruptcy, although, in addition to an antecedent debt of £240, a further advance of £200 was given by the grantee as part of the consideration for the assignment. The general question as to the validity of such an assignment, where a previous debt was taken as part of the price, was considered by the Court; but, by referring to part of the judgment, delivered by Jervis, C.J. (p. 104), it will be seen that their decision is grounded upon the peculiar form of the assignment, which not only transferred to the grantee all the property which the trader then had, and the money advanced (if then in his possession), but also professed to give the grantee a right to take all the future acquired property of the trader, even though it should be purchased with the further advance—so that the trader got no equivalent for any part of the property transferred—and Jervis, C.J., expressly stated that the form of the deed made it unnecessary for the Court to consider further the general question. The decision in *Graham* v. *Chapman* was relied on in *Bell* v. *Simpson*, and *Pennell* v. *Reynolds*, as establishing the general proposition that an assignment of *all* a trader's property would be, in itself, an act of bankruptcy, if part of the consideration consisted of a previous debt. But the Court did not give it that construction; and Pollock, C.B., states in *Bell* v. *Simpson*, "It cannot be inferred from *Graham* v. *Chapman* that a present advance is not available. The Court held the deed to be an assignment of everything without securing any present advantage to the bankrupt." In *Woodhouse* v. *Murray* (also, here relied on by plaintiffs' counsel), the entire consideration for the assignment of *all* the trader's property was a previous judgment debt; the grantee had issued execution on the judgment, under which all the property was seized, and the grantee withdrew the execution on the assignment being executed. In that case there was no further advance, or equivalent given to the trader, and the question as to the effect of a further advance did not arise. That question was much considered in the case of *Ex-parte Fisher*, already mentioned, in which several other cases were referred to, and in which Lord Justice Mellish states, as the result of the authorities, "that an assignment by a debtor of all his effects, partly as a security for a past debt, and partly as a security for a substantial fresh advance, is not necessarily an act of bankruptcy." In my opinion, it

Digitized by Google

clearly follows from those authorities that an assignment of all a trader's property would not necessarily, of itself, be an act of bankruptcy, if made in consideration not only of an antecedent debt, but also of a substantial further advance. It is true that, in such a case, although the further advance be of a substantial amount, there may be circumstances to show that the assignment was invalid, as having been executed for the purpose of defeating or delaying creditors, or for some other purpose in contravention of the policy of the bankruptcy laws. But, the question as to the intent and object of the parties would be for the jury to determine. And, in the present case, the only question left to the jury as to the object, or purpose for which the deeds were executed, appears to have been found by them in defendant's favour. With respect to the question, whether, in this case, the further advance of £43 was an advance of such a substantial part of the value of the property as would prevent the assignment from being necessarily, and *per se*, an act of bankruptcy—it appears upon the evidence that the value of the property, assigned by the bill of sale, was about £280, that the landlord's claim thereon for rent was £52, leaving about £228 as its net value. It, also, appeared that the land comprised in the deed of conveyance was subject to a charge vested in the Irish Church Commissioners, to an annuity of £13, and to a mortgage to the National Bank; and it was not shown what was the value of the land, or whether it was or was not more than sufficient to meet those charges. There was, therefore, no evidence that the value of the property assigued amounted to more than about £228; so that the sum of £43 advanced was little less than £75 of the net value. And the question is whether, under all the circumstances of the case, that advance is to be considered as being (to use the words of Willes, J., in *Pennell* v. *Reynolds*) the advance "of a substantial part of the value of the property?" If, in the present case, no further advance whatever was made by the defendant to Young, in addition to the antecedent debt, then the plaintiffs would be entitled, as matter of law, to have a verdict directed for them, as the deeds included *all* the property of Young, with only a colourable exception. The further advance, however, alters the case. The amount of that advance was to be considered by the jury, together with the other circumstances of the case, in coming to a conclusion on the question whether the deeds were executed for the purpose, or had the effect of defeating or delaying Young's creditors. But, having regard to the finding of the jury on the question left to them, the plaintiffs would not be entitled to have the verdict directed for them, except we should hold, as matter of law, that the small amount of the advance necessarily made the execution of those deeds an act of bankruptcy, independent of any consideration of such other circumstances. It may be that, having regard to the amount of that advance, and to those other circumstances, the jury came to a wrong conclusion in finding that the deeds were not executed with a view of Young's absconding; and if plaintiffs merely sought to set aside the verdict, already obtained, as being against the weight of evidence, there would, in my opinion, be strong grounds for our doing so, and for our sending the case for a new trial. It is, however, a very different question, whether plaintiffs are entitled to have the verdict now entered for them. The question whether, upon the evidence given at the trial, the execution of those assignments constituted an act of bankruptcy or not, was for the consideration of the jury, subject, of course, to the principles of law laid down by the judge as to what would constitute such an act. The reservation at the trial, giving plaintiffs liberty to have the verdict entered for them, contained no provision that the Court should be at liberty to draw inferences of fact from the evidence; and, therefore (according to the practice in this country), we should not, in my opinion, substitute ourselves for a jury, by deciding that the further advance of £43 was so insufficient in amount as necessarily to make the execution of these deeds an act of bankruptcy. Can it be laid down by the Court, as matter of law, that the £43 was so insufficient in amount as that it could not be relied on in support of the deeds? In the case of *Ex-parte Fisher* it appeared that the assignment included *all* the trader's property, that the value of such property was £718, that the antecedent debt was £624, and that the amount of the further advance was only £100—being something less than one-seventh of the value of the property assigned, and, accordingly, less in proportion to it than the advance in the present case is to the value of Young's property. And yet, Lord Justice Mellish states (p. 644), "We do not think that we can lay down, as matter of law, that the smallness of the amount of the advance necessarily makes the bill of sale an act of bankruptcy, but we think it affords strong evidence that the principal object of the parties in the whole transaction was, not to enable the bankrupt to continue his trade, but, to secure to Mr. Wells the repayment of his past advance." And it appears that the Court, upon the entire evidence in the case, came *a priori* to the conclusion that such was the object of the parties in the transaction. That case, and two other cases in equity—viz., *Ex-parte Foxley* (L. R. 3 Ch. 515) and *In re Wood* (L. R. 7 Ch. 302)—have been relied on by plaintiffs' counsel, as showing that, notwithstanding the finding of the jury, we should act upon our own opinion of the evidence, and enter a verdict for plaintiffs. But judges *in equity*, exercising the functions of jurors as well as of judges, have a power of dealing with and acting on the evidence before them which Courts of Common Law do not possess, except it be given to them by the consent of the parties. And it appears to me that, according to the opinion of Lord Justice Mellish in *Ex-parte Fisher*, the smallness of the amount of the advance in the present case does not necessarily make the execution of the deeds in question an act of bankruptcy. In the case of *Shrubsole* v. *Sussams*, already mentioned, in which an assignment of all the trader's property was upheld, the value of the property, or the amount of the antecedent debt, or further advance is not mentioned, but Erle, C.J., states that it was a small advance. We have, also, been referred by plaintiffs' counsel to some cases at law, as showing that even Courts of Law might (without regard to the finding of the jury) act upon the conclusions which they themselves draw from the evidence, as to such assignments being acts of bankruptcy or not, and might enter the verdict accordingly. But, upon examining those cases it will be found that they are no authority for our adopting that course in the present case. In two of these cases—*Leake* v. *Young* (2 E. & B. 955) and *Bittlestone* v. *Cook* (6 E. & B. 296)—the power of drawing inferences of fact from the evidence was expressly given to the Court by the reservations at the trial. In *Newton* v. *Chandler* (7 East. 185) the question came before the Court upon a case stated for their opinion. In *Woodhouse* v. *Murray*, and *Graham* v. *Chapman* (already mentioned) the assignments included the entire of the trader's property. In the former of those cases there was no further advance whatever, as the consideration of the assignment; and in the latter case it appears, from what I have already stated, that the decision proceeded upon the ground that, in consequence of the provision in the deed as to the trader's future acquired property, there was, in fact, no equivalent given to the trader for any property, and the Court considered the case as if there had been no further advance whatever. In those two cases, therefore, there was no question as to the sufficiency of the further advance, and the Courts were clearly authorized to enter the verdicts they did, holding as *matter of law* that an assignment of all a trader's property, in consideration merely of an antecedent debt, was in itself an act of bankruptcy. In *Smith* v. *Cannon* (2 E. & B. 75) the jury found that the assignment was an act of bankruptcy, and the Court held that there was evidence to warrant such finding. In some other of the cases cited the verdicts of the jury were only set aside, and new trials directed. But no case has been cited which, in my opinion, would warrant our entering a verdict for plaintiffs in the present case. Defendant's counsel have relied upon the decision in *Re Gass* (Ir. R. 2 Eq. 310, 2 Ir. L. T. 40). In that case, however, the greater part of the trader's property was not included in the assignment, and the facts in other

Digitized by Google

respects were essentially different from those before us; but, the observations of Lord Justice Christian are in some respects applicable to the present case. With respect to the general question of an assignment by a trader being an act of bankruptcy, he states (p. 310), "The question is, in its entirety, one for the jury, and it is for them to say whether, under all the circumstances, the effect of the assignment is to defeat and delay creditors." If the jury have in this case come to a wrong conclusion, we have the power of setting their verdict aside; but I am of opinion, for the reasons I have stated, that the plaintiffs are not entitled to have the verdict now entered for them.

Fitzgerald, J.—I quite concur in the judgment of my Lord Chief Justice. The question of law brought before us is one on which no doubt should be allowed to rest. There has been a long, uniform course of decision, commencing more than a century since, establishing the rule that an assignment by a trader in embarrassed circumstances of all his effects, or of all save a colourable part, to a creditor, in consideration of a pre-existing debt, is *ipso facto* an act of bankruptcy, and void against the assignees in bankruptcy, independent of the intention, in point of fact, with which it was executed. The intention to defeat the creditors is, in such case, assumed by the law. The reason is given by Lord Mansfield in *Compton* v. *Bedford* (1 W. B. 362)—"Because the very deed of assignment makes him a bankrupt; he not having anything left to trade upon. The deed itself is an act of bankruptcy." He adds, "Other cases that have since been adjudged were where *all* the effects were assigned over; but I never gave my opinion on these cases without at the same time declaring that an exception of part (that was fraudulent only) would not make the assignment valid." The long train of authorities referred to by my Lord Chief Justice shows that, down to the present time, this rule has been steadily acted upon; and I never heard any doubt cast on it whilst practising at the Bar, nor since I have sat here until in the present case. Then, does the present case fall within it? and if so, was there any question to be left to the jury? The assignment and bill of sale purport to be dated the 21st of November, '72, and the bill of sale is expressed to be "in consideration of £250, for £200 of which the said Michael Moriarty is security for the said J. Young, and the remaining £50, paid by the said J. Young to the said M. Moriarty at or immediately before the ensealing and delivery of those presents." The £50, however, was not in fact paid by the said J. Young—although it is said that Moriarty gave Young £23; but if he did, it was to pay his expenses in going to America. The defendant was examined as a witness for the plaintiffs, and he states "Young was my brother-in-law. He went to America on the 22nd of November. He had shop goods besides the furniture, but I could not say there was £10 worth—there was £5 worth. Two or three days before the bill of sale was executed I knew he was going to America." If the case rests on the transfer of the 21st of November, there clearly was no question for the jury. The transfer was of *all*, save a part which the witness values at £5. I will not say that it was a fraudulent exception. It is just as probable that it was omitted, either unintentionally, or because it was not worth including. The law infers that such a transaction was a fraud on the creditors, and entered into with intent to defeat them, as it necessarily has that result. But it was urged that the defendant did not rest on the assignments of the 21st November alone, and that there was a prior transfer two or three months previously. That appears to rest on a passage of the defendant's evidence, as set out in the report of the learned Judge who presided at the trial—"I had possession of the land and furniture two or three months before." But, I read this as a portion of the same transaction, which the parties endeavoured to complete by the bill of sale of November. It is quite true that a gift of personal property may be effected without deed or writing, if it has been carried into effect and coupled with actual possession; but if the prior dealing here was of that character, it would be in itself equally an act of bankruptcy, as it was a transfer of the same property, being all that the trader had, in consideration of a pre-existing liability. In my opinion, there was no question to send to the jury; the judge ought to have directed a verdict for the plaintiffs; and I am, further, of opinion that the verdict the jury did find was perverse. The defendant, in the argument, rested principally on the case of *Bell* v. *Simpson*, as establishing that there was a question for the jury, and that the verdict ought not to be disturbed. I do not mean to express any opinion on that case, and I confine myself to showing that it ought not to affect our decision. That case is radically different from the present. There, the bankrupt, being indebted to the defendant in £50, and pressed by the defendant for payment, offered to sell him his fixtures and trade effects, valued at £120 17s., to be paid for by defendant in cash to the extent of £70 17s., and the residue to go in satisfaction of the old debt. The money was paid, and a bill of sale was executed. It was an assignment of the whole of the trader's available effects, but not in consideration of a pre-existing liability alone. The larger portion of the consideration was an equivalent in cash. If the bankrupt had simply paid the defendant his debt on pressure, the transaction might have been upheld, and what he did was, in effect, to pay the debt by a portion of his effects and sell the residue for £70 17s. The Court thought the transaction honest and *bonâ fide*, and, being put in place of the jury, upheld it. There the bankrupt got an equivalent. The distinction is obvious. I am not to be understood as expressing approval exactly of the reasoning of the Court in that decision, but it is unnecessary now to quarrel with it. If the question before us was whether the verdict in this case ought on the weight of evidence to be permitted to stand, I apprehend that there would be no difference of opinion in holding that it was quite contrary to the evidence, on the question submitted by the learned judge. Such a case ought not to go to a second trial unless the plaintiffs desire it; and we, therefore, enter the verdict for the plaintiffs.

Barry, J.—I do not intend to deliver any lengthened judgment. I only wish, while expressing my concurrence with my Lord Chief Justice and my brother Fitzgerald, to bring to recollection the mode in which the case was presented at the trial. It has been suggested that there may be several questions upon which the opinion of the jury may be taken in such a case; but, no such questions were raised or hinted at during the trial. Neither party suggested that I should leave to the jury any question save those which I did leave, and upon which the jury found, viz:—1st (at defendant's instance), Whether the assignment was made with fraudulent intent to delay or defeat the creditors? 2nd (at plaintiffs' instance), Was it made with a view to the bankrupt's absconding? The state of facts appearing at the trial is as follows:—Whether regard be had to the transaction of September or the transaction of November, or to both combined, there was a transfer, by parol or by deed, of all the chattels and real property of the bankrupt (with a colourable exception), and this assignment was in consideration of past debts, and liabilities already incurred by the defendant as surety for the bankrupt. The bill of sale recited a consideration of £50; but there was no evidence that that sum, or any part of it was paid. There was some evidence, not deemed important or at all relied upon by the defendant, that he had, between September and November, paid another debt of the bankrupt, either to save the chattels from execution, or because he was liable as surety. It accidentally fell from the defendant, while giving his evidence, that, the day before the bankrupt went to America, he gave him a sum of about £20; but that payment was not relied upon by the defendant's counsel as being any payment on account of the £50. It was, obviously, a present in order to enable the bankrupt to leave the country. Under those circumstances, I cannot distinguish this case from the ordinary case of an assignment by a trader of all his property, in consideration of a previously existing debt, which, according to a long series of authorities, is established to be an act of bankruptcy. I, therefore, concur in the judgment of the Court, that the

Digitized by Google

verdict should be entered for the plaintiffs, though I do so with regret, as I pity the unfortunate defendant, who is ruined by his excessive good nature towards the bankrupt.

Timpson v. Dalton.

(Before the same).

Reported by E. N. Blake, Esq., Barrister-at-law.

May 23, 1874.—*Pleading—Fraudulent representation—Duplicity—Setting aside summons and plaint.*

On motion to set aside paragraphs of a summons and plaint, averring that the defendant, knowing that a horse was unsound, by then fraudulently "concealing from the plaintiff that said horse was unsound," and representing to him that it was sound, induced the plaintiff, who was ignorant of such unsoundness, to buy the horse.

Held, *that the words "concealing from the plaintiff that said horse was unsound" should be struck out.*

Motion that the third and fourth paragraphs of the summons and plaint be struck out, or amended, as being double, ambiguous, and embarrassing.

The first and second paragraphs were for breach of warranty that a horse sold to the plaintiff was sound. The third paragraph was as follows:—"That the defendant was possessed of a horse which the defendant then well knew was unsound, and the defendant, by then fraudulently *concealing from the plaintiff that the said horse was unsound, and* representing to him that it was sound, induced the plaintiff, who was ignorant of such unsoundness, to buy the said horse for £84, which the plaintiff paid to the defendant; whereby," &c. The fourth paragraph was alike in terms, save that the representation alleged was "that the said horse was sound, as far as the defendant knew."

Hemphill, Q.C. (with him *Gibbon*), in support of the motion.

Armstrong, Serjeant (with him *Molloy*), *contra.*

The following authorities were cited:—*Parsons* v. *O'Toole*, 8 Ir. L. T. R. 72; *Redmond* v. *Clarke*, 4 Ir. L. T. 475; *Fitzgerald* v. *Thompson*, 9 Ir. Jur. N. S. 53.

Per Curiam.—Let the third and fourth paragraphs be amended, by striking thereout the words "concealing from the plaintiff that said horse was unsound."

LAND SESSIONS.

(Before Hon. Charles Trench.)

Flynn v. Vernon.

Oct. 19, 1874.—*L. & T. Act*, 1870—*Compensation for disturbance—Improvements—Waiver of notice to quit—Ejectment, for non-payment of subsequent rent.*

On March 20th, 1874, a landlord served a yearly tenant with notice to quit, and subsequently, on March 25th, a year's rent having fallen due, served him with a civil bill ejectment for non-payment thereof, on which a decree was had, and possession of the holding obtained. On a claim by the tenant under the L. & T. Act (Ir.), 1870, for compensation, by reason of the disturbance in occupancy by means of the service of the notice to quit.

Held, *that the claimant was not entitled to compensation, as the service of the ejectment for non-payment of rent subsequent to the notice to quit operated as an implied waiver of the notice to quit.*

This was a claim under the L. & T. Act, 1870, on behalf of Mr. John Flynn, to recover from Mr. J. E. V. Vernon, of Clontarf Castle, £243 10s., for disturbance in occupancy, improvements, unexhausted manures, &c. There was a cross claim for set-off, but it was not entered into, in consequence of the decision arrived at. The case was heard at the Land Sessions for the County Dublin, when the following facts appeared:—The claimant was tenant to the respondent of lands, held at the yearly rent of £41. On March 20th, 1874, the respondent served him with a notice to quit, and subsequently, a year's rent having fallen due, on the 25th of March served him with a civil bill ejectment for non-payment of rent. The ejectment was tried, and a decree obtained by the respondent at the June Sessions. The present claim was brought for the disturbance in occupancy, &c., by the notice to quit which had been served upon the claimant.

J. A. Curran, for the claimant.

Monroe, for the respondent.

The Chairman decided that the claimant was not entitled to compensation, as the subsequent serving on him of the ejectment for non-payment of rent was, in effect, an implied waiver of the previous notice to quit, and as it was on the writ of ejectment that a decree was had, and possession of the holding obtained.

Attorneys for the claimant: *Ennis and Son.*

Attorney for the respondent: *C. Fitzgerald.*

COURT OF REVISION.

(Before W. S. B. Kaye, Esq., LL.D.)

In re Rev. A. I. M'Donogh.

Oct. 9, 17, 1874.—*Lodger Franchise—Representation of the People (Ir.) Act*, 1868, *s.* 4.—*College Rooms.*

On a claim to be registered a voter in respect of lodgings, under 31 & 32 Vict., c. 49, s. 4, it appeared that the claimant occupied separately and as sole tenant, and, for the twelve months preceding July 20, 1874, resided in rooms on the ground floor of a building in Trinity College, and within its walls, which were of the clear yearly value, if let unfurnished, of £10. The rooms were let to him at a year's rent; but no period for his tenancy was fixed or agreed upon. On the landings of several other storeys in the same building there were similar sets of rooms, each set being separate from, and not communicating with any other set; and no person had a right to enter the claimant's rooms without his permission. The rooms would not have been let to the claimant had he not been connected with the College, and engaged in its work.

Held, *that the claimant was entitled to be registered a voter, as a lodger, within the meaning of the Representation of the People (Ir.) Act*, 1868, *s.* 4.

Claim, by the Rev. A. I. M'Donogh, to be registered voter for the city of Dublin, in respect of lodgings, under 31 & 32 Vic., c. 49, s. 4. The facts sufficiently appear in the judgment of the Court. There were other similar claims, which were governed by the decision on this claim.

Mr. J. F. Goodman and *Mr. Mathews*, in support of the claim.

Mr. M'Sheehy and *Mr. W. K. O'Shaughnessy*, *contra.*

The Barrister.—I have given these cases the best consideration in my power, and I will now state shortly the grounds upon which I make my decision. This is a claim under the lodger franchise. The Act of Parliament under which this franchise was created is the 31st & 32nd Vic., cap. 49, sec. 4. It provides every man shall be entitled to be registered as a voter, &c., who—1. Is of full age, &c. 2. As a lodger has occupied in such city, town, or borough, separately, and as sole tenant for the twelve months preceding the 20th of July in any year, the same lodgings, such lodgings being part of one and the same dwelling-house, and of a clear yearly value, if let unfurnished, of £10 and upwards; and—3. Has resided in such lodgings during the twelve months immediately preceding the 20th of July, and has claimed to be registered as a voter at the next ensuing registration of voters. The Rev. Albert Irwin M'Donogh appeared before me and claimed to be registered

Digitized by Google

as a lodger in respect of the rooms on the ground floor in the building No. 10, Trinity College. The claimant occupied separately and as sole tenant, and resided, for the twelve months preceding the 20th July, 1874, in these rooms, which were of the clear yearly value, if let unfurnished, of £10. The rooms were let to him at a year's rent; but no period for his tenancy was fixed or agreed upon. The rooms he occupied are in the building known as No. 10, Trinity College, and such building is within the walls of the College. The rooms of this and of the other claimants are separate from, and do not open into any other rooms. On the landings of the several other storeys, in the same building, there are similar sets of rooms, each set of rooms being separate from, and not communicating with any other rooms. No one had any right to enter the claimant's rooms except by his permission. The claimant admitted that the rooms would not have been let to him if he had not been connected with the college, and engaged in its work. It was contended before me that the claimants were entitled to be registered as lodgers, and that no real distinction existed between their case and that of persons occupying and residing in apartments in houses entirely let in tenements. On the other hand, it was contended that, in the case before me, there was such an actual severance of the rooms as to constitute separate dwellings; and the case of *Lang* v. *Edwards* was relied on. There can be no doubt one of the most important cases upon the lodger franchise, if not the most important, is the case of *Edwards* v. *Lang*, Ir. R. 3 C. L. 395. In fact, I consider the principles established by the decision of the Court of Exchequer Chamber in that case to rule the present. The particulars of it are these:—The entire of the house in which the claimant resided, and out of which he claimed, was let out in tenements. The landlord did not reside on the premises, and had not retained any portion of them in his own hands, nor had he any caretaker residing in the house, neither had he any key of the outer door, nor any means independently of the will of the tenants of admitting himself into the house, if the outer door were closed. The Court of Exchequer Chamber (Fitzgerald, B., dissenting) held, reversing the decision of the revising barrister, that the claimant was entitled to be registered as a lodger. That case was followed, during the same sitting of the court, by the case of *Lang* v. *Edwards*, in which was raised the same question which is now before me. It is reported 2 Ir. L. T. 717, Ir. R. 3 C. L. 413. There the revising barrister decided against the right of the claimant, who claimed to be registered as a lodger in respect of two bedrooms and one sittingroom in the building known as No. 22, Trinity College. The Court of Appeal, being equally divided, the decision of the revising barrister was not disturbed. The question, therefore, was left open. Three of the members of the Court were of opinion that there was such a severance of the premises, in the case of the Trinity College claimants, as to constitute a separate dwelling, and that, therefore, they were not entitled to be registered as lodgers. Keogh and O'Brien, JJ., and the late Mr. Justice George took a different view of this important question. O'Brien, J., in his judgment, observes—"Having regard, however, to the circumstances referred to in my former judgment (*i.e.*, in the case of *Lang* v. *Edwards*), that the 36th section of the Irish Registration Act, 1868, only excludes from the lodger franchise a person actually rated as an occupier of the same premises, and does not exclude a party merely liable to be rated; and considering also the 16th section of the Irish Representation Act, 1868, I think it would be a refined distinction to hold that, by reason of the claimant's apartments being separated from the rest of the building, he should, therefore, be excluded from the lodger franchise, though he has occupied for the required period apartments of sufficient value, and which, in other respects, are held by him as any lodgings would be held." Keogh, J., gave a very important and convincing judgment. He said—"I should have come to the same conclusion if this case had been argued before our decision in *Edwards*, appellant, *Lang*, respondent; but the decision in that case gives additional reason for my opinion in the present one, as, in my view, the cases in principle are not distinguishable. If the language of Byles and M. Smyth, JJ., in *Stamper* v. *Overseers of Sunderland*, which was relied upon in support of the view we adopted in *Edwards* v. *Lang*, be considered, it will be seen that this case comes within the rule they laid down. I look upon the words in the more enlarged sense. The claimant must be a lodger in a dwelling-house, and I cannot see that the tenant of any unfurnished lodgings in any house, with the key in his pocket, is not as much separated from the other dwellers in the house as the appellants here. If the whole house is let out to lodgers, it does not seem to me that actual separation, such as is described here, alters the intention of the Legislature. I think these rooms are as much part of a dwelling-house as any in any other lodging-house in Dublin." Having regard to those judgments, and to the principles established by the Court of Exchequer Chamber in the case of *Edwards* v. *Lang*, I have arrived at the conclusion that the claimants here are entitled to be registered, and will, therefore, admit their claims.

COURT OF ADMIRALTY.

Reported by R. D. MURRAY, Esq., Barrister-at-law.

"THE NAGPORE."

Feb. 13, 1874.—*Evidence—Nautical Expert*—30 & 31 *Vict.*, *c.* 114, *s.* 73—11, 216, 217, *G. O.* 1867.

Where the Court is assisted by nautical assessors, the evidence of a nautical expert will not be received.

This was a suit for damages, occasioned by "The Nagpore" colliding with "The Pilot," in Kingstown Harbour. The plaintiffs produced Captain Dawkins, of H. M. S. "Vanguard," the man-of-war stationed in Kingstown Harbour, who did not witness the collision, but who was in Court, and heard the witnesses for the plaintiff detail the circumstances; and they proposed to ask him his opinion, as to whether, under all the circumstances detailed, "The Nagpore" could have been brought into harbour in safety.

Dr. Elrington, Q.C. (with him *Dr. Boyd*), for the defendants, objected to the evidence.

Dr. Todd, Q C. (with him *Dr. Corrigan*), for the plaintiff, pressed the evidence.

TOWNSEND, J., after referring to section 73 of 30 & 31 Vic., c. 114, and 216th & 217th General Orders, 1867, and also to the 11th General Order, (which enacts that the practice of the Court in operation before the 27th day of November, 1867, shall continue in force, save in so far as it may be inconsistent with the Act, or with any of these Orders), held that, as the practice of the Court previous to the 27th November, 1867 (the date of the Admiralty Court, Ir., Act) was not to receive such evidence when the Court was assisted by nautical assessors, so it should now be rejected.

COURT OF BANKRUPTCY.

Reported by E. N. BLAKE, Esq., Barrister-at-law.

(Before HARRISON, J.)

Ex parte VANCE and WILSON; *in re* H.

August 4, 11, 18, 28, 1874.—*Adjudication—Annulling, on equitable grounds — Act of Bankruptcy — Previous assent, by petitioning creditor, to trust deed for benefit of creditors—Estoppel—Petition by trustees to annul adjudication—Concerted act of bankruptcy.*

A creditor, who (amongst others) had assented to a deed, whereby a debtor assigned all his estate to trustees for the benefit of his creditors, and who, afterwards, assented to an agreement for a composition by the debtor, to be secured by sureties on his behalf, and to a resolution of creditors acceding to the agreement, subsequently, in concert with the

Digitized by Google

debtor and his sureties, for the purpose of getting rid of the effect of the deed, agreement, and resolution, procured an act of bankruptcy to be committed by the debtor, and, thereupon, filed a petition against him, upon which he was adjudicated a bankrupt. Upon a petition presented by the trustees,

Held, *that the adjudication should be annulled.*

Petition, on behalf of T. Vance and T. Wilson (creditors in this matter, and trustees of an assignment in trust for creditors hereinafter mentioned, executed by Patrick H., senior, the bankrupt), that the adjudication herein be annulled, and that the petition of Patrick H., junior, the petitioning creditor in the matter, be dismissed.

In support of the petition an affidavit, verifying same, was made by the petitioners, stating as follows:—By an indenture dated May 2, 1874, made between the said Patrick H., senior, the said T. Vance and T. Wilson, and the several creditors of Patrick H., senior, executing same, the said Patrick H., senior, assigned all his estate and effects to said T. Vance and T. Wilson, as trustees, for the benefit of all his creditors. After the execution thereof by Patrick H., senior, and the trustees, the solicitor of the latter sent a circular to all the creditors on May 8, 1874, fully apprising them thereof, and that same lay at said solicitor's office for execution by creditors choosing to claim the benefit thereof. Blank forms were also forwarded to the creditors, to be signed by them, if willing to authorize the deed to be executed on their behalf. The circular and letter of authority were sent to Patrick H., junior, as well as to the other creditors. Immediately upon the execution of the deed, the trustees took possession of the stock-in-trade and property assigned, and placed Mr. Griffin as manager in charge. On May 20 the trustees sent their agent, J. B. Manning, with two porters, to remove the stock to Dublin for sale, as it would there command a higher price. That was about being done when Patrick H., senior, Henry H. (his father), and Mr. Minnock requested Manning not to remove the goods, and offered to purchase the estate from the trustees for £850, or such further or other sum as should be necessary to pay to the creditors a composition of 10s. and costs. Mr. Manning, who had authority so to do, agreed, on behalf of the creditors, to accept this offer, whereupon the trader and the said Henry H. and James Minnock signed an agreement to this effect, and stipulated for the payment of the composition by five instalments of 2s. each, at three, six, nine, twelve, and fifteen months, to be secured by their joint and several promissory notes in favour of the creditors respectively. By this agreement Henry H., the trader's father, who was, as stated, joint lessee with the trader of his premises in Tullamore in which the trade was carried on, undertook to join with him, or separately on his account, if required by the trustees, in the execution to them of a mortgage of the premises, as further or additional security for the said sum of £850, or such other sum as might be necessary, and further undertook to execute a deed embodying and carrying out the agreement when tendered for execution. This agreement was signed by the parties in presence of Mr. Manning, who thereupon handed over the possession of the stock to them, and undertook to obtain the assent of the creditors to the proposal. Henry H., the trader's father, insisted on Mr. Manning turning every person out of the shop and premises, and giving him full possession. Henry H., thereupon, employed the trader and said Mr. Griffin as his shop assistants. On obtaining the proposal referred to, the trustees issued circulars dated the 26th May, 1874, and called a meeting of the creditors, who assembled together on the 29th May. The creditors who attended this meeting represented liabilities to the extent of £1,030 5s. 10d., when they unanimously agreed to accept the proposed offer of composition, as appeared by a resolution then entered into. Patrick H., junior, a relative and creditor of the trader for the sum of £100, having, by an authority in writing, bearing date the 28th day of May, 1874, authorized the trustees' solicitors so to do, they, about the 29th of May, executed said indenture in the name of said Patrick H., junior, who was represented at the said meeting, and assented by said Mr. Manning to the said proposal. A copy of said resolution was forwarded to all the creditors, including said Patrick H., junior, on the 31st May, by the trustees' solicitors, who stated in a circular of that date the short substance of the proposal, and that the trader and his father had undertaken, as further security, to execute the mortgage referred to. On the 18th of June petitioner's solicitor, by a further circular, informed the creditors, and said Patrick H., junior, that the trustees were anxious to close the estate, and that, unless they intimated their assent to the arrangement particularized in their circular of the 31st of May, and the resolution of creditors therewith sent, the estate was likely to go into bankruptcy, in which case the sureties would stand released, and the dividend would be considered under 10s., the composition proposed. About the time this circular was issued, the two sureties, Henry H. and James Minnock, called on Mr. Meldon, the trustees' solicitor, and stated they had no confidence in the trader; that he was not steady, and that they would prefer not being surety for him. They then alluded to the circular of the 31st of May, of which they produced a copy, and said it appeared they might be held liable for over £850; that they did not read the agreement of the 20th of May; that Mr. Manning told them that it was to be a security not exceeding £800; and that beyond the amount they were not to be responsible. Eventually after some conversation, in which they were told they would be held responsible, they stated to Mr. Meldon they were yet willing to be security to the extent of £800, and no more. It was then supposed the liabilities might be £1,600, or perhaps £1,700, but it afterwards appeared that they amounted to £1,354 18s. 9d. only, excluding liability (if any) to Henry H., the trader's father and co-surety, and a creditor for 24s., as appeared by the schedule to the deed. On the 27th of June, however, Messrs. Larkin & Co. wrote to the trustees' solicitor, stating they were instructed by Henry H. to inform them that he now declined to become surety in this matter, and requested a copy of the undertaking signed by him. On the following day Messrs. Meldon and Sons furnished to Messrs. Larkin and Co. a copy of the agreement, which they stated they were instructed to enforce against their clients, upon the ground of the trustees having, upon the faith of the security, placed the trader and his sureties in possession of the property, and obtained the assent of the creditors to the proposal for composition, as embodied in the agreement. On the 16th day of July the said Patrick H., junior, filed a petition for adjudication of bankruptcy against the said Patrick H., senior, under which, on the 17th day of July following, he was adjudicated a bankrupt; the act of bankruptcy relied on being a declaration of insolvency, signed by the trader, and bearing date the 15th day of July. The deponents, in conclusion, stated their belief that the said act of bankruptcy was concocted between the trader

Digitized by Google

and his co-sureties, Henry H. and James Minnock, and that the said petition and adjudication had thereon were filed and procured by the said Patrick H., with a view of freeing the said sureties, and of defeating deponents and the creditors of the said trader, who so, as aforesaid, signed the said trust deed, and assented to the agreement of the 20th of May; and they submitted that said adjudication was invalid, and should be annulled, inasmuch as all the creditors of the said debtor, save one for 24s. and the said Henry H., including the said Patrick H., junior, were parties to, and signed or assented to the indenture of the 2nd of May and the agreement of the 20th of May, on the faith of which respectively the trustees procured the assent of the creditors to the proposal of composition thereby made.

An affidavit, also in support of the motion, was made by Mr. Manning, stating that, acting on the authority of the trustees, he, on the 4th day of May, 1874, sent to the residence and place of business of the said Patrick H., senior, and took possession, on behalf of said trustees, of the stock and property assigned by said indenture, and placed Mr. Griffin in charge thereof; that, after he had so taken possession, the said Patrick H., senior, and his father, Henry H., offered a composition of 7s. 6d. in the £, on the liabilities due by the said Patrick H., on getting a re-assignment of the estate, which offer the deponent refused, not considering it sufficient, and requesting them to consider the matter, and make a better offer; that the trustees remained in possession of the estate until the 20th of May, when, finding that said Patrick H. did not increase the said offer of composition, the deponent on said last-mentioned day, by direction of the trustees, with the assistance of two porters, was about to remove the stock to Dublin, where he considered it would sell best, whereupon the said Patrick H., senior, and his father, and Mr. Minnock requested the deponent not to remove the goods, which they proposed to purchase for £850, or such further sum as would be sufficient to pay the creditors 10s. in the £, and costs, which offer deponent agreed to accept on behalf of the trustees, whereupon the trader and his sureties signed an agreement to that effect, and stipulated for payment of said composition by five instalments of 2s. each at three, six, nine, twelve, and fifteen months, to be secured by their joint and several promissory notes in favour of the creditors respectively; that said agreement was signed by said parties in the deponent's presence, whereupon he handed over the possession of said stock and property, with the assent of the said Patrick H., senior, and James Minnock, to the said Henry H., who, before he accepted such possession, required deponent to turn every person out of the premises, which he did, and handed over the keys and possession thereof, and at the request of said parties the deponent undertook to procure the assent of the creditors to said composition agreement; that, on obtaining said proposal, the trustees caused circulars to be issued to the creditors, who held a meeting on the 29th of May, which meeting the deponent attended on behalf of Patrick H., junior, the petitioning creditor, from whom he received a letter bearing date the 26th of May, enclosing an authority signed by him, and addressed to Messrs. J. D. Meldon and Sons, authorizing them to sign the trust deed on his behalf, and the said Patrick H., junior, by said letter, stated that he could not come up to attend said meeting, and that he would be very much obliged by the deponent's attending and acting in his stead; that, pursuant thereto, the deponent attended at the said meeting of creditors, and assented, on behalf of said Patrick H., to the said offer of composition, as stated in the said agreement, of which, prior to the receipt of said letter, the deponent was aware he approved, inasmuch as he (the deponent) had, upon the occasion of the signing of said agreement, a conversation with the said Patrick H., when he approved of said offer, but declined to secure same, which the deponent requested him to do, the said Patrick H. stating, as his reason for not becoming security, that he had already lost money in that way by the bankrupt, or words to that effect.

In reply, an affidavit was made by Henry H, and James Minnock, stating that J. B. Manning, at the time they signed the agreement referred to in the petition, distinctly informed them that the extent of their liability would be £800, and that they would have out of the estate, over and above said sum, a surplus of at least £500. He, also, stated that portion of the goods which were not saleable would be taken back by the creditors, and the cost price thereof allowed, and he informed them that if his statements were not found to be correct, they would rescind the agreement. They entered into the agreement without any professional advice or assistance whatsoever. It was not true, as stated in the petition, that Henry H. insisted upon turning every person out of the shop and premises. But J. B. Manning himself suggested that Henry H. should take possession, in order to take care of the property, and it was he suggested the mode in which possession should be taken. On the occasion of the signing of the said agreement, J. B Manning informed them that he did not know whether the proposal they made would be accepted by the creditors. And the said creditors never informed them that they had agreed to their proposal.

C. H. Meldon, in support of the petition, cited *ex p. Bunn*, 3 Deacon 119; *ex p. Lowe*, 1 Gl. & Jam. 78; *re Flynn*, 8 IR. L. T. R. 112; *re S.*, 8 IR. L. T. R. 43; *ex p. Johnston*, 4 De G. & Sm. 204; *ex p Harcourt*, 2 Rose 212; *ex p. Stray*, L. R. 2, Ch. 378; *ex p. Alsop*, 1 De G. F. & J. 289; *Oliver* v. *King*, 8 De G. M. & G. 110; *ex p. Tealdi*, 1 M. D. & De G. 210; *ex p. Lewis*, 3 M. D. & De G. 93.

Purcell, Q.C., *contra*.

Judgment reserved.

HARRISON, J.—In this case an adjudication in bankruptcy was pronounced on the 17th day of July last against the alleged bankrupt, Patrick H., senior, upon the petition of Patrick H., junior, the act of bankruptcy being a declaration of insolvency signed by the alleged bankrupt, on the 15th of July, and witnessed by Mr. Davoren, as solicitor. On the 30th of July, a petition was presented by Messrs. Thomas Vance and Thomas Wilson, creditors of the said alleged bankrupt, and the trustees in an indenture of trust, dated the 2nd day of May last, which had been executed by him, praying to have the adjudication annulled and the petition in bankruptcy dismissed, the petitioners averring, in the last paragraph of the petition, their belief that the act of bankruptcy in it relied upon, was concocted between the alleged bankrupt and his co-sureties, Henry H. and James Minnock, and the petitioning creditors; and that the petition and adjudication were filed and procured by the petitioning creditors with a view of freeing said sureties and defeating the present petitioners and the said creditors of the alleged bankrupt, who had signed said deed, and assented to an agreement of the 20th May, referred to in the petition, and submitting that said adjudication should be annulled, inasmuch as all the creditors of the alleged bankrupt, save one for 28s., and the said Henry H., including the petitioning creditors, were parties to and

Digitized by Google

assented to the said deed of the 2nd of May, and agreement of the 20th of May, on the faith of which the petitioners procured the assent of the creditors to the proposal of composition thereby made.

In the joint affidavit filed by Messrs. Vance and Wilson, on the 30th of July, the facts relied upon by them, in support of the prayer of their petition, are fully set forth. It appears from this affidavit that, on the 2nd day of May, the alleged bankrupt executed the deed in question, whereby he assigned all his estate and effects to Messrs. Vance and Wilson, as trustees, to realize and divide amongst such of his creditors as should execute the deed. Shortly after the execution of the deed, a circular was sent out by the trustees to the creditors of the alleged bankrupt, including Patrick H., the present petitioning creditor, dated the 8th May, together with an authority in blank, authorizing Messrs. Meldon to execute the deed. [His Lordship read the statements, in the affidavit, detailing the circumstances which afterwards took place, from that date down to the 17th of July, when the adjudication was pronounced.] Mr. Manning, who took possession of the trader's effects on the 14th of May, under the trust deed, on behalf of the trustees, and who entered into the agreement of the 20th May on their behalf with the trader and his two co-sureties, Henry H. and James Minnock, also made an affidavit in support of the petition, and deposing to the material facts alleged in the petition within his knowledge, including the making of that agreement, the delivery over of the trader's stock to Henry H. with the assent of the trader and of said Minnock, and his having undertaken, at their request, to procure the assent of the creditors to said composition agreement, the calling of the meeting of the 29th May, and his having attended that meeting on behalf of the petitioning creditor, Patrick H., from whom he had received a letter, dated the 26th May, enclosing an authority, signed by him, and addressed to the Messrs. Meldon, authorising them to sign the trust deed on his behalf; and the said petitioning creditor, by his said letter to deponent, requested deponent to attend said meeting on his behalf, as he could not come up to attend. Mr. Manning, in the sixth paragraph of his affidavit, states that he was aware that the petitioning creditor approved of the offer of composition, inasmuch as, upon the occasion of signing said agreement, he had a conversation with the petitioning creditor, at Tullamore, when he approved of said offer, but declined to secure same, which he had requested him to do, stating, as his reason for not becoming security, that he had already lost money in that way by the bankrupt, or words to that effect. The motion to annul the adjudication came on for argument on the 11th instant, one affidavit only, being a short one by the co-sureties, Henry H. and James Minnock, having been filed to resist the motion; but the statements contained in it are, in my opinion, immaterial for the decision of this motion. It is not unimportant, however, that the averment of the belief of the petitioners, contained in their affidavit, of the present proceedings having been concocted, as therein alleged, is not referred to or denied. [His Lordship referred to the allegations in the affidavit.] During the argument, and at the close, I made some remarks on the absence of any affidavit by the petitioning creditor, if he could contradict the statement deposed to by Messrs. Vance and Wilson and Mr. Manning, and, on a subsequent day, Mr. Larkin obtained leave to produce him, giving notice to the present petitioner. Accordingly, on the 18th instant, the petitioning creditor was examined, and as he contradicted Mr. Manning's statement referred to in the last paragraph of his affidavit, Mr. Manning, who was in Court, was called, and repeated in substance what he had already sworn. Messrs. Henry H. and Minnock were also called and examined, and denied having been present, as alleged by Manning, at the interview with the petitioning creditor, deposed to by him. I must, now, express my regret that I allowed that examination. I stated that I was a good deal influenced by the fact that the Messrs. Larkins' firm seemed mixed up a good deal in the case, and I did not like excluding the evidence after the remarks I had made. It transpired, during the examination, that Mr. Davoren, the junior member of that firm, was the solicitor who had acted in the matter, and Mr. Larkin informed me that he was at present in Switzerland. I have since read carefully over the depositions taken on this occasion, and I have come to the conclusion that, although Mr. Manning has been contradicted by the petitioning creditor, in reference to the conversation where it is alleged he approved of the agreement of the 20th May, I am not satisfied with his contradiction; and, even if that conversation did not take place, I am of opinion there is quite enough proved and admitted in this case to bind the petitioning creditor as an assenting party to the deed of the 2nd May, and the agreement of the 20th May, and that the proceedings in the present bankruptcy cannot stand. In his *viva voce* examination, the petitioning creditor admitted having, on the 28th May, signed the authority to Messrs. Meldon to sign the trust deed, and, although he denied having seen the trust deed, or knowledge of its contents at this time (Q. 31), it is to be borne in mind that the authority is specific, viz.:—to sign *the trust deed* in the above matter, viz.:—the matter of the trust estate of Patrick H., of Tullamore, in the King's County, shop-keeper, his own cousin, whose estate and effects had been taken possession of, in the beginning of the same month, by the trustees under said deed, and in whose house he had himself conversed with Mr. Manning, the agent for the trustees, to whom he says he was introduced by the alleged bankrupt as the person who had lent him £100. At Q. 105, the petitioning creditor stated that he had sent down to Mr. Griffin to fill up for him the printed authority in blank, which the petitioner avers was forwarded, along with the circular setting out the material provisions of said deed, by Messrs. Meldon to all the creditors (including the petitioning creditor), which blank authority had been sent up from the bankrupt's place of business to him in an envelope, which had been opened, both he and the bankrupt living in the same street in Tullamore, and the letter, apparently, having been delivered there in mistake. It is to be remembered that the alleged bankrupt and the petitioning creditor are first cousins, living in the same street of the town of Tullamore; that the stock and property of the alleged bankrupt were taken possession of by the trustees under the deed with the petitioning creditor's knowledge, on the 4th May, by Mr. Griffin (Q. 8), and that the trustees remained in possession until the 20th May; that, on the 26th of May, the petitioning creditor had the letter written and signed in his name, authorising Mr. Manning to act in his stead at the meeting of creditors, which he states he was informed had been called for the 29th instant, and Mr. Manning swears that the letter of the 28th May, was enclosed to him along with the letter of the 26th May. The petitioning creditor further stated, in his direct evidence, that he had heard that an agreement had been entered into by his cousin, the bankrupt, to pay 10s. in the £1 (QQ. 24, 25, 26, and 27, of his direct examination); and from the last of these answers it would appear that he heard this when the two men came down to take possession of the stock, which was upon 20th May, the day the agreement was entered into. From all these admitted facts, I have no doubt that the petitioning creditor knew perfectly the effect of the trust deed of the 1st May, and, as between himself and the other creditors of the alleged bankrupt, I am clearly of opinion he cannot now repudiate that deed, or allege he is not bound thereby, having by his letter of authority to Messrs. Meldon authorised them to sign same on his behalf for £100, the amount of his debt, which was accordingly done in his name, on the 29th of May, when the meeting of creditors was held, and a unanimous resolution entered into approving of the arrangement entered into on the 20th of May. I am, further, of opinion that the general authority conferred by the petitioning creditor on Mr. Manning, by the letter of the 26th May, equally binds the petitioning creditor to abide by that resolution. Mr. Manning swears that, pursuant thereto, he attended said meeting, and assented on behalf of the petitioning creditor to the said offer of composition, as stated in the agreement of the 20th

Digitized by Google

May, and the trustees, in their affidavit, state that all the creditors of the alleged bankrupt (save one for 24s., and his father, Henry H.) are parties to and signed and assented to said indenture of the 2nd May, and the agreement of the 20th May, on the faith of which respectively they procured the assent to the proposal of composition thereby made. I observe that there are the signatures of eighteen persons to the trust deed, whereas only twelve appear to have attended or to have been represented at the meeting of the 29th May. The circular of the 31st May and 18th June, referred to in the affidavit of Messrs. Vance and Wilson, shows the care that was taken to apprise all the creditors of what was done; and, so far as I can see, there was no surprise upon any one.

Having come to the conclusion that the petitioning creditor is bound by the trust deed and resolution of creditors of the 29th of May, it is necessary to consider the steps which have been taken by him to evade the binding effect of that deed and agreement. It is stated in Messrs. Vance and Wilson's affidavits that, about the 18th June, the co-sureties called on Mr. Meldon, and stated, for the reasons mentioned, that they would prefer not being surety for the alleged bankrupt, when they were told they would be held responsible. On the 27th June, Messrs. Larkin & Co. write Messrs. Meldon, stating "That Mr. Henry H., of Tullamore, instructs us to inform you that he now declines to become surety in this matter," and asking for a copy of his undertaking. The reply of Messrs. Meldon of the 29th June, Messrs. Larkin & Co.'s letters of the 2nd and 9th July, and Messrs. Meldon's reply of the 10th July, close the correspondence of the respective solicitors, and show on one side that Messrs. Larkin were obtaining every information in reference to what had occurred in this trust estate, it is to be presumed for the purpose of assisting their clients in getting themselves released from the effect of their agreement of the 20th May, whilst Messrs. Meldon's letters show that firm determined, on behalf of the trustees, to enforce it. At this stage the petitioning creditor appears upon the scene, and in a few days the steps are taken by him which ended in the present bankruptcy proceedings. The charge having been made in the petition and affidavit of the trustees in support of it, of complicity with the co-sureties, Henry H. and James Minnock, with the view of freeing them and defeating the creditors of the alleged bankrupt, who had assented to said trust deed and the agreement of the 20th May, the petitioning creditor, as already stated, filed no affidavit contradicting the charge, nor did the co-sureties, Henry H. and Minnock, refer to it in their affidavit of the 8th of August. In his *vivâ-voce* evidence, the petitioning creditor states (Q. 43) that he was advised by another uncle, Matthew H., to take proceedings in bankruptcy against the alleged bankrupt, and to come to Mr. Larkin for the purpose, and that he was not asked to do so, nor was this suggested, by the bankrupt or his father, Henry H., or James Minnock; (Q. 51) that the petition was not presented, nor was the adjudication obtained with any intention of relieving the sureties; and (Q. 52) that he had no communication with them before he presented the petition. It is, in my opinion, impossible to believe this when his admissions on cross-examination are taken into account. The petitioning creditor comes to Dublin on the 15th June, accompanied, as he admitted on cross-examination, by Henry H., the bankrupt's father (QQ. 157, 159, and 160), whom he had informed the night before of his intention to come to Dublin (Q. 162), having gone down to him "*to tell him my intention*" (Q. 165), knowing, as he admits (Q. 167), that Henry H. was one of bankrupt's sureties. On arriving in Dublin, they meet Mr. Minnock, the other co-surety, in Cope-street, and all three go together to Mr. Larkin's office, and all together saw Mr. Davoren, Mr. Larkin's partner, to whom the petitioning creditor states he told his intention of making his cousin a bankrupt. On that same day the letter of the 15th July is written by Messrs. Larkin to Messrs. Meldon, withdrawing, on the petitioning creditor's behalf, the letter of authority, dated the 28th May, to execute the trust deed, and calling their attention to the fact that same was not a sufficient authority, not being under seal—which withdrawal of authority I hold quite useless, and the point of same not being under seal, unimportant, the letter being relied on to show assent to and *not* a formal execution of said deed. On the same day the petitioning creditor sends a telegram to the bankrupt to come to town, as he had determined to make him a bankrupt, and it was necessary for him to be up (QQ. 227 and 234). The bankrupt being, as the petitioning creditor swears, ignorant of his intention until "*we*" sent for him, being Henry H., James Minnock, and himself. On the next day all these three persons, who had stayed overnight at the same house (Q. 233), go together and meet the alleged bankrupt at the train, and bring him to Mr. Larkin's office, where he signs the declaration of insolvency (the act of bankruptcy relied on), and the same day the petition in bankruptcy is presented. Upon these admitted facts, is it possible for any person to doubt that the petitioning creditor, the alleged bankrupt, and his co-sureties, were all working together for one common purpose, which was carried into effect when the adjudication was obtained? It is unimportant, I conceive, whether or not Mathew H. first advised the petitioning creditor to take the step he did. When he proceeded to carry it into effect, he acted in concert with the co-sureties of the alleged bankrupt, and the alleged bankrupt freely assists by at once committing an act of bankruptcy when sent for by the three others, which enabled a petition to be filed and adjudication obtained, the necessary effect of which was to free the sureties, defeat the trust deed and agreement of the 20th May, and to release the bankrupt's co-sureties therefrom—all the acts aforesaid being effected through one common solicitor.

The jurisdiction of the Court is undoubted to annul adjudications on equitable grounds, although all the legal requisites are complete. "I am of opinion," says Vice-Chancellor Knight-Bruce, in the case of *ex parte Johnstone, in re Johnstone* (4 De Gex & Sm. 207), "that according to the Act of Parliament, a commissioner, upon an application to adjudicate or to retain an adjudication of bankruptcy, may attend to equitable as well as legal circumstances, and is not to adjudicate or retain an adjudication, although there may be all the legal requisites, when circumstances of equitable invalidity are present to his mind." In that case a declaration of insolvency had been signed by a trader who was not informed that the purpose or object of requiring him to do so was to make him a bankrupt, or that the declaration could or would be used for such a purpose. A composition agreement with creditors afterwards took place, and the two partners of a Mr. Turner, who afterwards had the trader adjudicated bankrupt, agreed to pay the composition, and the stock-in-trade was handed over to them. The declaration was afterwards filed, but without the knowledge of the trader, and an adjudication obtained the next day, which the Vice Chancellor set aside, overruling Mr. Commissioner Goulburn, who had refused to do so. [His lordship read from the words "The signature," at p. 207 of the judgment, down to the words "act of bankruptcy" in the next page.] Now, here the trust deed and composition agreement are both anterior to the declaration of insolvency, and the alleged bankrupt is not the petitioner to annul; but good faith has, in my opinion, been equally broken, the creditors of the trader being the persons here aggrieved, whereas the trader in the case cited was the person injured. In the case of *ex parte Lowe* (1 Gly. & Jam. 78), the person who petitioned to annul was, as here, the trustee to whom the trader had assigned his estate in trust for the equal benefit of his creditors. James Roberts, who afterwards sued out the commission, had declined, on behalf of his father, a creditor, to sign the deed, but he had agreed not to sue out a commission of bankruptcy against the trader, or in any way defeat the object of the deed. He afterwards struck a docket against the trader, and the commission was superseded. "I think," says Lord Eldon, in his judgment (at p. 84), "it is absolutely impossible to doubt that this commission ought to be superseded. The bankrupt had a commission taken out against him. It afterwards occurred to the great body of the creditors to

Digitized by Google

think it would be more beneficial if a trust deed were executed. Accordingly, the property is assigned to the petitioner and another person for distribution amongst the creditors. Nothing is more clear than this, that where persons think fit to accede to such a trust deed, they cannot afterwards complain of what is done under it, for this reason, amongst others, that they have authorised the division of the property under the deed, and, if they afterwards take out a commission, they put themselves in the situation of recalling their confidence from those in whom they expressed that they placed confidence, and of reclaiming what has been paid by the trustees under the circumstances of that confidence." These observations are peculiarly applicable to the present case. In *ex parte Bunn* (3 Deacon) Sir George Rose lays down that a party to a trust deed cannot rely on any other act of bankruptcy. Upon the whole, I am of opinion that the petitioning creditor, having acceded to the said trust deed, and being bound by the resolution of the 29th May, adopting the agreement of the 20th May, was estopped from taking the steps he has taken to get rid of the effect of such deed, resolution, and agreement, and that the procuring of the act of bankruptcy to be committed by Patrick H. and the filing the petition and obtaining the adjudication, as before stated, were breaches of good faith with the creditors of the alleged bankrupt, all of whom, except one for 24s. and the said Henry H., are stated to have acceded to such trust deed, resolution, and agreement. I am, further, of opinion (although I do not consider this essential to invalidate the present proceedings—the ground already stated being, as I conceive, sufficient) that the act of bankruptcy was procured and the proceedings in bankruptcy were taken by the petitioning creditor in concert with Henry H. and James Minnock, the co sureties for the alleged bankrupt under the agreement of the 20th May; and I hold that these steps were taken with the object of defeating said trust deed, resolution, and agreement, and releasing the said Henry H. and James Minnock from the said agreement, same being their necessary result. And I rule that the adjudication be annulled, with costs.

Adjudication annulled.

Solicitors: *J. D. Meldon & Sons*; *M. Larkin & Co.*

COURT OF CHANCERY APPEAL.

Reported by MILES V. KEHOE, Esq., Barrister-at-law.

SAVAGE v. JAMES.

Feb. 17, 1874.—*Practice—Next friend of married woman—Security for costs—Evidence of solvency—Form of affidavits.*

Where the next friend of a married woman plaintiff is required by the defendant to give security for costs, on the ground that such next friend is not in solvent circumstances, the Court, unless clearly satisfied upon the evidence that the next friend is possessed of means to pay the costs, over and above all his existing liabilities, will order security for costs to be given, or that a different and sufficient next friend be appointed.

Appeal from an order of Chatterton, V.C., dated 26th Jan., 1874, that all further proceedings in this cause be stayed until Robert G. Keating, the next friend of the plaintiff, should give security for costs.

The bill in this cause was filed by Anne Savage against her husband, Joseph W. Savage, a bankrupt, and C. H. James and L. H. Deering, the official assignees of his estate, seeking to have it declared that a certain ship and money and plate, were the sole and separate property of the plaintiff, and held in trust by the official assignees for her. The plaintiff originally sued by Josephine Savage, as her next friend. On the 10th Nov., 1873, on the motion of the defendants, Chatterton, V.C., ordered that all further proceedings should be stayed until the said Josephine Savage should have given the usual security for costs, or until the plaintiff should have appointed a new and sufficient next friend in place of the said Josephine Savage. The bill was then amended by substituting as plaintiff's next friend Robert G. Keating, described as of 4, Grattan-terrace, in the city of Dublin. T. Phillips, clerk to the solicitors for the defendants, made an affidavit, in which he stated that shortly after the filing of the amended bill he went to 4, Grattan terrace, and was informed by the neighbours that Robert G. Keating had left the house two months before, and that it was empty and unoccupied; that a notice stating these facts was served on the plaintiff's solicitors, and that ten days afterwards a reply was received, stating that Keating's tenancy had not even then expired, and that at the time he signed the consent to act as next friend, and for some time after, he was residing there; that since then he had removed for the convenience of his business to Belcomp, Raheny, where any letters addressed to Grattan-terrace would be forwarded to him. Phillips further stated that he called on the landlord of the house in Grattan-terrace, who stated that Keating went away owing him a quarter's rent, which he had promised to pay by instalments of 10s. a-week, but had not done so; that he (Phillips) afterwards went to Belcomp, and found that Keating was acting as clerk to a gentleman named De Burgh, and was residing in a lodge-house on Mr. De Burgh's land, and that the house was poorly furnished. Robert G. Keating made an affidavit, in which he stated that it was not true that he left Grattan-terrace two months before the 23rd Dec.; that he did not promise to pay the rent by instalments, and that the house at Belcomp was not a lodge-house but a private dwelling-house, with garden and shrubbery, and its own exclusive entrance from the road. The affidavit proceeded:—"That I am acting as sub-agent and collector of rents for Mr. Henry De Burgh, J.P., and my present salary from him is £100 sterling per annum, besides house, &c., free. . . . . . That I am possessed in my own right of freehold property in the town of Clonmel, unincumbered, producing £21 per annum, and that I have expended on said property upwards of £300 of my own money, and that I have also become entitled, on the death of my mother in-law, which occurred in the month of October, 1872, to one-third of other freehold property of the value of £90 a-year, besides a sum of £700 of assets not yet distributed; and I am also possessed of furniture and household effects to the value of at least £100, and I have been informed by my wife and believe that the said Folliott Phillips did not come beyond the hall door of my said house, and could not be in a position to state how it was furnished. And I say that I have earned on an average between £200 and £350 a-year, for some years past, as an agent; and I say that I owe no debts save the ordinary domestic accounts, which I have different means to discharge in the usual course." Keating, also, stated that he had brought an action in the Court of Common Pleas, in which an application was made to compel him to give security for costs, but was refused; that he failed in the action, and had paid every shilling of the defendant's costs, amounting to £71. An answering affidavit was made by Folliott Phillips, in which he reiterated his former statements as to Keating's absence from Grattan-terrace, the kind of place he lived in at Belcomp, the communication made to him by the landlord about the rent; and he also detailed inquiries he made in reference to Keating's property, which tended to

Digitized by Google

show that it was considerably less than was represented by Keating. He also stated, as was the fact, that the action referred to in Keating's affidavit was brought by him to recover damages against a firm for false arrest, they having accused him of embezzlement while in their employment, whereupon he was arrested and tried at the Cork Spring Assizes, 1873; that the judge directed an acquittal, and thereupon Keating brought the action, in which he failed.

On the above state of facts, the defendants having moved that the plaintiff's next friend, Robert G. Keating, should be ordered to give security for costs, as mentioned in 8 IR. L. T. Notanda, 88, the Vice-Chancellor made the order of the 26th Jan., 1874, which is set forth above, and was the subject of the present appeal.*

Mr. Plunkett, for the appellant, cited the following authorities:—*Kerr* v. *Gillespie*, 7 Beav. 269; *Bailey* v. *Gundry*, 1 Keene, 53; *Watts* v. *Kelly*, 6 W. R. 206; *Elliot* v. *Ince*, 7 De G. M'N. & G. 475; *Counsel* v. *Garvie*, 5 IR. L. T. R. 96; *Wilton* v. *Hill*, 2 De G. M'N. & G. 807; *Pennington* v. *Alvin*, 1 S. & S. 264; *Drinan* v. *Mannix*, 3 Dr. & War. 154.

Mr. O'Hagan, Q.C. (with him *Mr. Perry*), for the respondent, *contra*.

Lord O'HAGAN, C.—The Vice-Chancellor's order cannot be discharged, but must be varied; there will be a direction that there must be a new next friend, or that Mr. Keating must give security for costs. In this case, beyond all doubt, the evidence is not of perfectly substantial solvency. *Elliot* v. *Ince* simply decides this, that where there is a positive statement by a person coming to prove solvency that he has property over and above a certain sum, the Court will not go into a scrutiny of his affairs; any other course would be very inconvenient. We have, first, in the action in the Court of Common Pleas enough to show us that the case is to be jealously regarded. We need not go at all upon the question of change of residence. The statement of Mr. Keating may be perfectly true, but the statement of the clerk of the appellant's attorney is very strong; and we have the clerk telling us that the house where Keating resides is not a good house, but a sort of hovel. But, as I have said, we need not go upon this save so far as it makes us jealous in looking at this case. Had he sworn that he was worth so much over and above his debts the matter would be different. But he has not done so; he has made out a catalogue of his assets, and under these circumstances any person disputing his solvency might reasonably go into details; but we need not enter into these. He has sworn simply that his domestic debts are the only incumbrances to which he is liable, but we have nothing before us to induce us to come to the conclusion that he has property over and above those debts. It is enough to say that this person has not brought himself by his sworn testimony within those authorities which have been cited, and, therefore, there is nothing to relieve us from the necessity of seeing that this lady is better represented than she would be by this gentleman as her next friend. As the order of the Vice-Chancellor has been varied, there must be no costs of the appeal.

CHRISTIAN, L J.—The grounds on which I think that this motion should be refused are very simple. I think that the departure from the ordinary form of affidavit, coming at the sequel of the removal of the former next friend of the plaintiff on account of her not being able to give security for costs, and of the various little incidents of this man's history, is enough to warrant us in refusing the application. In my opinion there was a studied departure from the ordinary form of affidavit. As the Vice-Chancellor's order has been varied, there must be no costs of the appeal, more particularly as the mistake was induced, perhaps, by the form of the defendants' notice of motion.

Solicitor for the plaintiffs: *Wm. B. Gardner*.
Solicitors for the defendants: *Perry & Croskerry*.

* In the Court below, *Doyle* v. *Hanks*, 6 IR. L. T. R. 85, 20 W. R. 887; *Hind* v. *Whitmore*, 2 K. & J. 458, were cited among other cases now referred to. Chatterton, V.C., in granting the motion, stated as his reason for so doing that Keating's affidavit was defective in not containing a statement that he was worth anything after payment of his debts, for it was possible that after the payment of his debts he might not be worth a shilling.

VICE-CHANCELLOR'S COURT.

Reported by EDWARD F. BEATTY, Esq., Barrister-at-law.

(Before CHATTERTON, V.C.)

In the Matter of the COMMISSIONERS OF CHURCH TEMPORALITIES IN IRELAND, AND THE ADVOWSON OF ATHLACCA AND CROOME; *ex parte* VISCOUNT MONCK.

Feb. 2, 1874.—*Purchase of Advowsons—Incapacitated owners—Money lodged in Court—Practice*—33 & 34 *Vict. c.* 42, *s.* 57—8 *Vict.*, *c.* 16.

Money lodged in Court as the value of advowsons in the case of incapacitated owners, under the 57th section of the Irish Church Act, 1869, *not allowed to be transferred to a different credit, but directed to be invested in Government new 3 per cent. stock to the credit of the matter in which it was lodged.*

Petition on behalf of John Monck Croker, a minor, praying (*inter alia*) that the sum of £6,935 0s. 8d., (the purchase-money of the advowson of Athlacca and Croome, in the diocese of Limerick, which, under the 57th section of the Irish Church Act, 1869, had been lodged in the Bank of Ireland, together with £1,179 3s. 2d. interest, by the Commissioners of Church Temporalities to the credit of the commissioners, John Monck Croker, a minor, Harriet Croker, his mother and guardian, and all others interested in the advowson), be invested in the purchase of Government new 3 per cent. stock, and, with the privity of the Accountant-General, be transferred to the credit of the cause of *Croker* v. *Stein*, and to the separate credit of the minor and all others interested in the advowson. The minor's title to the advowson had been under a settlement, dated the 13th day of May, 1841, by which he was made tenant in tail male of them, and of large estates.

Mr. John F. Walker, in support of the petition.

Mr. Reeves, for H. S. Monck Croker, the tenant in tail in remainder, opposed the form of the petition, on the ground that if the transfer were made the Court would have no jurisdiction to award costs when the money was ultimately transferred to those absolutely entitled, citing *Fisher* v. *Fisher*, L. R. 17 Eq. 340, and moved a cross motion to the effect that the money should be invested to the credit of the matter for which it was lodged.

Mr. George Atkins, for the Commissioners of Church Temporalities.

The VICE-CHANCELLOR refused to make an order in the form of the prayer of the petition, but made one, of which the curial part was as follows:—That the Accountant-General of this Court do invest the sum of £6,935 0s. 8d. cash, portion of the sum of £8,114 3s. 10d. cash, now standing in the books of the Governor and Company of the Bank of Ireland, to the credit of this matter, entitled in books of the said Accountant-General, "*ex parte* The Commissioners of Church Temporalities in Ireland, and to the credit of John Monck Croker, and Harriet Croker, widow, his mother and guardian, and all others interested in the

Digitized by Google

advowson of Athlacca and Croome, in the diocese of Limerick," in the purchase of Government new 3 per cent. stock, and transfer such stock, when so purchased, with the privity of the Accountant-General of this Court, to the like credit; and it is further ordered, that the said Accountant-General do invest the dividends to accrue due on said stock from time to time in the purchase of like stock, and transfer such stock when so purchased to the credit of *Croker* v. *Stein*, and the separate credit of the interest on the sum paid by the Commissioners of Church Temporalities, in compensation for the advowson of Athlacca and Croome, in the diocese of Limerick; and it is further ordered, that the Accountant-General do draw on the Governor and Company of the Bank of Ireland, out of the balance of said cash, in favour of Robert Reeves, the solicitor for Henry Stanley Monck Croker, for the sum of £4 cash, as and for his costs of applying in this motion; and it is further ordered, that the said Accountant-General do invest the residue of the said sum of £8,114 3s. 10d., remaining after the investment and payment aforesaid, in the purchase of Government new 3 per cent. stock, and transfer such stock, when so purchased, to the credit of the said cause of *Croker* v. *Stein*, and the separate credit on the sum paid by the Commissioners of Church Temporalities, as compensation for the advowsons of Athlacca and Croome, in the diocese of Limerick; and this Court doth declare the said Henry S. M. Croker entitled to the sum of £4 as and for his costs of appearing on this motion; and it is further ordered, that the said Commissioners do pay to the said petitioner his costs of the said petition, this order thereon, and proceeding thereunder, and all costs properly and necessarily payable under the Lands Clauses Consolidation Act, 1845, when taxed and ascertained.

Solicitors for the plaintiff: *Flood and Russell.*

Solicitors for H. S. Monck Croker: *Reeves and Sons.*

DONEGAL ASSIZES.

Reported by G. Hart, Esq., Barrister-at-Law.

(Before Whiteside, C.J.)

The Queen v. Doherty (1).

March 9, 10, 1874.—*Prisoner—Evidence—Inducement to confess by constable—Admission made after inducement.*

Where a prisoner had been told by a constable, at ten o'clock a.m., that it would be better for him to tell the truth, and not put people to the extremities he was doing, an admission by the prisoner to another constable, after six o'clock in the evening of the same day, was not allowed to be given in evidence, although the second constable had previously cautioned the prisoner.

The traverser was charged with the wilful murder of Mary M'Callion, at Muff, in Donegal, on Sunday, the 10th of August, 1873. A witness named Morrow was examined on the part of the Crown. He deposed as follows:—I am a sub-constable, and was stationed at Muff in August last. I was in charge of the prisoner on the evening of the 14th, after the inquest. He was in the kitchen of the police barrack, in my custody. I interrogated him in no way. He asked me could he see his father. I told him he could not, and for him not to say anything to criminate himself, for that anything he would say would hereafter come in evidence against him.

At this stage *Keys*, on behalf of the prisoner, objected to any further evidence of the conversation, on the ground that an inducement to confess had been held out to the prisoner by another constable in the earlier part of the same day. He then obtained leave to call sub-constable Darby, who deposed that he had had a conversation with the prisoner about ten o'clock in the morning of the 14th. The prisoner began by saying he wanted to speak to witness. Witness asked him had he been cautioned. Prisoner said "Yes, several times." Witness said to him, "It is better for you to tell the truth, and not put people to the extremities you are doing."

R. Johnston, Q.C. (with him *Hamilton*, Q.C., and *M'Gusty*).—The conversation with Morrow in the evening is admissible, from the length of time intervening, coupled with the fact that Morrow himself gave the prisoner a distinct caution. The effect of any inducement held out by Darby in the morning must have been completely removed from the prisoner's mind, and, therefore, what he said is evidence against him; *R.* v. *Lingate*, 1 Ph. Ev. 410; *Rosier's Case*, *ib*; *R.* v. *Clewes*, 4 C. & P. 224; *R.* v. *Richards*, 5 C. & P. 318.

Keys, *contra*.—After such an inducement, very strong evidence would be necessary to show that its effect had been removed; *Sherrington's Case*, 2 Lew. C. C. 123; *Meynell's Case*, *ib.* 123.

Whiteside, C.J.—If a person in authority—and it has been decided that a constable, having a prisoner in charge, comes within that definition—makes use of the expression proved to have been made to this prisoner, "That it would be better for him to tell the truth," it is as clear as light that any admission or confession afterwards made, under the influence of that inducement, should not be received. The Judges have held that it must be shown that the prisoner thoroughly understood that he could expect no gain from a confession. The subsequent caution must be shown to have had the effect of removing all such expectation from the prisoner's mind. I am not inclined in any way to relax that principle, and I am not satisfied that I should receive this evidence.

The jury were afterwards discharged without agreeing to a verdict, and the prisoner awaited his trial a second time at the next Assizes.

The Queen v. Doherty (2).

(Before Fitzgerald, B.)

July 21st, 22nd, 1874.—The prisoner was tried a second time on the before-mentioned charge, before Fitzgerald, B. Towards the close of the case for the prosecution, the evidence of sub-constable Morrow was again tendered against the prisoner, and was objected to on the same grounds as before.

[Fitzgerald, B.—After what took place at the last trial, I could not now receive this evidence without reserving the point, which I do not intend to do.]

Johnston, Q.C., referred to *The Queen* v. *Jarvis*, L. R. 1 C. C. 96; *The Queen* v. *Reeve and Hancock*, L. R. 1 C. C. 362.

Fitzgerald, B.—I do not think that I ought to receive this evidence. In every case, the whole depends on the opinion the Judge himself forms as to the admissibility of the evidence. All the facts must be considered, and I refuse to receive Morrow's evidence after what was said by sub-constable Darby.

The jury were, again, discharged without agreeing to a verdict.

Digitized by Google

LONDONDERRY ASSIZES.

Reported by G. HART, Esq., Barrister-at-Law.

(Before FITZGERALD, B.)

THE QUEEN *v.* DAVID DRIPPS.

March 12th, 13th, 1874.—*Prisoner—Postponement of trial*—21 *&* 22 *Geo.* 3, *c.* 11, *s.* 6 *(Ir.)*

A Judge of Assize has power, on the application of the Crown, and notwithstanding the prisoner's demand for an immediate trial, to postpone such trial a second time after bill found by the grand jury, without ordering the prisoner's release on bail, if satisfied that such postponement is necessary in order to secure the ends of justice.

Semble, *the second clause of the* 21 *&* 22 *Geo.* 3, *c.* 11, *s.* 6 *(Ir.), applies only to cases where the prisoner had neither been indicted nor tried at the first Assizes after his committal.*

Johnston, Q.C. (with him *Richardson*, Q.C., and *G. Hart*), applied for a postponement of the trial to the next Assizes.—The application was grounded on an affidavit made by Mr. Fitzgerald, the Crown solicitor, stating that a true bill for murder had been found against the prisoner at the Summer Assizes of 1870, and on the application of the Crown the case was postponed to the present Assizes; that on the 22nd of February, 1874, Mary and Margaret Ferrier were arrested, and charged with being accomplices in the murder; that they had been once or twice remanded, and were to be brought before the magistrates again on the 10th of March; that an indispensable witness for the Crown, Dr. Reynolds, owing to his having to attend as witness in other places, could not attend before the 17th of March; that the deponent was advised, and believed that a satisfactory trial of the prisoner could not be had till the result of the pending investigation should be known; and that "additional evidence may be forthcoming if the trial be postponed till the next Assizes."

William Irvine, for the prisoner.—We ask that the trial be proceeded with at this Assizes, or that the prisoner be discharged. He is ready for his trial, and has already been nine months in jail. The affidavit as to additional evidence is very weak, and shows no reasons for expecting that any new important evidence would certainly be procured before next Assizes. These Assizes will be concluded long before the 17th, and it would be most inconvenient to every one to have the trial then.

[FITZGERALD, B.—Under the Habeas Corpus Act* I have great doubt whether it is now in my power to postpone this case, and to keep the prisoner in jail till next Assizes.]

Johnston, Q.C., said that it was the constant practice to postpone the trial when the Crown showed on affidavit that such postponement was necessary in order to secure the ends of justice; the prisoner being charged with murder would not be admitted to bail.

[FITZGERALD, B.—I have no objection to trying the case on the 17th, but if you press me to postpone it till next circuit, and to detain the prisoner, you must show stronger reasons for my doing so, and satisfy me that it is within my power under the Habeas Corpus Act.]

The motion having stood over until the following day, James O'Connell, Head Constable, made an affidavit, stating as follows:—In September, 1873, he was told off to investigate the charge of murder against David Dripps, and also to connect therewith a charge against the two Ferriers of being accessories to the said murder, and had since been engaged in that investigation. Mary Ferrier, on the 16th June, 1873, purchased from Dr. Caldwell a pennyworth of white arsenic, stating that she required it for Miss Cavin. Margaret Ferrier gave the penny to her mother, Mary, stating that she had received it from Miss Cavin. Mary Ferrier gave Miss Cavin a harmless yellow powder, instead of the arsenic. An improper intimacy existed between David Dripps and Margaret Ferrier, and he had expressed an intention of taking her to live with him, and Margaret had said that she would give Mary Dripps something that would do for her. On June 18, 1873, Margaret Ferrier and David Dripps were seen in communication. David and his wife lived alone, and on bad terms with each other. On the morning of June 19th, Mary Dripps received a cup of tea from her husband containing poisonous matter, and died the same day from the effects of it. Dr. Reynolds, on analysis, found white arsenic in the stomach. On the 22nd February Mary and Margaret were arrested, and were now under remand, waiting the attendance of Dr. Reynolds and other witnesses. "If the case is adjourned till next Assizes additional evidence would be forthcoming."

FITZGERALD, B., said that he would postpone the case; on consideration, he did not think that the sixth section of the Habeas Corpus Act applied where the prisoner had already been indicted at a former Assizes. The second clause of the section seemed to apply only to the case of a prisoner who had been neither indicted nor tried at the first Assizes. He thought that he had power to postpone the case, and that sufficiently strong grounds for so doing had been made out by the Crown.

*Postponed accordingly.**

* The 21 & 22 Geo. 3, c. 11, s. 6 (Ir.); 31 Car. 2, c. 2, s. 7 (Eng.), provides that if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, and upon his prayer or petition in open Court, the first week of the Term, or first day of the Sessions of Oyer and Terminer, or General Gaol Delivery, to be brought to his trial, shall not be indicted some day in the next Term, Sessions of Oyer and Terminer, or General Gaol Delivery after such commitment, it shall, and may be, lawful to and for the Judges of the Court of King's Bench and Justices of Oyer and Terminer or General Gaol Delivery, and they are hereby required, upon motion to them made in open Court the last day of the Term, Sessions, or Gaol Delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appears to the Judges and Justices, upon oath made, that the witnesses for the King could not be produced the same Term, Sessions, or General Gaol Delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open Court, the first week of the Term, or first day of the Sessions of Oyer and Terminer and General Gaol Delivery, to be brought to his trial, shall not be indicted and tried the second Term, Sessions of Oyer and Terminer, or General Gaol Delivery after his commitment, or, upon his trial shall be acquitted, he shall be discharged from his imprisonment.

The point here raised was also raised in *R.* v. *Bowen*, 9 C. & P. 509, and there Williams, J., said that the Habeas Corpus Act must be humanly interpreted; the prisoner was indicted, but his trial must be subject to human contingency. *R.* v. *Beardmore*, 7 C. & P. 497, appears to be disapproved in *R.* v. *Osborne*, id. 799; *R.* v. *Guttridge*, 9 C. & P. 228. *Vide R.* v. *Chapman*, 8 C. & P. 558.—[*Rep.*]

* SUMMER ASSIZES, 1874.

July 30th.—David Dripps was tried before Fitzgerald, B., in Londonderry, found guilty, and sentenced to death.

August 3rd.—The two Ferriers were tried on the same charge, and were acquitted.

David Dripps was afterwards reprieved, and his sentence commuted to penal servitude for life.

Digitized by Google

CLONMEL ASSIZES.

Reported by JOHN E. WALSH, Esq., Barrister-at-Law.

(Before MONAHAN, C.J.)

In re SOUTH TIPPERARY PRESENTMENT, *ex parte* QUIRKE.

July 16, 1874.—*Grand Jury Act (6 & 7 Will. IV., c. 116—Presentment for a Chaplain to County Infirmary.*

The Grand Jury have no jurisdiction to present for a Chaplain to the County Infirmary.

Presentment for £40 to the Ven. Archdeacon Quirke, P.P., as remuneration for his services in attending to the spiritual wants of the inmates of the County Infirmary at Cashel. No chaplain had, in fact, ever been appointed, but Archdeacon Quirke had been in the habit of attending voluntarily for many years, and of rendering his services gratis. The presentment had been passed at Presentment Sessions, and the Grand Jury, having doubts as to its legality, referred the matter to the Lord Chief Justice for his opinion thereon.

Hemphill, Q.C., for Archdeacon Quirke.—The Grand Jury have jurisdiction to make the presentment, under the 85th section of the Grand Jury Act, as forming portion of the £700 there allowed to be presented for, for "the support and maintenance" of an Infirmary. Similar presentments have been passed unchallenged, for many years, in the counties of Clare, Galway, and Limerick.

[The foreman of the Grand Jury (Colonel Purefoy):—Dowse, B., at the Clonmel Spring Assizes, 1874,* refused to fiat an exactly similar presentment, holding that the Grand Jury had no jurisdiction to present for a chaplain to the County Infirmary.]

MONAHAN, C.J.—And I am of the same opinion. The presentment is clearly illegal.

WEXFORD ASSIZES.

Reported by JOHN E. WALSH, Esq., Baristerat-law.

(Before DOWSE, B.)

GORDON, Appellant; MURPHY, Respondent.

July 24, 1874.—*33 & 34 Vict., c. 46, s. 3—Holding valued under £10—Maximum claim for disturbance—Claim for improvements—Election.*

M., whose holding was valued under £10, claimed the maximum amount for disturbance, and also claimed for improvements, other than permanent buildings, and reclamation of waste land.

Held, *that both claims might be gone into in the first instance, the question as to the right to compensation for improvements to be settled after the case had been heard in its entirety.*

Claim for compensation for disturbance and improvements. Murphy, the claimant, held six acres of the lands of Ballingarrick, at the annual rent of £13, the holding being valued under £10. The chairman had awarded him two years' rent as compensation for disturbance, deducting a set-off of £1 10s. for rent due. The amount of the decree was £24 10s. The landlord appealed.

David Lynch, for the claimant, was proceeding to put forward a claim for improvements, other than permanent buildings and reclamation of waste land, when

John Gibson, for the landlord, objected.—The valuation is under £10, and more than five years' rent has been claimed for disturbance; therefore, the claim for improvements cannot be put forward.

David Lynch.—The case should be gone into in its entirety. A question may afterwards arise as to whether we can be allowed compensation for improvements.

DOWSE, B.—I think that the course pointed out by Mr. Lynch is reasonable, and I am disposed to adopt it.

The case was then proceeded with, and evidence on both claims was gone into. The decree of the chairman was reduced to one year's rent as compensation for disturbance, deducting £1 10s. for rent due, no compensation being allowed for improvements, and no costs.*

Attorney for the appellant: *Goff.*
Attorney for the respondent: *O'Flaherty.*

LAND SESSIONS.

Reported by CECIL R. ROCHE, Esq., Barrister-at-law.

(Before MATTHEW O'DONNELL, Q.C.)

PARKINSON *v.* THE EARL OF LONGFORD.

June 26, October 20, 1874.—*Landlord and Tenant Act, 1870, ss. 3, 4, 13—Claim for disturbance and improvement—Sale by administrator under order of Court of Chancery—Custom on estate against assignment—Purchase by trustee for benefit of administrator.*

Where administration was taken out to a deceased tenant, and the farm of the deceased was ordered to be sold by the Court of Chancery, the landlord of the estate objected to the sale of the tenant's interest, on the ground that the assignment of the tenant's interest, without the consent of the landlord, was forbidden by the custom of the estate; but, notwithstanding this, the landlord's agent was himself a bidder for the interest of the deceased, which was finally sold to the claimant under a secret trust for the administrator. The claimant was ejected by the landlord.

Held, *that the claimant was entitled to no compensation, having purchased as trustee for the administrator, who was still in possession of it.*

Semble, *that the custom of the estate could not oust the administrator's right of assigning the farm.*

This was a claim against the Earl of Longford, under sections 3 and 4 of the Landlord and Tenant Act, 1870, for compensation for disturbance, improvements, and unexhausted manures. At the trial, which took place at the Westmeath Land Sessions, the claim for compensation for disturbance was, with the permission of the Chairman, abandoned, more than four years' rent having been claimed, such claim not being permitted

* Clonmel, March 11th, 1874.—At the termination of his charge to the Grand Jury, Dowse, B., said:—"Three questions arise upon the presentments—1st, whether the Grand Jury has power to present for a sum of money to the Governor of the Gaol, to defray the costs of an action successfully brought against him (by a prisoner, in his custody as such Governor) for false imprisonment; I am clearly of opinion it has not; 2nd, whether it has power to present for a chaplain for the County Infirmary; I am equally clear it has not; and 3rd, whether growing trees are a subject for compensation, in case of malicious injury; in my opinion they are not."

In the second of these matters, *Hemphill*, Q.C., subsequently appeared for the Governor of the Gaol to support the presentment, and mentioned that, on his application, a similar presentment had been fiated by O'Brien, J., at Kilkenny Assizes, where an action brought against the Governor of the Gaol had failed, but the defendant could not realize his costs. as the plaintiff was a pauper.

DOWSE, B.—The case does not come within the wording of the Grand Jury Act, and I do not feel authorised to exercise a dispensing power.

* See *Dunally* v. *Hodgins*, 7 Ir. L. T. R. 181; *M'Nown* v. *Beauclerc. ib.* 188. *Cf.* judgment, *Burke* v. *Twinam*, ib. 201.—[REP.]

Digitized by Google

to be made in conjunction with a claim for improvements other than permanent buildings and reclamation of waste lands, where the claimant is tenant of a holding valued at a yearly sum exceeding £10, under the provisions of section 3. The total amount claimed was £262 10s. The facts of the case were as follows:—The lands in question formed portion of the Longford estate, and had been held by Ambrose M'Cauley as tenant from year to year under the Earl of Longford. On his death, which took place before the passing of the Landlord and Tenant Act, 1870, his brother, Robert M'Cauley, who had been living with the deceased and working the farm, was recognized as tenant by the Earl of Longford. After the passing of the Act the sisters of the deceased claimed a share in the farm; letters of administration were taken out by Robert M'Cauley, and an order, on administration summons, was made by the Master of the Rolls, directing a sale of the estate by auction; whereupon, the Earl of Longford served a notice to quit. At the auction, Mr. Stewart (a member of the firm of Stewart and Kincaid, land agents to Lord Longford), attended, and publicly stated that the notice to quit had been served, and that any person purchasing the interest in the lands would not be recognized as tenant to the Earl of Longford, as assignments by the tenants on the estate, without the consent of the landlord, was prohibited by a custom on the Longford estates. The lands were, however, put up for sale, and Mr. Stewart himself, notwithstanding the warning he had given, bid on behalf of the Earl of Longford for the purchase of the interest in the lands. The farm was, however, eventually knocked down to James Parkinson, the present claimant, for £215. Parkinson took possession of the farm, but was ejected by the Earl of Longford, and Robert M'Cauley was put into possession of the farm. On cross-examination, it was admitted by Parkinson that the money paid by him for the purchase of the farm was not his own, but was advanced to him on trust by Robert M'Cauley, who was himself incapacitated from becoming a purchaser by reason of his character of administrator to the owner of the interest.

C. Ribton Curran for the claimant. The alleged custom, by which the landlord claims the right of preventing assignment by the tenant without his permission, has not been proved in a satisfactory manner. Even if it were, Mr. Stewart, by himself bidding for the farm, has, as Lord Longford's agent, thereby impliedly authorized the sale and waived the custom. Such a custom could not interfere with the rights of an administrator to sell portion of the assets of the deceased, acting under an order of the Court of Chancery. Under those circumstances, the interest legally passed to the present claimant, who is in consequence entitled to compensation.

T. Pakenham Law, contra. The Earl of Longford is anxious to retain as his tenant the man so recognized before the Landlord and Tenant Act, 1870, passed, and he is now in possession, and the notice to quit was served in order to protect him from the vexatious litigation of the family. He advanced the money for the purchase, when the purchaser was forced by the Court of Chancery to lodge it, but not to purchase for himself, as he knew he was to be replaced in possession. He is now in possession of the lands as tenant to the Earl of Longford. Under those circumstances, it would be absurd to allow the claim for compensation. The custom against assignment without consent by the landlord having been shown to exist on the estate, and notice of it having been given at the sale, any person becoming a purchaser did so with full knowledge of the risk he was incurring, and cannot now claim compensation for the result of his persisting in the purchase, Mr. Stewart having only bid to prevent the litigation which has ensued from the sale.

Judgment reserved.

The CHAIRMAN.—This case, which came before me at the last Mullingar Quarter Sessions, is of a peculiar nature. The claimant, James Parkinson, is under-gamekeeper to Lord Longford. The farm was formerly held by Ambrose M'Cauley as tenant from year to year. On the death of Ambrose M'Cauley letters of administration to him were taken out by Robert M'Cauley, his brother, and the farm went into Chancery for the administration of M'Cauley's assets. By the order of the Master of the Rolls the farm was sold by public auction on the 29th March, 1873, and was purchased by Parkinson, the present claimant, for £215. At the auction, Mr. Stewart, of the firm of Stewart and Kincaid, agents for Lord Longford, objected to the sale on the grounds that by the custom of the estate no tenant had a right to assign his farm without the consent of the landlord, and relied on the 13th section of the Landlord and Tenant Act, 1870. Notwithstanding that objection having been raised by Mr. Stewart, he himself was one of the bidders for the farm before it was finally knocked down to the present claimant. Parkinson, in his evidence, admitted that the land was bought by him for Robert M'Cauley. It seems extraordinary that Parkinson should buy a farm for another man who was at that moment in possession of it, and then bring a claim for compensation for disturbance against Lord Longford in the face of his admission that he did not require the farm for his own use. I can clearly understand M'Cauley's motive in abstaining from bidding for the land. Having taken out letters of administration to his brother, he was precluded by a rule of the Court of Chancery from bidding for the farm;* and on that account he got Parkinson to bid for him. I do not think that the customs of the estate have anything to do with this case or are necessary for the defence. If the case turned on whether the land could be sold without the landlord's consent, and assigned to Parkinson, I should hold that it could, and decide against the landlord, Lord Longford. It is now settled by the authorities that where there is a covenant in a lease against assignment without the consent of the lessor, or if such be the custom of the estate, that a devolution of that estate by death is the act of Providence and not an assignment.† And in this case, the farm forming a portion of the assets of a deceased owner, the administrator of the deceased owner has a perfect right to dispose of it with the other assets of the deceased; *Seers* v. *Hind* 1 Ves. jun. 294, 2 Will. Ex. 6th ed., 880. But independent of authority, the 13th section of the Landlord and Tenant Act, 1870, upon which the counsel for the respondent relies, in its proviso expressly excepts from its enactments the devolution of a tenancy by operation of law upon an intestacy as has happened here, and no forfeiture of the interest in the farm happened by reason of such devolution. It is clear that Mr. Stewart had no right to object to the sale of the farm, but in consequence of his objection I believe, from the evidence of most respectable testimony before me, the interest in this farm, which was worth at least £400, was sold for £215. There, is however, a point which has arisen in this case which leaves me no option but to dismiss the claim. It was admitted that the farm was bought in trust for Robert M'Cauley, and he is still actually enjoying possession of it.‡ I am of opinion that a claimant under the circumstances of this case is not within the meaning and spirit of the Landlord and Tenant

* See *Kelly* v. *Kelly*, 8 Ir. L. T. R. 173.—[Ed., *I. L. T. Rep.*]

† *Cf. Norbury* v. *M'Donald*, 4 Ir. C. L. 137.—[Ed., *I. L. T. Rep.*]

‡ See *M'Neill* v. *Adams*, 8 Ir. L. T. Notanda, 501.—[Ed., *I. L. T. Rep.*]

Digitized by Google

Act, 1870, and is not entitled to compensation; and it will be for his Honor, the Master of the Rolls, if the matter in the administration of the estate of Ambrose M'Cauley be brought before him, to determine if such a sale should not be set aside as abortive. Let the claim be dismissed with costs.

Attorney for the claimant: *J. F. Goodman.*
Attorneys for respondent: *R. R. and S. Reeves.*

COURT OF BANKRUPTCY.

Reported by E. N. Blake, Esq., Barrister-at-Law.

(Before Harrison, J.)

In re Sir Charles Compton Domvile, a Bankrupt.

July 17, 18, 21, 24, 1874.—*Jurisdiction—Setting aside lease—Lessee not submitting to jurisdiction—Action by lessee against messenger of court—Injunction—B. A. Act*, 1872, *ss.* 6, 66, 68—*B. & I. Act*, 1857, *ss.* 19, 24.

Where a lease, executed by a bankrupt, is impeached as fraudulent by the assignees in bankruptcy, and the decision of the question of its validity or invalidity is necessary and expedient for the purpose of doing complete justice, or making a complete distribution of property, the Court of Bankruptcy has jurisdiction to decide the question, although the lessee refuses to appear and submit to the jurisdiction of the Court.

Where the lessee of a lease executed by a bankrupt, and impeached as fraudulent by the assignees in bankruptcy, brings an action of trespass against the messenger of the Court of Bankruptcy, in respect of an entry on the demised premises under the warrant of the Court, and the Court deems it expedient and necessary to decide the question of the validity or invalidity of the lease, for the purpose of doing complete justice or making a complete distribution of property, an injunction will be granted to restrain the further prosecution of the action, until the question of the validity or invalidity of the lease is decided, although the lessee refuses to appear and submit to the jurisdiction of the Court.

These were two motions made on behalf of the official assignees in this matter. The first motion was for an order that a lease, dated May 23rd, 1874, might be set aside as fraudulent and void against the assignees, and might be delivered up to be cancelled, and that the registry thereof might be vacated, on the grounds that the said lease was executed as a cover, and with a view to defeat and delay creditors, and without any *bona fide* intention that the same should be acted on or should take effect, and after the bankrupt had committed an act of bankruptcy, and in immediate contemplation of his leaving Ireland and remaining out of Ireland with intent to defeat and delay creditors, and on the further grounds that the execution of the said lease was, under the circumstances, an act of bankruptcy, and at a gross undervalue, and was in other respects fraudulent and void against the assignees of the bankrupt and his creditors.

The lease in question was made on the day of the date thereof, between the bankrupt of the one part, and R. Roberts of the other part, demising the mansion-house, demesne, and lands of Santry Court to R. Roberts, his heirs, executors, &c., from May 21st, 1874, and thenceforth during the life of the bankrupt, at the yearly rent of £60, payable on every 15th of October. Roberts then was, and for many years had been the confidential servant of the bankrupt, who was tenant for life of the demised premises, which contained 214a. 1r. 14p. statute measure, and were of the annual value of £686. Upon the day of the execution of the lease possession was delivered up to Roberts. Seven days after its execution the bankrupt (accompanied by Roberts) departed out of Ireland, with the intent to defeat and delay his creditors, upon which act of bankruptcy he was, on June 16, 1874, adjudicated a bankrupt. The notice of motion having, on July 14th, 1874, been served upon Mr. Froste, the solicitor who had prepared the lease, and who had acted as solicitor for Roberts in some other matters, Mr. Froste made an affidavit, in which he submitted that, as Roberts (who was still out of the jurisdiction) declined to appear and submit to the jurisdiction of the Court of Bankruptcy, that Court had not jurisdiction to declare the lease invalid, or to exercise the powers of a Court of Equity in relation thereto.

The second notice of motion was for an order that an action of trespass, brought by Roberts against Mr. R. D. Freeman, be stayed, and for an injunction to restrain Roberts from further proceeding with same; and was grounded upon (*inter alia*) the previous notice of motion. The action had been brought against Mr. Freeman for breaking and entering the above-mentioned premises under the warrant of the Court of Bankruptcy, directing him, as messenger of the Court, to enter into and upon any house and lands of the bankrupt, to search for and seize any goods or chattels of the bankrupt. The summons and plaint was served June 23, 1874, and the venue was laid in the county of Wicklow, the assizes in which were to commence July 27, 1874. Having first obtained an extension of time to plead, the defendant, on July 10th, pleaded traverses of the doing of the acts complained of, and of the plaintiff's title to the premises; and further pleaded that the acts complained of were done by him as a messenger of the Court of Bankruptcy in Ireland, in obedience to a warrant of the said Court duly issued, and that, before the commencement of the action, no demand of the perusal and copy of such warrant was made or left at the usual place of abode of the defendant by the plaintiff, or by his attorney or agent, in writing, signed by the party demanding the same. Notice of trial and issues were served by the plaintiff for the assizes, and the issues were returned approved of by the defendant, who served notice for a special jury, whereupon the plaintiff proceeded to prepare for said trial. On July 17, 1874, the official assignees instituted the motion to restrain the action (with the knowledge and consent of the defendant), and served the notice thereof on Mr. Froste, the plaintiff's attorney, who, in reply, made an affidavit objecting to the jurisdiction of the Court, inasmuch as Roberts declined to appear and submit thereto.

The motion to set aside the lease coming on to be heard on July 17th, 1874,

Macdonogh, Q.C., on behalf of Roberts, claimed the right to begin, contending that his position was equivalent to that of a defendant in equity on a demurrer or plea to the jurisdiction; *Earl of Derby* v. *Duke of Athol*, 1 Ves. 201.

Jackson, Q.C., *contra*, on behalf of the assignees, objected.

Harrison, J., allowed that, in analogy to the practice in equity upon demurrer to the jurisdiction, the party objecting to the jurisdiction should open.

Whereupon,

Macdonogh, Q.C., and *Purcell*, Q.C., (with them *Price*), contending that the Court had not jurisdiction to make the order sought, cited *Ellis* v. *Silber*, L. R. 8 Ch. 83; *Smallman's Estate*, 1 Ir. L. T. 65; *Crowe's*

Digitized by Google

Estate, 19 W. R. 372; *Ronayne's Estate*, 13 Ir. Ch. 446; *Rorke's Estate*, 9 Ir. Jur. N.S. 409; *Re Crosbie*,* Madden, L. E. C. A. 44; B. A. (Ir.) Act, 1872, ss. 1, 66, sched. A; B. & I. (Ir.) Act, 1857, s. 24; 12 & 13 Vict., c. 106 (Eng.) s. 12; 32 & 33 Vict., c. 71 (Eng.) s. 72.

Jackson, Q.C. (with him *Seeds*), *contra*, cited *ex p. Anderson*, L. R. 5 Ch. 473; *Stone* v. *Thomas*, L. R. 5 Ch. 219; *Phillips* v. *Furber*, L. R. 5 Ch. 746; *Ex. p. Rumboll*, L. R. 6 Ch. 842; *Latter* v. *White*, L. R. 5 H. L. 578, 587; *Re Nolan*, 8 Ir. L. T. R. 55, on app. not reported; † B. A. (Ir.) Act, 1872, ss. 6, 66; B. & I. (Ir.) Act, 1857, s. 19; L. E. Court Act, s. 37; 32 & 33 Vict., c. 71 (Eng.) s. 65.

Blake, *amicus curiæ*, referred to *re Motion*, *Maule* v. *Davis*, 22 W. R. 225 (*s. c.* L. R. 9 Ch. 192); and, as regards *re Nolan*, mentioned that John Nolan, as appearing on the records, had, on October 30, 1873, given an undertaking in Court to abide the order of the Court of Bankruptcy on that motion.

Judgment reserved.

The motion for an injunction came on for hearing July 21st, whereupon the same counsel for Roberts objected to the jurisdiction formally, offering no argument.

Jackson, Q.C., in support of the motion, cited *in re England*, L. R. 12 Eq. 207; *Re Sparke*, L R. 7 Ch. 20; *Re Thorpe*, L. R. 8 Ch. 743; *ex p. Hughes*, L. R. 12 Eq. 137; *ex p. King*, L. R. 17 Eq. 232; *Hely* v. *Kennedy*, 8 Ir. L. T. R. 26; De Mol. Pr. G., 6th Ed., 310; 2 Seton on Decrees, 3rd Ed., 869, 874; B. A. Act, 1872, s. 68. *Doe* v. *Ball*, 11 M. & W. 531, was also referred to.

Judgment reserved.

Harrison, J.—The adjudication in this matter was made on the 16th day of June last. Cause was shown against it and disallowed, on the 3rd day of July. It appeared that the bankrupt on the 23rd day of May, 1874, executed to Robert Roberts a lease of Santry Place and Demesne, for his own life, at the yearly rent of £60. On the 14th of July a notice was served, on behalf of the assignees, for an order that this lease might be s t aside as fraudulent and void, as against the assignees, on the grounds stated in the notice. [His Lordship read same.] On the 17th of July an affidavit was filed by Mr. Froste, solicitor for Mr. Roberts, in which he refers to an action which has been brought against Mr. Freeman, the messenger of this Court, by Mr. Roberts, for alleged trespass *quare clausum fregit*, upon the lands comprised in said lease, and to the defences pleaded in said action, which is now pending and for trial at the approaching Wicklow Assizes. In that affidavit (paragraph 4th) Mr. Froste submits that the plaintiff in the action, Mr. Roberts, is entitled to have the validity of his lease tried at common law, and that, as he declines to appear and submit to the jurisdiction of this Court, this Court has not jurisdiction to declare his lease invalid, or to exercise the power of a court of equity in relation thereto. On the 18th the motion came on for hearing, and the objection raised in the affidavit filed by Mr. Froste, which was in the nature of a demurrer to the jurisdiction of the Court, was argued—the merits of the case not being discussed.

On the 21st inst. a motion was made, on behalf of the official assignees, for an injunction to restrain the proceedings in the action pending for the Wicklow Assizes. Mr. Roberts appeared by counsel, again, to protest against the jurisdiction of the Court, and, after entering such formal protest, his counsel withdrew. Mr. Jackson, the counsel for the assignees, admitted that, unless the Court had jurisdiction to entertain the application to set aside the lease, the injunction could not be granted; but, assuming that the Court had such jurisdiction, he contended it was a proper case for granting the injunction.

The objections which were urged by Mr. Roberts' counsel to the jurisdiction of the Court, to entertain the motion to set aside the lease, are twofold:—1st, founded on the construction of the Irish Bankruptcy Acts of 1857 and 1872, and the distinction between their provisions and the analogous ones of the English Statutes of 1849 and 1869; and 2nd, founded on the construction of the 72nd section of the English Statute of 1869, similar to the 66th section of the Irish Act of 1872, which, it was contended, upon the recent decisions of the English Courts, does not confer the jurisdiction here sought to be enforced, even if the Irish legislation on the subject had been similar to the English. Upon the best consideration which I have been able to give to the case, I am of opinion that neither of these objections should prevail, and that this Court has jurisdiction, which it is bound to exercise when so required, to decide the question raised here, although the party sought to be affected refuses to come in and submit to its jurisdiction. As regards the first objection raised there is no doubt that a difficulty arises, owing to the different frame of the English and Irish Statutes. When the Bankruptcy Act, 1869, which now regulates the procedure in England, was passed, all preceding Bankruptcy Statutes were on the same day repealed, and the English Statute was thus left to form a distinct code applicable to bankruptcy administration. Now, section 12 of the Act of 1849 in England is similar in its terms to section 24 of the Irish Act of 1857, and there is no doubt that under these clauses the jurisdiction of the Court, as regards third parties, is confined to those who appeared and submitted to the jurisdiction of the Court. The jurisdiction, to use the words of Gifford, L.J., at page 479 of the report, in the case of *ex parte Anderson* (L. R. 5 Ch. 473), "is there in terms confined to persons actually within the bankruptcy, or coming and submitting to the jurisdiction;" and he then contrasts the 72nd section of the Act of 1869, analogous to the 66th section of the Irish Act, with the section he referred to. "If," he says, "we then turn to the 72nd section, the contrast in the terms is very strong. With respect to the word 'parties' there used, *Mr. Roxburgh* argued that it meant parties to the bankruptcy; but, in my opinion, it means parties to the litigation. The terms of this clause, in my opinion, give the Court complete jurisdiction to decide every question that it may be considered necessary to decide, with a view to the distribution of the bankrupt's estate." In that case it was held that, under the 65th and 72nd sections of the English Act, almost similar to the 6th and 66th sections of the Irish Act of 1872, the Court had power to restrain the sale of some property transferred by a deed which was impeached as fraudulent, and to decide upon the validity or invalidity of that deed against the party claiming it, notwithstanding his objecting that the Court had not the jurisdiction claimed. Now, turning to the Irish statutes, it is true that the 24th section of the Act of 1857 is left unrepealed by the Act of 1872, and by it the jurisdiction is confined, as regards third parties, to those "who appear and submit." The Act of 1872 is then passed, and section 66 enacts that, "subject to the provisions of the said Act—*i.e.*, of 1857—and of this Act, *and in addition to the powers conferred by the said Act*, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy or arrangement coming within the cognisance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and the Court shall not be subject to be restrained in the execution of its powers under the said Act or this Act by the order of any other Court, nor shall any appeal lie from its decisions except in the manner directed by the said Act; and if in any proceeding in bankruptcy or arrangement there arises any question of

* *Et cf. re Flynn*, 8 I. L. T. R. 112; *re Tierney's Estate*, *ib.*, 62; *re Denny's Estate*, *ib.*, 153; *Coulthurst* v. *Smith*, 29 L. T. N. S. 243, 714; *re Dixon*, L. R. 8 Ch. 555.—[*Rep.*]

† It is reported *infra*, p. 199.

Digitized by Google

fact which the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly, before one of the Judges of the said Court, in the same manner as if it were the trial of an issue in one of the Superior Courts of Common Law,"—using the very same words as occur in the 72nd section of the English statute. If the true construction of the words in the 72nd section of the English statute is to confer the power of binding third parties in regard to all questions necessary to be decided, for the purpose of doing complete justice or making a complete distribution of property, I am of opinion that the words of the section of the Irish statute which provide, that this Court shall have the powers conferred by that section, "*in addition to the powers conferred by the said Act*," also enable this Court to exercise the same full jurisdiction, and by necessary implication extend the power of binding all parties who might be necessary to be bound, notwithstanding the restrictive words contained in 24th section of Act of 1857. Do, then, the words in the English statute confer the power on the Court of Bankruptcy of deciding such a question as is raised here—viz., whether this lease is or is not a valid instrument, the party claiming under it refusing to submit to the jurisdiction of the Court? On this point I am of opinion, that the case of *ex parte Anderson* is an express authority that the Court of Bankruptcy in England (and, for the reasons I have stated, I consider this Court has the like authority) has jurisdiction to decide the validity or invalidity of the lease which is impeached, in the present case, as fraudulent and void as against the assignees, upon the proper proceedings being instituted for that purpose. In *ex parte Anderson*, the deed sought to be impeached was an assignment for value, of certain pictures and other property belonging to the bankrupt, by deed dated the 18th of December, 1869. On the 24th of December the bankrupt was adjudicated, on his own petition. The pictures were advertised for sale on the 18th March, 1870. The creditors' assignee alleged that the assignment was fraudulent, and made at an undervalue; and on the 11th of March he obtained the injunction *ex parte* to restrain the sale, which order was appealed from direct to the Lord Justice. The Lord Justice was of opinion that section 65 (analogous to section 6 of the Irish Act of 1872) clearly gives the Chief Judge complete jurisdiction—a jurisdiction, at least, as extensive as if he were sitting in the Court of Chancery, and dealing with a suit instituted by proper plaintiffs. After referring to the 72nd section in the terms I have before alluded to, he continues:—"The terms in this clause, in my opinion, give the Court complete jurisdiction to decide every question that it may be considered necessary to decide, with a view to the distribution of the bankrupt's estate. Is or is not the question, in the present case, one which it is necessary to decide with a view to the distribution of the bankrupt's estate? I am clearly of opinion that it is. I have no doubt it was the intention of the Legislature that the Bankruptcy Courts should be complete and sufficient in themselves; and that they should, for the purpose of making a complete distribution of the bankrupt's property, exercise, at least, all the powers possessed by any Judge of the Court of Chancery. Now, beyond all doubt, if the assignee had filed a bill, the Court of Chancery might have granted an injunction and afterwards decided the question whether the purchase was valid; and, that being so, I am of opinion that there was jurisdiction to make the order appealed from."

Now, in the present case, it appears that the lease was executed on the 23rd of May—seven days before the bankrupt left the country with the intent, as the Court has held, of defeating and delaying his creditors. The lease purports to be a lease of the mansion-house, demesne, and lands of Santry Court—[His Lordship read the parcels]—at the rent of £60 per annum, for the bankrupt's life. The lessee is the bankrupt's confidential servant, who left the country with him, and has not since resided on the premises. The annual value of the place is sworn to amount to £686 per anuum; and, on the motion for an injunction, it was proved that, the bankrupt having mortgaged his property to the Standard Insurance Company, in the month of June, 1872, a receiver over the property was appointed by the mortgagees, and he then attorned and became tenant to the mortgagees, at a rent of £686 per annum, for the premises comprised in this lease—the description in the receiver-deed of the premises being, "The mansion-house of Santry, with its outbuildings and appurtenances, and the demesne lands of Santry, containing, in the whole, 214a. 1r. 14p.," words almost similar to those contained in the parcels in the lease. The bankrupt is sworn to have been, at this time, indebted to the extent of £25,000 over and above the mortgage to the Standard Company, his surplus rental, for his life, being £3,000 per annum. The day after the adjudication, the present action is commenced against the messenger of the Court, for alleged trespass on the premises comprised in the lease, by the lessee thereunder, the trespass being the entry of the messenger, under his warrant in Sir. C. Domville's bankruptcy, on the lands of Santry. Upon these facts being set out in a bill filed in Chancery to set aside the lease, and substantiated by *primâ facie* evidence, the Court would, in my opinion, have granted an injunction to stay that action, upon proper terms, until the validity of the lease was decided. In the case of *Ex parte Cohen, in re Sparke*, L. R. 7 Ch. 20, it was decided that the Court of Bankruptcy had jurisdiction to restrain a creditor from bringing an action against the trustee under a liquidation—an action upon a bill of sale given by the debtor, the validity of which was disputed by the trustee, and the execution of which was eventually held to amount to an act of bankruptcy—and that the question as to the validity of the bill of sale must be determined in the Court of Bankruptcy. [His Lordship referred to the judgments of the L.JJ.] It is contended, however, that the case of *Ex parte Anderson*, which was cited in the last case, has been overruled by Selborne, L.C., in the case of *Ellis* v. *Silber*, L.R. 8, Ch. 83, and that that case decides that the Court of Bankruptcy has no jurisdiction to decide such a question as is raised here; and, undoubtedly, there are expressions in the Lord Chancellor's judgment which do appear to favour this contention, and certainly his observations in reference to Anderson's case would appear to show that he held that the jurisdiction in bankruptcy only attached, in that case, because the person claiming under the bill of sale had made certain arrangements with the bankrupt's creditors, and had, therefore, brought the matter, by his own acts and submission, under the administration in bankruptcy. I acknowledge that I cannot see the force of these observations in reference to the facts established in Anderson's case, although they do, undoubtedly, show the disinclination of the Lord Chancellor to extend the jurisdiction of the Court so as to bind third parties, unless under special circumstances. What was really decided in *Ellis* v. *Silber* was that the jurisdiction of the Court of Chancery was not taken away by the Bankruptcy Act of 1869, where a suit would, but for the fact of a bankruptcy, be fit to be entertained by the Court of Chancery; and I do not find that the Lord Chancellor professes to overrule *Ex parte Anderson*, although he does use the expressions I have referred to. The other case referred to of *Re Motion, Maule* v. *Davis*, L. R. 9. Ch. 192, before Lord Selborne and the Lords Justices, does not, in my opinion, conflict with Anderson's case. It was there held that section 72 of the Bankruptcy Act of 1869 does not enable the Court of Bankruptcy to draw within its jurisdiction property, or the owners of property, not vested in the trustee, and not originally subject to the administration in bankruptcy, and *a fortiori* does not authorise that Court to work out a decree which has been made in Chancery against such persons. But here the question is, whether or not this property really belongs to the assignees or to Mr. Roberts; and I think this Court is bound to hear and pronounce its decision upon that question as one essential for the proper purposes of the administration in bankruptcy of the bankrupt's estate. Nothing can be stronger than the expressions of the Lords Justices James and Mellish, in the case of *Ex parte Cohen, re Sparke* (L. R. 7, Ch. 20), in support of this view. There the grantee under bills of sale brought his

Digitized by Google

action against the trustee in the debtor's liquidation, for the goods comprised in the bills of sale. The county court judge restrained the action, and his decision was approved by the chief judge; and, on appeal to the Lords Justices, "I am clearly of opinion," says James, L.J., "that this is just the case to which the Act is intended to apply." [His Lordship read both judgments to the end.]

As the action now pending, which it is sought to restrain, is confessedly brought, against the messenger of the Court, merely for entering under his warrant on the lands comprised in the lease, which were ostensibly the bankrupt's property at the time of the adjudication, and as no special damage is alleged beyond the mere fact of such entry, I think such action should be restrained until the validity of the lease is determined—a proper undertaking being given by the assignees to institute proceedings by charge in this Court to raise this question, and to prosecute such proceedings, subject to the order of the Court, and also to abide any order the Court may make as to the payment of damages and costs, in case it should eventually be held, on appeal, that this order should not have been made, or in case the validity of the lease is upheld.

As regards the first motion which was heard, to set that lease aside, on the hearing of which the question of jurisdiction was raised and argued, I shall rule that the Court has jurisdiction to hear and determine the question; but that the Court pronounces no rule on the motion, being of opinion that the proceedings should be by charge and discharge. And, having regard to the very serious question which has been raised as to the jurisdiction of the Court, I think that in case an appeal is lodged, as it was stated it would, against this order and the order granting the injunction, then the proceedings on the charge should not be prosecuted pending the decision of the Court of Appeal on these questions.

The order upon the first motion was as follows:—"The Court being of opinion that it has jurisdiction to make such order, but it appearing to the Court that the case for impeaching the said lease of the 23rd of May, 1874, should be put forward by the assignees in a charge to be filed for that purpose, the Court doth make no rule on the said motion; and the assignees so undertaking, the Court doth order that they do file a charge for the purpose of impeaching the said lease of the 23rd of May, 1874, within one month from this date, to be discharged by the said Robert Roberts, if so advised, within ten days after the Court of Appeal in Chancery shall have pronounced judgment in any appeal from this order, or within one fortnight after the first day of next Michaelmas Term."

*The order upon the second motion was as follows**:—"The said assignees, by their counsel, undertaking to abide by any order this Court may make as to damages, in case this Court hereafter should be of opinion that the said Robert Roberts has sustained any, by reason of this order, which the assignees ought to pay: It is ordered that the said Robert Roberts, his attorneys and agents, he and they are hereby restrained from further prosecuting the action commenced by the said Robert Roberts against the said Richard Deane Freeman, in Her Majesty's Court of Queen's Bench in Ireland, in the notice of motion referred to, and from commencing any other action at law, or taking any other proceeding against the said Richard Deane Freeman for the cause of action in the said summons and plaint mentioned, until the further order of this Court. It is further ordered that the service of this order be substituted upon the said Robert Roberts by serving therewith Mr. Richard Pope Froste, the attorney for the said Robert Roberts in the said action."

Solicitor for Roberts: *R. P. Froste.*

Solicitors for the assignees: *W. Findlater & Co.*

* *Cf. Re an Arranging Debtor*, 7 Ir. L. T. Notanda 56; *re an Arranging Debtor*, 7 Ir. L. T, R. 17; *British Linen Co.* v. *Donovan*, *ib.* 81; *Hayden* v. *Goff*, *ib.* 152; Kisbey, B. Acts, 72.—[*Rep.*]

COURT OF CHANCERY APPEAL.

Reported by Miles V. Kehoe, Esq., Barrister-at-law.

In re Nolan, a bankrupt.

April 30, 1874.—*Voluntary conveyance—Setting aside as fraudulent*—10 *Car.* 1, *sess.* 2, *cap.* 3—*Jurisdiction*—35 & 36 *Vic.*, *cap.* 57, *s.* 66—20 & 21 *Vic.*, *cap.* 60, *ss.* 24, 26—*Evidence.*

Where a deed disposing of all the grantor's property was executed, without valuable consideration, by the grantor while indebted, and he, still owing some of the debts then due, became bankrupt shortly afterwards:—

Held (*affirming the order of Miller J.*, 8 *Ir. L. T. R.* 55), *that the deed was void as against the assignees in bankruptcy of the grantor, and that the lands thereby conveyed should be delivered up to the assignees.*

Appeal from an order of Miller, J., the curial portion of which was as follows:—"It is ordered by the Court, and hereby declared, that the indenture of lease, assignment, and bill of sale, bearing date the 19th day of January, 1871, made by James Nolan, the bankrupt in this matter, to John Nolan, is fraudulent and void against the assignees and creditors of the said James Nolan, the bankrupt in this matter. And it is further ordered that the said John Nolan do deliver up the said indenture to the assignees in this matter, to be cancelled. And it is further ordered that the said John Nolan do deliver up to the assignees in this matter possession of the lands and premises demised by said indenture. And it is further ordered that it be referred to the Chief Registrar to take the following accounts—1st. An account of the household goods and furniture, farming stock, crops, and implements of husbandry, and all other the goods and chattels assigned by the said indenture, or the proceeds of the sale thereof, which have been received by, or have come to the hands of the said John Nolan since the 19th day of January, 1871: 2nd. An account of all sums of money properly paid or expended by the said John Nolan out of the same, under the specific directions of the said James Nolan, the bankrupt, since the said 19th day of January, 1871. And it is further ordered that the Chief Registrar do set off the amount ascertained on the one account against the amount ascertained on the other account, and strike the balance, and report by and to whom the balance is payable. And it is further ordered that the said John Nolan do pay to the assignees in this matter their costs of this motion, properly and necessarily incurred when taxed and ascertained. And the Court doth reserve the question of the costs of the enquiries hereby directed, and further order, until the return of the Chief Registrar's report."

The facts of the case appear in the report of the case before the Court below, 8 Ir. L. T. R. 55, which was now referred to in the arguments.

Mr. E. Gibson, Q.C. (with him *Mr. Houston*), on behalf of the appellant. The assignment was for a good consideration of more or less value, and that being so, the intention to defeat creditors should be proved, and will not be presumed; *Freeman* v. *Pope*, L. R. 9 Eq. 206, L. R. 5, Ch. 544. It should have been shown that at the date of the deed the assignor was in insolvent circumstances; *Holmes* v. *Penny*, 3 K. & J. 90. The order was grounded on illegal evidence. The chief clerk's certificate and the decree should not have been received, as the other proceedings were not in evidence.

[Christian, L.J.—However that may be in theory, I believe it very often happens that the certificate is allowed to be given in evidence without the other

formal proceedings being put in. But it only proves the fact of such having been made—not the reasons for it as appearing on the pleadings. You might have produced the pleadings, if there were anything in them that could throw light on the matter.]

The bankrupt's statements and depositions should not be received to gainsay his own deed.

[CHRISTIAN, L.J.—They are admissible on the issue of fraud.]

The probate of the will of Bernard Nolan should have been put in, and the motion grounded on it.

[CHRISTIAN, L.J.—In your answering affidavit you ought to have at least called attention to the matters proposed to be traversed, and put them on strict proof. LAWSON, L.C.—Is a party in such case to accumulate expense, instead of assuming that those matters are admitted?]

The function of an affidavit is not as a pleading, to put facts in issue, but to act as evidence.

[CHRISTIAN, L.J.—Is it the practice of the Court of Bankruptcy to bring in third persons on a mere motion? In the exercising of this new jurisdiction, partaking somewhat of the solemnity of an equity suit, one would have expected that there would be something in the nature of pleadings, as by charge and discharge, and something in the nature of a process to bring in third persons.]

The jurisdiction to affect third persons conferred by the B. & I. Act, 1857, s. 24 (unrepealed), only extends to such as appear and submit to the jurisdiction. But that is only "so far as the assignees are concerned," which words limit the operation of the context. The Court has no jurisdiction whatever to make this order, directing the petitioner to deliver up possession of the lands; B. A. Act, 1872, ss. 66, 68, 75; B. & I. Act, 1857, s. 24.

[CHRISTIAN, L.J.—Has the Court power only to decide, and not to execute its decree? Was not the object in this respect of s. 66 of the Act of 1872, to obviate the circuity of proceeding previously necessary? If power is given to decide, does it not follow that the Court has power to execute its decree?]

That section only gives the power of decision and regulates the mode of decision, as by the Court itself, or a jury. We abandon the remaining reason of appealing as assigned, viz., as to costs being given against the petitioner, although not asked for by the notice of motion.

Mr. Walsh, Q.C. (with him *Mr. T. Pakenham Law*), on behalf of the respondents. The Court had full power to order the delivery up of the lands. The B. & I. Act, 1857, s. 26, provides for the enforcement of the orders of the Court.* That section and s. 24 of the same Act, and s. 66 of the B. A. Act, 1872, are to be construed together; B. A. Act, 1872, s. 1. But it is unnecessary to argue fully the question that might arise, had not the appellant submitted to the jurisdiction, for the appellant appeared and submitted to the jurisdiction; on November 28, 1873, he obtained time to answer H. Nolan's affidavit, on an undertaking then given in Court, to abide the order of the Court on the motion, and that the property assigned should not be removed. Had he not done so, the Court would still have had jurisdiction; but having done so, he cannot now question that jurisdiction. In the Court below no question of jurisdiction was raised. Having so submitted, the depositions in the bankruptcy proceedings are evidence against him. The evidence objected to was properly received; it was received subject to the judge selecting what he would act on; and irrespective of it, there was sufficient evidence to sustain the case. *Bird* v. *Lake*, 1 H. & M. 119. The deed was executed without consideration, the grantor having been indebted at the time, and still owing some of the debts then due; it disposed of all his property; and he became bankrupt shortly afterwards. It was, therefore, fraudulent and void as against the assignees; *Twynes case*, 1 Sm. L. C. 1; 10 Car. 1, sess. 2, ch. 3, sec. 10.

* *Cf. Re Fahy*, 7 Ir. Jur. N. S. 46.—[ED., *I. L. T. Rep.*]

SIR J. NAPIER, L.C.—I believe that, in this case, we have no difficulty in affirming the order of the Court below, 8 IR. L. T. R. 55. The question is merely one as to the validity of the deed of the 19th Jan., 1871. It is not the habit of Courts of Appeal to encourage appeals on questions of fact, especially where the Court below has had the superior advantages of a *vivâ-voce* examination of witnesses. Indeed, one of the greatest improvements which have been introduced into the proceedings in Chancery is the power given to the Court to have the witnesses examined before the Court itself. Now, there are generally a few cardinal matters of fact that decide a case like this. As in all cases of this kind, the outside is very finished and very pompous, and solemn words and forms of expression are used; so this deed also begins. But the Nolans appear all through to have had a certain understanding one with the other. "This indenture made 19th Jan., 1871, between James Nolan, of Myshall, farmer, of the one part, and John Nolan, of Old Ross, farmer, of the other part: whereas, the said James Nolan has agreed with his brother, the said John Nolan, to demise to him the lands hereafter described for the term of his natural life, at the yearly rent of £137 1s. 2d., and to assign and make over to him the household goods, farming stock and implements of husbandry, and all other the goods and chattels specified in the schedule hereunder written. Now this indenture witnesseth that, in part pursuance of the said agreement, and in consideration of the yearly rent and covenant hereafter expressed, and for other good and valuable considerations," etc. *Dolosus versatur in generalibus.* Was that a genuine deed, *bona fide* intended for the purpose of giving that property over, as a real and honest transaction between man and man? Now, as to the yearly profit rent, we have the following statement contained in the petition of appeal:—"On behalf of your petitioner, an affidavit filed by him on the 5th day of December, 1873, was read, and therein your petitioner deposed, among other things, that he is a brother of the bankrupt, whom he found, prior to the execution of the deed in question, living unhappily with said Hugh Nolan and wife, who were managing his farm for him; that the bankrupt was an aged man, 84 years old, unable to manage his farm, and unwilling any longer to leave it to another to be managed for him; that the bankrupt proposed to your petitioner to take both the farms at a bulk rent of £137 1s. 2d., with an option for the bankrupt, in lieu of the profit rent thus arising, to be supported, maintained, and clothed by your petitioner." So the profit rent disappears, and the substituted consideration is that the petitioner is to be supported by the appellant. "And this indenture witnesseth that, in further pursuance of the said agreement, and for the consideration aforesaid, he, the said James Nolan, doth by these presents bargain, sell, assign, and make over unto the said John Nolan, his executors, administrators, and assigns, all and singular the household goods and furniture, farming stock, crop, and implements of husbandry, and all other the goods and chattels specified in the schedule hereunder written;" and then comes this sweeping clause:—"And all other (if any) the goods and chattels of or belonging to, or usually held or enjoyed with the said lands, and all the estate, right, title, claim, and demand of the said James Nolan therein or thereto, and to every part and parcel thereof, and all benefit to be had or gotten thereby; to have and to hold, take, receive and enjoy the same and every of them, unto the said John Nolan, his executors,

Digitized by Google

administrators, and assigns, absolutely as his and their goods and chattels for ever." I turn again to the same paragraph of the petition of appeal; it says:—"Your petitioner did not get any of the chattels mentioned in the deed as originally intended, but same were sold by public auction by the bankrupt himself, and the proceeds, at his request, received by your petitioner and applied in payment of costs and other debts due by the bankrupt to his solicitor, your petitioner, and other persons." There we have all this pompous parade of words, assigning all the goods and chattels absolutely, but the bankrupt himself has them sold by auction, and some of the proceeds John applies to pay the debts of the bankrupt himself, and this was done by John, who had bought the farm, stock and all, out and out. Again, at the process in the Civil Bill Court, John is a witness assisting the other brother, in his own name, to recover the price of some of these goods which he had himself already assigned over. What was the status of the bankrupt at the time of the execution of the deed? There was a liability hanging over the bankrupt from the way in which he had managed the property of the minor children of Bernard Nolan. There were several other debts which it is unnecessary to specify. Yet John gets all the profit; and with regard to the minors, the very fund, out of which something would remain to make good the breaches of trust and spoliation of the trust fund which had been committed, that was all put into the hands of John as his own, that so he might use the deed for the purpose of protecting a fraudulent transaction. We must apply our common sense to such matters, and can we say that this was intended as a *bona fide* transaction? Although the subsequent acts of parties to a deed cannot conclusively control the estimation in which it should be held, yet there is no better exponent of their motives than to see how did they act after the deed was executed—tell me how they acted, and I shall tell you what they meant. The deed says nothing about an option of being maintained in the house, so here we have this grant of a profit rent paraded which was never paid, but was a mere shadow signifying nothing, and the conveyance of all the chattels was clearly a mere cover. These are a few broad, intelligible facts which seem to me to speak trumpet-tongued against the validity of this deed. I have no doubt that this order, made, as it was, with all the advantage of a parol examination, is perfectly right.

Lawson, L.C., and Christian, L.J., concurred.

Solicitor for the appellant: *W. K. Tully.*
Solicitor for the respondent: *T. C. Butler.*

COURT OF QUEEN'S BENCH.

Reported by S. N. Elrington, Esq., Barrister-at-law.

(Before Whiteside, C.J., O'Brien, Fitzgerald, and Barry, JJ.)

York *v.* M'Loughlen.

Nov. 9, 1874.—*Practice—Security for costs—Plaintiff resident in England—C. L. P. Act*, 1853, *s.* 52—*Judgments Extension Act*, 1868—*Special circumstances.*

In consequence of the Judgments Extension Act, 1868, *a plaintiff resident in England will not be required, by this Court, to give security for costs, unless special circumstances be shown to induce the Court, in its discretion, to order otherwise.*

White and Hart *v.* Carroll, 8 *Ir. L. T. R.* 63, *followed.* Clarke *v.* Croker, 8 *I. L. T. R.* 96; Hunt *v.* Smyth, ib., 203, *disapproved.*

Motion, on behalf of the defendant, for an order that the plaintiff be restrained from further proceeding in this action, until he should have given security for costs.

The action was brought by the plaintiff, who was a commission agent, against the defendant for £1,000 damages for slander, the plaintiff alleging that the defendant had spoken and published of the plaintiff, in relation to his trade and business and the carrying on and conducting thereof by him, that "he (meaning plaintiff) is a swindler, and is conniving with a bankrupt in Manchester to rob their creditors." The motion was grounded upon an affidavit by the defendant, stating that he was advised and verily believed he had a good defence to the said action upon the merits;* that the plaintiff resided at Manchester, in England, out of the jurisdiction of the Court; that he verily believed that the plaintiff was not a mark for costs, and that he was not possessed of, or entitled to any property, real or personal, within Ireland or the jurisdiction of the Court;† that the deponent on Oct. 6, 1874, obtained a judgment in the Court of Common Pleas at Lancaster (Manchester district) against the plaintiff for £33 4s. 4d., debt and costs, in an action brought by deponent against plaintiff to recover the amount of a bill of exchange drawn by the deponent and accepted by the plaintiff; and that, in the hope of being able to obtain full payment of said debt, his attorneys had to agree to accept the payment of the amount of such judgment by monthly instalments of £5 each, owing to the inability of the plaintiff to pay the entire amount at once, or to pay in larger instalments.

M'Corkell, in support of the motion.—The decision of this Court in *White* v. *Carroll*, 8 Ir. L. T. R. 63, has not been followed by the Courts of Common Pleas or Exchequer; *Clarke* v. *Croker*, 8 Ir. L. T. R. 96; *Hunt* v. *Smyth*, Exch., Nov. 7.‡

[Whiteside, C.J.—What would be the rule on a motion like this in Westminster Hall, if an Irish plaintiff were suing a person in England for damage either to his goods or his reputation?]

The motion would be refused, unless the case were distinguishable from *Raeburn* v. *Andrews*, L. R. 8 Q. B. 118. From *White* v. *Carroll*, it would appear that under special circumstances security might still be compelled. This being an action of tort, and the plaintiff having no visible means, the action would be remitted to the inferior Court, under C. L. P. A. Act, 1870, s. 6, were it not that he resides out of the jurisdiction, and would be at additional inconvenience and expense were the trial to be had at the Quarter Sessions of Londonderry, where the defendant resides, and where no more than £5 could be allowed as the expense of each witness. Consequently, the defendant has no redress against those costly proceedings, taken by a plaintiff who is no mark for costs, unless he obtain the benefit of the statutable protection sanctioned by the C. L. P. Act, 1853, s. 53.

[Fitzgerald, J.—The argument amounts to this merely, that the means of the plaintiff are limited.§

O'Brien, J.—It is not at all to be conceded that, even if he were within the jurisdiction, we would remit such a case to to an inferior tribunal. The plaintiff is charged with a serious fraud, and there only £40 could be recovered.]

This case is peculiar in this respect, that we cannot find that the plaintiff has any residence in England either.

* This averment was insufficient, and its insufficiency would have been, alone, ground for refusing the motion; *Ashworth* v. *White*, 5 Ir. L. T. R. 189.—[Ed., *I. L. T. Rep.*]

† See *Gaynor* v. *Short*, 8 Ir. L. T. R. 116; and 5 I. L. T. & S. J. 611.—[Ed., *I. L. T. Rep.*]

‡ Reported *infra* p. 203; *et vide Chessman* v. *Campbell*, *infra*, p. 203.—[Ed., *I. L. T. Rep.*]

§ See *Coleman* v. *Fayle*, 8 Ir. L. T. R. 88; and see Com., 8 Ir. L. T. 317.—[Ed., *I. L. T. Rep.*]

Digitized by Google

[BARRY, J.—That is a very material matter, and might form a special circumstance. But that fact is not sworn. WHITESIDE, C.J.—When the instalments fell due were they paid?]

They were not; but that is not sworn.

[BARRY, J.—As to his having no assets, that would apply equally whether he lived here or in England. But, that we do not now carry out the former practice as to requiring security for costs to be given, and regard a plaintiff living in England or Scotland as if he were living in Ireland, since the passing of the Judgments Extension Act, 1868, is a circumstance to be regarded in considering whether an action by a plaintiff living in England or Scotland should be remitted to the inferior court. FITZGERALD, J.—We have remitted cases in which the plaintiffs resided in England. WHITESIDE, C.J.—In Days Common Law Procedure Acts, p. 419, it is said that "by the Judgments Extension Act, 1868, 31 & 32 Vict., ch. 54, sec. 5, a plaintiff resident in Ireland or Scotland, is now relieved from the necessity of finding security for costs by reason of such residence, unless, under special grounds, a judge should order otherwise." The effect of that statute is, that if you succeed here, you get your judgment which may be enforced in England; and what more do you require?]

The defendant having a meritorious defence to the action, is entitled to have security given by the plaintiff, who has no visible means of paying the costs of the action.

There was no appearance *contra*.

WHITESIDE, C. J.—Counsel for the defendant is right in his argument that special circumstances must be shown, in order to induce the Court to grant such a motion. That is the rule laid down by this Court, not without consideration, in the case of *White* v. *Carroll*, 8 Ir. L. T. R. 163; and the question is whether such special circumstances have here been shown? I have the highest respect for what is decided by any Court of co-ordinate jurisdiction. But although our decision has not been adopted elsewhere, we have a well-considered decision of the Court of Queen's Bench in England (*Raeburn* v. *Andrews*, L. R. 9, Q. B. 118), holding that, under existing circumstances, no Scotchman nor Irishman—and this is the true spirit of the union—suing in Westminster Hall, shall be dealt with as if he were a native of Nova Scotia or Russia, but that, as security is given by the fact that the moment the defendant gets a judgment in England he can register it here and issue execution thereupon, his rights are maintained;—and what more could the Court do if the judgment were obtained and entered in Ireland? The reason of that decision applies to the state of things appearing in this case. If an English merchant sells goods in Ireland and endeavours to recover the value from a defaulting debtor, the first thing with which he is met is a motion to lodge money for the benefit of the defaulter, and to embarrass the plaintiff in his attempt to get his just demand. In this case the plaintiff, a commission agent in England, complains that he was slandered by an imputation of complicity in a serious fraud; and if any action of slander is to be encouraged, it is one of this description. I am not disposed to abandon lightly the decisions which we have made upon a matter of practice. It is true that if there be special circumstances, we might grant the rule now sought; but what are the circumstances set forth? That the defendant has not realized the amount of a judgment recovered against the plaintiff in the Court of Common Pleas at Manchester, and was obliged, from the plaintiff's position in trade, to agree to accept the debt by instalments, which agreement it is stated had not been kept, and therefore the defendant thought himself entitled to the order for which he applied. If he meant to show that the plaintiff was insolvent, he should have so stated in his affidavit. It is said that the plaintiff's address is not known; if so, and if he had absconded, that should have been stated directly, and we would have taken into account that special circumstance. But we think that there is neither principle nor expediency in now compelling English or Scotch plaintiffs to give security for costs in ordinary cases, when they come to this Court to assert their rights.

O'BRIEN, J.—In the case before the Common Pleas, *Clarke* v. *Croker*, 8 Ir. L. T. R. 96, a distinction was taken by Monahan, C.J., between interlocutory costs and the costs on final judgment, and he considered that one reason for requiring security for costs was that, if interlocutory costs were awarded, payment might be enforced by attachment if the plaintiff were within the jurisdiction, but the defendant lost that benefit if the plaintiff were out of the jurisdiction. That is, when the plaintiff is ordered to pay them personally. I do not think that this is a sufficient reason to depart from the rule we have already made, and I consider that there are no special circumstances in this case. As to remitting those actions, we have power to do so, notwithstanding the fact that the plaintiff resides out of the jurisdiction.

FITZGERALD, J.—I concur with my Lord Chief Justice and my brother O'Brien in adhering to our former decision, which was based upon a broad and substantial ground, and which is quite in accordance with the practice in England. It is said that the 52nd section of the C. L. P. Act, 1853, makes a distinction. And it remains for us to consider whether that section does make any difference. The practice in England is, now, not to require security for costs in such a case as that which is as present before the Court. And perhaps, a plaintiff in England, suing here, has a stronger claim to protection, in this respect, than if he were an Irish subject suing in England, as the English Courts have not the same power of directing service of process to be substituted on a defendant, when resident in Ireland, as the Courts in this country have of ordering substitution of service on English defendants. It comes to this, that while a plaintiff residing in England is prevented from suing in Ireland, when he cannot give security for costs, he cannot sue in England either, as he could not get an order in England to serve a party residing here. It remains for us to consider only whether the 52nd section of the C. L. P. Act, 1853, makes any difference. A popular error has crept in, that the practice of requiring security for costs by plaintiffs out of the jurisdiction depends on the statute or common law. It is judge-made law. For the protection of suitors, when the judgments of the Irish Courts could not be enforced in England, it was declared that a plaintiff not residing within the jurisdiction should give security for costs. In that we but adopted the English practice; and our decision, altering that practice, rests upon the same ground as that on which the analogous English decision depends. The maxim *Cessante ratione legis cessat ipsa lex* applies.

Let us see whether the 52nd section makes any difference. An alteration in common-law procedure had taken place. Formerly the first step to be taken by a defendant was to appear, and after a certain number of days he filed a declaration, but the Common Law Procedure Act made the alteration, that the defendant would not be called upon to appear until he came into court with both appearance and defence together, as one and the same. In consequence, it would have been late then to apply for security for costs, because the practice was that, once the defendant filed his defence, security for costs would not be ordered. In order to remedy that, the Act provides that any defendant who was served with a summons and plaint should thereupon be deemed to be in court, for the purpose of making application to compel the plaintiff to give security for costs; no such order, however, to be made unless upon a satisfactory affidavit of merits. This fictitious presence of the defendant in court was thus created to give him this opportunity. The whole of this amounts, merely, to a statutable recognition of the existing practice as to requiring security for costs. That does not require an Act of Parliament in order to abrogate the practice. The

Digitized by Google

decisions of the Courts of Common Pleas and Exchequer seem to go to this extent—that until an Act of Parliament shall have displaced the 52nd section, we must go on compelling a plaintiff, resident in England or Scotland, to give security for costs, although our judgment here is as effective, and may be as effectually enforced in England or Scotland as if the plaintiff were living in Ireland. I am still of opinion that our former decision was based upon good sense; that it stands upon a broad and practical ground, and lays down a convenient and expedient rule; and I have not seen anything in the decisions of the Courts of Common Pleas or Exchequer, especially in the case quoted, in *Hunt* v. *Smith*, in the latter Court, from Ball and Beatty's Reports, to lead me to think that our decision in *White* v. *Carroll* was erroneous.

BARRY, J.—I was not present when the decision was made in the case of *White* v. *Carroll;* therefore my view as to the question might not be very material, because I would not think of suggesting to my brethren to arrive at a different conclusion, even were I to believe that decision to be wrong. But I do not think that it was wrong. I have not heard anything urged at the bar, nor have I read anything to induce me to say that we should adopt a rule different from that which has been now laid down, and which is followed in England. It has been put forward, in *Hunt* v. *Smyth*, that when an Act corresponding with the Judgments Extension Act was passed for the Court of Chancery it was held not to interfere with the old practice in Chancery as to requiring security for costs. I confess that, if this question came before us *res integra*, I would consider, with the Lord Chief Baron, that this did furnish a strong argument, by analogy, against holding that the Judgments Extension Act dispensed with the requirement of security for costs; but the question did not originally, nor does it now, come before the Court as *res integra*. It arises after a fully-considered decision of the Court of Queen's Bench in England, that, since the Judgments Extension Act, the practice of requiring security for costs should be in such cases dispensed with. It would introduce an unfortunate state of things if there were not a reciprocal practice in this country, nor is there any reason why we should not adopt the practice acted on by the Court of Queen's Bench in England. As to the 52nd section of the C. L .P. Act, 1853, it is nothing more or less than a recognition of an existing practice, and, by it, provision has been made to prevent the practice from being overturned by the other provisions of that Act, the motive being that in cases where security for costs may be given the provisions of the 52nd section shall come into operation.

No Rule.

Attorney for plaintiff: *James Hayden.*
Attorney for defendant: *J R. Neely.*

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-law.

(Before MONAGHAN, C.J., KEOGH, and MORRIS, JJ.)

CHEESEMAN v. CAMPBELL.

Nov. 6, 1874.—*Practice—Security for costs—Plaintiff resident in England—Judgments Extension Act* (31 & 32 *Vict.*, c. 54)—*C. L. P. Act*, 1853, *s.* 52.

A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, *is entitled to obtain an order to stay proceedings in an action brought by a plaintiff living in England, until security for costs has been given, where a satisfactory affidavit is made that the defendant has a defence upon the merits.*

Clarke *v.* Croker, 8 *Ir. L. T. R.* 96, *followed.* White *v.* Carroll, ib. 63, *not followed.*

Motion, on behalf of the defendant, that the proceedings in this action be stayed until the plaintiff should give security for costs, under C. L. P. Act, 1853, s. 52. The action was brought to recover £51 15s., the price of goods sold by the plaintiff, who resided in London, to the defendant who lived in Belfast. After the preliminary notice and notice of motion were served, the defendant had pleaded, lodging £21 in Court, and traversing the rest of the causes of action; and had served notice that such defence was without prejudice to the motion. The motion was grounded on an affidavit of merits.

Weir, in support of the motion, cited *Clarke* v. *Croker*, 8 Ir. L. T. R. 96.

Lane, *contra*, cited *White* v. *Carroll*, 8 Ir. L. T. R. 63; and mentioned that the Court of Exchequer had the question involved in those conflicting decisions under consideration, in *Hunt* v. *Smith*.*

Per CURIAM.—We shall follow the decision in *Clarke* v. *Croker*, at all events until there has been a meeting of the judges, and a determination come to that the practice should be changed.

Motion granted.

Attorneys for the plaintiff: *H. & W. Seeds.*
Attorney for the defendant: *John Dunne.*

COURT OF EXCHEQUER.

Reported by GEORGE A. KELLY, Esq., Barrister-at-law.

(Before PALLES, C.B., FITZGERALD, DEASY, and DOWSE, BB.)

HUNT v. SMYTH.

Nov. 3, 7, 1874.—*Practice—Security for costs—Plaintiff resident in Wales—Non-statement of plaintiff's residence, in affidavit to ground motion—Judgments Extension Act*, 1868—*C. L. P. Act*, 1853, *s.* 52.

When a plaintiff, served with a preliminary notice requiring him to give security for costs, alleging that he resides out of the jurisdiction, does not contradict that statement, and his residence is so described in the summons and plaint, it is not necessary to state that he so resides, in an affidavit to ground a motion for security for costs.

A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, *is entitled to obtain an order to stay proceedings in an action brought by a plaintiff, resident in Wales, until security for costs has been given, where a satisfactory affidavit is made disclosing that the defendant has a defence upon the merits.*

Clarke *v.* Croker, 8 IR. L. T. R. 96, *approved.* White *v.* Carroll, 3 IR. L. T. R. 63; Raeburn *v.* Andrews, L. R. 8, Q. B. 118, *disapproved.*

Motion under the C. L. P. A., 1853, s. 52, to compel a plaintiff, residing out of the jurisdiction, to give security for costs. The action was brought by Edward Darcy Hunt, described in the summons and plaint as residing at Cardiff, in the County of Glamorgan, Wales, against the defendant for breach of contract in not accepting a cargo of coals. The motion was grounded upon an affidavit disclosing a good defence on the merits, but not containing any reference as to the residence of the plaintiff.

Seeds, for the defendant, in support of the motion.

Peet, for the plaintiff, *contra.*—It is not stated in the defendant's affidavit that the plaintiff resides out of the jurisdiction. The statement in the title of the summons and plaint is not enough, as the plaintiff might have various residences. A defendant seeking security for costs should make a complete case on affidavit. Since the pas-

---

* See next case, and *York* v. *M'Loughlin*, *ante*, 201.—[Ed., *I. L. T. Rep.*]

Digitized by Google

sing of the Judgments Extension Act, 1868, a plaintiff should not be compelled to give security for costs, merely by reason of his residing in England or Scotland; *White* v. *Carroll*,* 8 Ir. L. T. R. 63. That case, decided by the Court of Queen's Bench, was not followed by the Court of Common Pleas in *Clarke* v. *Croker*, 8 Ir. L. T. R. 96; but the decision of the Queen's Bench rests upon sounder principle, and, in following *Raeburn* v. *Andrews*, L. R. 9 Q. B. 118, has the greater weight of authority. The history of the rule requiring security for costs to be given by a plaintiff is stated in 1 Tydd's Prac., 534, quoted by Archibald, J., in *Raeburn* v. *Andrews*. The employment of a second attorney is not necessitated by the Judgments Extension Act; once judgment is obtained here, the Irish solicitor can send the certificate by post to the master of the English court.

[Dowse, B.—Do you mean to say that the Master there would issue execution on it, on such a communication?]

It would be competent to him to do so. Before the Act, an action would have to be brought on the judgment, and many difficulties might arise in the service of the plaint; now, only execution remains to be done. The reason why security for costs was ordered to be given was that it might prevent notorious failures of justice—defendants, though succeeding in actions, failing to recover their costs. There is no greater hardship in a defendant having to issue execution in England than in Ireland.

[Fitzgerald, B.—I apprehend that the reason of the practice was that the Court had not power, of itself, to enforce its own process against plaintiffs resident abroad. Dowse, B.—A difficulty I feel very much is as to the 52nd section of C. L. P. A., 1853. Suppose that there were nothing else but that section, might it not of itself be sufficient to warrant such motions as this? Is it not going a long way to contend that the 52nd section is repealed, because the Judgments Extension Act gives another remedy?]

That section is merely a statutory recognition of the previous practice, and leaves such applications in the discretion of the Court. If it were obligatory it would equally apply to all plaintiffs; but some plaintiffs, on the contrary, are privileged and need not give security, for instance, peers of the realm; *Marquis of Donegal* v. *Ingram*, 5 Ir. Jur. 395; *Earl of Kingston* v. *Sheehy*, Hay. & Jon. 358.

Seeds, in reply.—As regards the plaintiff's residence, the preliminary notice for security served on the plaintiff required same, "inasmuch as you live out of the jurisdiction."

[Dowse, B.—It was open to him to contradict that statement, but he has not done so. Palles, C.B.—We must take the residence of the plaintiff as described in the plaint as being correct.† Address yourself to the remaining question.]

Motions to compel plaintiffs, residing out of the jurisdiction, to give security for costs are here made under the authority of a statute; C. L. P. A., 1853, sec. 52. In England the practice is merely a matter of usage, and differs much from the Irish practice. A motion such as this could be made in England without an affidavit of merits.

[Fitzgerald, B.—The C. L. P. A., 1853, sec. 52, is founded on the former practice.]

The practice prior to 1853 was similar to the present. In *Clarke* v. *Croker*, the Common Pleas refused to alter the present practice; and it was there argued that interlocutory costs awarded here could not be recovered in England under the Act of 1868.

[Dowse, B.—There appears to be no provision in the Judgments Registration Act for the registration of certificates for interlocutory costs.]

The statute says—"where judgment shall hereafter be obtained." In *Garod* v. *Halliday*, 4 Ir. L. T., 551, this Court refused to direct the Master to give a special certificate where the costs had been awarded by an order, on the ground that the statute was conversant only with judgments. In *Coleman* v. *Fayle*, 8 Ir. L. T. R. 88, this difficulty was recognised, but not overcome, by Fitzgerald, J. Even if such costs were made invariably costs in the cause, there would be no way of so recovering them if the action never proceeded to final judgment. A defendant would be obliged to go to the expense of employing an English attorney to register his judgment, who is not an officer of this Court.

[Fitzgerald, B.—The master of the Court in England is not an officer of this Court, and we have no jurisdiction over him. Palles, C.B.—The course necessitated would come practically to the same thing as if he had to bring an English action on the judgment.]

The certificate required by the Act must be "produced" to the Master of the Court in England; evidently it would not do to send it by post. If the statute contemplated any change in the practice, the express provision in the 5th section would not be confined to costs incurred in proceedings taken on the certificate. It does not clearly appear what the "special circumstances" referred to in section 5 may include. It was considered in *Coleman* v. *Fayle*, that poverty was not a special circumstance. It is clear that under that section the defendant, even if he proceeded to register and enforce his judgment in England, might still be required to give security for costs, and might so lose that remedy.

Cur. adv. vult.

Palles, C.B.—In this case an application was made on behalf of the defendant to compel the plaintiff, who resides out of the jurisdiction, to give security for costs. The case was argued before us on a former day, when the questions which arose were disposed of, with the exception of that as to the effect of the Judgments Extension Act, 1868. In my opinion the motion ought to be granted. The 1st section of that Act is as follows:—[His lordship read the section]. The contention of the plaintiff's counsel was that, as this statute gives an effectual remedy to the defendant by enabling Irish judgments to be enforced in England, the reason for requiring security for costs to be given has ceased, and that the practice should therefore cease. We have to ask ourselves what was the reason and origin of the practice. It is not to be found in the absence of a remedy for the recovery of costs against a party to the action residing in England. It was always possible for a defendant, obtaining a judgment for his costs in this country, to recover them by an action on the judgment in England; but that remedy was capable of being enforced not by the Court in this country, where the costs were awarded, but, by a Court in the country where the plaintiff resided. It was not a remedy by which the Court could, by its own process, do full justice to a defendant impleaded here by a plaintiff resident abroad, nor was it carried into effect by means of its own officer. In *Pray* v. *Edie*, 1 T. R. 267, Buller, J., states, as the reason of requiring security, that "if a verdict be given for the plaintiff, he

---

* See *York* v. *M'Loughlen*, *ante*, 201; *Chessman* v. *Campbell*, *ante*, 203.—[Ed., *I. L. T. Rep.*]

† See note to *Barrett* v. *Fowler*, 6 Ir. L. T. R. 24.—[Ed., *I. L. T. Rep.*]

Digitized by Google

is not within reach of our law so as to have processes served upon him for the costs." And in *The Kilkenny and Great Southern and Western Railway Co.* v. *Fielden*, 6 Exch. 86, Alderson, B., says "a plaintiff is compelled to give security for costs, because he cannot be fixed by the direct process of the Court." The practice of the courts of equity, requiring security for costs from non-resident plaintiffs, is founded upon the same reasons. "Security for costs," says Sir John Leech, M.R., in *Lord Aldborough* v. *Burton*, 2 M. & K. 403, "is to be given when the plaintiff is out of the jurisdiction of the Court, because costs in such cases cannot be recovered by the process of the Court." If this be the true reason, it still remains in full force, for the Judgments Extension Act does not extend the limits of the existing jurisdiction, but merely substitutes a new and inexpensive method of procedure, by registering in England a certificate of the Irish judgment, which is to have the full force and effect of a judgment originally recovered in England. In principle these forms of procedure are, practically, identical. Each of them requires a proceeding to be had in another Court, to do that which the Court here was unable to effect. Therefore, the reason for requiring security to be given still exists, and the foundation of the plaintiff's argument fails. Although this question did not arise at common law until after the passing of the Act of 1868, an analogous question, as regards the practice of the Court of Chancery in this respect, arose half a century ago. As regards the courts of equity, a statute was passed, in 1801, very similar in its effects to that now passed for the courts of common law. [His lordship read 41 G. 3, c. 90, ss. 5 & 6.] If the argument urged on behalf of the plaintiff here is correct, security for costs should not, since the passing of that Act, have been enforced by the Courts of Chancery in England or in Ireland. And yet on the contrary, notwithstanding the Act, the practice continued unchanged. Nor was this *per incuriam*. In 1814 the question now before the Court was argued before Lord Manners, in *Mullet* v. *Christmas*, 2 B. & B. 422. There, Mr. Thomas Ball contended for the plaintiffs that the reason for the practice had ceased in consequence of the passing of that Act, and that, therefore, the practice should cease; but counsel for the defendants, in support of the practice, was not called on in reply. The Lord Chancellor stated that, in his opinion. the practice of the Court requiring security for costs was not intended to be altered by the Act of Parliament referred to, and that if it were so intended a proviso to that effect would have been introduced into it. That is a decision that an Act of Parliament, enabling the process of a Court in this country to be enforced by means of the process of another Court, not in this country, does not interfere with the practice of requiring security for costs to be given by suitors not resident in this country. In Ireland the practice still prevailed. In England, too, that practice still prevailed. This continuance of the practice after the passing of a statute so analogous to the Judgments Extension Act, appears to me to furnish strong reasons why we should not hold that this practice should now be altered in consequence of the latter Act. Upon those grounds I cannot concur in the reasoning on which the decision of *Raeburn* v. *Andrews*, L.R., 9 Q.B., 118, was founded; and I am, therefore, coerced to dissent from the decision of the Court of Queen's Bench in *White* v. *Carroll*. I consider that the judgment of the Court of Common Pleas in *Clarke* v. *Croker* is right in principle, and ought to be followed by this Court, and that the ordinary order for security for costs should be made. I may add that I have not adverted to section 52 of the Common Law Procedure Act, 1853, as my judgment rests upon grounds which rendered it unnecessary to consider the question as affected by that section.

Dowse, B.—I concur in the judgment of the Court, delivered by my Lord Chief Baron. It would be unnecessary to add anything to what he has said, were it not that I wish to state that I, myself, in addition, attach great importance to the bearing of the 52nd section of the Common Law Procedure Act, 1853. That is a statutable enactment recognising, if not entitling the defendants to security for costs, and nothing but a statute can remove it. The maxim *cessante ratione legis cessat ipsa lex* is one which is, no doubt, properly held applicable as regards common law; but, I think, it is a very dangerous doctrine to apply to the construction of statutes, and, for my part, I am not disposed so to apply it.

Fitzgerald and Deasy, BB., concurred.

Motion granted.

Attorney for the plaintiff: *Joseph H. Townsend.*
Attorney for the defendant: *Henry Oldham.*

VICE-CHANCELLOR'S COURT.

Reported by E. F. Beatty, Esq., Barrister-at-Law.

(Before Chatterton, V.C.)

In re Fegan's Settlement (1).

Nov. 11, 1874.—*Practice—Leases and sales of Settled Estates Acts—Appointment of guardian to infant petitioner—Petition presented.*

A special guardian to an infant petitioner, under the Settled Estates Acts, may be appointed after the petition has been presented.

Motion for appointment of special guardian for infant petitioners.

The petition in the matter had been presented to obtain an order that a proposal for a lease, in the petition mentioned, should be carried into effect; that the lease of the premises, being part of a settled estate comprised in the will of Daniel J. Fegan, deceased, should be authorised to be made to the Commissioners of Admiralty, at the yearly rent of £25, for the term of 90 years; that power to grant a lease, in conformity with the Acts 19 & 20 Vict. c. 120; 21 & 22 Vict. c. 77; 27 & 28 Vict. c. 45; and 1 Will. IV. c. 65, should be vested in Patrick O'Dowd and Martin J. Fegan, and that they should execute the lease; and that the said lease should be subject to the conditions and restrictions in the said Acts contained; and in addition thereto, should contain such covenants and stipulations as the judge should approve.

An affidavit was made by Patrick O'Dowd, which, *inter alia*, set forth that the testator had bequeathed all his property to his daughter, Mary Hanley Fegan, absolutely for her own use and benefit, but that she should not get the possession of it until she should attain the age of 21 years, or marry with the consent and sanction of the trustees appointed in the will, or the majority of them, with a proviso that in the event of her wishing to become a nun, or dying before marriage or before she attained 21 years of age, all her property, with the exception of £1,500, should go among certain persons mentioned in the will. Mary H. Fegan was an infant, and at the time of presenting the petition no guardian to her had been appointed.

Mr. H. O'Neil Burke now moved that a special guardian should be appointed for the infant petitioners, notwithstanding the filing of the petition.

[Chatterton, V.C.—In Morgan's Chancery Practice and in Daniel's Chancery Practice, the rule is stated to be that the order appointing a guardian must be obtained before the petition is presented.]

There is no settled practice on the subject. In *Re Longstaffe's Settled Estates*, 1 Dr. & Sm. 142, a petition had been presented under the Settled Estates Acts (1856), 19 & 20 Vict. c. 120, seeking power for the trustees under the testator's will to sell a leasehold estate devised by the will, no such power being given by the will. Subsequently, an application was made in Chambers to

Digitized by Google

appoint the father of the infant petitioner, who was himself also a petitioner, the guardian of the infant for the purpose of the petition; but the Chief Clerk objected to draw up the order asked, on the ground that by the 21st regulation of the 8th August, 1857, the application for the appointment should have been made previously to the presentation of the petition. There *Re Hargrave's Trusts*, 7 W. R. 156, was cited; and Kindersley, V.C., said that he considered the regulations were not absolutely binding in the same way as orders were; and he thought that the order might be made after the petition was presented. He, therefore, should direct the registrar to take a note of his opinion for the guidance of the Chief Clerk. This goes far to show that what is laid down in Morgan's Ch. Pr. has been altered in England; and it is, *a fortiori*, to show that the practice is otherwise here.

CHATTERTON, V.C.—I will make the order on the authority of those decisions; though it does seem to me like introducing an alteration in the practice.

Solicitor: *M. J. Kelly.*

In re FEGAN'S Settlement (2).

Nov. 16, 1874.—*Practice—Summons in Chambers—Advertisements—Settled Estates Acts.*

For the purpose of obtaining an order to have advertisements under the Settled Estates Acts inserted in newspapers, the application should be made by summons in Chambers, and not by an ex parte *motion.*

This was an *ex parte* motion (in the matter of a petition, under the Settled Estates Acts, to authorize a lease of certain lands) to have the direction of the Court as to the newspapers in which advertisements should be inserted as required by the Settled Estates Acts.

Mr. Henry O'Neil Burke, in support of the motion.—The usual order is to insert the advertisements in the *Dublin Gazette*, and in two local newspapers; we propose to have them inserted in the *Mayo Telegraph* and the *Mayo Examiner.*

[CHATTERTON, V.C.—I think this ought to be done in Chambers.]

It is done by *ex parte* summons in England; and it is apprehended that the motion of course, here, would most correspond to that.

CHATTERTON, V.C.—You must apply by summons in Chambers. I have, already, decided that such is the practice.

Solicitor: *M. J. Kelly.*

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-Law.

(Before MONAHAN, C.J., KEOGH and MORRIS, JJ.)

PROCTOR *v.* CHURCH.

Nov. 16, 1874.—*Garnishee order—C. L. P. A. Act,* 1856, *s.* 63—*Amount awarded under Civil Bill decree—Respite of decree—Appeal.*

The amount awarded by a decree under the L. & T. Act, 1870, *which was respited until the next sessions for a proposed settlement, is not a debt which the Court can order to be paid over.*

Semble, *that an appeal being pending would have the same effect.*

John Church, a judgment-debtor, had obtained a decree at a land sessions, held at Magherafelt, on the 27th of June, 1874, against his landlord, James Church (the garnishee), for a sum of £192 14s. 10d., under the L. & T. Act, 1870. This decree was drawn up and entered in the ordinary form, and at the foot of it the following entry was made in the Land Sessions Book:—"Upon application of both parties, let the foregoing order of Court be respited until next sessions for a proposed settlement, but no rehearing to take place." On the 28th of August the judgment-creditor, James Proctor, obtained a garnishee order, absolute to attach so much of the above decree as would satisfy his judgment debt of £14 11s., and conditional for the garnishee to pay over that amount, unless cause shown, on the 4th of September. Affidavits were filed as cause for that day, but the case stood over by consent, whereupon a further affidavit was filed by the garnishee, stating that the land case, not being settled, had come on, according to the order for adjournment, at the Magherafelt Land Sessions on the 24th of October, when the following order was made:—"It is ordered by the Court—let the decree of last sessions in this case issue as of the present sessions." From this decree the landlord (the garnishee) had appealed.

J. A. Phillips, for the judgment-creditor.—At the time the conditional order was obtained there was a debt which could be attached, and the adjournment of its payment could not affect the rights of the judgment-creditor. If the Court cannot make the order absolute for payment at present, the motion should be allowed to stand over until the appeal has been decided.

A. M'Conchy, for the garnishee.—The order was premature, as the decree, pending the adjournment, could not be attached; *Shaw* v. *Shaw*, 2 Ir. L. T. 243; *Jones* v. *Thompson*, E. B. & E. 63. Even now, the Court cannot order the debt under the decree of the 24th October to be paid over, as an appeal is pending: *Russel* v. *Ferguson*, 2 I. L. T. 137.

KEOGH, J.—The judgment-debtor was not in a position to enforce his demand against his landlord on the 4th of September, and his judgment-creditor cannot be in a better position than he was. The Court could not order the money to be paid over on that date. An appeal pending would, of itself, be sufficient to prevent us making an absolute order to pay over the money. The absolute order attaching the money is not affected by this order, but the cause shown against making absolute the conditional order to pay over must be allowed, with costs.

MONAHAN, C.J., and MORRIS, J., concurred.

*Order accordingly.**

Attorney for the judgment creditor: *W. Proctor.*
Attorney for the garnishee: *T. G. Carson.*

COURT OF EXCHEQUER.

Reported by GEORGE A. KELLY, Esq., Barrister-at-Law.

ANONYMOUS.

Nov. 6, 7, 1874.—*Practice—Debtors Act,* 1872—1 *G O.* 1873—*Order for payment—Proof of means—Jurisdiction.*

A motion for an order for payment, under the Debtors Act, 1872, *s.* 6, 1 *G. O.* 1873, *should be made to a Judge in Chamber, and not to the Court* in banco.

Where an order for payment is applied for, under the Debtors Act, 1872, *s.* 6, *it must be shown that the person*

---

* See *Johnston* v. *Graves*, 8 Ir. L. T. R., 76; and *Webb* v. *Graves* (unreported), cited in Com., 8 Ir. L. T. & S. J., 385.—[Ed. *I. L. T. Rep.*]

Digitized by Google

making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default.

This was a motion, on notice, for an order to compel the defendant to pay to the plaintiff the amount of a judgment, and the costs of the motion, either in one sum or in instalments, or that, in default, the defendant should be committed to prison pursuant to the provisions of the Debtors Act, 1872. On the motion coming on for hearing before the full Court,

M. V. Kehoe, for the plaintiff, stated that the notice of motion had been served in error for the full Court, overlooking that the practice of the Court was that such motions should be moved *in camera;* and asked to have the application adjourned to Chamber.

P. O'Brien, for the defendant, *contra.*—The notice of motion, being for the full Court, should be refused. The Court has no jurisdiction to hear it.

[PALLES, C.B.—We have on various occasions ruled that such motions should be made in Chamber, but, under similar circumstances, have merely adjourned them into Chamber.* My brother Dowse will hear this motion in Chamber].

On the motion coming on, accordingly, before Dowse, B., *in camera*, it appeared, from the affidavits made in support of the motion by the plaintiff and his solicitor, that the debt, for the recovery of which the order was sought, amounted to £48, being the amount of a judgment for mesne rates and costs recovered by the plaintiff at the Summer Assizes, Limerick. The verdict was entered on the 3rd August. A writ of *fi. fa.* issued on the 22nd of the same month, upon which the sheriff returned *nulla bona*. Shortly after the verdict against him, the defendant auctioned all his stock, farming implements, and crops, realizing over £100 by the sale.

The defendant's affidavits, to oppose the order, disclosed various circumstances of harsh treatment by the plaintiff, and stated that since the sale of his effects he had paid to the Munster Bank a debt of £30, besides various sums for wages; and that during the last year he had expended £200 for medical advice and for his support; and that in consequence of ill-health he was unable to attend to his business, and feared that he would be compelled to go into the workhouse infirmary.

M. V. Kehoe, for the plaintiff.—We seek, now, an order for payment, in the first instance, under the 6th section of the Debtors Act, 1872. Such an order may be made without proof that the debtor has means to pay: *per* Kelly, C.B., *Dillon* v. *Cunningham*, L. R. 8 Ex. 23. Afterwards, when an order for commitment is applied for, it will become necessary to show the existence of means; *ib.*

P. O'Brien, for defendant.—The notice of motion is for an order to compel payment or to commit to prison in the event of non-compliance. The Court can commit to prison only where it is proved to its satisfaction that the defaulter either has or has had, since the date of the order or judgment, the means to pay the debt: Debtors Act, 1872, sec. 6, sub-sec. 2. It is not now proved that this defendant has means to pay the debt. That is the foundation of the jurisdiction to make an order for payment.

DOWSE, B.—The question of hardship is not for my consideration. Before making an order for payment, I must be satisfied of the party's ability to pay; that is the foundation of my whole jurisdiction.* I make no rule on the motion, but will not give costs.

Order accordingly.

Attorney for the plaintiff: *W. F. O'Shaughnessy.*
Attorney for the defendant: *Michael O'Donnell.*

* See *O'Donnell* v. *Smith*, 8 Ir. L. T. R., at p. 38; *Reardon* v. *Hayes*, *ib.* 116; *Holland* v. *Read*, *ib.* 168.—[Ed. *I. L. T. Rep.*]

WICKLOW ASSIZES.

Reported by JOHN E. WALSH, Esq., Barrister-at-Law.

(Before DOWSE, B.)

Re THE WICKLOW COURT-HOUSE.

July 28, 1874.—*Grand Jury Act* (6 & 7 *Will. IV.*, c. 116), *s.* 69—*Repairing court-house—Presentment approved of by the grand jury, and rejected at subsequent sessions—Summary presentment.*

The grand jury have no jurisdiction to present summarily for the cost of repairing the court-house.

A presentment for the repair of the court-house at W. had been read and approved of by the grand jury, and a plan and specification prepared for the work, but the presentment was rejected at the subsequent Presentment Sessions.

Held, *that the succeeding grand jury was not authorized by the 69th section of the Grand Jury Act to pass the presentment.*

Question raised by the County Wicklow Grand Jury, under the circumstances stated in a letter, dated the 25th of July, 1874, and written by their foreman, Sir George Hodson, to Mr. Baron Dowse. After some preliminary remarks, this letter proceeded:—"Our county court-house, originally an ill-planned structure, and at no time being a suitable building, has, of late years, become so dilapidated and inconvenient as to render it not only unfit for its required purposes, but also seriously injurious to the health of all engaged in the public business transacted there. Accordingly, at the Spring Assizes, 1873, a committee of six members of the grand jury was appointed, 'to consider and report upon the state of the county court-house, so that the several small sums requisite for repairing and maintenance may, in future, be included in a single presentment.' In the progress of the duty so imposed, it came to the knowledge of the committee that, in order to render the building safe and commodious, and suitable for the requirements of the county, a sum of about £2,000 would have to be levied by presentment. A plan and specification were, accordingly, prepared by the county surveyor, and a presentment for the work having been duly 'read and certified,' at Spring

* See *Sturgeon* v. *Robinson*, 8 I. L. T. R. 13.

On Nov. 7, 1874, the point above decided also arose in *O'Brien* v. *Carmody*, at Limerick Quarter Sessions, before *Theobald Purcell*, Q.C., the Chairman, who arrived, independently, at a similar conclusion. A decree for £16 15s. 6d. rent having been obtained against the defendant at a previous Quarter Sessions, Mr. *Ryan*, solicitor for the plaintiff, now moved for an order for payment under the Debtors' Act, preparatory to applying for an order for committal, stating that the practice adopted by Mr. *Leahy*, the late Chairman, was to make orders for payment at the Sessions next after the granting of the decrees, and at another subsequent Sessions to make orders for committal if default made. The Chairman said that he should dismiss the present application, on the ground that one of the essentials of such an application was, that it should have been shown that the defendant was able to pay the amount of the decree, and had refused to pay it. *Rule accordingly.*—[Ed. *I. L. T. Rep.*]

Digitized by Google

Assizes, 1874, was *rejected*, at the recent Presentment Sessions for the county at large, by a majority of those present, and voting, solely on the grounds that the attendant expenditure was considerable. On a discussion of the subject yesterday, many of our grand jurors were of opinion that the action thus taken was injudicious, any delay in such alterations and improvements tending only, as most assuredly would be the case, to a much larger expenditure within a not distant period, and leaving untouched the question of any present remedial measures to abate the inconvenience complained of. Such being the state of the case, I am induced to ask your kind consideration of the subject, chiefly in reference to your powers as Judge of Assize, and to the provisions of such portions of the 6th & 7th Will. IV., c. 116 (the Grand Jury Act), as bear upon the subject. The 18th section provides that, in case the magistrates and cess-payers, at two consecutive Presentment Sessions, shall refuse to approve of any application for a public work, then, on certain preliminary forms being complied with, it shall be lawful for the Judges of Assize, or any of them, to cause a jury to be empanelled, to inquire whether such work is a proper one to be executed, and if so, the Judge, if he think fit, may direct the grand jury to consider such presentment, &c. This proceeding would necessarily involve a delay of many months. The 69th section enables the grand juries of counties to present 'such sums of money as shall be necessary for building, rebuilding, enlarging, repairing, altering, or fitting up, any court-house or sessions-house therein;' and we have been informed that Chief Justice Whiteside, on a recent occasion, deservedly finding fault with the imperfect accommodation at Wicklow, had expressed his opinion that this section applies to making *immediate* provision for carrying out such works of this nature as may be required. It is unnecessary that I should further occupy your attention by enlarging upon the evils which are now, and have for some years been experienced by the Judges of Assize, the chairman of the county, the magistrates, jurors, county officers, and all those whose business it is to attend at different seasons of the year within the court-house. The contracted space, the imperfect ventilation—particularly in the Record Court—the absence of any means of warming either of the Courts, are some, amongst the many, of the existing evils, and render the building a positive disgrace to this—otherwise civilized—county, and more particularly, since it has been arranged that in future much business is to be transacted at Assize time in the county town, in addition to that specially connected with local affairs.

"Having thus explained the state of things in connexion with the subject, I venture to hope that you will take such measures as you may think fit and desirable in applying a remedy to an evil which many of our body deplore, and which they would readily render their aid to remove."

The grand jury having considered, and found or rejected, all the bills sent up to them,

Dowse, B., said:—Gentleman, Sir George Hodson, your foreman, has sent me a written communication in relation to a resolution which your predecessors had come to, recommending that a sum of £2,000 should be presented for, in order to pay for certain alterations and improvements in this very defective court-house. He states that an application had been made, in consequence of the resolution, to the last Presentment Sessions for this sum, that the presentment was thrown out, and that he had submitted to you a question whether, under these circumstances, the 38th section of the Grand Jury Act, which makes it unlawful for the grand jury to pass any presentment unless the application has been approved of at Presentment Sessions, applied, so as to hinder you from now passing the presentment, and he asks whether the 69th section would not, in its terms, authorize you to summarily present for the amount. I think that Sir George Hodson has adopted a most convenient course in sending me this communication, conveyed in the clearly expressed letter he has written. By so doing he has given me an opportunity of considering the matter, and, although much can be said on both sides of the question, I do not feel that I am warranted in holding you can pass the presentment, it having been rejected at Presentment Sessions. In my opinion, the 69th section does not authorize you to present summarily, and I would recommend you to take no further steps in the matter, but to cause a fresh application to be made at the next Presentment Sessions.

In re The Rev. Mathew Collier, P.P.

July 27, 28, 1874.—*The Grand Jury Act (6 & 7 Will. IV., c. 116)—Malicious injury—Vestments and other Church property.*

The words "other work belonging to any person" in the 135th section of the Grand Jury Act are ejusdem generis *with those preceding them, and, therefore, the Grand Jury has no jurisdiction to present for compensation for the malicious destruction of vestments and other Church property.*

Claim for £21 18s., as compensation for the malicious burning of three suits of vestments used for celebrating mass, a large embroidered altar cloth, an alb, a soutane, a Roman missal, twelve wax candles, and a green baize cover, which were in the Roman Catholic Chapel at Barnisky, parish of Kilbride, and barony of Arklow, and had been set fire to and destroyed on the night of the 19th of December, 1873. The grand jury had made a presentment to the Rev. Mathew Collier, P.P., for the amount. The presentment was now submitted to Dowse, B., to fiat same.

Dowse, B.—In my opinion this class of property does not come within the definition of "other work" in the 135th section of the Grand Jury Act, and it clearly is not within the previous words of the section. The words "other work" plainly refer to matters *ejusdem generis* with the preceding words. A member of the grand jury has called my attention to the case of *In re Fitzpatrick*, Ir. Cir. R. 819, where Judge Perrin held that the section included fences. I agree in the decision, but not in Judge Perrin's reasons as reported. Baron Pennefather is reported to have held that a pack of hounds is within the section (Foot's Grand Jury Laws, 105); but I certainly wholly dissent from that view. If the Act of Parliament is to be extended in the manner contended for, the Legislature need not have specified the various subjects for which compensation should be awarded in such detail, as a line or two would have been sufficient for their purpose. I have no hesitation in deciding on the illegality of the presentment, but I shall afford the Rev. Mr. Collier an opportunity of having the point argued before me to-morrow.

On the following day *Mr. Johnston*, solicitor for Mr. Collier, argued that the case was covered by the words "other work belonging to any person."

Dowse, B.—In my opinion the case does not come within the statute. I cannot fiat this presentment.

Digitized by Google

WEXFORD ASSIZES.

Reported by JOHN E. WALSH, Esq., Barrister-at-Law.

(Before DOWSE, B.)

REILLY, Appellant; DOYLE, Respondent.

July 24th, 1874.—33 & 34 *Vict,*, c. 46, s. 15—*Town Park, what constitutes.*

R. held a farm situated a little more than a mile from a town in which he resided. The rent was not above the usual letting value of the land, which was cultivated as an ordinary agricultural farm, but the land had been leased with a dwelling-house in the town of Gorey, for a long term, as had been done in other instances on the estate, as appurtenant to the house, in order to encourage building in the town.

Held, *that the land was not town-park within the meaning of the* 15*th section of the Landlord and Tenant (Ireland) Act*, 1870.

Claim for £62 10s. compensation for disturbance, and £26 for unexhausted manure and fencing. Reilly, the claimant, held 5a. 5p. of the lands of Ramstown Lower, situated a little more than a mile from the town of Gorey, as tenant from year to year, at the annual rent of £12 10s., the valuation being £8. The rent was the usual letting value of the land, which was always cultivated as an ordinary agricultural farm. It was proved that this was one of the many farms which, according to the custom on the Ram Estate, of which the town of Gorey formed part, had been let to a tenant of a house in that town, as appurtenant to the house, originally on leases for thirty-one years, or three lives, for the purpose of encouraging building in the town. The Chairman (Henry West, Q.C.) held the land to be a "town-park" within the meaning of the 25th section of the Landlord and Tenant (Ireland) Act, 1870. From this decision the claimant appealed.

John Gibson, for the appellant, argued that the land did not satisfy any of the three requirements of the 15th section, and could not, therefore, be deemed a "town-park"

David Lynch, for the respondent, cited *Dunally* v. *Hodgins*, 7 IR. L. T. REP. 181.

DOWSE, B.—In my opinion it would be an abuse of terms to call this holding a town-park, and the 15th section does not apply to the case.*

A decree was subsequently made for one year's rent (£12 10s.), as compensation for disturbance, £10 for unexhausted manures, and the appellant's costs.

Attorney for the appellant: *John A. Sinnott.*

Attorney for the respondent: *Peter J. O'Flaherty.*

COURT OF BANKRUPTCY.

Reported by W. H. KISBEY, Esq., Barrister-at-Law.

(Before MILLER and HARRISON, JJ.)

Ex parte the PROVINCIAL BANK; *in re* EASDALE.

July 6, 11, 1874.—*Act of bankruptcy—Setting aside adjudication—B. A. Act*, 1872, *sec.* 21.

A trader in Belfast was indebted to the Provincial Bank in a considerable sum of money on foot of bills of exchange drawn by the firm of Lowry, Valentine, and Kirk, and accepted by the trader. Lowry, Valentine, and Kirk, who had discounted the bills in the Provincial Bank, were also in embarrassed circumstances, and about to stop payment, and this to the knowledge of the bank. After some negociations with the trader, the bank handed to John Lowry, head of the firm of Lowry, Valentine, and Kirk, three of the trader's over-due acceptances for £1,000 each, upon which the firm of Lowry, Valentine, and Kirk issued a debtor's summons. Subsequently Lowry's solicitor, in presence of an officer of the bank, offered to withdraw the debtor's summons if the trader executed a trust deed vesting all his estate in trustees for the benefit of all his creditors, which he accordingly did without delay. The bank refused to execute the trust deed, and, relying upon it as an act of bankruptcy, filed a petition against the trader, and obtained an adjudication against him.

Held, *that the bank, having stood by while the trader was forced or induced to execute the deed, must be taken as having acquiesced in its execution, and asented thereto, and could not take advantage of it as an act of bankruptcy.*

This case came before the Court upon cause shown by the alleged bankrupt, pursuant to section 129 of the Act of 1857, against an adjudication in bankruptcy, dated the 26th of June, 1874. The facts of the case appear fully in the judgment of the Court.

Macdonagh, Q.C. (*Monroe* with him), for the trader, cited *ex parte Stray*, L. R. 2 Ch. 374; *ex parte Bunn*, 3 Deacon, 119; *ex parte Lowe*, 1 Gl. & Jam. 78; *ex parte Johnstone*, 4 De G. & S. 204; *ex parte Alsop*, 1 De G. F. & J. 289.

Exham, Q.C. (*Perry* with him), for the petitioning creditor.

HARRISON, J.—This case came before the Court on a motion by the alleged bankrupt to show cause against an adjudication in bankruptcy pronounced against him on the 26th day of June last on the petition of Thos. Hewat, public officer of the Provincial Bank of Ireland. The petitioning creditor's debt consisted of three over-due acceptances, each for £1,000, discounted by the Provincial Bank of Ireland, which were protested at maturity. The alleged act of bankruptcy relied on was the execution of a trust deed by the alleged bankrupt on the 30th day of June last, whereby he assigned all his estate and effects to trustees for realization and distribution amongst such of his creditors as should execute said deed. It is admitted that this was an act of bankruptcy which could be relied upon to ground an adjudication by any person not party or privy to such deed, or who was not precluded from relying on same as a fraudulent deed within the meaning of the bankruptcy law; but the alleged bankrupt contends that the provincial banking company are so precluded.

The motion was argued before my colleague, Judge Miller, and myself on the 6th instant. My colleague had hoped to be able to join with me in pronouncing judgment, but, owing to the unavoidable delay in obtaining a copy of the shorthand writer's notes of the evidence taken on the hearing of the case, he was unable to do so before leaving on his vacation. I have his authority, however, for stating that he concurs in the judgment I am about to pronounce. I, of course, am alone responsible for the reasons assigned for that judgment.

It appears that, on the 14th of May, the Provincial Bank had a number of acceptances of the firm of Lowry, Valentine, and Kirk, whose affairs were then in a tottering state, and some of whose acceptances were dishonoured on the 17th of May. The bank also, on the 14th of May, held two over-due acceptances, each for £1,000, of the alleged bankrupt of the drafts of the said firm of Lowry, Valentine, and Kirk, and a third acceptance likewise, which matured shortly afterwards, viz., on the 18th of May, and was likewise dishonoured. On the 14th of May Mr. Davis, the manager of the Belfast branch of the Provincial Bank, addressed a letter to the alleged bankrupt,

* See *Taylor* v. *Dowden*, 8 Ir. L. T. R. 83; *Wilson* v. *Earl of Antrim*, 8 Ir. L. T. Notanda, 501.—[Ed., *I. L. T. Rep.*]

Digitized by Google

asking Easdale to come to the bank to see him concerning his bills, then overdue, which Mr. Easdale did. On the 19th of May, Mr. John Lowry,, of the firm of Lowry, Valentine, and Kirk, came to the Provincial Bank (Belfast), accompanied by his solicitor, Mr. Carson, and there had an interview with Mr. William Morrison, who describes himself as one of the assistant inspectors of that bank, acting for the province of Ulster, and who at that time acted for Mr. Davis as the representative of the bank in Belfast. Mr. Davis, on the 16th of May, having gone to England on business, which detained him until his return on the 20th. On that occasion Mr. Morrison handed to Mr. Carson, as solicitor for Mr. Lowry, the three acceptances of the alleged bankrupt above referred to. Mr. Carson, who has made an affidavit which was used on the present motion, states in the third paragraph of that affidavit his recollection of what took place when he obtained said acceptances. That paragraph is as follows:—"I say that I went with said John Lowry to the said Provincial Bank, and at Mr. Lowry's request Mr. Morrison gave me the said bills of exchange to enable me to produce the same to this honourable Court when applying for a debtor's summons, on my undertaking to return the same to the said bank; and, to the best of my recollection, I intimated on that occasion to Mr. Morrison that I was about to proceed, at the suit of Lowry, Valentine, and Kirk, to make the said William Easdale a bankrupt on foot of said bills." Mr. Morrison, in the affidavit filed by him jointly with Mr. Davis in support of the adjudication, does not refer to the giving of these bills to Mr. Carson. [His Lordship referred to the *viva-voce* examination and cross-examination, and continued.] Now, whether or not Mr. Morrison knew the exact nature of the proceedings intended to be instituted by Lowry, Valentine, and Kirk against the alleged bankrupt, when he gave these acceptances to Mr. Carson, or that it was proposed to take steps grounded on them to make Mr. Easdale a bankrupt, it is admitted that without having received any payment on foot of these bills, which then and still are the property of the bank, he handed them to Mr. Lowry's solicitor for the purpose of instituting proceedings which would compel Easdale to submit to his creditors a statement of his affairs; and it being understood, as he says, that these proceedings should be such as would, in addition, prevent Easdale disposing of his goods, which Mr. Lowry informed Mr. Morrison he was then doing. Mr. Morrison states his belief to have been that a summons and plaint was what was contemplated, and he so appears to have informed Mr. Hewat, the principal officer of the bank in Dublin, on the 26th of May. The receipt given by Mr. Carson for the bill is not produced, but Mr. Morrison states, according to his recollection, it was a simple acknowledgment of "having received from the Provincial Bank a certain amount of bills, to be handed back when the bills were required." The steps which were taken by Messrs. Lowry, Valentine, and Kirk, through Mr. Carson, when possession of these acceptances had been so obtained, are detailed by Mr. Carson in his affidavit. On the 19th of May particulars of demand, on behalf of Messrs. Lowry, Valentine, and Kirk, and notice requiring payment of £3,000 were prepared by Mr. Carson, and served on Mr. Easdale, and on the said 19th of May Mr. Carson also prepared an affidavit for Mr. Lowry, to ground the application to this Court for a debtors summons against the said Easdale, and this affidavit and the bills having been produced to the registrar, the debtors summons, at the suit of Lowry, Valentine, and Kirk, was issued against William Easdale, from this Court, on the 22nd day of May, and was served on him upon Monday, the 25th of May. Now, the debtors summons could only be obtained, according to the general rules and practice of this Court, on the filing of an affidavit of the alleged debt being due *to the person or persons making the affidavit*, and on production of the bills referred to in the summons; and I must here express my grave censure upon all the parties who took part in this portion of the transaction, as well as upon the solicitor who prepared and allowed his client to make the affidavit in question, as upon the client who swore that affidavit when prepared. Had the real facts of the transaction been known to the registrar a debtors summons, founded on these bills, as due to Lowry, Valentine, and Kirk, would not have been issued, and had proceedings been taken, as threatened by Mr. Armstrong, Mr. Easdale's solicitor, to have the debtors' summons dismissed, it would have been undoubtedly dismissed by the Court, on the facts admitted by all parties being proved. I acquit Mr. Morrison of any moral blame in the transaction. He has stated, on his oath, that he knew nothing of the procedure applicable to process of this nature, and that he was not aware of Mr. John Lowry having made the affidavit I have referred to, but it is clear that he placed Mr. Lowry in a position which enabled him to take the course he did, by handing over the bills then and now the property of the bank, on which not a farthing had been paid by Lowry's firm, and this step led eventually to the execution of the trust deed, which the bank now contend was a fraudulent act, which they are not debarred from relying on as an act of bankruptcy. The debtors summons having been so served on Monday, the 25th of May, Mr. Easdale appears to have gone to the office of the Provincial Bank in Belfast upon the subject, and on Thursday, the 28th of May, Mr. Armstrong, his solicitor, received, through Mr. Easdale, a message from Mr. Davis, the manager, to call upon him in reference to his affairs and to the affairs of Lowry, Valentine, and Kirk. Mr. Armstrong made an affidavit to ground the motion to show cause, detailing what occurred at the interview which ensued at the bank between Mr. Davis, Mr. Morrison, and himself. Mr. Armstrong has, further, given a detailed and particular account of what he alleges afterwards took place until the trust deed was eventually executed. Mr. Armstrong was in Court when the motion was argued, and was not cross-examined. In some points he has been contradicted by Mr. Morrison, and their evidence does not concur. There is, however, a substantial agreement on several of the main points of the case, and where they differ I am disposed to attach much more weight to Mr. Armstrong's evidence than to Mr. Morrison's. The statements in his affidavit are clear and precise, and he deposes positively to what he alleges occurred; he is not contradicted by Mr. Davis or Mr. Morrison in their joint affidavit, in reply, in reference to several of the matters he so deposed to; and the vague contradiction by Mr. Morrison, contained in the 7th paragraph of that affidavit, where he admits having had several interviews with Mr. Armstrong, but "denies that they were of the purport or effect stated by him," is not the statement which would be made by a man who could distinctly controvert the allegations he disputes, nor did Mr. Morrison's *vivâ voce* evidence on the hearing of the motion shake my belief in Mr. Armstrong's accuracy. [Having read the affidavit of Mr. Armstrong and Mr. Morrison, his Lordship continued.] It will be seen that Mr. Morrison was under the impression apparently when he made this affidavit that several interviews had taken place between Mr. Carson, Mr. Armstrong, and himself, on different days, after the interview in the bank, before a trust deed was mentioned, and that the suggestion as to the trust deed came from Mr. Armstrong; whereas Mr. Armstrong states distinctly that the trust deed was spoken of, and that he agreed to advise his client to execute it on the occasion of the only interview in Mr. Carson's office to which he refers, and which took place on the 19th of May, where, he alleges, he was invited to go by Mr. Morrison; and he further states that the proposal to execute the deed came from Mr. Carson, and that Mr. Morrison requested him (Armstrong) to act on Mr. Carson's advice, to which he replied that he would. This allegation is denied by Mr. Morrison in his affidavit, but Mr. Morrison's recollection of what took place at this interview does not appear to me to be nearly so distinct as Mr. Armstrong's, and his impression that the interview itself at which the trust deed was mentioned took place on a day subsequent to Thursday, the 28th day of May, is manifestly incorrect. I consider it impossible that this could be so, as Mr. Hewat, the Scotch trustee, had to be written to after the deed was agreed to,

Digitized by Google

and he arrived, and the deed was executed, on the Saturday following, two days only after the 28th of May. Mr. Carson does not, by his affidavit, give any material assistance in deciding which of the two parties, Armstrong or Morrison, is correct on the points in which they differ as to what took place when all met in his office. He does not contradict Mr. Armstrong, and submits that his statements may be accurate, the only point which seems to have made any impression on his mind being the altercation which then took place between him and Mr. Armstrong as to the validity of the debtors summons, his recollection of said interview, save as to said altercation, being, as he says, "*a perfect blank.*" The important matter, however, is admitted by Mr. Morrison—viz., that after the altercation between Armstrong and Carson respecting the validity of the proceedings upon the debtors summons, it was eventually agreed between Carson and Armstrong that those proceedings should be withdrawn if Mr. Easdale would execute a trust deed. Now, Mr. Armstrong, as I have said, swears that Morrison advised him to act on Carson's advice, and get the deed executed. I am of opinion that he is stating accurately what occurred, and that Morrison did give this advice; but even if he did not, if his conduct throughout this transaction was such as to induce any reasonable man to believe he was a party assenting to the course suggested, and willing to have the deed executed, and that a stop should be thereupon put to the legal proceedings then pending, which he himself had been instrumental in initiating, and which were taken as much for the benefit of the bank as of Messrs. Lowry, Valentine, and Kirk, I am of opinion that neither Morrison nor his principals, the Provincial Banking Company, who have had the benefit of those proceedings and of the trust deed which led to their discontinuance, can be allowed to impeach that deed as fraudulent, and in itself an act of bankruptcy. My opinion upon the evidence is that he was an assenting party, and I would be of that opinion even if I came to the conclusion that he did not advise Mr. Armstrong to act on Mr. Carson's advice, or that the suggestion as to the execution of a trust deed came, in the first instance, from Mr. Armstrong.

The law applicable to such a case as this is now clearly settled, and the only difficulty is to bring any particular case within the principle of the authorities, the latest and leading one of which is that of *Ex parte Stray*, L. R. 2 Ch. 374*:—"It is well settled," said Cairns, L. J., at page 378, "by a series of authorities of which the case of *Ex parte Alsop* may be mentioned as the last, that a creditor who is a party or privy to a deed of the description mentioned in the statute, *or who has acted in any way which would be an equivalent to an assent, recognition, or approval of the deed*, cannot allege that the execution of the deed is an act of bankruptcy. I apprehend that the principles upon which those cases (the authority of which cannot now be questioned) have gone is this, that inasmuch as under the statute the petitioning creditor is obliged to allege that the act in operation is a fraudulent act, any person who has been a participator or sharer in the fraud cannot be heard to claim any benefit or advantage from the act." It can scarcely be expected that the particular facts of any two cases will coincide; there are, however, some strong points of similarity between the case of *Ex parte Stray* and the present case. There it was of importance that the debtor's property should be protected from executions, one of which had actually been laid on. In the present case it was the common object of Mr. Morrison, acting for the Provincial Bank, and of Messrs. Lowry, Valentine, and Kirk, that the control of Easdale's property should be taken from him, and that same should be protected so as to be forthcoming to meet the over-due acceptances. There Goody, the creditor, who afterwards sought to make this deed an act of bankruptcy, was stated to have expressed his assent to the course eventually agreed to by the debtor, of executing the deed, which allegation was distinctly denied by Goody, but Goody did not contradict an allegation that he saw the deed being filled up, and took part in the discussion as to the address of the proposed trustee. Lord Justice Cairns, in commenting on the facts, states his opinion, upon the evidence, to be that he entertained no doubt that Mr. Goody was at the place approving and encouraging the bankrupt to execute the assignment—that he could not look on Goody otherwise than as a person who assented to the execution of the deed, and was taking advantage of it for the purpose of shielding the estate for a certain length of time, and was willing, if certain other arrangements such as were contemplated could have been made, to take still further advantage from the deed. Lord Justice Turner, in his judgment, says:—"The sole question here, as I understand it, is whether Mr. Goody was so far party or privy to the execution of this deed, as to debar him from setting it up as an act of bankruptcy. In my opinion, he so acted in what passed after the meeting of the 23rd November as to debar himself from the right to do so. He stood by, and saw the deed being filled in for the purpose of being executed; and it cannot, I think, be said that because he went out of the room before it was actually executed, he was not a party or privy to it. Had he not intended that it should be executed, he would have protested against it. I can find nothing in what is said to have taken place after the meeting of the 23rd of November which displaces to my mind the effect of this conduct on the part of Mr. Goody. Everything which subsequently took place is reconcilable with the notion that he was not to be bound by the terms of the deed as a deed, binding and operating upon him so as to oblige him to come in under it; but, everything which took place is equally consistent with the notion that he was bound by the deed to the extent of being prevented from using it as an act of bankruptcy. He has, besides that, taken advantage of the deed from the time of its execution down to the 7th of December, and for three days after that period, as a protection against executions which might be lodged against the bankrupt's estate. I cannot think that, under these circumstances, he can be permitted to turn round and say, 'I will use that deed as an act of bankruptcy, which on the 23rd of November I could not have so used.'"

It has, however, been contended that, although Mr. Morrison might be precluded from impeaching this deed if he were himself a creditor of Mr. Easdale, his acts did not bind the bank, and that they are at liberty to rely on the deed as fraudulent and an act of bankruptcy. Now, I consider that Mr. Morrison's acts in this transaction bound the bank quite as fully as if he had been the manager of the Belfast branch of that establishment. He may have had even greater authority than Mr. Davis, who filled the position of manager and representative of the bank in Belfast, but upon the facts established he cannot be deemed to have had less. He was acting for Mr. Davis when he delivered over the bills to Lowry and Carson on the 19th of May, and informed him on his return of what he had done. He was present with Davis when Armstrong called at the bank, on the 28th of May. He was introduced by Davis to Armstrong, when the conversation took place as to Easdale's affairs, and particularly as to the issuing of the debtors summons, and the statement in Armstrong's affidavit is not denied, that he (Morrison), in Mr. Davis' presence, made the appointment to call at Armstrong's office on that day, in reference to that debtors' summons, and that he did so call. Throughout the case he seems to have acted with the concurrence of Mr. Davis, as the chief agent and representative of the bank in Belfast; and acting in that capacity, I am of opinion his acts in reference to the business and affairs of the bank would bind his principals, although he might exceed the scope of his authority, there being no notice brought home to the parties who dealt with him of any limitation of such authority; and "the manager of the bank," says Pollock, C.B., in giving judgment in the case of *Hamilton* v. *Bell*, 8 Exch. 10, "is a person appointed to conduct the entire business, irrespective of the partners." In that case a local manager had induced a customer to hand him some money

* See also, *ex p. Vance and Wilson; in re H.*, 8 Ir. L. T. R. 185.—[Ed., *Ir. L. T. Rep.*]

Digitized by Google

of hers then in the bank, on the pretence the bank had an equitable mortgage on some property, and that the money would be applied in paying off the mortgage and in the purchase of the property for the customer. The manager applied the money to his own purposes, and the Court held the bank liable to refund it to the customer, the jury having found that the manager intended to make the customer believe, and that the customer did believe, that the manager was acting as agent for the bank in the transaction. It was argued, that such a transaction was altogether outside the scope of his duties, and that the Banking Company was not responsible for his unauthorized and fraudulent act, but the Court of Exchequer held them liable. In Grant's Law of Bankers this case is referred to, and the following observations occur, which, I think, correctly lay down the law as to the scope of the manager's authority, to bind the bank in matters connected with the affairs where there is no notice of any limitation of that authority:—"The situation of manager is one of high trust, but the trust becomes still greater and the responsibility much enhanced in the case of a *local* manager of a branch establishment of the bank. For many purposes he is looked upon by the law, and is treated as if he were the whole body, whom he has power to bind, even by his tortious acts, although he may not be a partner. For instance, if the local manager of a branch gets into his hands the money of a customer of the bank, by inducing the customer to consider that he is acting in the transaction as agent of the bank, and is invested with authority to effect the purpose for which the customer confides the money to him, and then appropriates the money to his own purposes, the customer's loss will fall upon the co-partnership. To hold the bank not to be liable in such a case would be, it has been said, to hand over the public to the mercy of the clerks employed by these banks. The principle seems to be that the manager is a servant whom the bank, for the purposes of their trade, virtually accredit, and hold out to the world, as invested by them with general authority to act for them in the affairs of the branch bank, and the public has no power or means to discriminate what is and what is not in any particular case within the legitimate scope of the agent's powers, or in accordance with the directions of his principals."

Now, the assenting to a trust deed under the circumstances of the present case was, in my opinion, an act so connected with the business of the bank, and with the recovery of the money due the bank on Easdale's dishonoured acceptances, as to be binding upon the banking company when given by their agent, as I am of opinion it was given, even although as between such agent and his principals he had no authority to give it. It is not, however, I conceive, necessary to rely upon the binding effect of such an assent in the present instance, as I consider that the Provincial Bank are, upon the established facts, precluded from relying on any objection arising out of the alleged want of authority of their representative Mr. Morrison, there being sufficient evidence of acquiescence, on the part of the principals of the bank, in his acts, and adoption of benefits therefrom to estop them from impeaching the execution of this deed as a fraudulent act. Mr. Morrison appears to have been engaged for a considerable time in Belfast, before the 19th of May, investigating the circumstances in reference to the difficulties of Lowry, Valentine, and Kirk, and of the firms with which they were connected; and he alleged, in answer to Mr. Exham, "that he nightly kept Mr. Hewat, the public officer, informed of all he knew." On the 19th of May he handed over Mr. Easdale's unpaid acceptances to Mr. Lowry and his solicitor for the object already stated, and he produced his letters to Mr. Hewat of the 26th of May, in which, although he does not fully state the step he had taken, he apprised him of the institution of legal proceedings against Easdale and Co. upon three bills for £1,000 each, "lying here past due, with a view of putting such pressure upon them as would induce them to show a state of their affairs, and place their stock of manufactured goods out of their immediate control and render them available for the acceptance to Lowry, Valentine, and Kirk." He had previously written to Mr. Hewat, on the 23rd of May, in reference to Easdale's affairs and Mr. Hewat replied to this letter on the 30th of May, and in this letter shewed himself fully alive to the embarrassing position in which Mr. Morrison might have placed the bank, had he sanctioned proceedings in the name of the public officer of the bank at the request of Lowry, Valentine, and Kirk, without receiving payment of the bills, but there is no repudiation contained in this letter of any authority on Morrison's part to take this step, if he had so taken it. Again, on the 1st of June Mr. Morrison writes to Mr. Hewat a letter, in which he says, in effect, that the object for which the bills were given out of the custody of the bank has been effected. "He signed a trust deed on Saturday afternoon, and the summons was therefore withdrawn." If the head officials of the bank considered that Mr. Morrison had been acting in an unauthorized manner, should they not, on receipt of this letter, have repudiated his acts? No reply to this letter, however, is forwarded, and a fortnight is allowed to elapse before the petition in bankruptcy is presented. During that interval, as stated by Mr. Armstrong in his affidavit, the trustees were in full possession of the debtor's place of business. They had gone into possession the day the deed was signed, employed the hands in the factory, and continued the business; the property of Easdale, which it was of such importance to the Provincial Bank to protect, was placed out of his control and protected, and thus a material advantage accrued, and was taken by the bank, of the deed they now impeach. The deed was gazetted and published in the local newspapers, and it is stated in Mr. Armstrong's affidavit, that the majority of the creditors in Belfast, Glasgow, and London, Manchester, and other places, have either signed the deed, or empowered others to sign for them. After such an interval of time, and under the circumstances I have stated, I think that the bank are now estopped from contending that the execution of that deed was a fraudulent act.

In conclusion, I may observe that I think there is strong ground for believing that it is not the execution of the deed which was ever objected to in fact by any of the officials of the bank, but the alleged conduct of the debtor and his trustees subsequent to the execution of the deed. Misconduct on the part of the trustees or of the debtor, subsequent to the execution of the deed, should such exist, of which no legal proof has been adduced, is, however, no ground for impeaching the deed itself as fraudulent, or of enabling the parties who consider themselves aggrieved to treat its execution as an act of bankruptcy, if they are otherwise estopped from doing so.

Upon the entire case my opinion is that the cause shown should be allowed, with costs.

Solicitors for the petitioning creditor: *Messrs. S. Black & J. Browning.*

Solicitors for the trader: *Messrs. W. E. Armstrong and Cronhelm & Tobias.*

(Before Harrison, J.)

Ex parte Birley Brothers; *in re* Easdale.

August 15, 17, 21, 1874.—*Adjudication—Security—Petitioning Creditors' Debt—Act of Bankruptcy—B. A. Act,* 1872, *sec.* 21—*General Orders,* 1872, *Nos.* 43, 85, 86, 87, 88, 89.

Petitioning creditors, in their petition and the affidavit in support of it, relied upon debts due by a trader, amounting to £2,000, which were stated to be part of his debts to the petitioning creditors. The petition and affidavit stated that the petitioning creditors held a security or lien upon goods of the bankrupt in the hands of a New York firm, which security or lien they waived as against the debt on which they relied, but without prejudice to their right to retain it against their other demands.

Held, *that the petition did not comply with the 21st*

section of the Bankruptcy Amendment Act, 1872, *and could not support an adjudication.*

The petitioning creditors had as their commission agents, in Belfast, a firm which admittedly, by one of its members, had been active in procuring the trader to sign the trust deed relied on, by the petitioning creditors, as an act of bankruptcy. It was proved that the petitioning creditors had no knowledge of the execution of the trust deed, and that their agents were not agents in that behalf.

Held, *that the petitioning creditors were not precluded rom relying on the trust deed as an act of bankruptcy.*

Re O'Neill, 7 *I. L. T. R.* 20, *over-ruled.*

This case came before the Court upon a motion to show cause against an adjudication of bankruptcy, obtained against William Easdale, of Belfast, by Messrs. Birley Brothers, of Preston. Witnesses were examined in the case, and several affidavits were relied upon, from which it appeared that Messrs. Birley Brothers had in Belfast, as their commission agents, the firm of Lowry, Valentine, and Kirk, and another firm, called Richardson Brothers. Lowry, Valentine, and Kirk had traded nominally on their own account, though it was known in the trade that they were agents only for Birley's Unions; and being agents for many manufacturers, their custom was to send invoices, or sale notes, as from themselves, to the houses that bought from them, not distinguishing their principals, and to draw on the buyers every month. They thus drew on William Easdale, and sent to Birley Brothers their drafts accepted by William Easdale, considerably in excess of the total amount of the goods of Birley Brothers bought by William Easdale. Both Lowry, Valentine, and Kirk and William Easdale got into difficulties; and William Easdale transferred to Lowry, Valentine, and Kirk an order on Watson & Co., of Liverpool and New York, to hold all goods in New York of William Easdale for account of Lowry, Valentine, and Kirk. This order Lowry, Valentine, and Kirk transferred immediately to Birley Brothers. There was a wide diversity of opinion as to the value of the goods, but their value was admittedly considerable.

Mr. John Lowry, head of the firm of Lowry, Valentine, and Kirk, had been party to procuring a trust deed to be executed by William Easdale, for the benefit of all his creditors. Lowry, Valentine, and Kirk were still commission agents of Birley Brothers when this occurred, but the evidence of one of the Messrs. Birley showed that the act of Mr. John Lowry was unknown to and unauthorized by them. Birley Brothers, relying on the trust deed as an act of bankruptcy, presented a petition in bankruptcy, setting out a debt for £2,000, and stating further debts not enumerated. The petition, also, stated that the petitioning creditors held a security on goods of the trader in the hands of Watson & Co., of New York, but went on to say that the security was waived as against the £2,000 debt, but without prejudice to holding it as against the remainder of the demand.

Macdonagh, Q.C. (with him *Purcell*, Q.C., and *Kisbey*), showed cause against the adjudication, citing *Ex parte Stray*, L. R. 2 Ch. 374; *Ex parte Bunn*, 3 Deacon, 119; *Ex parte Shaw*, 1 Maddock 598; *Ex parte Johnstone*, 4 De G. & S. 204; *Ex parte Mauritz*, L. R. 5 Ch. 779; and the 43rd, 85th, 86th, 87th, 88th, and 89th General Orders, 1872.

Andrews, Q.C., for the petitioning creditors, cited 2 Lindley on Partnership, 1219; *In re O'Neill*, 7 I. L. T. R. 70.

HARRISON, J.—The adjudication in bankruptcy in this case was pronounced on the 4th of August, instant. The petition was presented by the firm of Birley Brothers, of Preston—the act of bankruptcy relied on being the execution of a trust deed in the ordinary form, vesting the debtor's estate and effects in trustees for the benefit of his creditors.

Notice of the intention to show cause against the adjudication was served on the 8th, and the motion was fully argued before me on the 15th and 17th inst. The grounds of disputing the adjudication are fully set out in the notice—viz., that it is intended to dispute the petitioning creditors' debt and the act of bankruptcy; and also, that the petition is null and void, inasmuch as it does not comply with the Act of Parliament, because the petitioners do not state in their petition that they will be ready to give up the security mentioned in the petition for the benefit of the creditors, in the event of the debtor being adjudicated a bankrupt; nor that they are willing to give an estimate of the value of their security; nor did they claim, having valued same, to be admitted as petitioning creditors to the extent of the balance of the debt due to them, after deducting the value so estimated; and because the petitioning creditors had assented to the execution of the trust deed relied upon as the act of bankruptcy. On the argument of the motion, these several grounds were discussed separately, the counsel for the alleged bankrupt contending, in addition to the first ground of objection set out in the notice, founded on the non-compliance with the statutory provisions of the last Bankruptcy Act, 1872, that, in fact, there was no debt due by William Easdale to the petitioners which could be deemed in this Court adequate to support the adjudication, inasmuch as the amount of any goods of the petitioners, which had been purchased by Easdale, and which were included in the bill of exchange mentioned in the petition and proof of debt, and the said bills therein referred to, had been liquidated and satisfied by the value of certain goods of Easdale's, in the hands of Watson Brothers, of New York, which the petitioners held opposite their debt, and that, so far as said bills covered the proceeds of any other goods purchased by Easdale, said goods were not the property of the petitioners, but of third parties, all of whom had signed or assented to the trust deed relied on as the act of bankruptcy. Counsel, also, contended that the petitioners must be deemed to have been privy to, and assenting to the execution of said trust deed, and, in consequence, estopped from relying upon it to support their adjudication. So far as these two grounds of objection are concerned, I expressed my opinion, at the close of the argument, that they were both untenable. As regards the last ground, there is not, in my opinion, a shred of evidence to support it, or to entitle the Court to hold that the petitioners were either themselves, or by any agent authorized in that behalf, ever privy or assenting to said deed.

As regards the former of said grounds, it appears that Messrs. Lowry, Valentine, and Kirk were, for many years, the agents and factors of the petitioners in Belfast, and so continued to the end of May last. Lowry, Valentine, and Kirk were also factors and agents for many other firms, and, as such, sold to William Easdale large quantities of goods, portions of which belonged to the petitioners, and portions to other parties. The course of dealing was for Lowry, Valentine, and Kirk to furnish William Easdale, at the end of each month, with a statement of the amount due by him against the goods so supplied, and bills of exchange, the drafts of Lowry, Valentine, and Kirk, were then accepted by Easdale, dated generally the fourth of the following month, and payable in 4 months. Lowry, Valentine, and Kirk endorsed these bills, with others, to the petitioners, from time to time, as Mr. Hutton Birley stated in his evidence (Q. 20), on open account against goods sold for them by Lowry, Valentine, and Kirk, the petitioners not knowing, or having any notice whether the amount of these bills covered merely the goods of the petitioners, which had been sold by Lowry, Valentine, and Kirk, or, as counsel expressed it, "how the bills were to be referred." In the latter end of May, Lowry, Valentine, and Kirk stopped payment, and the petitioners withdrew their agency. At this time the petitioners held four bills, the accept-

Digitized by Google

ances of William Easdale, of the drafts of Lowry, Valentine, and Kirk, received by them in the manner before stated, one being the bill set out in the petition, and proof of debt for £2,000, dated the 4th of February, at four months; one for £1,000, dated the 4th of March, at four months; one for £1,500, dated the 4th April, at four months; and one dated the 4th May, for £1,012 17s. 1d., at four months—making, in all, £5,512 17s. 1d. It appeared that on the 6th of May William Easdale had given to Lowry, Valentine, and Kirk an order on William Watson & Co., of Liverpool and New York, directing them to hold all balances in favour of Wm. Easdale, arising out of the shipments to their New York house, for account of Messrs. Lowry, Valentine, and Kirk; and on the 16th of May, Lowry, Valentine, and Kirk transferred the benefit of said order to the petitioners by letter of that date. The letters of Lowry, Valentine, and Kirk to Watson & Co., and to the petitioners, dated the 16th May, in reference to this transfer, were produced. The original letter of William Easdale to Messrs. Watson & Co., of the 6th of May, was also produced by Mr. Birley, who stated he received it from Messrs. Watson and Co; and it had endorsed upon it the particulars of the goods of William Easdale, then in Watson & Company's hands, amounting, as per invoice order, to £3,549 18s. 4d. Mr. Easdale states, in his affidavit of the 12th instant, that he first heard of this order having been so transferred to the petitioners by Lowry, Valentine, and Kirk, on the 17th July last, at which time he had been served with notice of demand to ground a debtor's summons by Messrs. Johns, Hewitt, and Johns, as solicitors for the petitioners, founded on the bill for £2,000, which fell due on the 7th of July. He then went over to Preston, and had an interview with the petitioners on the 20th of that month, and stated to them, as he says in the 8th paragraph of his affidavit, "that they could not be considered as being creditors, in fairness between man and man, and submitted that, on the one hand, they should charge my estate with no more than the value of the goods which I have received from Messrs. Lowry, Valentine, and Kirk, as their agents, and, on the other hand, should credit my estate with the full value of the said order." Mr. Easdale states that a conference then took place, and that it was agreed by the petitioners "that, if they would suffer no loss by my estate, they would be perfectly willing to let the amount of goods covered by the said order go as against their account," and that one of the petitioners' firm instructed him to get a statement made out, showing the value of the goods held by Messrs. Watson & Co., which he says he did. That statement shows the estimated value of the surplus proceeds of the goods to be £3,141 19s. 9d. Mr. Easdale says he then received from the petitioners a letter, in the following terms:—"Hanover-Street Mills, Preston, July 22, 1874.—Messrs. William Easdale & Co., Belfast.—Dear Sir,—After the explanation you have given us as to the value of the goods you had in the hands of Messrs. Watson & Co., of New York, now our property, by being handed over to us by Lowry, Valentine, and Kirk, of Belfast, we agree to suspend taking action against you in bankruptcy until the 29th instant, so as to afford us time to make further inquiry as to the correctness of this statement. We send a copy of this note to our Belfast solicitors.—Yours truly, Birley Brothers." On the 23rd of July Mr. Easdale and Mr. Hutton Birley met at Messrs. Watson's house in Liverpool, and it appears that on that occasion the Messrs. Watson stated that the value of the goods, after paying all charges, would be about £1,300. Mr. Easdale, in his affidavit, says this statement was altogether inaccurate, and must have been made in ignorance of the true value of said goods. On the 27th July Messrs. Johns, Hewitt, and Johns wrote to Mr. Easdale to state that Messrs. Birley had directed them to say that, upon making inquiries, they had not been able to satisfy themselves that the goods in the hands of Messrs. Watson & Co., of New York, would produce anything like the sum he had stated, and that they, consequently, adhered to their determination to proceed in bankruptcy on the 29th instant; and on the same day Mr. Easdale wrote to the petitioners a letter, enclosing statements of their accounts with Watson & Co., saying, "that one of the papers had extended statements of the stock taken, at average prices these goods having been sold at during the last six months, when the markets were at their lowest point, and showing, at these unusually low prices, an amount of £1,800 still to come out of this stock, which amount, I confidently say, you will not only realize in full, but, if there be no forcing of sales, you will have 10 or 15 per cent. more returns than what is set down." Mr. Easdale, in this letter, again pressed the petitioners to support his trust deed, contending that the amount they would receive out of the goods in Watson's hands, "with what you will receive, ranking all the bills on our estate alone, not taking into account Lowry, Valentine, and Kirk's estate, and independent of what we expect to realize out of the merchant bankruptcy of Malcolmson & Co., if wound up under trust deed, will make up fully the total amount our estate has had, through Lowry, Valentine, and Kirk, of your goods." Mr. Easdale again pressed the petitioners to the same effect, in substance, by letter of the 29th July, after he had received Messrs. Johns, Hewitt, and Johns' letter informing him that the petitioners intended to proceed in bankruptcy. That letter closes the evidence on this portion of the case. And I am clearly of opinion that Mr. Easdale has not established his contention, that no debt can be deemed by this Court to be due which would support an adjudication. The bills in the petitioners' hands amount to £5,512 17s. 1d., as before stated, including the bill for £2,000 in the petition mentioned, were all endorsed to them, before due, for valuable consideration, and no agreement has been proved that the petitioners ever consented to receive the amount of the goods in Watson & Co.'s hands, *whatever it might amount to*, in discharge of the liability of William Easdale, either for the entire amount of such bills, or for the respective portions thereof, which he states represent the goods of the petitioners, sold to him by Lowry, Valentine, and Kirk, which, he says, amounts to £2,846 8s. 1d. It does appear that the petitioners were willing to make some such arrangement, if satisfied that the goods in Watson & Co.'s hands were of the value stated by Mr. Easdale on the 22nd July—viz., £3,141 19s. 9d; and they did suspend their proceedings in bankruptcy, to afford time for inquiry; but, when that inquiry resulted in their being informed that the goods would only realize £1,300, the negotiation, whatever it was, came to an end, and they instructed their solicitors to proceed. When examined in this Court, Mr. Hutton Birley stated he was willing to take £500 for his lien on the goods in the hands of Watson & Co. Independently of express agreement, it cannot be contended that Mr. Easdale has any legal right to insist on any portion of this debt to the petitioners being discharged on the grounds stated; and I am, therefore, of opinion that his contention on this branch of the case has failed.

The serious question, however, remains, which is stated in the notice of intention to show cause, founded on the non-compliance with the provisions of the 21st section of the Bankruptcy Act of 1872. The words of that section, as applicable to this objection, are as follows:—"The debt of the petitioning creditor must be a liquidated sum, and must not be a secured debt, unless the petitioner states in his petition that he will be ready to give up such security for the benefit of his creditors, in the event of the debtor being adjudicated a bankrupt; or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated; but he shall, on an application being made by the assignees or trustee, within the prescribed time after the date of adjudication, give up his security for the benent of the creditors upon payment of such estimated value." The petition, after setting out the bill of exchange for £2,000 as being the amount of the petitioner's debt, contains the following statement:—"That your petitioners do not, nor doth any person or persons on their behalf, hold any security on the debtor's estate, or on any part thereof, for the payment of the said sum, save a certain order, or lien, on certain goods of the bankrupt in the hands of Messrs. Watson, of New York, as further and collateral

Digitized by Google

security for the said bills and others, which your petitioners waive as against the said bills, but without prejudice to their right to retain the said security against their other demands." Now, there can be no doubt that this statement does not comply in terms with the provisions of the statute, assuming that the debt in question was a secured debt, as the petitioners neither state that they will be ready to give up such security for the benefit of the creditors in the event of adjudication taking place, nor that they are willing to give an estimate of the value of such security, or give such estimate. Mr. Andrews, however, contended that the debt in question—viz., the £2,000 bill—was not a secured debt, and that, even if it could be so considered, the petitioners, by waiving their security in their petition as against this debt, "without prejudice to their right to retain the said security as against their other demands," on that moment became unsecured creditors, and that, as this act of waiver was made before the adjudication was pronounced, it was sufficient. Now, as regards the first of these contentions, I am of opinion that the debt in question was a secured debt. The transfer by Lowry, Valentine, and Kirk of the lien on the balance of the proceeds of William Easdale's goods in the hands of Watson & Co. on the 16th of May, and its acceptance by the petitioners, created a general security in favour of the petitioners, covering any debt due, or accruing due by William Easdale, including the amount of the bill in question. The transfer was so treated throughout by the petitioners, and by William Easdale himself, in their interviews in July; and the statements in the petition itself completely estop the petitioners, in my opinion, from any such contention as that the debt in said petition was not a secured debt. In the interpretation clause of the Act of 1872, "secured creditor" is defined to mean "a creditor holding any mortgage, charge, or lien on the debtor's estate, or any part thereof, as security for a debt due to him;" and in the present petition the petitioners allege that *they hold no security* on the debtor's estate, or on any part thereof, for the payment of said sum, *save* an order on Messrs. Watson & Co., of New York, referring to the order in question *as further and collateral security* for the said bills and others. How can the petitioners contend, after this statement, verified upon oath, that they were unsecured creditors, or that their debt was not a secured debt? Mr. Andrews, indeed, relied on the principle that the security must be upon the estate of the debtor, and not on that of a third person, citing Lindley on Partnership, vol. ii., p. 1219, and the cases there referred to. But the security here *is* upon the debtor's estate—viz., a security first given by the debtor to Lowry, Valentine, and Kirk, and by them transferred to the petitioners, and, throughout their negotiations with Mr. Easdale, treated by both parties as a valid security against his estate. Assuming, then, that the debt was a secured debt, is the waiver by the petitioners, contained in the petition, of such security as against the bill of exchange in question, retaining their right to retain same against their other demands, a compliance with the provisions of the Act of Parliament? My opinion is that it is not, and that the non-compliance is so substantial that the adjudication, founded on such petition and the debt used to support it, is invalid, and the cause shown against it must be allowed. Mr. Andrews, in his argument on this branch of the case, relied upon the proposition laid down, also, in 2 Lindley on Partnership 1219, "That a creditor who has a security not exclusively appropriated to a particular debt may, on the bankruptcy of his debtor, appropriate that security to any debt which may be owing to him by the bankrupt." And probably, a secured creditor, holding a general security unappropriated, would be held so entitled if he claimed so to prove, although in a bankruptcy which occurred since the Act of 1872; but, the present case is not one of proof in a bankruptcy by a secured creditor, but of a petition by a creditor, who, although secured, has neither stated in his petition his readiness to give same up for the benefit of the creditors, nor his willingness to value same, but, on the contrary, claims to retain it unvalued, as against his other demands, the particulars of which he does not set forth, nor does he give any estimate of the value of such security. It must be borne in mind, independently of the strong prohibitory words of the statute, that there are many claims which furnish good materials for proof which could not be relied upon as good debts to support a petition. For instance, the debt of a non-trader incurred before the Act of 1872 might be proved in his bankruptcy, although it would not constitute a good petitioning creditor's debt under section 22 of the Act of 1872. Again, under section 46, unliquidated damages, after being assessed by the Court, may be proved in the bankruptcy, although such a demand could not constitute a good petitioning creditor's debt. Many other instances of the same nature might be mentioned, particularly the power of proving for debts not payable at the time of the bankruptcy, deducting rebate of interest, which is conferred by section 252 of the Act of 1857. And the case of *Ex parte Mauritz*, L. R. 5 Ch. 779, cited in the argument, may be mentioned, as illustrating a similar distinction between the preliminary steps which may be taken by a secured creditor in obtaining a debtor's summons, and the steps he must adopt if he eventually file a petition of bankruptcy founded on such summons, and as laying down the necessity for his complying with the statutable conditions in the latter case. "The Act," says Lord Justice James, in his judgment, "says that when a secured creditor presents a petition for adjudication he must state his willingness to give up his security, or have it valued. But it does not say that the preliminary steps under a debtor's summons can only be taken on that condition."

In addition to the objection arising from the non-observance of the conditions prescribed, by the statute, to be observed by a secured creditor, in order to entitle him to obtain an adjudication upon a secured debt, it is clear, as was pointed out in the argument, that, as the petitioners have not done so, the creditors are deprived of the right conferred upon them by the 21st section, of having the security given up by the petitioners for their benefit, upon payment of the estimated value within the time prescribed, which, by the 86th General Order, is fixed at two months, while, by the effect of the 43rd General Order, the petitioners, without any further step being taken by them, would be entitled to rank and receive a dividend upon the amount of the debt, which they have attempted to except from the operation of their security, retaining at the same time their security opposite a debt of unknown amount, and which the security might eventually more than discharge when realized. Consequences of a serious and injurious nature could be shown to result to the general creditors from such a practice, if sanctioned, and unfair advantages might accrue to the petitioning creditor. Proceedings to compel him to account, or a suit to redeem his security, might be rendered necessary, and delay and expense occasioned in the distribution of the estate; whereas, if the statutory course is adopted, the security can be forthwith redeemed, if it is considered prudent so to do, and realized for the benefit of the estate. It is not, however, necessary, in my opinion, that it should be shown that undue advantages should accrue to the petitioners, or that loss should result to the general estate, by pursuing the course taken in the present instance, it being sufficient to establish that the provisions of the statute have been departed from, and that the prescribed conditions requisite to found a valid adjudication have not been complied with in a substantial particular. It is to be observed that the terms of the section are in the negative, and amount to a prohibition against using a secured debt to ground a petition, unless one of the two conditions prescribed is followed. I must, further, observe that the great difference of opinion which prevails between those who have advised the petitioners and Mr. Easdale, as to the value of the goods in question, furnishes a strong reason for requiring that the provisions of the 21st section should have been followed, and the petitioners obliged, in the first instance, before obtaining an adjudication, to estimate the value of the security, which the assignees might at once have redeemed.

I need scarcely say that I do not consider myself in any way bound by my own decision in the case of *Re O'Neill*, 7 I. L. T. R. 20, referred to by Mr. Andrews, where, on an

Digitized by Google

ex parte application, I held that a petition should be received, in which a course similar to what has been here pursued had been followed. The present is the first instance in which the point has been raised and solemnly discussed, and I am bound to give the parties my opinion on the question, unaffected by my decision in the former case, which, as I have said, was made upon an *ex parte* application, and which was not afterwards questioned.

Upon the entire case, I am of opinion that the cause shown should be allowed, on the ground that the debt of the petitioning creditors is a secured debt, and that the petitioners have not stated in their petition that they will be ready to give up such security for the benefit of the creditors, in the event of the debtor being adjudicated a bankrupt, nor that they are willing to give an estimate of the value of their security, nor do they give such estimate; and that the petitioners do pay the costs of the motion, so far as same are applicable to the ground above specified, but not including any other portion of such costs, and that the respective parties bear their own costs respectively, so far as same are applicable to the other grounds specified in the notice.

Solicitors for the petitioning creditors: *S. Johns, Hewitt, & Johns.*

Solicitors for the trader: *W. E. Armstrong and Cronhelm & Tobias.*

COURT OF COMMON PLEAS.

Reported by J. R. STRITCH, Esq., Barrister-at-Law.

(Before MONAHAN, C.J., KEOGH and MORRIS, JJ.)

SHUTER v. M'LURDY.

Nov. 17, 18, 1874.—*Civil bill ejectment—Verifying affidavit—56 Geo. III., c. 88, s. 7—6 & 7 Will. IV., c. 75, s. 2—14 & 15 Vict., c. 57, ss. 79, 83—23 & 24 Vict., c. 154, ss. 73, 101, 104.*

A civil bill ejectment on the title brought under the 79th section of the 14 & 15 Vict., c. 57, and not being a proceeding between landlord, or lessor, and tenant, and not being brought for or against a person in occupation who has signed an acknowledgment under that Act, need not be verified by an affidavit such as is mentioned in the 83rd section thereof.

This was a special case stated for the opinion of the Court of Common Pleas, under the 27 & 28 Vict., c. 99, s. 35, by Fitzgerald, B.

The case came before the learned Baron at the Londonderry Summer Assizes, 1874, on appeal from a decree of the Chairman of the County. A civil bill ejectment had been brought for the recovery of the possession of a house, garden, and premises in the town of Coleraine, under the 14 & 15 Vict., c. 57, s. 79. It was not a proceeding between landlord and tenant, nor was the ejectment brought for, or against any occupier who had signed any acknowledgment pursuant to the 14 & 15 Vict., c. 57, or against any person claiming or deriving under such occupier. The Chairman had given a decree for possession, and, at the hearing of the appeal taken from that decree, counsel for the appellant called for the production of the affidavit verifying the contents of the civil bill, which, he contended, was necessary under the 83rd section of the 14 & 15 Vict., c. 57. On the other hand, counsel for the respondent contended that such an affidavit was not now necessary. Fitzgerald, B., held that the decree should be affirmed, unless it were necessary that an affidavit of verification should have been made, and accordingly he reserved the following question for the Court of Common Pleas:—"Whether in case of a civil bill ejectment brought under the 79th section of the 14 & 15 Vict., c. 57, and not being a proceeding between landlord, or lessor, and tenant, and not being brought for or against a person, or persons, in occupation, who shall have signed an acknowledgment pursuant to said Act, it is necessary that the civil bill should be verified by such an affidavit as is mentioned in the 83rd section of said Act? And, if this question were to be answered in the affirmative, the decree ought to be reversed; and, if answered in the negative, the same ought to be affirmed."

Porter, Q.C. (with him *Holmes*), for the defendant.—This civil bill ejectment is brought on the title. The 83rd section of the 14 & 15 Vict., c. 57, is still applicable, and an affidavit verifying the contents of the civil bill is necessary. The section has not been repealed in its entirety by the 73rd section of the subsequent Act of 1860 (23 & 24 Vict., c. 54). It is erroneously said to be repealed in Johnstone's Ed. Coppinger's County Court Prac. 105, referring to sec. 104, sched. B. The latter section applies only to those cases in which the relation of landlord and tenant exists, and, accordingly, that portion only of the 83rd section 14 & 15 Vict., c. 57, has been repealed, which assumes such a relation to exist. In the present case the relation of landlord and tenant does not exist, and, therefore, the unrepealed portion of the 83rd section governs it. The words used in the 79th section, describing those cases in which the Chairman may exercise a jurisdiction in ejectments on the title are *also* used in the 83rd section, where all the classes of ejectment are set out, and, therefore, the provisions of the latter apply to the former section. Again, the words used in the 83rd section are not to be found throughout the Act, except in the 79th section, and can have no other application. Further, the 83rd section commences with the words, "In *every* ejectment by civil bill," &c., and concludes with the provision that there shall be an affidavit verifying the contents of such civil bills. It is, then, clear that an affidavit of verification was formerly necessary. It may be contended that the section requires affidavits only from a "landlord, or lessor, or owner, or the known agent or receiver," &c., and that it did not require one from a claimant to disputed possession. But there is no limitation expressed in the section, which commences with the most general words, and sets out specially every class of ejectment, including that of the 79th section; and the word "owner" is wide enough to include "claimant." The reasonable construction to be put upon the word "owner" is that it includes "claimant," for by the 56 Geo. III., c. 88, s. 7, an affidavit was required from the "landlord, or lessor," but the word "owner" was not introduced until it was added in the 83rd section, in order to meet the cases of ejectment by claimants brought under the 79th section. And again, the word "owner" has this general meaning put upon it by the Legislature itself in the 86th section of the same Act (14 & 15 Vict., c. 154), enacting that, in any ejectment proceedings to recover any lands under the provisions of this Act, "the landlord, or owner," shall be entitled to possession, &c. It is clear, then, that the affidavit was necessary in the ejectment proceedings under the 79th section; and it is, also, clear that the word "owner" includes the word "claimant." The requirement of an affidavit of verification has not been removed by the 73rd section of 23 & 24 Vict., c. 154, though it will be contended that the 83rd section was repealed, as to this provision, by the 73rd section of the latter Act. But that section does not expressly, and can only be said impliedly to repeal the 83rd "For a more ancient statute will not be repealed by a more modern one, unless the latter expressly negative the former, or unless the provisions

Digitized by Google

of the two statutes are manifestly repugnant, in which latter case the earlier enactment will be impliedly modified or repealed. . . . . . In order to repeal an existing enactment, a statute must have either express words of repeal, or must be contrary to, or irreconcilable with the provisions of the law to be repealed, or, at least, mention must be made of that law, showing an intention of the framers of the latter Act of Parliament to repeal the former; but the law will not allow the exposition to revoke, or alter, by construction of general words, any particular statute where words may have their proper operation without it;" Broom Leg. Max. 29. Not only does the law not favour implied repeal, but, in Deasy's Act there is a special section expressly repealing all that the Legislature thought necessary. The 104th section declares the Acts in schedule "B" to be repealed; and in that schedule ss. 71 to 96, inclusive, of 14 & 15 Vict., c. 57, are repealed, *so far* as they relate to proceedings between *landlord and tenant*, and to persons in occupation who shall have signed acknowledgments pursuant to the Act. Now, the proceedings in this case relate to neither of the classes here mentioned, and, therefore, the 83rd section 14 & 15 Vict., c. 57, is still in operation as to those proceedings. The 73rd section of Deasy's Act only applies to ejectments between parties connected by the relation of landlord and tenant. The preamble of the Act states its scope; s. 104, schedule B repeals ss. 71 to 96 of 14 & 15 Vict., c. 57, within that scope; and the 101st section enacts that title to lands is not to be drawn into question; thus excluding the class of proceedings brought under the 79th section of 14 & 15 Vict., c. 57.

Rea v. *Lavery*, 3 C. & D. C. C. 420; *M'Bride* v. *Donovan*, *ib.* 425; *Collins* v. *M'Donnell*, 6 I. L. T. R. 157, were cited.

M'Mahon, Q.C. (with him *Killen*), *contra*.—The 83rd section of 14 & 15 Vic., c. 57, which is relied upon, has been repealed by the 73rd section of the Landlord and Tenant Act, 1860. The necessity for an affidavit of verification no longer exists. When the Civil Bill Act was passed, a plaintiff in ejectment was not permitted to give oral testimony in the case, and his affidavit was required and accepted as a kind of *quasi* evidence. The Legislature adapted itself to the requirements of the parties, and repealed the section by another, the words of which are imperative, and the statute being general and remedial, should be literally construed. The course of practice has been almost universally against requiring the verification, and the majority of Chairmen consider the affidavit of verification no longer a necessary and legal element in an ejectment under the 79th section. The Acts prior to 14 & 15 Vict., c. 57, are not applicable to this case. They relate only to those cases in which the relation of landlord and tenant exists. This ejectment has been brought under the 79th section of that Act, and in the section no mention is made of an affidavit. The 83rd section, declaring that an affidavit of verification is necessary, does not state that such affidavit should be made by a claimant of the possession of lands under the 79th section, but only by the "landlord, or lessor, or owner, or his known agent or receiver." Therefore, no affidavit in this case is necessary. But, even assuming that an affidavit by the claimant was formerly necessary under the 83rd section, it has ceased to be so now. The 71st section, 14 & 15 Vict., c. 57, empowers the Chairman to put landlords in possession of deserted tenements; the 72nd applies to ejectment for overholding; the 73rd applies to ejectment for non-payment of rent; the 79th section, under which the present proceedings are brought, gives the Chairman jurisdiction as to the disputed possession of lands, &c.; and the 82nd section applies to ejectments against tenants at will, or permissive occupants. Then follows the 83rd section, which, recapitulating the various classes of ejectment set out in the foregoing sections, enacts that the truth of the contents of civil bill ejectment shall be verified by the affidavit of the landlord, or lessor, or owner, &c. But by 23 & 24 Vict. c., 154, s. 73, it is enacted that "it shall not be necessary to make *any* affidavit verifying the contents of *any* civil bill ejectment, whether for non-payment of rent, or *otherwise*." By this section it is declared that no affidavit is necessary, and so general in its application is it, that it repeals the 88th section of 14 & 15 Vict., c. 57, which renders the affidavit of a landlord, in undefended ejectments for non-payment of rent, admissible as evidence. A subsequent Act, 27 & 28 Vict., c. 99, s. 46, has re-enacted the 88th section; but the 83rd has not been re-enacted, and consequently verification is not now necessary.

They cited the *Sussex Peerage case*, 11 Cl. & Fin. 86; *Gilman* v. *Crowley*, 7 I. C. L. R., 557.

KEOGH, J.—I have no doubt as to what should be the decision of the Court in this case. It is contended that an affidavit verifying the contents of a civil bill ejectment, brought under the 79th section of 14 & 15 Vict. c. 57, is necessary under the 83rd section of that Act. Even supposing that the affidavit was ever necessary under that section (and I think it doubtful), that enactment has been repealed by the 73rd section of 23 & 24 Vict. c. 154. I confess that, at first, I was not a little influenced by Mr. Porter's reference to the 101st section of the latter Act, declaring that the title to lands should not be drawn in question; but, what do I find on turning to the 14 & 15 Vict. c. 57? That this very section is *verbatim* in that Act (s. 96); and of course it can only be construed as having the same efficacy. I, therefore, am of opinion that the affidavit of verification was not necessary in these ejectment proceedings, and that the decree should be affirmed.

MORRIS, J.—I concur in the judgment delivered by my brother Keogh. We are unanimously of opinion that an affidavit of verification is not necessary. Even under the 83rd section of 14 & 15 Vict. c. 54, I think its necessity is doubtful. The 7th section of 56 Geo. III. c. 88, requires such an affidavit, but it does not apply to the class of ejectments now before the Court. Section 2 of 6 & 7 W. IV. c. 75, s. 2, which is similar to the section under which these proceedings have been taken, does not require any affidavit. Again, the 82nd section of 14 & 15 Vict. c. 154, applies to cases in which the "owners" of lands have been sufferers, and gives to them a means of recovering possession of their lands from caretakers, servants, and permissive occupants; and the word "owner" in the 83rd section clearly refers to the class mentioned in the 82nd section.

But whatever the law might have been under the old Acts, it has been repealed by the 73rd section of the Landlord and Tenant Act of 1860, which declares, in plain language, that "it shall not be necessary to make any affidavit verifying the contents of any civil bill ejectment, whether for non-payment of rent or *otherwise*." Is not this a civil bill ejectment, and how then can it be said that an affidavit is necessary? The most reasonable construction to put upon the section is that no affidavit is now necessary. It would be a ridiculous construction of the 73rd section to hold that an affidavit, which was not necessary from 1836 to 1852 in this class of ejectment, then became a legal necessity; and it is quite clear that, so far as that section required affidavits, it has been repealed by the 73rd section of Deasy's Act. For these reasons, I am of opinion that the decree should be affirmed.

MONAHAN, C.J., concurred.

Digitized by Google

(Before Lawson, J.)

Re Drogheda Election Petition.

April 23, 1874.—*Practice—Parliamentary Elections Act* (31 *& 32 Vict., c.* 125)—*The Ballot Act*, 1872, (35 *&* 36 *Vict., c.* 33)—*Inspection of ballot papers.*

Liberty given to the Clerk of the Crown and Hanaper to permit the agents of the petitioners and respondents, in a Parliamentary Election petition, to inspect ballot papers which had been received by the Returning-officer though objected to, on the part of a candidate, as having been marked so that the voters could be identified.

Motion, on behalf of Robert Martin and others, the petitioners in the matter of the Parlimentary Election Petition for the county of the town of Drogheda, for an order to permit inspection of ballot papers.

The motion was grounded on an affidavit of Mr. Henry Clinton, who deposed that he was the Parliamentary agent of the petitioners, and had acted as the conducting agent of Mr. Whitworth, one of the two candidates at the late election in Drogheda; that the respondent, Dr. O'Leary, was the only other candidate, and that Dr. O'Leary was returned as the candidate elected, and elected by a majority of ten votes; that the deponent was advised by counsel that Mr. Whitworth should have been declared elected, and that the majority for Dr. O'Leary was a colourable one, and had been created by the reception of voting papers improperly filled up, and marked so as to lead to the identification of the voters, for from 45 to 50 ballot papers had been received and counted by the returning officer, though objected to on behalf of Mr. Whitworth, which had a cross marked on them after and opposite the name of Dr. O'Leary, and in the same compartment, instead of being marked outside the vertical line at the right hand side of the name; that a petition had been duly presented against the return of the said respondent, and that deponent was advised that a scrutiny of the ballot papers was essential to justice, and necessary in order to enable the petitioners to question the validity of said election.

Heron, Q.C. (with him *Nicholls*), for the petitioners, in support of the motion, cited *re Tyrone Election Petition*, Ir. R. 7, C. L. 190; *re Athlone Election Petition*, 8 Ir. L. T. Notanda, 88; 35 & 36 Vict. c. 33, sch. 1, p. 1, r. 40. They asked that the order should go for an inspection both of the rejected ballot papers, and the ballot papers objected to yet received, as, unless there was a scrutiny at the trial, it would be necessary to have a general inspection then, and time would be saved by having it now, while it would, also, enable them to be prepared if a scrutiny were entered upon at the trial.

Porter, Q.C. (with him *Killen*), for W. H. O'Leary, one of the respondents, *contra*.—The case of the *Athlone Election Petition* was the converse of the present, and the motion there made was not so extensive as this application, as now presented on the argument for the petitioners; and none so extensive has been granted here or in England. This is in effect an application for a preliminary scrutiny, but seeking to inquire into matters which would be outside a scrutiny. In the *Athlone* case the order was sought for the purpose of inspecting the *rejected* ballot papers.

[Lawson, J.—There is no doubt that there would be a right to an inspection of rejected ballot papers in a proper case for it; and in principle I think there is, also, a right to have an inspection of ballot papers which were received by the returning officer contrary to objection. That the returning officer's decision is final does not take away any right to inspection.]

This is a mere fishing application, to assist the petitioners in spelling out a case. We do not deny that the Court has jurisdiction to make the order; but, before such an exercise of its power, an overwhelming case of convenience must be made out. Here, however, the application is unnecessary, frivolous, and vexatious. Upon the showing of the affidavit of the petitioners' agent, they seem quite familiar with the papers for the scrutiny of which this motion is now made. There are charges in the petition of bribery, &c., and recriminating charges, and if these were proved the scrutiny would be wholly unnecessary. The decision of these matters of fact should be preliminary to a scrutiny. The secrecy of the ballot should be most jealously guarded. The scrutiny of the voters in the case of *Clare County Election*, 1853, 2 P. R. & D. 241, was not entered into until after allegations of treating, bribery, and intimidation were decided. So, in the *Lyme Regis* case, 1848, 1 P. R. & D. 26, and in the *District of Wigton Burgh's* case, 1853, 2 P. R. & D. 134, the more convenient course was held to be, that the consideration of the other matters alleged in the petition should be preliminary to the scrutiny of the votes. In Leigh and Le Marchant's Election Law, p. 76, the usual procedure is stated:—"The inquiry by way of scrutiny is sometimes entered into before the other charges in the petition are disposed of, but this is not an expedient course, since it is possible that those defending the seat will, by the above section, be able to disqualify the candidate for whom the seat is claimed. The general charges should, therefore, usually be gone into first. . . . If the petitioner is disqualified, a scrutiny of votes may still take place, for the purpose of showing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices." Not only is the order sought at a stage in the proceedings when to grant it would be a novelty, unnecessary, contrary to the principles of the Ballot Act and to the course pointed out in Leigh and Le Marchant as usual, but it is, moreover, a fishing scrutiny, which the Court will not encourage. We would still be entitled to go on with a scrutiny at the trial.

[Lawson, J.—I am not disposed to make an order so extensive as that contended for. I should be inclined to make an order following that made in the *Tyrone Election* case.]

If an order is to be made at all, we would prefer that there should be an inspection of the received ballot papers, as we also might be advantaged. [*Heron*, Q.C.—As regards the rejected papers, the Clerk of the Hanaper can attend at the trial with them in a separate packet, to be opened if necessary.]

J. B. Falconer, for the returning officer R. B. Daly, the other respondent, applied for costs of appearing, and referred to the *Athlone* case.

Nicholls, in reply.

Ordered, that the Clerk of the Crown and Hanaper do, on Monday the 27th inst., at the hour of 12 o'clock, allow an inspection of the ballot papers admitted and received by the returning officer at the election for the said borough, to Mr. Henry Clinton and Mr. Verdon on behalf of the petitioners, and Mr. J. G. Healy and Mr. John Downs on behalf of the respondents. Let every precaution be taken by the Clerk of the Crown and Hanaper not to permit of the inspection of any other document, or documents, than said papers. And let the costs of this motion, and of the said inspection, be costs for the successful party in this election petition matter.

Digitized by Google

MONAGHAN ASSIZES.

Reported by R. DONNELL, Esq., Barrister-at-Law.

(Before FITZGERALD, J.)

MAGEE v. MARQUIS OF BATH.

July 10, 1874.—*Ulster tenant-right—Acquiring the tenant-right—Letting, without in-coming payment, by landlord in possession.*

Lands, anciently subject to the Ulster tenant-right custom—part of an estate on which the custom was denied from 1851 *to* 1860*—were, in the famine years, surrendered by the tenants, who left while owing arrears of rent and were assisted, by the landlord, to emigrate. The lands remained unlet for several years, and were, in* 1857, *re-let to a tenant who made no in-coming payment, and who afterwards, being in arrear of rent, surrendered the lands to the landlord. They were subsequently, in* 1859, *re-let by the landlord, who had occupied them in the interval, to a tenant who undertook to erect a dwelling-house on the lands.*

Held, *that the re-letting was subject to the Ulster tenant-right custom.*

This was an appeal, by the Marquis of Bath, from a decision of the Chairman, who awarded Magee, the claimant, £400 under the Ulster tenant-right custom.

From the claimant's evidence it appeared that, in 1847–8, the farm had been let to a number of tenants, who fell into arrears. The Marquis of Bath assisted them to emigrate, and, in 1853, took the land into his own hands, in which it remained until, in 1857, he let it to David Gilmour. Gilmour held it only a year, and the appellant took it again into his own hands. The present claimant, having sold his own farm in Cavan, in 1859, took the farm in question, together with a house and garden usually occupied with the farm, paying a year's rent to the office, and undertaking, in writing, to expend £100 in erecting a dwelling-house. In 1862 he got another farm. For this he paid £6 11s. and half a year's rent (£2 9s. 1d.), making £9 0s. 1d., on getting possession. The rent of the two farms amounted to £36 12s., and of the house and garden to 5s. per annum.

Mr. Lang, sub-agent, deposed that the farm had been formerly four farms. The tenants left in arrear. Some were assisted to emigrate, and some went to other estates. In 1857 Mr. Gilmour got possession of 62 acres, without paying anything. He gave up possession in December, 1857, owing £14 9s. rent, which was lost. In 1859, 27 acres, part of Gilmour's farm, were let to Magee, who paid the hanging gale. From 1851 up to 1860 tenant-right sales were not permitted on the Bath estate. After 1860 sales were permitted, but not in every instance. There are 1,800 holdings on the Bath estate; £8,000 was spent on emigration; £30,000 was lost in arrears during the bad times. The rental is £21,000 per annum. In the famine years the tenant-right became a valueless commodity. It would have sold for something prior to 1860. Mr. W. S. Trench became agent in 1851.

C. U. Townshend deposed—I was sub-agent from 1851 to 1854. There was no tenant-right in that period. Some of the land would have fetched a price, but it was not permitted to be sold. It was broadly stated over the estate that sales would not be permitted. About 6,0.0 acres were on hands at that time. About 500, only, remained on hands when I left in 1854.

Frederick Trench deposed—I have been agent since November, 1872. I had been sub-agent since 1868. Tenant-right is allowed on farms held from time immemorial, or where in coming payments have been made. The sale must be made to an adjoining tenant. Since the Land Act, instances have occurred of tenants who paid nothing coming in, and who were refused leave to sell to an adjoining tenant. Most of these tenants still remain; but one, Jackson, has left. He got three months' grazing without paying anything for it, but that was because his cattle had foot and mouth disease. If the adjoining tenant does not offer a reasonable price, or is objectionable, I tell the selling tenant to bring me a purchaser from the townland.

Andrews, Q.C. (with him *Monroe*), for the claimant, contended that the lands were, by reasonable implication, let subject to the Ulster custom; and that the words in the 1st section of the Land Act—"Where the landlord has purchased or acquired from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall thenceforth cease to be subject to the custom"—applied to a tenant claiming compensation who had disposed of his tenant-right claim to the landlord, and not to any succeeding tenant of such lands, who might or might not be subject to the custom according to the terms, express or reasonably implied, of the letting.

Falkiner, Q.C. (with him *Elrington*, Q.C., *Porter*, Q.C., and *Orr*), for the respondent, contended that the landlord, by assisting former tenants of these lands to emigrate, and foregoing arrears of rent, had "purchased or acquired" the custom within the meaning of the section, and that, consequently, the lands were statutably rendered incapable of being ever again subjected to the custom.

FITZGERALD, J.—In this case, in which the Marquis of Bath is the appellant and Henry Magee the respondent, the claimant claims £700 under the Ulster custom for the value of his tenant-right, and the Chairman in the Court below gave a decree for £445, and from that decree there is an appeal. The tenancy was first created for the main portion of the holding in November, 1859, and for the small residue three years after. That tenancy was not determined by the ejectment for non-payment of rent in 1870, nor by the memorandum of agreement in May, 1871, which was not acted upon. The tenancy was not determined, because the ordinary consequences of redemption ensued, and we are thus dealing with a tenancy created before August, 1870, and terminated by a notice to quit in 1873. The evidence was quite sufficient to establish, and did establish to my satisfaction, that a usage which would come within the denomination of the Ulster tenant-right custom had existed on the part of the estate of the Marquis of Bath, to which the lands in question belong, and still exists, save where before the passing of the statute that usage had been extinguished and not revived. The claimant had been refused permission to sell the land, and he had therefore established a *prima facie* case. The answer of the landlord was that, prior to the creation of the tenancy he had acquired the farm from the then tenants, thus abrogating the tenant-right custom within the meaning of the first section of the Act, and that, therefore, the holding ceased to be subject to the custom. The matters of fact, established by the evidence given on the part of the landlord, were these:—There was no doubt that these lands were subject to the usage before 1853. Now, in what was called the "bad times," the tenants abandoned the possession in 1853, owing some arrears, and some were assisted to emigrate. On the lands coming into the hands of the Marquis of Bath, they remained in his possession for some time, until they were let to a man named Gilmour in 1857. He, too, abandoned the possession in 1858, owing some arrears. The letting to the present claimant took place in 1859. It was on those circumstances the Marquis of Bath rested his case of the acquisition of the tenant-right. It was urged that the landlord, having thus got possession free of any tenancy or claim, had acquired from the tenant the tenant-right custom, and that thenceforth the holding—that is, the parcel of land—ceased to be subject to it.

Digitized by Google

Whether there was such an acquisition as would come within the meaning of the statute may be doubted. The section of the Act would seem to have reference to cases where the landlord had purchased up the tenant's interest, with a view to extinguish the usage. That there was an acquisition of this kind in the present instance may be, as I before remarked, reasonably doubted; but on this question I do not propose to express any opinion. I am unable to adopt the reasoning on this subject of the Chairman of the county Antrim, in the case of *Williamson* v. *Lord Antrim* (7 Ir. L. T. R. 157), or of Mr. Butt in his book on the Land Act, pages 577, 579. The question is of such importance that, if it arose so directly as to necessitate a decision, I should certainly reserve it for the Court for Land Cases Reserved. I have no doubt whatever on one matter of fact, and that is, that whenever it comes to be investigated it will be found in multitudinous cases that, where before the passing of the Act the land had come into the possession of the landlord freed from any tenancy or claim, and was re-let by him, the new letting was considered to be subject to the usage, and treated and dealt with accordingly. As the dealings by which the landlord is said to have acquired the tenant-right, as well as the letting to the claimant, took place before the passing of the Land Act, there can be no doubt that in one sense the land, when it came into the landlord's hands before the letting to the claimant, was not subject to any custom or usage. Tenant-right, before the passing of the Land Act, was not recognized by law. It had, in fact, no legal existence—it was the creation of the landlord's will. No sale could take place without his consent, and the law did not in any way interfere with, or abridge his right to determine the tenancy, or impose any obligation on him to give compensation. Tenant-right was then merely a moral obligation, enforced by the pressure of public opinion. The landlord might have given notice that for the future he would not recognize or give effect to the custom, or he might, without any notice, refuse to give force to it. But if in one sense land which, before the passing of the Act, came into possession of the landlord freed from any tenancy or claim, might be said to be no longer subject to the prevailing usage, it seems equally clear that on a new letting, before the passing of the Land Act, the landlord might expressly recognize the usage such as it was, or the new letting might be entered into under such circumstances as by fair implication to be subject to the usage existing on the estate, whatever force it might have. The question I now propose to consider as a question of fact is, whether the letting to the claimant in 1859 was, by fair implication, excluded from or included in the usage of tenant-right then prevailing on the estate. We are now dealing with an estate on which the usage generally prevailed, and on which the tenants, who had been examined in the case, had stated that sales had not been prevented, provided they had been conducted according to the rules of the estate, which were, that an adjoining tenant would have the preference if he offered a reasonable sum, and that the in-coming tenant would have to be accepted by the landlord. The evidence I propose principally to refer to is that of Mr. Townshend, Mr. Lang, and Mr. Trench. Mr. Townshend came to the estate as under-agent in the year 1851, and continued in that capacity until July, 1854. He stated, in his evidence, that the usage did not prevail on the estate in those years. Mr. Lang said that it was permitted again in 1860. That just exactly illustrated the character of what was called tenant-right before the passing of the Act. It was at the will of the landlord and was the creature of his pleasure. It existed before the "bad times," but in those years of distress it ceased to be of any value. Mr. Townshend stated that the difficulty in those days was not to get purchasers of tenant-right, but to get solvent tenants. There was, he said, a large tract of land, of about 6,000 acres, on which there were no tenants. The evidence of Mr. Lang was that the tenant-right was created by the landlord's will, and abrogated at his pleasure. I gave the utmost weight to what Mr. Lang said, as I considered him an excellent and truthful witness. The evidence of Mr. Trench is not of so much importance as the others, because he has been only a short time connected with the estate, he having been appointed agent in 1872. I cannot give effect to his statement that tenant-right had only existed on holdings that had been occupied by the ancestors of the tenants from time immemorial. In coming to deal with the case made by the claimant, the first thing to be observed is that he was a stranger to the county and to the estate. He came from a neighbouring county and a different estate, where he had held a farm, and, I suppose, disposed of it in the usual way. He came to a county where tenant-right pretty generally prevails, and to take lands which had actually been subject to it. He agreed to become tenant in November, 1859. I do not pause to consider whether the claimant was invited by Mr. Trench, or whether Mr. Trench was solicited to accept him—it seems to me to be of no moment whatever. By the agreement which was signed on the occasion Magee undertook to pay a year's rent, not as arrears, and that he should expend £100 in erecting a dwelling-house. It seems clear from this that the tenant was to pay a fine or purchase-money. He was to pay the entire year's rent of 1858, not as arrears, for the land had been in the hands of the Marquis of Bath for the year. If he came in as an ordinary yearly tenant, there was no reasonable ground for asking him to pay the previous year's rent, which was not arrears, nor would it be reasonable to ask him to put himself under the obligation to pay £100, to be applied in erecting a house on the farm. I presume the house already upon it must have been considered unsuitable for the residence of a tenant. It appeared, further, that he was to come in under the ordinary rules of the estate. Recollect we are dealing here with a stranger to the estate. It has been stated by Mr. Townshend, I think, that notice was given in the office that tenant-right did not prevail on the estate. But no notice of this kind was given to the claimant. If it was intended—as it was in the power of the landlord to determine—that this holding was not to be subject to the ordinary custom and usage of the estate, Mr. Steuart Trench should have so informed the tenant. If such a thing had been stated to Magee, he would have said, "What security have I? I am paying a year's rent, and you are placing me under an obligation to erect a dwelling-house and improve the land, and yet at the end of the first year you may say my tenancy has ceased." As far as we can judge, in the lamented absence of Mr. Steuart Trench, nothing of the kind seems to have taken place. We are left to draw an inference, and the inference which I deduce is, that Magee was led to believe, and did believe that he was accepted as tenant in the ordinary way, with the benefit of the custom then prevailing generally on the estate. Matters continued in this way until 1870, when the Land Act was passed, and what was before a custom depending on the will of the landlord became law, and it is under that Act the claimant seeks for compensation. It is a fair inference that this farm was let on these conditions, and it is now to be so considered. That being so, although the tenant misconducted himself, there was nothing to deprive him of his right to compensation. I do not give any effect to the conversation with Mr. Trench. I rely entirely on the written evidence to show that this tenant is entitled to the benefit of the usage. It remains for me to say how far I am to interfere with the Chairman's decision. I think the amount awarded is excessive. I am inclined to rest my judgment very much on the evidence of Eakins. I collect from his testimony that Magee was willing to accept £300, if he got the consent of the agent. Mr. Trench, also, fixed the price at £300. And I will, therefore, affirm the Chairman's decision, but reduce the amount to £300, deducting £36 12s. for rent and taxes. I wish to observe, however, that this case is to be considered by itself, depending on its special circumstances, and I do not express any opinion upon other and larger questions which have been referred to during its hearing.

Attorney for the claimant: *R. E. Bailie.*

Attorneys for the respondent: *Jas. Murland and Edward Gibson.*

Digitized by Google

THE IRISH LAW TIMES,
AND SOLICITORS' JOURNAL.

PUBLIC GENERAL STATUTES,
37° & 38° VICTORIÆ (1874).

(*The Important Statutes only are set out at length.*)

CAP. I.

An Act to apply the sum of one million four hundred and twenty-two thousand seven hundred and ninety-seven pounds fourteen shillings and sixpence out of the Consolidated Fund to the service of the years ending the thirty-first day of March one thousand eight hundred and seventy-three and one thousand eight hundred and seventy-four. [28*th March* 1874.]

CAP. II.

An Act to apply the sum of seven million pounds out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-five. [30*th March* 1874.]

CAP. III.

An Act to enable the Secretary of State in Council of India to raise Money in the United Kingdom for the Service of the Government of India. [30*th March* 1874.]

CAP. IV.

An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters. [24*th April* 1874.]

CAP. V.

An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore. [24*th April* 1874.]

CAP. VI.

An Act to amend the Acts relating to Cattle Disease in Ireland. [21*st May* 1874.]

29 & 30 Vict. c. 4.

WHEREAS by "The Cattle Disease Act (Ireland), 1866," power was given to the Lord Lieutenant or other chief governor or governors in Ireland, in the manner in the said Act mentioned, to make such orders and regulations as to him or them might seem necessary for the more effectually preventing the spreading of contagious or infectious disease amongst cattle, and for the other purposes in the said Act mentioned; and by the said Act provision was made for defraying the expenses necessary for the purpose of carrying the said Act into execution, and for other purposes in the said Act mentioned, by means of a rate to be assessed, subject to the limitations and in the manner prescribed by the said Act, upon the several Poor Law unions in Ireland in proportion to the net annual value of the rateable property therein, according to the valuation in force for the time being:

And whereas by the said Act provision was made in case the amount so assessed should be insufficient that such further sums as should be required should be raised by means of further rates to be assessed subject to the limitations and in the manner prescribed by the said Act; and in case occasion should not arise for the application to the purposes aforesaid of the whole or any part of any moneys so raised, then that all such moneys, or the remaining balance of the same, should be paid over to the treasurers of the said Poor Law unions, and be applied in manner provided by the said Act:

33 & 34 Vict. c. 36.

And whereas the purposes to which such moneys might be applied under the authority of the said Act were extended, and the said Act was amended by "The Cattle Disease (Ireland) Amendment Act, 1870:"

And whereas under the authority and for the purposes of the first-recited Act a certain sum of money was raised, but inasmuch as there was only occasion to expend for the said purposes a part of such sum, the balance was paid over to the treasurers of the said unions respectively, as provided by the said Act:

And whereas a further sum being now required to be raised for the purposes of the said Act, doubts have arisen whether the powers in that behalf conferred by the recited Acts apply to and include cases where a portion of the previous levy has been paid over to the treasurers of unions, and it is expedient such doubts should be removed:

Be it therefore enacted, &c.: . . .

Short title.

1. This Act may be cited for all purposes as "The Cattle Disease (Ireland) Acts Amendment Act, 1874," and the recited Acts and this Act may be cited for all purposes as "The Cattle Disease (Ireland) Acts, 1866–1874."

Amendment of section 13 of 29 & 30 Vict. c. 4.

2. It is hereby declared that the provisions of section thirteen of "The Cattle Disease Act (Ireland), 1866," extend and apply to each and every case in which, for the purposes of carrying into execution The Cattle Disease (Ireland) Acts, 1866–1874, and for the purposes therein mentioned, any sum of money shall be required, whether such case shall arise after the disbursement of any

Digitized by Google

sum or sums raised under the provisions of the said Acts, or any of them, or after the repayment of any such sum or sums, or any part thereof, to the treasurers of Poor Law unions under the said provisions.

Provided always, that no certificate or order under the authority of the said section thirteen of "The Cattle Disease Act (Ireland), 1866," shall authorise the assessment at any one time of more than one halfpenny in the pound on the net annual value of the rateable property in any Poor Law union, according to the valuation in force for the time being.

Cap. VII.

An Act to amend the Law respecting the payment of the Assistant Judge of the Court of the Sessions of the Peace for the county of Middlesex, and his deputy, and the Chairman of the Second Court at such Sessions. [21*st May* 1874.]

Cap. VIII.

An Act to make provision for the taking of Harbour Dues in the Isle of Man. [21*st May* 1874.]

Cap. IX.

An Act to authorise an Advance out of the Consolidated Fund of the United Kingdom to the Public Works Loan Commissioners, for enabling them to make Loans to School Boards in pursuance of the Elementary Education Act, 1873. [21*st May* 1874.]

Cap. X.

An Act to apply the sum of thirteen million pounds out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-five. [21*st May* 1874.]

Cap. XI.

An Act for altering the shooting season for Grouse and certain other Game Birds in Ireland. [21*st May* 1874.]

WHEREAS under an Act of the Parliament of Ireland, of the thirty-seventh year of the reign of King George the Third (chapter twenty-one), intituled "An Act to amend the Game Laws," the shooting season in Ireland for moor game and grouse begins on the twentieth day of August, and it is expedient that the law in Ireland be in that respect altered:

37 G. 3. c. 21. (I.)

Be it therefore enacted, &c.: . . . .

Grouse season to begin on 12th Aug. in Ireland.

1. The said Act of the Parliament of Ireland shall be read and have effect as if with respect to moor game and grouse the twelfth day of August had been mentioned throughout that Act instead of the twentieth day of August.

Short title.

2. This Act may be cited as The Game Birds (Ireland) Act, 1874.

Cap. XII.

An Act to make provision for the transfer of the assets and liabilities of the Bengal and Madras Civil Service Annuity Funds, and the Annuity Branch of the Bombay Civil Fund, to the Secretary of State for India in Council. [8*th June* 1874.]

Cap. XIII.

An Act to extend to the present Bishop of Calcutta the Regulations made by Her Majesty as to the leave of absence of Indian Bishops. [8*th June* 1874.]

Cap. XIV.

An Act to render valid Marriages heretofore solemnized in the Chapel of Ease called "Saint Paul's Church at Pooley Bridge," in the parish of Barton in the county of Westmorland. [8*th June* 1874.]

Cap. XV.

An Act to amend the Act of sixteenth and seventeenth Victoria, chapter one hundred and nineteen, intituled "An Act for the Suppression of Betting Houses." [8*th June* 1874.]

WHEREAS it is expedient to amend the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses," and to extend the provisions of such Act to Scotland:

Be it enacted, &c.: . . . .

Act to be construed with 16 & 17 Vict. c. 119.

1. This Act shall be construed as one with the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter one hundred and nineteen, intituled "An Act for the suppression of Betting Houses" (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Betting Acts, 1853 and 1874, and each of them may be cited separately as the Betting Act of the year in which it was passed.

Short title.

Commencement of Act.

2. This Act shall not come into operation until the thirty-first day of July one thousand eight hundred and seventy-four.

Penalty on persons advertising as to betting.

3. Where any letter, circular, telegram, placard, handbill, card, or advertisement is sent, exhibited, or published,—

(1.) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act; or,

(2.) With intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining informa-

Digitized by Google

tion or advice for the purpose of any such bet or wager or with respect to any such event or contingency as is mentioned in the principal Act; or,

(3.) Inviting any person to make or take any share in or in connection with any such bet or wager;

every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the principal Act with respect to offences under that section.

Extension to Scotland.

4. The twentieth section of the principal Act is hereby repealed, and the principal Act, as amended by this Act, shall extend to Scotland, with the following modifications and provisions:

(1.) The term "distress" shall mean poinding and sale;
The term "misdemeanour" shall mean a crime and offence:

(2.) All offences or penalties under this Act and the principal Act shall be prosecuted and recovered before the sheriff of the county or his substitute in the sheriff court, at the instance of the Procurator Fiscal, or of any private person, under the provisions of the Summary Procedure Act, 1864, and all the jurisdictions, powers, and authorities necessary for the purposes of this section are hereby conferred on the sheriffs and their substitutes:

(3.) Every pecuniary penalty which is adjudged to be paid under this or the principal Act shall be paid to the clerk of the court, and shall be by him accounted for and paid to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty:

(4.) The thirteenth and fourteenth sections of the principal Act shall not apply to Scotland, but it shall be competent to any person who is convicted under this Act or the principal Act to appeal against such conviction to the High Court of Justiciary, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, convictions, and restrictions contained in the said provisions.

CAP. XVI.

An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

[*8th June* 1874.]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted, &c.:

Short title.

1. This Act may be cited as "The Customs and Inland Revenue Act, 1874."

PART I.

Customs.

Repeal of customs duties on sugar, &c.

2. On and after the first day of May one thousand eight hundred and seventy-four the duties of customs on the following articles, namely, sugar not equal to refined, including cane juice, molasses, almond paste, dried cherries, dry comfits, confectionery, not otherwise enumerated, preserved ginger, marmalade, succades, and all fruits and vegetables preserved in sugar, not otherwise enumerated, shall cease and determine.

On and after the twenty-first day of May one thousand eight hundred and seventy-four the duties of customs on the following kinds of sugar, namely, brown or white candy, refined sugar, or sugar rendered by any process equal in quality thereto, and manufactures of refined sugar, shall cease and determine.

On and after the first day of May one thousand eight hundred and seventy-four the drawbacks on sugar refined in Great Britain or Ireland which were allowed by the Act of the thirty-sixth and thirty-seventh years of Her Majesty's reign, chapter eighteen, shall cease and determine.

Grant of customs duties on tea.

3. The duties of customs now charged on tea shall continue to be levied and charged on and after the first day of August one thousand eight hundred and seventy-four until the first day of August one thousand eight hundred and seventy-five on importation into Great Britain or Ireland (that is to say),

Tea, the lb. - - - *6d.*

PART II.

Income Tax.

Grant of duties of income tax.

4. There shall be charged, collected, and paid for the year commencing on the sixth day of April one thousand eight hundred and seventy-four, in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say),

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A.), (C.), (D.), or (E.) of the said Act, the duty of twopence;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said Act—

In England, the duty of one penny;

In Scotland and Ireland respectively, the duty of three farthings.

Provisions of Income Tax Acts to apply to duties hereby granted.

5. All such provisions contained in any Act relating to income tax as were in force on the fifth day of April one thousand eight hundred and seventy-four shall have full force and effect, with respect to the duties of income tax granted by this Act, so far as the same shall be consistent with the provisions of this Act; and for the purposes of this Act the year one thousand eight hundred and sixty-two, mentioned in the forty-third section of the Act of the twenty-fifth and twenty-

Digitized by Google

sixth years of Her Majesty's reign, chapter twenty-two, shall be read as and deemed to mean the year one thousand eight hundred and seventy-four.

Provisions of Income Tax Acts to apply to duties to be granted for succeeding year.

6. In order to insure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and seventy-five, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and seventy-five shall have full force and effect, with respect to the duties of income tax which may be so granted, in the same manner as if the said duties had been actually granted and the said provisions had been applied thereto by an Act of Parliament passed on that day: Provided that nothing in this section shall be deemed to render necessary or authorise the appointment of assessors for such of the said duties as may be payable under Schedules (A.) and (B.) of the said Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, or to continue the rates of income tax granted by this Act.

Assessment of Income Tax and Inhabited House Duties for year 1874–75.

Provisions as to assessment of income tax under Schedules (A.) and (B.), and of inhabited house duties, for the year 1874–75.

7. With respect to the assessment of the duties of income tax hereby granted under Schedules (A.) and (B.), in respect of property elsewhere than in the metropolis, as defined by "The Valuation (Metropolis) Act, 1869," and of the duties on inhabited houses elsewhere than in the said metropolis, for the year commencing on the sixth day of April one thousand eight hundred and seventy-four, the following provisions shall have effect:

(1.) The inspectors or surveyors of taxes shall be the assessors for the said duties, and in lieu of the poundage by law granted to be divided between the assessors and collectors in regard to such duties there shall be paid a poundage of three halfpence to the collectors thereof.

(2.) The sum charged as the annual value of any property in the assessment of income tax thereon for the year which commenced on the sixth day of April one thousand eight hundred and seventy-three, and the sum charged as the annual value of every inhabited house in the assessment made thereon for the same year, shall be taken as the annual value of such property or of such inhabited house for the assessment and charge thereon of the duties of income tax hereby granted, or of inhabited house duty, to all intents and purposes as if such sum had been estimated to be the annual value in conformity with the provisions in that behalf contained in the Acts relating to income tax and the duties on inhabited houses respectively.

(3.) The commissioners executing the said Acts shall for each place within their district cause duplicates of the assessments to be made out and delivered to the collectors, together with the warrants for collecting the same.

(4.) The commissioners executing the said Acts in England shall for each place within their district appoint such persons, being inhabitants of the place, as they shall think fit, to be collectors of the duties in like manner as if such persons had been presented to them by assessors in conformity with the said Acts.

Part III.

Income Tax and Inhabited House Duties.

Case for Opinion of Court.

Application of part and interpretation of term.

8. This part of this Act applies to Great Britain only; and in the construction thereof the term "the court" means, as to England, the Court of Exchequer at Westminster, until the Supreme Court of Judicature Act comes into operation, and thereafter the Exchequer Division of the High Court of Justice, and, as to Scotland, the Court of Exchequer in Scotland.

Commissioners for income tax and inhabited house duties may be required to state a case for the opinion of court.

9. Immediately upon the determination of any appeal under the Acts relating to income tax by the commissioners for the general purposes, or by the commissioners for the special purposes, of such Acts, or any appeal under the Acts relating to the inhabited house duties by the commissioners for executing such last-mentioned Acts, the appellant or the inspector or surveyor may, if dissatisfied with the determination as being erroneous in point of law, declare his dissatisfaction to the commissioners who heard the appeal (herein-after called the commissioners), and having so done may, within twenty-one days after the determination, require the commissioners, by notice in writing addressed to their clerk, to state and sign a case for the opinion of the court thereon. The case shall set forth the facts and the determination, and the party requiring the same shall transmit the case, when so stated and signed, to the court within seven days after receiving the same, and shall previously to or at the same time give notice in writing of the fact of the case having been stated on his application, together with a copy of the case to the other party, being the inspector or surveyor, or the appellant, as the case may be.

(1.) The party requiring the case shall, before he shall be entitled to have the case stated, pay to the clerk to the commissioners a fee of twenty shillings for and in respect of the case.

(2.) The court shall hear and determine the question or questions of law arising on a case transmitted under this Act, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the court may seem fit, and all such orders shall be final and conclusive on all parties.

(3.) The court shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

(4.) The authority and jurisdiction hereby vested in the court shall and may (subject to any rules and orders of the court in relation thereto) be exercised by a judge of the court sitting in chambers, and as well in vacation as in term time.

(5.) The court may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to cases stated under this Act.

Digitized by Google

PART IV.

Excise.

Repeal of Duties.

Repeal of duties in respect of horses and horse dealers.

11. On the first day of July one thousand eight hundred and seventy-four the following duties of excise shall cease to be payable; that is to say,

Duties on race horses;
Duties on licences to keep horses or mules;
Duties on licences for exercising or carrying on the trade of horse dealers;

but the enactments relating to the said duties respectively shall remain in full force and effect as to any duties which shall be owing or in arrear on the said day, and as to any offences which shall have been committed against any of the said enactments previous thereto.

Repeal of excise duties on sugar and sugar used in brewing.

12. On the first day of May one thousand eight hundred and seventy-four the duties of excise payable upon sugar made in the United Kingdom, and upon sugar used in brewing, shall cease to be payable; but the enactments relating to the said duties respectively shall remain in full force and effect as to any duties which shall be owing or in arrear on the said day, and as to any offences which shall have been committed against any of the said enactments previous thereto.

Grant of Duties.

Grant of excise duties on sugar used in brewing.

13. On and after the first day of May one thousand eight hundred and seventy-four there shall be charged, collected, and paid, for the use of Her Majesty, her heirs and successors, upon every hundredweight, and in proportion for any fractional part of a hundredweight, of all sugar which shall be used by any brewer of beer for sale in the brewing or making of beer, or in the preparation therefrom of any liquor or substance to be used as colouring in the brewing or making of beer, the excise duty of eleven shillings and sixpence.

The said duty shall be under the management of the Commissioners of Inland Revenue, and all the provisions contained in any Act relating to excise duties and in force after the passing of this Act shall, so far as the same are applicable, have full force and effect with respect to such duty.

As to Brewers and Distillers using Sugar.

Interpretation of term "sugar."

14. For the purpose of the duty hereby granted on sugar used in or in connexion with brewing, and in the construction of any Act of Parliament, so far as such Act relates to sugar so used, and of this Act, the term "sugar" means any description of sugar, and includes any saccharine substance or syrup manufactured from any material from which sugar is or can be manufactured.

Brewers may use sugar.

15. Notwithstanding anything in any Act of Parliament to the contrary, it shall be lawful for any brewer of beer for sale to make use of sugar in the brewing or making of beer, and also to prepare and make from sugar for his own use in brewing a liquor or substance for colouring beer, and to use such liquor or substance in the course of brewing or making of beer.

An entry paper to be delivered to brewers, and provisions to be observed in relation thereto.

16. A paper shall be delivered by the officer of excise to every brewer of beer for sale for the purpose of his making therein the entries mentioned in this section, and the following provisions shall have effect in relation to such paper and the entries to be made therein:

1. The brewer shall keep the paper at all times in some public and open part of his entered premises ready for the inspection of the officers of excise, and he shall permit any officer of excise at any time to inspect the paper.
2. The brewer shall enter in the said paper the quantity in bushels of malt, and in pounds weight avoirdupois of sugar, which he intends to use in his next brewing, and the quantity in pounds weight avoirdupois of sugar which he intends to convert into a liquor or substance to be used by him as colouring in the course of brewing, and also the day and hour when such brewing or process of conversion, as the case may be, is intended to take place.
3. The brewer shall make such entry, so far as respects the day and hour of brewing or conversion, twenty-four hours at the least before he shall begin to mash any malt or dissolve or convert any sugar, and, so far as respects the quantity of malt or sugar, two hours at the least before the hour entered as the hour of brewing or conversion.
4. The brewer shall, at the time of making such entry write on the paper the date when the entry is made.
5. The brewer shall not cancel, obliterate, or alter any entry in the paper or make therein any entry which is untrue in any particular.

For any offence against this section the brewer shall forfeit the penalty of twenty pounds.

Amendment of section 8 of 33 & 34 Vic. c. 32, and application of the provisions of that section.

17. Section eight of the Act of the thirty-third and thirty-fourth years of Her Majesty's reign, chapter thirty-two, shall be read as if the provision numbered eight therein contained were as follows:

The brewer shall not remove any sugar from his brewery, or dispose thereof in any manner other than by dissolving the same in the mash tun or other vessel duly entered for that purpose, or by converting the same into a liquor or substance for his own use in colouring beer in the course of his brewing.

And the several provisions contained in the said section as so amended, and the penalty thereby imposed, shall have effect and apply in relation to sugar to be used by any brewer of beer for sale in the making of any colouring liquor or substance to be used by him in the brewing or making of beer, as well as in relation to sugar to be used by such brewer in the brewing or making of beer.

Reduction of penalties imposed by secs. 2 and 3 of 1 & 2 Geo. 4, c. 22.

18. Sections two and three of the Act of the first and second years of the reign of His Majesty King George the Fourth, chapter twenty-two, shall be read as if the sum therein respectively mentioned as the amount of penalty was twenty pounds in lieu of two hundred pounds.

Provision as to distiller using sugar.

19. A distiller using sugar in the distillation of spirits shall not remove any sugar from his entered storehouse or room without the sanction of the Commissioners of Inland Revenue, save for the purpose of being conveyed immediately to the mash tun or other vessel duly

Digitized by Google

entered, to be there immediately dissolved and used in the manufacture of spirits; and he shall, before removing any sugar from the storehouse or room for the purpose of being conveyed immediately as aforesaid, give four hours previous notice in writing to the proper officer of the time when he intends to remove the same, and shall specify the quantity thereof; and he shall, at the time mentioned in such notice, convey the specified sugar immediately from the storehouse or room to the mash tun or other vessel duly entered, to be there dissolved and used in the manufacture of spirits, and shall forthwith deposit again all sugar so removed and not dissolved and used in the said storehouse or room to be again removed therefrom only upon like notice; and for any offence against this section the distiller shall forfeit the penalty of fifty pounds.

Amendment of sections 65 and 76 of 23 & 24 Vic. c. 114.

20. Section sixty-five of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter one hundred and fourteen, shall be read as if the time therein specified as the time to expire after the termination of the brewing period before distilling was two hours in lieu of four hours; and section seventy-six of the same Act shall be read as if the period of two hours were inserted in lieu of the period of four hours wherever such period is mentioned.

Repeal of enactments as in schedule.

21. The several Acts and parts of Acts specified in the schedule to this Act are hereby repealed, save as to arrears of duties and previous offences as herein-before mentioned.

SCHEDULE.

Containing the Enactments relating to Inland Revenue repealed by this Act.

Session and Chapter	Title or abbreviated Title	Extent of Repeal
1 & 2 Geo. 4 c. 22.	An Act for altering and amending the Laws of Excise for securing the payment of the Duties on Beer and Ale brewed in Great Britain.	Sections 1 and 7.
7 Will. 4. and 1 Vict. c. 57.	An Act to impose certain Duties of Excise on Sugar made from Beetroot in the United Kingdom.	The whole Act.
3 & 4 Vict. c. 57.	An Act to impose Duties of Excise on Sugar manufactured in the United Kingdom.	The whole Act.
10 & 11 Vict. c. 5.	An Act to allow the use of Sugar in the brewing of Beer.	Section 1 to 5, both inclusive, and Section 12.
13 & 14 Vict. c. 69.	An Act to reduce the Duty of Excise on Sugar manufactured in the United Kingdom, &c.	Sections 5 and 9.
17 & 18 Vict. c. 30.	An Act for granting certain Duties of Excise on Sugar made in the United Kingdom.	Section 1; Sections 2 and 3, so far as respects Duties on Sugar; and Section 7.
19 & 20 Vict. c. 82.	An Act to repeal and re-impose under new regulations the Duty on Race Horses.	The whole Act.
20 Vict. c. 16.	An Act to amend an Act of the last Session of Parliament for repealing and re-imposing under new regulations the Duty on Race Horses.	The whole Act.
23 & 24 Vict. c. 114.	An Act to reduce into one Act and to amend the Excise Regulations relating to the distilling, rectifying, and dealing in Spirits.	Sections 53 to 60, both inclusive; Sections 61, 62, and 63, so far as they relate to Sugar, Molasses, and Treacle; and Section 94, so far as it relates to Sugar and Molasses.
24 & 25 Vict. c. 91.	An Act to amend the Laws relating to the Inland Revenue.	Section 15.
31 & 32 Vict. c. 124	An Act to amend the Laws relating to the Inland Revenue.	Section 3.
32 & 33 Vict. c. 14.	An Act to grant certain Duties of Customs and Inland Revenue, &c.	The provisions numbered (8) to (12), inclusive of Section 19, and so much of the Act as relates to Duties and Licenses for Horses or Mules or Horse Dealers.
33 & 34 Vict. c. 32.	An Act to grant certain Duties of Customs and Inland Revenue, &c.	Section 7, the proviso to Section 9, Sections 10 and 11, and Schedule B.
34 & 35 Vict. c. 103.	An Act to amend the Law relating to the Customs and Inland Revenue.	Sections 24 and 25.
36 & 37 Vict. c. 18.	An Act to grant certain Duties of Customs and Inland Revenue, and to alter other Duties.	Section 3 and Schedule B.

Digitized by Google

CAP. XVII.

An Act to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint John the Evangelist, at Bentley, in the parish of Shustock in the county of Warwick. [*8th June*, 1874.]

CAP. XVIII.

An Act to appoint additional Commissioners for executing the Acts for granting a Land Tax and other rates and taxes. [*30th June*, 1874.]

CAP. XIX.

An Act to amend "The Stamp Act, 1870," in regard to the Stamp Duty payable by Advocates in Scotland on admission as Barristers in England or Ireland, and by Barristers in England or Ireland on admission as Advocates in Scotland. [*30th June*, 1874.]

WHEREAS by "The Stamp Act, 1870," it was enacted that the stamp duty payable on admission as an advocate in Scotland shall be fifty pounds, and that the stamp duty payable on admission in England or Ireland of any person to the degree of barrister-at-law if he has been previously duly admitted to the said degree in Ireland or in England, as the case may be, shall be ten pounds, and in any other case fifty pounds; and it is provided by section thirty-one of the said Act that ten pounds of the duty of fifty pounds payable on admission to the degree of a barrister-at-law in Ireland of a person not previously admitted to that degree in England, and also ten pounds payable for duty on the like admission of a person who has been previously admitted to the said degree in England, shall be paid by the Receiver General of Inland Revenue to the Treasurer of the Society of King's Inn, Dublin, to be applied by him according to the directions of the said society, so that no more than fifty pounds is in any case paid to Exchequer by a person on admission to the said degree in England and afterwards in Ireland, or in Ireland and afterwards in England; and it is just that no more should be paid to Exchequer on admission as an advocate in Scotland, and afterwards to the degree aforesaid in England or Ireland, or on admission to the degree aforesaid in England or Ireland, and afterwards as an advocate in Scotland:

33 & 34 Vic., c. 97.

Be it therefore enacted, &c.: . . .

Stamp duties to be paid on admission of an advocate to be a barrister, and vice versâ.

1. No Stamp duty shall be payable on admission in England to the degree of barrister-at-law of a person previously duly admitted as an advocate in Scotland, or on admission as an advocate in Scotland of a person previously duly admitted to the degree of barrister-at-law in England; and the stamp duty payable on admission as an advocate in Scotland of a person previously duly admitted to the degree of barrister-at-law in Ireland shall be ten pounds, and the stamp duty payable on admission in Ireland to the degree of barrister-at-law of a person previously duly admitted as an advocate in Scotland shall be ten pounds.

Distinct accounts to be kept of moneys payable to King's Inns, Dublin. 33 & 34 Vict. c. 97. s. 31.

2. A distinct account shall be kept of the moneys payable for duty on the admission to the degree of barrister-at-law in Ireland of persons previously duly admitted as advocates in Scotland, and such moneys shall be paid over by the Receiver General of Inland Revenue to the Treasurer of the Society of King's Inns in Dublin, to be applied by him according to the directions of the said society.

CAP. XX.

An Act to provide for the Exemption of Churches and Chapels in Scotland from Local Rates and Assessment. [*30th June*, 1874.]

CAP. XXI.

An Act for the discontinuance of the Four Courts Marshalsea (Dublin), and the removal of Prisoners therefrom. [*30th June*, 1874.]

WHEREAS the amendment of the law relating to imprisonment for debt, by the Debtors Act (Ireland), 1872, has reduced and will still further reduce the number of prisoners in the Four Courts Marshalsea, Dublin, and it is therefore expedient to discontinue the said prison, and to make such provisions as are in this Act contained:

Be it enacted, &c.: . . . . .

Short title

1. This Act may be cited for all purposes as the Four Courts Marshalsea Discontinuance Act, 1874.

Interpretation of terms.

2. In this Act the term "Lord Lieutenant" shall mean the Lord Lieutenant or other chief governor or governors of Ireland for the time being.

Power to Lord Lieutenant to appoint prisons in lieu of Marshalsea.

3. At any time after the passing of this Act it shall be lawful for the Lord Lieutenant from time to time, by order to be published in the Dublin Gazette, to order and appoint that any county, borough, or city prison or prisons specified in such order, and which shall have been certified by the Inspectors General of Prisons, or one of them, as fit for such purpose, shall be a prison or prisons to which all persons who, before the passing of this Act, might lawfully have been committed to the custody of the Marshal of the Four Courts Marshalsea, may be committed, and to which all persons who, at the time of the passing of this Act, are in the custody of the said Marshal, may, unless lawfully discharged in the meantime, be removed.

Every such prison is in this Act referred to as a "certified prison."

Orders made to be taken as valid.

4. Every order purporting to be made under the authority of this Act by the Lord Lieutenant shall be conclusive evidence of every fact and circumstance necessary to authorise the making thereof, and shall be deemed and taken to all intents and purposes whatsoever to have been made in pursuance of and in conformity with the provisions of this Act, and the production of a printed copy of the Dublin Gazette purporting to be printed and published by the Queen's authority, and to contain the publication of any such order, shall for all purposes be conclusive evidence of such order.

Prohibition of committal to Four Courts Marshalsea.

5. When and so soon as any order appointing a certified prison has been made and published in manner by this Act directed, no person shall be committed to the custody of the Marshal of the Four Courts Marshalsea, Dublin, and all persons who before the passing of this Act might lawfully have been committed to the custody of the said Marshal may be committed to any certified prison and there detained in like manner as but for the passing of this Act they might have been detained in the said Four Courts Marshalsea: Provided that all

Digitized by Google

persons who at the time of the making and publishing of such order shall be imprisoned in the said Four Courts Marshalsea, may, until their removal therefrom in manner by this Act prescribed, be detained in the same manner as if this Act had not been passed.

Prisoners may be removed by warrant of Lord Lieutenant.

6. At such time after the passing of this Act as may be determined by the Lord Lieutenant, the Marshal of the Four Courts Marshalsea shall certify under his hand to the Lord Lieutenant a true list of the names of the prisoners then in his custody, with the several causes and times of their commitments; and as soon thereafter as conveniently may be it shall be lawful for the Lord Lieutenant from time to time to issue his warrant under his hand directed to the Marshal of the Four Courts Marshalsea, requiring him to deliver into the custody of the governor of the certified prison named in such warrant the prisoner or prisoners named in such warrant, and upon the receipt of any such warrant the said Marshal shall deliver such prisoner or prisoners into the custody of such governor, with the processes under which he or they was or were respectively committed, and the said Marshal shall remove such prisoner or prisoners to the certified prison named in such warrant.

If any person named in any warrant of the Lord Lieutenant has been lawfully discharged out of the custody of the said Marshal before the execution of the warrant, the said Marshal shall certify such discharge under his hand to the Lord Lieutenant.

The removal of any prisoner in obedience to the warrant of the Lord Lieutenant shall not be considered to be an escape.

Custody of prisoners committed in pursuance of Act.

7. All persons removed or committed to any certified prison in pursuance of this Act shall be in the custody of the governor of that prison, and shall continue in such custody, subject to the laws for the time being in force in relation to the imprisonment of debtors, and to the rules for the time being in force for the regulation of debtors in such prison, or to such other special rules as may from time to time be approved by the Lord Lieutenant.

Maintenance of prisoners in certified prison.

8. The Commissioners of the Treasury and the board of superintendence of a certified prison may enter into such agreements as they think fit with respect to the contribution to be paid to the said board of superintendence on account of the expenses to be incurred by them in the safe-keeping, lodging, maintenance, and care of the prisoners removed or committed to such certified prison in pursuance of any warrant under the authority of this Act, and the amount of contribution so agreed to be paid, and the expense of providing such prisoners with furniture, fuel, and light, and of the removal of such prisoners to such certified prison, and from such prison to and from any court of competent jurisdiction, shall be defrayed out of moneys to be provided by Parliament.

And in the meantime, and until such agreement shall be made, or failing such agreement, the Commissioners of the Treasury shall pay to the said board of superintendence for the safe-keeping, lodging, maintenance, care, and other expenses of prisoners committed to such certified prison under the authority of this Act, for the net cost (after deducting all payments made by or on account of such prisoners) of the safe-keeping, lodging, maintenance, care, and other expenses of the prisoners removed and committed to such certified prison under the authority of this Act, such sums as the Inspectors General of Prisons or one of them shall certify and the Lord Lieutenant shall approve, and such sums shall from time to time be paid out of moneys to be provided by Parliament.

Removal of records.

9. As soon as all the prisoners confined in the Four Courts Marshalsea have been discharged or been removed under this Act, all records, books, and papers in the custody of the Marshal or any other officer of the Four Courts Marshalsea relating to the business of the said prison shall be delivered to such person as the Lord Lieutenant may direct, and the office of Marshal of the Four Courts Marshalsea, and all other offices in the said prison, shall be abolished.

Compensation to officers.

10. It shall be lawful for the Commissioners of Her Majesty's Treasury to grant to every person whose office shall be abolished under the provisions of this Act, and who shall not be transferred to any office of equal or greater value, such special annual allowance or gratuity by way of compensation as on a full consideration of the circumstances of each case may seem to the said Commissioners to be a reasonable and just compensation for the loss of his office, and such annuity or gratuity shall be paid out of moneys to be provided by Parliament.

Discontinued prison vested in the Crown.

11. Upon the abolition of the office of the Marshal of the Four Courts Marshalsea, that prison, with all the lands and tenements, furniture and fixtures thereto belonging, shall vest absolutely in the Commissioners of Public Works in Ireland upon trust, to be sold, conveyed, disposed of, or applied in such manner as the Commissioners of the Treasury shall direct.

Cap. XXII.

An Act to relieve Revenue Officers from remaining Electoral Disabilities.

[30th June 1874.]

WHEREAS an Act was passed in the session of Parliament holden in the thirty-first and thirty-second years of the reign of Her present Majesty, intituled "An Act to relieve certain officers employed in the "collection and management of Her Majesty's revenues "from any legal disability to vote at the election of "members to serve in Parliament:"

And whereas notwithstanding the passing of the said Act certain servants of the Crown in the Revenue departments are still subject, at the suit of informers and others, to certain very severe penalties in relation to elections for members of Parliament, to which penalties other civil servants of the Crown are not subject:

And whereas it is desirable to abolish such penalties: Be it enacted, &c.

Enactments in schedule repealed.

1. The enactments contained in the schedule to this Act, and any enactments reviving or continuing the same or any of the enactments contained in the schedule to the Act of the thirty-second year of Her Majesty, chapter seventy-three, are hereby repealed.

SCHEDULE.

The Statutes of the Realm.

12 & 13 W. 3. c. 10. s. 89. (1)
9 Anne, c. 11. s. 45. (2)
10 Anne, c. 18. s. 198. (3)
2 & 3 Vict. c. 71. s. 6.

(1) s. 91. in Ruffhead's edition.
(2) c. 10. s. 44. in Ruffhead's edition.
(3) c. 19. s. 182. in Ruffhead's edition.

Digitized by Google

CAP. XXIII.

An Act to amend the Acts regulating the Salaries of Resident Magistrates in Ireland and the Salaries of the Chief Commissioner and Assistant Commissioner of Police of the Police District of Dublin Metropolis.

[30*th June* 1874.]

6 & 7 W. 4. c. 13. WHEREAS by an Act passed in the session of Parliament held in the sixth and seventh years of the reign of King William the Fourth, intituled "An Act to consolidate the Laws relating to the "Constabulary Force in Ireland," (in this Act referred to as "the Act of 1836,") it was (amongst other things) enacted, that every magistrate appointed under the authority thereof should have and receive such salary by the year, not exceeding four hundred pounds, as the Lord Lieutenant or other chief governor or governors of Ireland should think fit:

16 & 17 Vict. c. 60. And whereas by an Act passed in the session of Parliament held in the sixteenth and seventeenth years of the reign of Her present Majesty, intituled "An Act to amend the Acts regulating the "salaries of resident Magistrates in Ireland," (in this Act referred to as "the Act of 1853,") the Act of 1836 was amended, and the Lord Lieutenant or other chief governor or governors of Ireland was and were empowered in the manner thereby prescribed to vary and classify the salaries of the magistrates appointed or to be appointed under the Act of 1836; and for such purpose he or they was and were authorized to fix the salaries of not more than twenty of such magistrates at sums not exceeding five hundred pounds by the year:

And whereas the salaries of the magistrates appointed and acting under the authority of the Act of 1836 have, in pursuance of the provisions of the Act of 1853, been raised, and the said magistrates have with reference to salary been classified in three divisions (in this Act referred to as "Class I.," "Class II.," and "Class III." respectively), and to every member of each such class there is now payable the sums by way of salary specified in relation to such class in the second column of the Schedule A. to this Act annexed:

And whereas it is expedient to increase the salaries of magistrates heretofore appointed under the authority of the Act of 1836, and also to make provision with respect to the salaries of magistrates hereafter to be appointed under the authority of the said Act, and for such purpose to amend the said Acts and to make such provisions as are in this Act contained:

And whereas by section three of the Dublin Police Act, 1859, the salaries of the chief commissioner and assistant commissioner of police of the police district of Dublin metropolis are limited to the sums therein respectively mentioned, and it is expedient that such limitations should cease to apply thereto, and that the said section should be repealed and other and better provisions should be made instead thereof:

Be it therefore enacted, &c.: . . . .

Repeal of 6 & 7 Will. 4. c. 13. s. 34. and 16 & 17 Vict. c. 60 s. 1. 1. From and after the first day of April one thousand eight hundred and seventy-four the parts of Acts specified in the Schedule B. to this Act annexed shall be and the same are hereby repealed; provided always, that such repeal shall not alter, vary, or affect any act, matter, or thing duly done, or any liability incurred, before the said first day of April one thousand eight hundred and seventy-four, or any right to or the payment of any salary under the authority of such parts of Acts.

Increase of salary to present magistrates. 2. From and after the first day of April one thousand eight hundred and seventy-four, there shall be paid by way of salary to every magistrate in Class I., Class II., and Class III. respectively, the sum specified in relation to such class in the third column of the Schedule A. to this Act annexed, in lieu of the salary payable to such magistrate, and also in lieu of the allowances for clerk and orderly, under the recited Acts or otherwise howsoever.

Salary of future magistrates. 3. Every magistrate hereafter appointed under the authority of the Act of 1836 shall be entitled to receive by way of salary the sum specified in relation to magistrates belonging to Class III. in the third column of the Schedule A. to this Act annexed, unless and until the Lord Lieutenant or other chief governor or governors of Ireland shall under the authority of this Act otherwise direct.

Power to Lord Lieutenant, &c. to vary salaries of magistrates. 4. It shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland from time to time, by order, to direct that any magistrate heretofore or hereafter appointed under the authority of the Act of 1836 may be paid such salary not exceeding the amount specified in relation to magistrates belonging to Class I. or Class II. respectively, in the third column of the Schedule A. to this Act annexed, as he or they shall think fit: Provided always, that not more than twenty of such magistrates shall at any one time be entitled to receive the sums by way of salary specified in relation to magistrates belonging to Class I. in the third column of the said schedule, and that not more than thirty-two of such magistrates shall at any one time be entitled to receive the sums by way of salary specified in relation to magistrates belonging to Class II. in the third column of the said Schedule A.

Provided also, that nothing in this section contained shall authorise the Lord Lieutenant or other chief governor or governors of Ireland to diminish the salary to which, under the preceding provisions of this Act, any magistrate heretofore appointed is entitled as and from the first day of April one thousand eight hundred and seventy-four.

Allowances. 5. In addition to the salary by this Act provided, there shall be paid to every magistrate heretofore or hereafter appointed under the authority of the Act of 1836, by way of allowance for travelling within his district, the sum of one hundred pounds per annum, and such sum of one hundred pounds shall be in lieu of any allowance for forage or for the keep of any horse or horses heretofore granted to such magistrates.

In addition to the aforesaid allowance there shall also be paid to any magistrate to whom the Lord Lieutenant or other chief governor or governors of Ireland has or have, with the approval of the Commissioners of Her Majesty's Treasury, awarded, or shall hereafter from time to time with the like approval award, any further allowance for travelling and remaining from home on duty, and for stationery, and for any expenses incurred in change of station, all and every the sums of money so awarded for the said purposes.

Superannuation. 6. The superannuation allowances payable to magistrates appointed under the Act of 1836 shall be computed exclusive of the allowances by this Act authorised.

In the case of any magistrate to whom under any Act now in force a superannuation allowance might be granted within three years after the first day of April one thousand eight hundred and seventy-four, calculated

Digitized by Google

upon the average amount of salary received by such magistrate for three years next preceding the commencement of such allowance, such superannuation allowance shall be calculated upon the average amount of salary which such magistrate would have received for the period of three years next preceding the commencement of such allowance, if during such period this Act had been in force.

Repeal of section 3 of 22 & 23 Vict. c. 52. Salaries of chief commissioner and assistant commissioner of Dublin Police to be fixed by Lord Lieutenant, &c., with approval of Treasury.

7. Section three of the Dublin Police Act, 1859, shall be and the same is hereby repealed, and instead thereof be it enacted, that from and after the passing of this Act it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland from time to time, by order, to appoint such sums by way of salaries to the chief commissioner and assistant commissioner of police of the police district of Dublin metropolis respectively as he or they shall think fit and the Commissioners of Her Majesty's Treasury shall approve: Provided always, that nothing in this section contained shall authorise the Lord Lieutenant or other chief governor or governors of Ireland to diminish the salaries at the time of the passing of this Act respectively payable to the persons holding at such time the offices of chief commissioner and assistant commissioner.

Salaries, &c. to be paid out of moneys voted by Parliament.

8. All salaries and allowances under this Act shall be paid out of moneys from time to time to be provided by Parliament for such purpose.

SCHEDULE A.

Class I.	£500	£675
Class II.	400	550
Class III.	300	425

SCHEDULE B.

6 & 7 Will. 4. c. 13. s. 34.
16 & 17 Vict. c. 60. s. 1.

CAP. XXIV.

An Act to empower the Public Works Loan Commissioners to advance a sum of money, by way of loan, for the improvement of the Harbour of Colombo in the colony of Ceylon. [30*th June* 1874.]

CAP. XXV.

An Act to remove the Restrictions contained in the British White Herring Fishery Acts in regard to the use of Fir Wood for Herring Barrels. [30*th June* 1874.]

CAP. XXVI.

An Act to make provision respecting the Stamp Duty on Transfers of Stock of the Government of Canada. [30*th June* 1874.]

CAP. XXVII.

An Act to regulate the Sentences imposed by Colonial Courts where jurisdiction to try is conferred by Imperial Acts. [30*th June* 1874.]

CAP. XXVIII.

An Act to further amend the Law relating to Juries in Ireland. [30*th June* 1874.]

WHEREAS the law relating to juries in Ireland was amended by "The Juries (Ireland) Act, 1873," but the time during which the provisions of the said Act should be in force and operation was by the said Act limited to the eleventh day of January one thousand eight hundred and seventy-five:

And whereas it is expedient that certain of the said provisions should continue in force and operation for a further limited time:

Be it therefore enacted, &c.: . . .

Short title.

1. This Act may be cited for all purposes as "The Juries (Ireland) Act, 1874;" and the Juries (Ireland) Acts, 1871 to 1873, and this Act shall be construed together as one Act, and the same may be cited for all purposes as "The Juries (Ireland) Acts, 1871 to 1874."

Certain provisions of 36 Vict. c. 27, continued.

2. The provisions of "The Juries (Ireland) Act, 1873," with the exception of sections three and eight, shall continue in force and operation until the eleventh day of January one thousand eight hundred and seventy-six; and the said provisions of the said Act hereby continued shall be read and construed as if the words "one thousand eight hundred and seventy-six" were therein inserted instead of the words "one thousand eight hundred and seventy-five," and as if the words "in the year one thousand eight hundred and seventy-four" were inserted in section five instead of the words "in the year one thousand eight hundred and seventy-three."

CAP. XXIX.

An Act to amend the Law relating to the Militia. [30*th June* 1874.]

CAP. XXX.

An Act to transfer parts of the Holyhead Old Harbour Road from the Board of Trade to the Local Board of Health of the town of Holyhead; and for other purposes. [30*th June* 1874.]

CAP. XXXI.

An Act to amend the Conjugal Rights (Scotland) Amendment Act, 1861. [16*th July* 1874.]

CAP. XXXII.

An Act to amend "The Drainage and Improvement of Lands Act (Ireland), 1863." [16*th July* 1874.]

26 & 27 Vict. c. 88.

WHEREAS by "The Drainage and Improvement of Lands Act (Ireland), 1863," the Commissioners of Public Works in Ireland were authorised to advance money in the manner and subject to the conditions in the said Act mentioned, for the purpose of aiding in the completion of works for the drainage and improvement of lands in any district, and the repayment of any money so advanced was to be secured by means of an annual rentcharge to be payable for the term of twenty-two years at the rate of six pounds ten shillings for every one hundred pounds

Digitized by Google

charged upon such lands in the manner by the said Act provided:

And whereas a further Act was passed in the session of Parliament held in the twenty-seventh and twenty-eighth years of Her Majesty, chapter seventy-two, explaining certain provisions contained in the said Act:

27 & 28 Vict. c. 72.

And whereas the said Acts were amended by "The Drainage and Improvement of Lands Amendment Act (Ireland), 1865," and by "The Drainage and Improvement of Lands Amendment Act (Ireland), 1869," and it is expedient further to amend the said Acts:

28 & 29 Vict. c. 52. 32 & 33 Vict. c. 72.

Be it therefore enacted, &c.: . . .

Short title.

1. This Act may be cited for all purposes as "The Drainage and Improvement of Lands Amendment Act (Ireland), 1874."

Loans may be made repayable by rentcharges at five per cent. for 35 years.

2. It shall be lawful for the Commissioners of Public Works, upon application of any drainage board, out of any moneys in their hands available for loans, by and with the sanction of the Commissioners of Her Majesty's Treasury, and subject to such rules, regulations, and conditions as the said Commissioners of the Treasury may think proper from time to time to make, to make loans or advances for the purposes of the said recited Acts, and to secure the repayment of the same, if they think it expedient so to do, by means of rentcharges at five per cent. per annum payable for terms of thirty-five years, instead of by rentcharges at six pounds ten shillings per cent. per annum payable for terms of twenty-two years as by the said Acts provided; and in case any loan shall be so made to the drainage board of any district, each of the several parcels or portions of land specified in the award of the Commissioners apportioning the consolidated sum of principal and interest amongst the respective proprietors of the said parcels or portions of land in such district and on their lands respectively, (as by the said Acts provided) shall, from the date of such award, become charged with the payment to Her Majesty of an annual rentcharge of five pounds for every one hundred pounds charged on such parcels or portions of land respectively, and so in proportion for any lesser amount, to be payable for the term of thirty-five years, to be computed from the fifth day of April or tenth day of October which shall next happen after the making of such award, such rentcharge to be paid by equal half-yearly payments on the fifth day of April and tenth day of October in every year, the first of such payments to be made on the second of such days which shall happen after the date of such award.

Provisions as to rentcharges in recited Acts to apply to rentcharges under this Act.

3. All the provisions in the recited Acts contained or referred to with respect to the rentcharges therein mentioned shall be applicable to rentcharges under this Act in like manner in all respects as if rentcharges under this Act were rentcharges under the recited Acts.

Notice of inspectors reports having been lodged with clerks of unions to be sent to proprietors.

4. In all cases in which copies of the report of any inspector appointed by the Commissioners of Public Works for the purpose of making inquiries as to the propriety of constituting any proposed district, and as to the assent of the proprietors thereto, are required to be lodged with the clerk or clerks of the unions respectively, as directed by section six, number five, of the said first recited Act, the petitioners shall in addition to the notice which they are required to publish in some newspaper, as directed by the said section, cause notices stating that such report has been so lodged to be served on each of the reputed proprietors of land in such district by delivery of the same personally, or, if any such proprietor is absent from Ireland, to his agent, or by leaving the same at the usual or last known place of abode of such proprietor as aforesaid, or by forwarding the same by post, in a prepaid letter, addressed to the usual or last known place of abode of such proprietor.

This Act and the recited Acts to be construed as one Act.

5. The Acts herein-before recited or referred to as amended by this Act and this Act shall be read together as one Act.

CAP. XXXIII.

An Act to extend the Powers of the Leases and Sales of Settled Estates Act.

[16*th July* 1874.]

WHEREAS it is expedient to extend the operation of the Act, chapter one hundred and twenty of the nineteenth and twentieth years of Her Majesty, to facilitate leases and sales of settled estates, herein-after called the principal Act:

19 & 20 Vict. c 120.

Be it therefore enacted, &c.: . . .

Short title.

1. This Act may be cited as the Leases and Sales of Settled Estates Amendment Act, 1874.

Notice to be given to persons who do not consent to or concur in application.

2. Where under the principal Act the concurrence or consent of any person in or to any application hereafter to be made under that Act is required, and such concurrence or consent shall not have been obtained, notice shall be given to such person, in such manner as the court to which such application shall be made shall direct, requiring him to notify, within a time to be specified in such notice, whether he assents to or dissents from such application or submits his rights or interests, so far as they may be affected by such application, to be dealt with by the court; and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the court.

Court may dispense with consent, having regard to the number and the interests of parties.

3. An order under the principal Act may be made upon any such application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained, or shall have been refused, but the court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who dissent therefrom, or who submit or are to be deemed to submit their rights or interests to be dealt with by the court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made, and every order of the court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

Applications to be dealt with otherwise as prescribed by principal Act.

4. All such applications shall be otherwise dealt with in such manner as are prescribed by the principal Act, or any orders made in pursuance thereof, with regard to the exercise of the powers conferred by that Act.

Digitized by Google

Cap. XXXIV.

An Act to amend the Act of the fifty-fifth year of King George the Third, chapter one hundred and ninety-four, intituled "An Act for better regulating the Practice of Apothecaries in England and Wales." [16*th July* 1874.]

Cap. XXXV.

An Act for further promoting the Revision of the Statute Law by repealing certain enactments which have ceased to be in force or have become unnecessary. [16*th July* 1874.]

Cap. XXXVI.

An Act to render Personation, with intent to deprive any Person of Real Estate or other property, Felony. [30*th July* 1874.]

WHEREAS it is expedient to amend the law relating to personation:

Be it therefore enacted, &c.: . . .

Personation in order to obtain property to be felony.

1. If any person shall falsely and deceitfully personate any person, or the heir, executor, or administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property, he shall be guilty of felony, and upon conviction shall be liable, at the discretion of the court by which he is convicted, to be kept in penal servitude for life, or any period not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Saving.

2. Nothing in this Act shall prevent any person from being proceeded against and punished under any other Act, or at common law, in respect of an offence (if any) punishable as well under this Act as under any other Act, or at common law.

Offences against this Act not to be tried at general or quarter sessions.

3. No offence against this Act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

Short title.

4. This Act may be cited for all purposes as the False Personation Act, 1874.

Cap. XXXVII.

An Act to alter and amend the Law as to Appointments under powers not exclusive. [30*th July* 1874.]

WHEREAS by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects in such manner that no one of the objects of the power can be excluded, or some one or more of the objects of the power cannot be excluded by the donee of the power from a share of such property, but without requiring a substantial share of such property to be given to each object of the power, or to each object of the power who cannot be excluded:

And whereas instruments intended to operate as executions of such powers are frequently invalid in consequence of the donee of the power appointing in favour of some one or more of the objects of the power to the exclusion of the other or others, or some other or others of such objects, and it is expedient to amend the law so as to prevent such intended appointments failing:

Be it therefore enacted, &c.: . . .

Appointments to be valid notwithstanding one or more objects excluded.

1. That no appointment, which from and after the passing of this Act shall be made in exercise of any power to appoint any property, real or personal, amongst several objects, shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, but every such appointment shall be valid and effectual notwithstanding that any one or more of the objects shall not thereby or in default of appointment take a share or shares of the property subject to such power.

Proviso.

2. Provided always, and be it enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any power, which shall declare the amount or the share or shares from which no object of the power shall be excluded, or some one or more object or objects of the power shall not be excluded.

Cap. XXXVIII.

An Act to extend the Jurisdiction of Courts of the Colony of the Straits Settlements to certain Crimes and Offences committed out of the Colony. [30*th July*, 1874.]

Cap. XXXIX.

An Act to provide for the exception of the Borough of Wenlock from the category of boroughs under the "Elementary Education Act, 1870." [30*th July* 1874.]

Cap. XL.

An Act to amend the powers of the Board of Trade with respect to inquiries, arbitrations, appointments, and other matters under special Acts, and to amend the Regulation of Railways Act, 1873, so far as regards the reference of differences to the Railway Commissioners in lieu of Arbitrators. [30*th July* 1874.]

Be it enacted, &c.: . . . .

Preliminary.

Short title.

1. This Act may be cited as the Board of Trade Arbitrations, &c. Act, 1874.

Part I.

Board of Trade Inquiries, &c.

Power of Board of Trade as to inquiry.

2. Where, under the provisions of any special Act, passed either before or after the passing of this Act, the Board of Trade are required or authorised to sanction, approve, confirm, or determine any appointment, matter, or thing, or to make any order or to do any other act or thing for the purposes of such special Act, the Board of Trade may make such inquiry as they may think necessary for the purpose of enabling them to comply with such requisition or exercise such authority.

Where an inquiry is held by the Board of Trade for the purposes of this section, or in pursuance of any general or special Act passed either before or after the passing of this Act, directing or authorising them to

Digitized by Google

hold any inquiry, the Board of Trade may hold such inquiry by any person or persons duly authorised in that behalf by an order of the Board of Trade, and such inquiry if so held shall be deemed to be duly held.

Expenses connected with arbitration, sanction, &c.

3. Where application is made in pursuance of any special Act passed either before or after the passing of this Act, to the Board of Trade to be arbitrators, or to appoint any arbitrator, referee, engineer, or other person, or to hold any inquiry, or to sanction, approve, confirm, or determine, any appointment, matter, or thing, or to make any order, or to do any other act or thing for the purposes of such special Act, all expenses incurred by the Board of Trade in relation to such application and the proceedings consequent thereon, shall, to such amount as the Board of Trade may certify by their order to be due, be defrayed by the parties to such application, and (subject to any provision contained in the said special Act) shall be defrayed by such of the parties as the Board of Trade may by order direct, or if so directed by an order of the Board of Trade shall be paid as costs of the arbitration or reference.

The Board of Trade may, if they think fit, on or at any time after the making of the application, by order require the parties to the application, or any of them, to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand, and if such payment or security is not made or given may refuse to act in pursuance of the application.

All expenses directed by an order of the Board of Trade or an award in pursuance of this section to be paid may be recovered in any court of competent jurisdiction as a debt, and if payable to the Board of Trade, as a debt to the Crown, and an order of the Board of Trade shall be conclusive evidence of the amount of such expenses.

Meaning of "special Act."

4. In this part of this Act the term "special Act" means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Board of Trade confirmed by Act of Parliament and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864.

Order of Board of Trade may be in writing.

An order of the Board of Trade for the purposes of this part of this Act, or of any such special Act as is referred to in this part of this Act, may be made by writing under the hand of the President or of one of the secretaries of the Board.

Repeal of 35 & 36 Vict. c. 18.

5. The Act of the session of the thirty-fifth and thirty-sixth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for regulating Inquiries by the Board of Trade," is hereby repealed, without prejudice to anything done or suffered under that Act.

PART II.

Reference to Railway Commissioners.

Power of Board of Trade to appoint Railway Commissioners to be arbitrators or umpire.

6. Where any difference to which a railway company or canal company is a party is required or authorised under the provisions of any general or special Act passed either before or after the passing of this Act, to be referred to the arbitration of or to be determined or settled by the Board of Trade, or some person or persons appointed by the Board of Trade, the Board of Trade may, if they think fit, by order in writing under the hand of the President or one of the Secretaries of the Board, refer the matter for the decision of the Railway Commissioners, and appoint them arbitrators or umpire, as the case may be, and thereupon the Commissioners for the time being shall have the same powers as if the matter had been referred to their decision in pursuance of the Regulation of Railways Act, 1873, and also any further powers which the Board of Trade, or an arbitrator or arbitrators, or umpire, appointed by the Board of Trade, would have had for the purpose of the arbitration, if the difference had not been referred to the Commissioners: Provided always, that this section shall not apply to any case in which application is made to the Board of Trade for the appointment of an umpire under the twenty-eighth section of "The Lands Clauses Consolidation Act, 1845."

Declaration as to powers of Commissioners in arbitrations.

7. Where any difference is referred for the decision of the Commissioners in pursuance of the Regulation of Railways Act, 1873, as amended by this part of this Act, the Commissioners shall have the same power by their decision of rescinding, varying, or adding to any award or other decision previously made by any arbitrator or arbitrators (including therein the Board of Trade) with reference to the same subject-matter as any arbitrator or arbitrators would have had if the difference had been referred to him or them.

Duration, &c. of part of Act, and construction with 36 & 37 Vict. c. 48.

8. This part of this Act shall be construed as one with the Regulation of Railways Act, 1873, and shall continue in force for the same time as that Act and no longer, but the expiration of this part of this Act shall not affect the validity of anything done before such expiration.

The Regulation of Railways Act, 1873, together with this part of this Act, may be cited as the Regulation of Railways Acts, 1873 and 1874.

CAP. XLI.

An Act to amend "The Colonial Attornies Relief Act."

[30*th July* 1874.]

CAP. XLII.

An Act to consolidate and amend the Laws relating to Building Societies.

[30*th July* 1874.]

WHEREAS it is expedient to consolidate and amend the law relating to building societies:

Be it enacted, &c.: . . . . . .

Short title.

1. This Act may be cited as The Building Societies Act, 1874.

Commencement of Act.

2. This Act shall commence and take effect on the second day of November one thousand eight hundred and seventy-four.

Definition of registrar.

3. The registrar in this Act means (except where otherwise expressed) the registrar for the time being of friendly societies in England, Scotland, or Ireland, as the case may be, who shall, for the purposes of this Act, be the registrar of building societies.

Definition of court.

4. The court in this Act means,—

In England, the county court of the district in which the chief office or place of meeting for the business of the society is situate;

Digitized by Google

In Scotland, the sheriff's court of the county in which such office or place of meeting is situate; and
In Ireland, the civil bill court within the jurisdiction of which such office or place of meeting is situate.

Definition of terminating and permanent societies.

5. A terminating society in this Act means a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained; a permanent society means a society which has not by its rules any such fixed date or specified result at which it shall terminate.

Application to Scotland.

6. In the application of this Act to Scotland the following words and expressions shall have the meanings hereby assigned to them; viz., "freehold estate" shall mean "heritable estate;" "mortgage" shall mean "conveyance or bond and disposition in security;" "letters of administration" shall mean "confirmation."

Repeal of 6 & 7 W. 4, c. 32.

7. The Act of the sixth and seventh years of His late Majesty King William the Fourth, chapter thirty-two, intituled "An Act for the Regulation of Benefit Building Societies," is hereby repealed, but this repeal shall not affect any subsisting society certified under the said Act, until such society shall have obtained a certificate of incorporation under this Act; and this repeal shall not affect the past operation of the said Act, or the force or operation, validity or invalidity, of anything done or suffered, or any bond or security given, or any right, title, obligation, or liability accrued, or any proceedings taken thereunder, or under the rules of any society which has been certified thereunder: Provided that with regard to such subsisting societies as may not obtain certificates of incorporation under this Act, all things required to be done by or sent to the barrister or advocate and the clerk of the peace under the provisions of the said repealed Act shall be done by or sent to the registrar.

Societies under former Act to continue.

8. Every society the rules of which have been certified under the said repealed Act shall be deemed to be a society under this Act, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as herein-after mentioned.

Incorporation of societies.

9. Every society now subsisting or hereafter established shall, upon receiving a certificate of incorporation under this Act, become a body corporate by its registered name, having perpetual succession, until terminated or dissolved in manner herein provided, and a common seal.

Enrolments to be sent to registrar.

10. On the commencement of this Act all transcripts of the rules of societies certified and enrolled under the said repealed Act which are now filed with the rolls of the sessions of the peace of any county, riding or division, city or borough, liberty or place, shall, on a proper application made for that purpose, be taken off the file and transmitted by the clerk of the peace to the registrar, to be by him kept and registered; and upon such registration every such subsisting society shall be entitled to a certificate of incorporation on application to the registrar.

Where enrolled transcript of rules not transmitted.

11. Any society now subsisting, the transcript of the rules of which is not transmitted to the registrar by the clerk of the peace, shall, upon furnishing the registrar with a copy of its rules, purporting to be certified or to be a true copy of rules certified by the barrister under the said repealed Act, authenticated by statutory declaration of the secretary or other officer of the society, as the registrar may require, be entitled to a certificate of incorporation, and such copy of rules shall be by him kept and registered.

Certificate of incorporation how to be granted.

12. A certificate of incorporation under this Act shall not be granted to an existing society except upon application to the registrar made by authority of a general meeting of the society specially called for the purpose; and the registrar may require of the person making the application a statutory declaration that such authority was duly given.

Purpose for which societies may be established.

13. Any number of persons may establish a society under this Act, either terminating or permanent, for the purpose of raising by the subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate, by way of mortgage; and any society under this Act shall, so far as is necessary for the said purpose, have power to hold land with the right of foreclosure, and may from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the society: Provided always, that any land to which any such society may become absolutely entitled by foreclosure, or by surrender, or other extinguishment of the right of redemption, shall as soon afterwards as may be conveniently practicable be sold or converted into money.

Limitation of liability of members.

14. The liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society.

Power to borrow money.

15. With respect to the borrowing of money by societies under this Act, the following provisions shall have effect:

(1.) Any society under this Act may receive deposits or loans, at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society:

(2.) In a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two thirds of the amount for the time being secured to the society by mortgages from its members:

(3.) In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two thirds as aforesaid, or a sum not exceeding twelve months subscriptions on the shares for the time being in force:

(4.) Any deposits with or loans to a society under this Act, made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding

Digitized by Google

on the society, but no further deposits or loans shall be received by such society, except within the limits provided by this section:

(5.) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a society shall have printed or written therein or thereon the whole of the fourteenth and fifteenth sections of the present Act.

Matters to be set forth in the rules.

16. The rules of every society hereafter established under this Act shall set forth,—

1. The name of the society, and chief office or place of meeting for the business of the society:
2. The manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and, if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in this Act, and, if so, within what limits, not exceeding the limits prescribed by this Act:
3. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested:
4. The terms upon which shares may be withdrawn and upon which mortgages may be redeemed:
5. The manner of altering and rescinding the rules of the society, and of making additional rules:
6. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers:
7. The manner of calling general or special meetings of the members:
8. Provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society:
9. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration:
10. Provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof:
11. Provision for the custody of the mortgage deeds and other securities belonging to the society:
12. The powers and duties of the board of directors or committee of management and other officers:
13. The fines and forfeitures to be imposed on members of the society:
14. The manner in which the society, whether terminating or permanent, shall be terminated or dissolved.

Rules to be made.

17. The persons intending to establish a society under this Act shall transmit to the registrar two copies of the rules agreed upon by them for the government of the society, signed by three of such persons and by the intended secretary or other officer; and the registrar, if he find that the rules contain all the provisions set forth in section sixteen of this Act, and that they are in conformity with this Act, shall return one copy of the rules to the secretary or other officer of the society, with a certificate of incorporation,

Registration of rules.

and shall retain and register the other copy; provided that no society shall be registered under this Act in a name identical with that in which a subsisting society is already registered, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. The society shall supply to any person requiring the same a complete printed copy of the rules, with a copy of the certificate of incorporation appended thereto, and shall be entitled to charge for every such printed copy of rules a sum not exceeding one shilling.

Alteration of rules.

18. Any society under this Act, certified previously to the passing of this Act, may alter or rescind any rule or make any additional rule by the vote of three fourths of the members present at a special meeting called for the purpose, of which meeting notice, specifying the proposed alteration, rescission, or addition shall be given to the members in the manner provided by the rules of the society, or in the absence of such rules, by letters sent through the post seven days previous to such meeting; and any society hereafter established may alter or rescind any rule, or make an additional rule, in the manner its rules direct; and every society under this Act altering or rescinding any rule, or making an additional rule, shall forward two copies of every resolution for rescission of a rule, and of every alteration of or addition to its rules, signed by three members and the secretary, and a statutory declaration of an officer of the society that the provisions of this section have been complied with, to the registrar, who, if he find that such alteration, addition, or rescission is in conformity with this Act, shall return one of the copies to the secretary or other officer of the society with a certificate of registration, and retain and register the other copy.

Rules may be made to provide forms of conveyance, &c.

19. Any society under this Act, in a schedule to its rules, may describe the forms of conveyance, mortgage, transfer, agreement, bond, security for deposit or loan, or other instrument necessary for carrying its purposes into execution.

Evidence of registration.

20. Any certificate of incorporation or of registration, or other document relating to a society under this Act, purporting to be signed by the registrar, shall, in the absence of any evidence to the contrary, be received by the court, and by all courts of law and equity and elsewhere, without proof of the signature; and a printed copy of the rules of a society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules.

Rules to be binding on members and others.

21. The rules of a society under this Act shall be binding on the several members and officers of the society, and on all persons claiming on account of a member, or under the rules, all of whom shall be deemed and taken to have full notice thereof.

Change of name.

22. A society under this Act may change its name by resolution of three fourths of the members present at a meeting called for the purpose, provided that the new name is not identical with that of any society previously registered and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. Notice of the change of name shall be sent to the registrar and registered by him, and he shall

Digitized by Google

give a certificate of registration. Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

Officers to give security.

23. Every officer of a society under this Act having the receipt or charge of any money belonging to the society shall, before taking upon himself the execution of his office, become bound with one sufficient surety at the least, in a bond according to the form set forth in the schedule to this Act, or give the security of a guarantee society, or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, at such times as its rules appoint, or as the society require him to do so.

Officers to account.

24. Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may sue upon the bond, or may apply to the court, who may proceed thereupon in a summary way, and make such order thereon as to the court in its discretion shall seem just, which order shall be final and conclusive.

Investment of surplus funds.

25. Any society under this Act may from time to time, as the rules permit, invest any portion of the funds of the society, not immediately required for its purposes, upon real or leasehold securities, or in the public funds, or in or upon any parliamentary stock or securities, or in or upon any stock or securities payment of the interest on which is guaranteed by authority of Parliament, or in the case of terminating societies, with other societies under this Act; and for the purpose of investments in the public funds or upon security of copyhold or customary estate, the society, or the board of directors or committee of management thereof, may from time to time appoint and remove trustees.

When trustees are absent, &c., registrars may order stock to be transferred.

26. When any person in whose name any stock transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, as a trustee for any society under this Act, is absent from England or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary or other officer of the society and three members of the board of directors or committee of management thereof, and on proof satisfactory to him, may direct the transfer of the stock into the name of any other person or persons as trustee or trustees for the society; and such transfer shall be made by the surviving or continuing trustee or trustees, and if there be no such trustee, or if such trustee or trustees shall refuse or be unable to make such transfer, and the registrar shall so direct, then by the Accountant General or Deputy or Assistant Accountant General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this section against any claim or demand of any person injuriously affected thereby.

Property of the society vested without conveyance.

27. All rights of action and other rights, and all estates and interests in real and personal estate whatsoever, now belonging to or held in trust for any society certified under the said repealed Act, shall, on the incorporation of the society under this Act, vest in the society without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments, the title to which cannot be transferred without admittance.

As to copyholds.

28. Where any society under this Act is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor of which the same are held shall from time to time, if required by the society, admit such persons, not more than three, as the society appoints, to be trustees on its behalf as tenants in respect of such hereditaments, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same, on payment of such special fine, or compensation in lieu of fine, and fees as may be agreed upon.

Payment of sums not exceeding £50 when members or depositors die intestate.

29. If any member of or depositor with a society under this Act having in the funds thereof a sum of money not exceeding fifty pounds shall die intestate, then the amount due may be paid to the person who shall appear to the directors or committee of management of the society to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid: Provided that whenever the society after the decease of any member or depositor has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as next of kin or as the lawful representative of such deceased member or depositor against the funds of the society, but nevertheless such next of kin or representative shall have his lawful remedy for the amount of such payment as aforesaid against the person who has received the same.

Payment to persons appearing to be next of kin declared valid.

Provision for the case of a member dying intestate leaving an infant heir.

30. Whenever a member of a society under this Act, having executed a mortgage to the society, shall die intestate, leaving an infant heir or infant coheiress, it shall be lawful for the said society, after selling the premises so mortgaged to them, to pay to the administrator or administratrix of the deceased member any money, to the amount of one hundred and fifty pounds, which shall remain in the hands of the said society after paying the amount due to the society and the costs and expenses of the sale, without being required to pay the same into the Post Office Savings Bank, as provided by the Trustees Relief Act, and the Acts amending or extending the same. The said sum of one hundred and

Digitized by Google

fifty pounds to be considered as personal estate, and liable to duty accordingly.

Punishment of fraud in withholding money, &c.

31. If any person whosoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers, or other effects of a society under this Act, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by this Act, he shall be liable on summary conviction to a penalty not exceeding twenty pounds, with costs not exceeding twenty shillings, and to be ordered to deliver up to the society all such moneys, securities, books, papers, or other effects to the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under the provisions of this Act.

Proceedings necessary for the termination or dissolution of a society.

32. A society under this Act may terminate or be dissolved—

1. Upon the happening of any event declared by its rules to be the termination of the society.
2. By dissolution in manner prescribed by its rules.
3. By dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—
    (a.) the liabilities and assets of the society in detail;
    (b.) the number of members, and the amount standing to their credit in the books of the society;
    (c.) the claims of depositors and other creditors, and the provision to be made for their payment;
    (d.) the intended appropriation or division of the funds and property of the society;
    (e.) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

   Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society.
4. By winding-up, either voluntarily under the supervision of the court or by the court, if the court shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the court under this section may be from time to time made by the authority for the time being empowered to make general orders for the court.

Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar, and registered by him.

Societies may unite with others, or one society may transfer its engagements to another.

33. Two or more societies under this Act may unite and become one society, with or without any dissolution or division of the funds of such societies or either of them, or a society under this Act may transfer its engagements to any other such society, upon such terms as shall be agreed upon by three-fourths of the members (holding not less than two-thirds of the whole number of shares) of each of such societies present at general meetings respectively convened for the purpose; but no such transfer shall prejudice any right of any creditor of either society. Notice of every such union or transfer shall be sent to the registrar, and registered by him.

Determination of disputes by arbitration.

34. Where the rules of a society under this Act direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested, directly or indirectly, in its funds; of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the dispute; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned. Where the parties to any dispute arising in a society under this Act agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar shall have the same effect as that of arbitrators.

Court may order compliance with the decision of arbitrators.

Determination of disputes by registrar.

Determination of disputes by court.

35. The court may hear and determine a dispute in the following cases:

1. If it shall appear to the court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award.
2. Where the rules of the society direct disputes to be referred to the court or to justices.

Determination to be final.

36. Every determination by arbitrators or by the court or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall

Digitized by Google

not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity; provided always, that the arbitrators, or the registrar, or the court, as the case may be, may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or court may determine.

Buildings for the purpose may be purchased or leased.

37. A society under this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange, or let such building, or any part thereof.

Minors may be elected members.

38. Any person under the age of twenty-one years may be admitted as a member of any society under this Act, the rules of which do not prohibit such admission, and may give all necessary acquittances; but during his nonage he shall not be competent to vote or hold any office in the society.

Shares may be held by two or more persons.

39. Two or more persons may jointly hold a share or shares in any society under this Act; and all shares held jointly by any two or more persons in any society subsisting at the time appointed for the commencement of this Act, the rules whereof shall not prohibit such joint holding, shall be deemed to be lawfully so held.

Societies shall make annual audits and statements of the funds to the members.

40. The secretary or other officer of every society under this Act shall, once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities; and every such account and statement shall be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary or other officer; and every member, depositor, and creditor for loans shall be entitled to receive from the society a copy of such account and statement, and a copy thereof shall be sent to the registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in every office of the society under this Act.

Exemption from stamp duties.

41. No rules of any society under this Act, nor any copy thereof, nor any power, warrant, or letter of attorney granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any member, his executors or administrators, assigns, or attorneys, from the funds of the society, nor any transfer of any share, nor any bond or other security to be given to or on account of the society, or by any officer thereof, nor any order on any officer for payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this Act, or of the rules of the society, shall be subject or liable to or charged with any stamp duty or duties whatsoever, provided that the exemption shall not extend to any mortgage.

Receipt endorsed on mortgage to be sufficient discharge without re-conveyance.

42. When all moneys intended to be secured by any mortgage or further charge given to a society under this Act in England or Ireland have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a re-conveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the schedule to this Act, and such receipt shall vacate the mortgage or further charge or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any re-conveyance or re-surrender whatever; and if the said mortgage or further charge has been registered under any Act for the registration or record of deeds or titles, the registrar under such Act, or his deputy or assistant registrar, or the recording officer, as the case may be, or, in the case of copyholds or lands of customary tenure, if the mortgage or further charge has been entered on any court rolls, the steward of the manor or his deputy respectively, shall, on production of such receipt, verified by oath of any person, make an entry opposite the entry of the charge or mortgage, to the effect that such charge or mortgage is satisfied, and shall grant a certificate, either on the said mortgage or charge or separately, to the like effect, which certificate shall be received in evidence in all courts and proceedings without any further proof, and which entry shall have the effect of clearing the register or record of such mortgage; and the registrar or recording officer shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate, and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry of Deeds Office and Record of Title Office are now by law directed to be paid and applied.

Penalties.

43. If any society hereafter formed under this Act, or any persons representing themselves to be a society under this Act, commence business without first obtaining a certificate of incorporation under this Act, or if any society under this Act makes default in forwarding to the registrar any returns or information by this Act required, or in inserting in any deposit book or acknowledgment or security for loan the matters required by section fifteen of this Act to be inserted therein, or makes a return wilfully false in any respect, the person or persons by whom business shall have been so commenced, or by whom such default shall have been made, or who shall have made such wilfully false return, shall be liable for every day business is so carried on, or for every such default or false return, upon summary conviction before justices at the complaint of the registrar, to a penalty not exceeding five pounds. If any society under this Act receives loans or deposits in excess of the limits prescribed by this Act, the directors or committee of

Digitized by Google

management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess.

Regulations. 44. One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under this Act, and generally for carrying this Act into effect. The registrar shall give his certificates in the forms contained in the schedule to this Act respectively.

SCHEDULE.

FORM OF BOND.

KNOW all men by these presents, That we, *A.B.* of , one of the officers of the Building Society, established at in the county of , and *C.D.* of (as surety on behalf of the said *A.B.*), are jointly and severally held and firmly bound to the said society in the sum of to be paid to the said society, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the day of in the year of our Lord .

Whereas the above-bounden *A.B.* hath been duly appointed to the office of of Building Society, established as aforesaid, and he, together with the above-bounden *C.D.* as his surety, have entered into the above-written bond, subject to the condition herein-after contained:

Now, therefore, the condition of the above-written bond is such, that if the said *A.B.* shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

FORM OF RECEIPT TO BE ENDORSED ON MORTGAGE OR FURTHER CHARGE.

THE Building Society hereby acknowledge to have received all moneys intended to be secured by the within [*or* above] written deed.

In witness whereof the seal of the society is hereto affixed this day of by order of the board of directors [*or* committee of management] in presence of

, Secretary [*or* Manager]. (L.S.)

[*Other witnesses, if any required by the rules of the society.*]

FORMS OF CERTIFICATE TO BE GIVEN UNDER THIS ACT.

Certificate of Incorporation.

I, , Registrar of Building Societies in [England, Scotland, *or* Ireland], hereby certify that the Building Society, established at in the county of , is incorporated under "The Buildings Societies Act, 1874."

Given under my hand this day of 18 .

Registrar of Building Societies.

Certificate of Registration of Alteration of Rules.

I, , Registrar of Building Societies in [England, Scotland, *or* Ireland], hereby certify that the foregoing alterations of [*or* addition to] the rules of the Building Society, established at in the county of , are registered under "The Building Societies Act, 1874."

Given under my hand this day of 18 .

Registrar of Building Societies.

Certificate of Registration of Change of Name.

I, , Registrar of Building Societies in [England, Scotland, *or* Ireland], hereby certify that the registered name of the Building Society, established at in the county of , is changed from the date hereof to the name following:

pursuant to "The Building Societies Act, 1874."

Given under my hand this day of 18 .

Registrar of Building Societies.

CAP. XLIII.

An Act to amend the Alkali Act, 1863.

[30*th July* 1874.]

26 & 27 Vict. c. 124. 31 & 32 Vict. c. 36. 35 & 36 Vict. c. 79.

WHEREAS it is expedient to amend the Alkali Act, 1863, in this Act referred to as "the principal Act," as made permanent by the Act of the session of the thirty-first and thirty-second years of the reign of Her present Majesty, chapter thirty-six, and amended by the Public Health Act, 1872:

Be it therefore enacted &c.: . . .

Construction of Act with 26 & 27 Vict. c 124, and short title. 1. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the principal Act, and this Act and the principal Act may be cited together as "The Alkali Acts, 1863, 1874," and this Act may be cited separately as The Alkali Act, 1874.

Commencement of Act. 2. This Act shall not come into operation until the first day of March one thousand eight hundred and seventy-five.

Amendment of definition of "alkali work." 3. Whereas by section three of the principal Act, the term "alkali work" is defined to mean "every work for the "manufacture of alkali, sulphate of soda, or sulphate of "potash in which muriatic acid gas is evolved," and doubts have arisen whether the formation of sulphate of soda in the treatment of copper ores by common salt is or is not a manufacture of sulphate of soda within the meaning of the said section; and it is expedient to remove such doubts: Be it therefore enacted that,

The formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda within the meaning of the said section.

Amendment of 26 & 27 Vict. c. 124. s. 4. as to the condensation of muriatic acid gas evolved. 4. Whereas it is provided by section four of the principal Act, that every alkali work shall be carried on in such manner as to secure the condensation of such per-centage of muriatic acid gas as therein mentioned, and it is expedient to make further provision in relation thereto: Be it therefore enacted that,

In addition to the condensation of such per-centage of muriatic acid gas as aforesaid, every alkali work shall be carried on in such manner as to secure the conden-

Digitized by Google

sation to the satisfaction of the inspector, derived from his own examination or from that of a sub-inspector, of the muriatic acid gas evolved in such work to such an extent that in each cubic foot of air, smoke, or chimney gases escaping from the works into the atmosphere there is not contained more than one-fifth part of a grain of muriatic acid.

If any alkali work is carried on in contravention of this section the owner of that work shall be deemed to be guilty of an offence against the principal Act, and be subject to the penalties in that Act mentioned; and the provisions of the principal Act shall apply to the carrying on of an alkali work in contravention of this section in the same manner as if, wherever reference is made in the said Act to the condensation of muriatic acid gas to the extent in that Act mentioned, there were added a reference, with the necessary alterations, to the provisions of this Act relating to the condensation of muriatic acid gas.

Best practicable means to be used for the condensation of noxious gases other than muriatic acid.

5. In addition to the condensation of muriatic acid gas as aforesaid, the owner of every alkali work shall use the best practicable means of preventing the discharge into the atmosphere of all other noxious gases arising from such work, or of rendering such gases harmless when discharged. If he fail to use such means in the opinion of the court having jurisdiction in respect of the penalties imposed by this section, he shall be liable to a penalty not exceeding in the case of the first offence twenty pounds, and in the case of a second offence fifty pounds, with a further sum of two pounds for every day during which such offence has continued, and in the case of a third or any subsequent offence twenty pounds for every day during which such offence has continued.

Penalties under this section shall be recovered at the suit of the inspector in the manner in which penalties for offences other than offences against a special rule are recoverable in pursuance of the principal Act: Provided always, that no such owner shall be convicted of more than one such offence in respect of any one day: Provided also, that no such suit shall be instituted and no such penalties shall be inflicted unless the inspector shall, ten days previously, deliver to such owner a statement in writing specifying in what respect such owner has failed to comply with the requirements of this section, and also specifying means which in his opinion would suffice to comply therewith, and a copy of such statement shall on the institution of any proceedings under this section be laid by the inspector before the court having cognizance of the matter.

Power of entry for inspector.

6. Every inspector and sub-inspector of alkali works shall have the same power of inspection, examination, or testing, for the purpose of acertaining whether the provisions of this Act with respect to noxious gases other than muriatic acid are complied with, as he has for the purpose of acertaining whether the provisions of the principal Act, as amended by this Act, in relation to the condensation of muriatic acid are complied with, and all the provisions of the principal Act relating to the inspection, examination, and testing, and to penalties for obstructing any inspector or sub-inspector in the execution of the principal Act, or neglecting to afford to the inspector or sub-inspector the necessary facilities in relation to inspection, examination, or testing, under the principal Act, shall apply accordingly.

Persons engaged in alkali works not to be inspectors.

7. In addition to the disqualifications contained in section eight of the principal Act, no person either directly or indirectly engaged or interested in any alkali works, or in any patent for any process or apparatus carried on or used in any alkali works, shall act as an inspector or sub-inspector under the Alkali Acts, 1863 and 1874.

Special rules may be made with respect to noxious gases.

8. Special rules made by the owner for the guidance of his workmen in pursuance of the principal Act may extend to any matter or thing required to be observed by them in relation to the prevention of the discharge of the noxious gases mentioned in this Act.

Definition of noxious gases.

9. "Noxious gas" shall, for the purposes of this Act, mean any of the gases following; that is to say,

Sulphuric acid;
Sulphurous acid, except that arising from the combustion of coals;
Nitric acid, or other noxious oxides of nitrogen;
Sulphuretted hydrogen; and
Chlorine.

Saving as to general law

10. Nothing herein contained shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action, suit, indictment, or otherwise to which he would have been entitled if this Act had not passed.

CAP. XLIV.

An Act to make better provision for improving the health of women, young persons, and children employed in manufactures, and the education of such children, and otherwise to amend the Factory Acts. [*30th July* 1874.]

WHEREAS it is expedient to make better provision for improving the health of women, young persons, and children employed in manufactures, and the education of such children, and otherwise to amend the Factory Acts:

Be it enacted, &c.: . . . . . .

Preliminary.

Short title.

1. This Act may be cited as the Factory Act, 1874, and together with the Factory Acts, 1833 to 1871, may be cited as the Factory Acts, 1833 to 1874.

Commencement of Act.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-five, which day is in this Act referred to as the commencement of this Act.

Hours of Employment and Refreshment.

Period for employment of children, young persons, and women.

3. The period during which a child, young person, or woman may be employed in a factory to which this Act applies, shall be either the period between the hours of six in the morning and six in the afternoon, or the period between the hours of seven in the morning and seven in the afternoon.

Hours of employment of children, young persons, and women in factory where period from 6 a.m. to 6 p.m.

4. In every factory to which this Act applies, and in which the period of employment is between the hours of six in the morning and six in the afternoon, the following regulations shall be observed:

(1.) A child, young person, or woman shall not be employed except between those hours; and

Digitized by Google

(2.) A child, young person, or woman shall not be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal; and

(3.) There shall be allowed between the hours of six in the morning and six in the afternoon on every day except Saturday two hours for meals, and of such time one hour at the least shall be before three o'clock in the afternoon; and

(4.) A child, young person, or woman shall not on Saturday,

(a.) If not less than one hour is allowed for meals on that day, be employed in any manufacturing process after one o'clock in the afternoon, or for any purpose whatever after half-past one o'clock in the afternoon; and

(b.) If less than one hour is allowed for meals on that day, be employed in any manufacturing process after half an hour after noon, or for any purpose whatever after one o'clock in the afternoon.

Hours of employment of children, young persons, and women in factory where period from 7 a.m. to 7 p.m.

5. In every factory to which this Act applies, and in which the period of employment is between the hours of seven in the morning and seven in the afternoon, the following regulations shall be observed:

(1.) A child, young person, or woman shall not be employed except between those hours; and

(2.) A child, young person, or woman shall not be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal; and

(3.) There shall be allowed between the hours of seven in the morning and seven in the afternoon on every day except Saturday two hours for meals, and of such time one hour at the least shall be before three o'clock in the afternoon; and

(4.) A child, young person, or woman shall not be employed on Saturday in any manufacturing process after half-past one o'clock in the afternoon, or for any purpose whatever after two o'clock in the afternoon.

Employment of children in morning and afternoon sets, or on alternate days.

6. In a factory to which this Act applies, the children may be employed either in morning and afternoon sets, or for the whole day on alternate days, and the following regulations shall be observed:

(1.) Where the children are employed in morning and afternoon sets:

(a.) A child who on any day except Saturday is employed before noon, shall not on the same day be employed after one o'clock in the afternoon, or if the hour of dinner be before one o'clock, after such hour of dinner; and

(b.) A child shall not be employed on Saturday in two successive weeks, nor on Saturday in any week if on any other day in the same week he has been employed for more than five hours; and

(c.) A child employed in the factory shall attend school in manner directed by section thirty-eight of the Factory Act, 1844; and the provisions of that Act with respect to such attendance and certificates thereof shall apply accordingly; and

7 & 8 Vict. c. 15. s. 38.

(2.) Where the children are employed on alternate days:

(a.) A child may be employed during the same hours, and with the same hours for meals, as young persons and women in a factory; and

(b.) A child shall not be employed in any manner on two successive days; and

(c.) A child employed in the factory shall attend school in manner directed by section thirty-one of the Factory Act, 1844; and the provisions of that Act with respect to such attendance and certificates thereof shall apply accordingly.

7 & 8 Vict. c. 15. s. 38.

Hours of meals to be simultaneously.

7. In a factory to which this Act applies, all children, young persons, and women in the factory shall have the time allowed them for meals at the same time of the day, unless some alteration for special cause be allowed in writing by an inspector.

Employment during meal times forbidden.

8. In a factory to which this Act applies, a child, young person, or woman shall not during any part of the time allowed for any meal be employed in the factory, or allowed to remain in any room in which any manufacturing process is being carried on, and any child, young person, or woman so employed or allowed so to remain shall be deemed to be employed in contravention of the provisions of this Act.

Notices of hours of employment and mode of employment of children.

9. The notice of the times of the day for meals required by section twenty-eight of the Factory Act, 1844, to be hung up in the factory shall, in every factory to which this Act applies, specify the hours between which the period of employment in such factory is fixed, and whether children in such factory are to be employed in morning and afternoon sets, or on alternate days.

The period of employment in the factory shall be deemed to be between the hours specified in such notice, and all the children in the factory shall be employed either in sets on alternate days as may be specified in such notice.

A change in such hours, or in the mode of employment of the children, shall not be made until after the occupier of the factory has sent written notice of his intention to make such change to the inspector or sub-inspector of the district in which the factory is situate, and shall not be made oftener than once a quarter, unless for special cause, allowed in writing by an inspector.

Abolition of recovery of lost time under 7 & 8 Vict. c. 15. ss. 33 and 34.

10. Until the first day of January one thousand eight hundred and seventy-six, children, young persons, and women may be employed in a factory to which this Act applies in the recovery of lost time in pursuance of the Factory Acts, 1833 to 1856, but after the said first day of January one thousand eight hundred aud seventy-six, in a factory to which this Act applies, a child, young person, or woman shall not be employed in the recovery

Digitized by Google

of lost time in pursuance of the Factory Acts, 1833 to 1856, or any of them, during any hours during which they cannot be employed in pursuance of the other provisions of this Act.

Saving as to youths in lace factories. 24 & 25 Vict. c. 117. s. 2.

11. Nothing in this Act shall prevent the employment of youths in lace factories, in manner provided by section two of the Lace Factories Act, 1861:

Provided that where the period of employment in the factory is between the hours of seven in the morning and seven in the afternoon, those hours shall be substituted in that section for the hours of six in the morning and six in the afternoon respectively.

Age of Children.

Extension of age of child to 14, unless educational certificate obtained.

12. After the first day of January one thousand eight hundred and seventy-six, for the purpose of this Act and of the Factory Acts, 1833 to 1856, in the case of a factory to which this Act applies, a person of the age of thirteen years and under the age of fourteen years shall be deemed to be a child, and not a young person, unless he has obtained from a person authorised by the authority herein-after mentioned a certificate of having attained such standard of proficiency in reading, writing, and arithmetic as may be from time to time prescribed for the purposes of this Act by that authority: Provided that any such person who previously to the first day of January one thousand eight hundred and seventy-six is lawfully employed in any such factory as a young person, may continue to be so employed in like manner as if this section had not been enacted.

The authority for the purposes of this section shall be—

(*a*.) In England the Lords of the Committee of the Privy Council on Education;

(*b*.) In Scotland the Lords of any Committee of the Privy Council appointed by Her Majesty on education in Scotland; and

(*c*.) In Ireland, the Lord Lieutenant of Ireland, with the advice of his Privy Council.

The standard of proficiency so prescribed shall be published in the London, Edinburgh, or Dublin Gazette, according as it is prescribed by the authority in England, Scotland, or Ireland, and shall not have effect until the expiration of at least six months after such publication.

Employment of children under nine or ten in factories.

13. In a factory to which this Act applies a child shall not be employed—

(*a*.) During the year one thousand eight hundred and seventy-five if he is under the age of nine years; or,

(*b*.) After the expiration of that year if he is under the age of ten years.

Provided that any child who previously to the commencement of the year one thousand eight hundred and seventy-five is lawfully employed in any such factory as a child under the age of nine years, and any child who previously to the commencement of the year one thousand eight hundred and seventy-six is lawfully employed in any factory as a child under the age of ten years may continue to be employed in any factory in like manner as if this section had not been enacted.

Employment of children in silk works. 13 & 14 Vict. c. 54. s. 7.

14. The enactments of the Factory Act, 1850, or any previous Act, which authorise the employment of any child in the silk manufacture during longer hours than those authorised in the case of a child in any other factory to which this Act applies, shall be repealed as from the commencement of this Act:

Provided that—

(1.) A child of the age of eleven and under the age of twelve years may be employed in the winding and throwing of raw silk during one year after the commencement of this Act in like manner as if such child were a young person; and

(2.) A child of the age of twelve and under the age of thirteen years may be employed in the winding and throwing of raw silk during two years after the commencement of this Act in like manner as if such child were a young person; and

(3.) Any child who immediately preceding the expiration of two years after the commencement of this Act is lawfully employed in the winding and throwing of raw silk as if he were a young person, may continue to be so employed in like manner as if this section had not been enacted.

Supplemental.

Education of children to be in efficient school.

15. After the first day of January one thousand eight hundred and seventy-six attendance at a school in England which is not for the time being recognised by the Education Department as giving efficient elementary education shall not in the case of a child employed in a factory to which this Act applies be deemed to be attendance at a school within the meaning of this Act or the Factory Act, 1844; Provided that,

(1.) This section shall not apply to a school in any school district within the meaning of the Elementary Education Act, 1870, which has not been declared by the Education Department to be sufficiently provided with public school accommodation within the meaning of that Act:

(2.) This section shall not apply where there is not a school so recognised within the distance of two miles from the factory in which the child is employed.

The Education Department shall make such declaration as above mentioned with respect to every school district which they are satisfied is supplied with sufficient public school accommodation, and shall from time to time publish, in such manner as they think sufficient to give information to all persons interested, lists of the schools for the time being recognised by them as giving efficient elementary education.

This section shall apply to Scotland in like manner as if it were enacted with the substitution of "Scotch Education Department" for "Education Department," of "parish or burgh" for "school district," and of "such school accommodation as is mentioned in "sections twenty-seven and twenty-eight of the Education (Scotland) Act, 1872," for "public school accommodation."

Penalty for wrongful employment and breach of Act.

16. Any child, young person, or woman who is employed in contravention of the provisions of this Act shall be deemed to be employed in manner contrary to the provisions of the Factory Act, 1833, as amended by the Factory Act, 1844, and any contravention of or failure to comply with the provisions of this Act shall be deemed to be an offence against the Factory Act, 1833,

Digitized by Google

as amended by the Factory Act, 1844, and all the provisions of the Factory Act, 1844, relating to offences, and penalties for offences, shall, as amended by the Factory and Workshop Act, 1871, apply accordingly.

Amendment of 34 & 35. Vict. c. 104 s 9. as to recovery of penalties in Scotland.

17. Section nine of the Factory and Workshop Act, 1871 (which section applies to the recovery of penalties in Scotland only,) shall, for the purposes as well of the Acts in this section mentioned as of this Act, be construed as if it contained the following additional provisions; that is to say,

(1.) It shall be no objection to the competency of any inspector or sub-inspector to give evidence as a witness in any prosecution for offences under the Factory Acts, 1833 to 1871, or the Workshops Act, 1867 to 1871, or any of them, that such prosecution is brought at the instance of such inspector or sub-inspector:

(2.) Every person convicted of an offence under the Factory Acts, 1833 to 1871, or the Workshop Acts, 1867 to 1871, or any of them, shall be liable in the reasonable costs and charges of such conviction.

Alteration of forms.

18. One of Her Majesty's Principal Secretaries of State may direct the forms contained in the schedules to the Factory Act, 1844, and the Lace Factories Act, 1861, and the abstract mentioned in section twenty-eight of the former Act, to be modified in such manner as appears to him necessary for bringing the same into conformity with this Act, and the forms and abstract as so modified shall be sufficient in law.

Definitions: "Factory Acts, 1833-1856."

19. In this Act—

The expression "the Factory Acts, 1833 to 1856," means such provisions as are not repealed by this or any other Act of the Acts following; namely,

3 & 4 W. 4. c. 103. The Factory Act, 1833;

7 & 8 Vict. c. 15. The Factory Act, 1844, as amended by the Ropeworks, Act, 1846; and

19 & 20 Vict. c. 38. The Factory Act, 1856.

"Woman."

The expression "woman" means a woman of the age of eighteen years and upwards.

Other expressions in this Act shall, so far as is consistent with the tenor of this Act, have the same meanings as they have in the Factory Act, 1844.

"Rope-works Act."

The Act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter forty, intituled "An Act to "declare certain ropeworks not within the operation "of the Factory Acts," is in this Act referred to and may henceforth be cited as the Ropeworks Act, 1846.

"Lace-works Act."

The Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred and seventeen, intituled "An Act to place the employment "of women, young persons, youths, and children "in lace factories under the regulations of the "Factories Acts," is in this Act referred to and may henceforth be cited as the Lace Factory Act, 1861.

Factory to which the Act applies defined.

20. This Act shall apply to the following factories; namely,

A factory as defined by the Factory Acts, 1833 to 1856;

A lace factory as defined by the Lace Factory Act, 1861.

And the expression "factory to which this Act applies" shall in this Act mean only the factories above in this section mentioned.

Repeal of Acts in schedule.

21. The Acts specified in the schedule to this Act are hereby repealed, from and after the commencement of this Act, to the extent specified in the third column of that schedule.

Provided that this repeal shall not affect—

(a.) Anything duly done or suffered under any enactment hereby repealed; or

(b.) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or

(c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(d.) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Digitized by Google

SCHEDULE.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Portions of Acts which have already been specifically repealed are in some instances included in the repeal in this schedule, in order to preclude henceforth the necessity of looking back to previous Acts.

Section and Chapter	Title or abbreviated Title	Extent of Repeal
3 & 4 Will. 4. c. 103.	An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom.	Sections three, five, and six, so far as they relate to factories to which this Act applies, and the whole of the remainder of the Act, except the following portions, namely— So much of section one as defines "night," section nine, section eleven, down to "remain in any "factory or mill," and from "any child who "shall not have completed his or her thirteenth "year" to the end of the section; section twelve, section fourteen, section sixteen, section seventeen, section eighteen from "all registers, books, "entries," down to "such copy as they may "think proper;" section nineteen down to "un-"der the authority thereof;" so much of section twenty-eight as relates to forgery; section forty-five, section forty-nine, and section fifty.
4 & 5 Will. 4. c. 1.	An Act to explain and amend an Act of the last session of Parliament, for regulating the labour of children and young persons in the mills and factories of the United Kingdom.	The whole Act.
7 & 8 Vict. c. 15.	An Act to amend the laws relating to labour in factories.	Section twenty-nine, section thirty, section thirty-one down to "afternoon of any Saturday, pro-"vided always that," and from "but it shall "not be lawful to employ any child" to the end of the section; section thirty-three; section thirty-four; and section thirty-six, so far as the above sections and parts of sections relate to factories to which this Act applies, and also section one, section two down to "as herein-after "mentioned and that;" section fourteen down to "continue in the same factory, but;" section eighteen down to "hereinafter provided and that;" section twenty-six from "shall be re-ckoned" down to "in such factory and;" section thirty-five, section forty, section seventy-four, and Schedule D.
10 & 11 Vict. c. 29.	An Act to limit the hours of labour of young persons and females in factories.	The whole Act.
13 & 14 Vict. c. 54.	An Act to amend the Acts relating to labour in factories.	Sections one, three to six, eight and nine, so far as those sections relate to factories to which this Act applies, and the whole of the remainder of the Act.
16 & 17 Vict. c. 104.	An Act further to regulate the employment of children in factories.	The whole Act, so far as it relates to factories to which this Act applies.
27 & 28 Vict. c. 48.	The Factory Acts Extension Act, 1864.	So far as it incorporates any enactment which is wholly repealed by this Act.
30 & 31 Vict. c. 103.	The Factory Acts Extension Act, 1867.	So far as it incorporates any enactment which is wholly repealed by this Act.
33 & 34 Vict. c. 62.	The Factory and Workshop Act, 1870.	So far as it incorporates any enactment which is wholly repealed by this Act.

Digitized by Google

CAP. XLV.

An Act for altering the Boundaries between the Liberty of St. Alban and the rest of the County of Hertford; and for making better provision for the Transaction of County Business, and the Administration of Justice at Quarter Sessions in that County.

[30th July 1874.]

CAP. XLVI.

An Act to consolidate and amend the Duties of Customs in the Isle of Man.

[30th July 1874.]

CAP. XLVII.

An Act to extend the Powers of Prison Authorities in relation to Industrial and Reformatory Schools, and for other purposes relating thereto. [30th July 1874.]

WHEREAS by the Prisons Act, 1865, prison authorities are empowered to borrow money for the purposes of altering, enlarging, new building, or building prisons:

And whereas prison authorities have power by the Industrial Schools Acts, 1866 and 1872, to contribute towards or themselves to undertake the alteration, enlargement, rebuilding, establishment, building, or purchase of the site for any industrial school, and by the Reformatory Schools Acts, 1866 and 1872, to contribute towards or themselves to undertake the alteration, enlargement, rebuilding, establishment, building, or purchase of the site for any reformatory school, but no power is given prison authorities under the said Acts relating to industrial and reformatory schools to borrow money for the purposes of such schools:

Be it enacted, &c.: . . . . . .

Short title. Construction of Act.

1. This Act may be cited for all purposes as "The Prisons Authorities Act, 1874," and shall be construed, as far as is consistent with the tenor thereof, as follows; that is to say, so far as it relates to industrial schools with the Industrial Schools Acts, 1866 and 1872, and so far as it relates to reformatory schools with the Reformatory Schools Acts, 1866 and 1872.

Power to borrow money for purposes of industrial and reformatory schools.

2. Subject to the provisions of "The Elementary Education Act, 1870," any prison authority may, with the approval of one of Her Majesty's Principal Secretaries of State, borrow money for the purpose of defraying or contributing towards the expense of altering, enlarging, rebuilding, establishing, building, or purchasing the site of any industrial or reformatory school under the said Industrial and Reformatory Schools Acts, or any of them.

Charge of borrowed moneys.

3. Any moneys borrowed by a prison authority under this Act may be charged by that authority on any county rate, or rate in the nature of a county rate, borough rate, or other rate applicable to the maintenance of a prison and leviable by that authority, or on any other property belonging to that authority and applicable to the same purpose as the said rates, and shall be repaid, together with the interest due thereon, out of such rates or other property.

Certain clauses of 10 & 11 Vict. c. 16 as to borrowing money incorporated.

4. The Clauses of "The Commissioners Clauses Act, 1847," with the exception of the eighty-fourth clause with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the Commissioners" shall mean the "prison authority."

Where a prison authority borrows any money under this Act they shall charge the rates or property out of which the moneys borrowed are payable, not only with the interest of the moneys so borrowed, but also with the payment of such further sum as will ensure the repayment of the whole sum borrowed within thirty years.

Special provision as to the county and city of Worcester.

5. For the purposes of the said Industrial and Reformatory Schools Acts and this Act, the justices of the county of Worcester in quarter sessions assembled shall be deemed to be the prison authority for the county of Worcester at large, and the council of the city of Worcester shall be deemed to be the prison authority for the city of Worcester and county of the same city, anything in the Worcester Prison Act, 1867, or any other Act, notwithstanding.

CAP. XLVIII.

An Act to provide for the payment of Wages without Stoppages in the Hosiery Manufacture. [30th July 1874.]

CAP XLIX.

An Act to amend the Laws relating to the sale and consumption of Intoxicating Liquors.

[30th July 1874.]

35 & 36 Vict. c. 94.

WHEREAS it is expedient to amend the Licensing Act, 1872, in this Act referred to as the principal Act:

Be it enacted, &c.: . . . . . .

Preliminary.

Construction and short title of Act. 35 & 36 Vict. c. 94.

1. This Act and the principal Act shall, so far as is consistent with the respective tenors of such Acts, be construed as one Act, and may be cited together as "The Licensing Acts, 1872–1874;" but this Act may, if necessary, be cited separately as "The Licensing Act, 1874."

Commencement of Act.

2. This Act shall come into operation as to the provisions relating to hours of closing (not being provisions relating to the grant of early-closing licenses), and as to the provision repealing section twenty-four of the principal Act, on the tenth of October one thousand eight hundred and seventy-four, and not before, and as to the remainder, immediately on the passing of this Act.

Hours of Closing.

Hours of closing premises licensed for sale of intoxicating liquors.

3. All premises in which intoxicating liquors are sold by retail shall be closed as follows; (that is to say,)

(1.) If situate within the metropolitan district,—

(a) On Saturday night from midnight until one o'clock in the afternoon on the following Sunday; and

Digitized by Google

(b) On Sunday night from eleven o'clock until five o'clock on the following morning; and

(c) On all other days from half an hour after midnight until five o'clock on the same morning; and

(2.) If situate beyond the metropolitan district and in the metropolitan police district or in a town or in a populous place as defined by this Act,—

(a) On Saturday night from eleven o'clock until half on hour after noon on the following Sunday; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning; and

(c) On the nights of all other days from eleven o'clock until six o'clock on the following morning; and

(3.) If situate elsewhere than in the metropolitan district or the metropolitan police district or such town or populous place as aforesaid,—

(a.) On Saturday night from ten o'clock until half an hour after noon on the following Sunday; and

(b) On Sunday night from ten o'clock until six o'clock on the following morning; and

(c) On the nights of all other days from ten o'clock until six o'clock on the following morning.

Such premises wherever situate shall, save as hereinafter mentioned, be closed on Sunday afternoon from three or half-past two according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon until six o'clock.

Such premises wherever situate shall be closed on Christmas Day and Good Friday and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday.

Exemptions as to theatres repealed.

4. An exemption from the above-mentioned hours of closing shall not be granted in respect of premises in the neighbourhood of a theatre, for the accommodation of persons attending the same, and so much of the twenty-sixth section of the principal Act as provides for the granting of an order making such exemption shall be repealed.

Exemptions as to beer-houses.

5. The grant of an order of exemption under the said twenty-sixth section amended as aforesaid may be made to any person licensed to sell beer or cyder by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment house.

Further exemptions as to beer-houses.

The grant of a license under the twenty-ninth section of the principal Act may be made to any person licensed to sell beer or cyder by retail, to be consumed upon the premises, as well as to any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold.

Power to vary on Sunday afternoon hours of closing premises for sale of intoxicating liquors.

6. Notwithstanding anything in this or in any local Act contained, the licensing justices may, if they think fit, as respects premises in which intoxicating liquors are sold, when situate in any place beyond the metropolitan district, for the purpose of accommodating the hours of closing on Sunday, Good Friday, and Christmas Day to the hours of public worship in such place, by order direct that such premises shall remain closed until one o'clock in the afternoon instead of half an hour after noon, and in that case such premises shall be closed in the afternoon from three until six o'clock, instead of from half-past two until six o'clock.

Any order made by the licensing justices under this section shall not come into operation until the expiration of one month after the date thereof, and shall be advertised in such manner as the licensing justices direct, and shall be in force until the same is revoked; the expense of any such advertisement may be defrayed in like manner as the expenses of advertising the sittings of such justices are defrayed.

Early-closing licenses.

7. Where, on the occasion of any application for a new license, or the removal or renewal of a license which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his license a condition that he shall close the premises in respect of which such license is or is to be granted one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such license.

The holder of a license in which such condition is inserted (in this Act referred to as an early-closing license) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act, and the provisions of this Act and the principal Act shall apply to the premises as if such earlier hour were the hour at which the premises are required to be closed.

The holder of an early-closing license may obtain from the Commissioners of Inland Revenue any license granted by such Commissioners which he is entitled to obtain in pursuance of such early-closing license, upon payment of a sum representing six-sevenths of the duty which would otherwise be payable by him for a similar license not limited to such early closing as aforesaid. In calculating the six-sevenths, fractions of a penny shall be disregarded.

The notice which a licensed person is required by section eleven of the principal Act to keep painted or fixed on his premises shall, in the case of an early-closing license, contain such words as the licensing justices may order for giving notice to the public that an early-closing license has been granted in respect of such premises.

Remission of duty in case of six-day and early-closing licenses.

8. A person who takes out a license containing conditions rendering such license a six-day license, as well as an early-closing license, shall be entitled to a remission of two-sevenths of the duty.

Penalty for infringing Act as to hours of closing.

9. Any person who—

During the time at which premises for the sale of intoxicating liquors are directed to be closed by or in pursuance of this Act, sells or exposes for sale in such premises any intoxicating liquor, or opens or keeps open such premises for the sale of intoxicating liquors, or allows any intoxicating liquors although purchased before the hours of closing, to be consumed in such premises—

shall for the first offence be liable to a penalty not exceeding ten pounds, and for any subsequent offence to a penalty not exceeding twenty pounds.

Saving as to bonâ fide travellers and lodgers.

10. Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating

Digitized by Google

liquor to be consumed on the premises from selling such liquor at any time to bonâ fide travellers or to persons lodging in his house: Provided, that no person holding a six-day license shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

Nothing in this Act contained as to hours of closing shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.

If in the course of any proceedings which may be taken against any licensed person for infringing the provisions of this Act or the principal Act, relating to closing, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a bonâ fide traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a bonâ fide traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a bonâ fide traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the twenty-fifth section of the principal Act.

A person for the purposes of this Act and the principal Act shall not be deemed to be a bonâ traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.

Hours of closing night houses.

11. Whereas by the Act of the session of the twenty-seventh and twenty-eighth years of the reign of Her present Majesty, chapter sixty-four, it is provided that no persons within the limits of that Act shall open or keep open any refreshment house, to which that Act so far as it is unrepealed applies, or sell or expose for sale or consumption in any such refreshment house any refreshments or any article whatsoever between the hours of one and four o'clock in the morning: And whereas it is expedient to amend the provisions of the said Act: Be it therefore enacted, that the said Act, so far as it is unrepealed, shall be construed as if there were substituted therein for the hour of one o'clock in the morning the hour of the night or morning at which premises licensed for the sale of intoxicating liquors by retail situate in the same place as such refreshment house are required to be closed, and as if the whole of England were within the limits of the Act, and as if the expression "district" in the Act included any place in which such refreshment house is situate.

Record of Convictions and Penalties.

Mitigation of penalties.

12. The sixty-seventh section of the principal Act is hereby repealed, and in lieu thereof be it enacted, that where any person holding a license under this or the principal Act is convicted of any offence against this or the principal Act, or against any of the Acts recited or mentioned therein, the Court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorised by any other Act.

Record of convictions on licenses.

13. Where any licensed person is convicted of any offence against the principal Act which by such Act was to have been or might have been endorsed upon the license, or of any offence against this Act, the court before whom the offender is brought shall cause the register of licenses in which the license of the offender is entered, or a copy of the entries therein relating to the license of the offender, certified in manner prescribed by section fifty-eight of the principal Act, to be produced to the court before passing sentence, and after inspecting the entries therein in relation to the license of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its sentence, whether it will or will not cause the conviction for such offence to be recorded on the license of the offender, and if it decide that such record is to be made, the same shall be made accordingly.

A declaration by the court that a record of an offence is to be made on a license shall be deemed to be part of the conviction or order of the court in reference to such offence, and shall be subject accordingly to the jurisdiction of the court of appeal.

A direction by the court that a conviction for an offence is to be recorded on the license of the offender shall, for the purposes of the principal Act, be deemed equivalent to a direction or requirement by the Act that such conviction is to be recorded; and all the provisions of the principal Act importing that convictions are required or directed by the Act to be recorded on the license of an offender shall be construed accordingly.

Record of conviction for adulteration.

14. Where a licensed person is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licenses, and may be directed to be recorded on the license of the offender in the same manner as if the conviction were for an offence against this Act, and when so recorded shall have effect as if it had been a conviction for an offence against this Act.

Temporary continuance of licenses forfeited for single offences.

15. Where any licensed person is convicted for the first time of any of the following offences,—

1. Making an internal communication between his licensed premises and any unlicensed premises;
2. Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;
3. Selling spirits without a spirit license;
4. Any felony;

and in consequence either becomes personally disqualified or has his license forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a license in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licenses at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.

Regulations as to entry on Premises.

Constable to enter on premises for enforcement of Act.

16. Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional license is in force.

Digitized by Google

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

Search warrant for detection of liquors sold or kept contrary to law.

17. Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.

When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor as aforesaid, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Occasional Licenses.

Occasional license required at fairs and races.

18. Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races without an occasional license authorising such sale shall, notwithstanding anything contained in any Act of Parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorised by his license to sell the same, and be punishable accordingly.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquors in premises in which he is duly authorised to sell the same throughout the year, although such premises are situate within the limits aforesaid.

Occasional licenses,—extension of time for closing.

19. Whereas by the twentieth section of the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter thirty-three, it is provided that the hours during which an occasional license shall authorise the sale of any beer, spirits, or wine shall extend from sunrise until one hour after sunset: Be it enacted, that the said section shall be construed as if in place of the words "sunrise until one "hour after sunset" there were inserted the words "such hour not earlier than sunrise until such hour "not later than ten o'clock at night as may be specified "in that behalf in the consent given by the justice for "the granting of such occasional license."

Offences on premises with occasional license.

20. For the purpose of so much of the principal Act as relates to offences against public order, that is to say, sections twelve to eighteen, both inclusive, and the sections for giving effect to the same, a person taking out an occasional license shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional license shall be deemed to be licensed premises, and to be the premises of the person taking out such license.

Miscellaneous.

Supply of deficiency in quota of borough justices on joint committee.

21. Where from any reason there are not for the time being three qualified borough justices to form the quota of a joint committee for such borough, in pursuance of section thirty-eight of the principal Act, the deficiency in number of such borough justices shall be supplied by qualified county justices to be appointed by the county licensing committee.

Provisional grant and confirmation of licenses to new premises.

22. Any person interested in any premises about to be constructed or in course of construction for the purpose of being used as a house for the sale of intoxicating liquors to be consumed on the premises may apply to the licensing justices and to the confirming authority for the provisional grant and confirmation of a license in respect of such premises, and the justices and confirming authority, if satisfied with the plans submitted them of such house, and that if such premises had been actually constructed in accordance with such plans, they would, on application, have granted and confirmed such a license in respect thereof, may make such provisional grant and order of confirmation accordingly.

A provisional grant and order of confirmation shall not be of any validity until it has been declared to be final by an order of the licensing justices made after such notice has been given as may be required by the justices at a general annual licensing meeting or a special sessions held for licensing purposes. Such declaration shall be made if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional license.

A provisional grant and confirmation of a license shall be subject to the same conditions as to the giving of notices and generally as to procedure to which such grant and confirmation would be subject if they respectively were not provisional, with this exception, that where a notice is required to be put up on a door of a house such notice may be put up in a conspicuous position on any part of the premises.

This section shall, with the necessary variations, extend to the provisional removal to any premises of an existing license under section fifty of the principal Act.

Digitized by Google

One license of justices may extend to several excise licenses.

23. Separate licenses of justices shall not be required in the case of separate excise licenses, and a licence of justices shall comprehend a permission to the licenses to take out as many excise licenses as may be specified in such license of the justices.

Confirmation of license to sell liquor not to be consumed on the premises not required.

24. A 'icense to sell any intoxicating liquor for consumption only off the premises shall not require confirmation by any authority.

Joint committee to make rules under s. 43 of principal Act.

25. Where the confirming authority is a joint committee, that committee shall make rules in pursuance of section forty-three of the principal Act as to the proceedings to be adopted for the confirmation of new licenses, and as to the costs of such proceedings, and the persons by whom such costs are to be paid.

Notices of adjourned brewster sessions and of intention to oppose.

26. Whereas by section forty-two of the principal Act it is enacted that a licensed person applying for the renewal of his license need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend: Be it enacted, that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent.

It shall not be necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licenses or applicants for licenses who are not required to attend at such adjourned annual general licensing meeting.

A notice of an intention to oppose the renewal of a license served under section forty-two of the principal Act shall not be valid unless it states in general terms the grounds on which the renewal of such license is to be opposed.

No appeal to quarter sessions in certain cases.

27. There shall be repealed so much of section eight of the Wine and Beerhouse Act, 1869, as incorporates or applies any repealed enactment, and no appeal shall be had to quarter sessions from any act of any justice with respect to the grant of new certificates under the Wine and Beerhouse Acts, 1869 and 1870.

Substitution of licensing justices for Commissioners of Inland Revenue as respects certain notices.

28. Whereas by section eleven of the principal Act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the Commissioners of Inland Revenue may from time to time direct, his name, with such additions as in the said Act mentioned: And whereas it is expedient to substitute in the said section the licensing justices for the Commissioners of Inland Revenue: Be it therefore enacted—

That in the said eleventh section the expression "licensing justices" shall be deemed to be substituted for the expression "Commissioners of Inland Revenue," and the word "justices" for the word "Commissioners."

Definition of term "owner."

29. Any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: Provided, that when such estate or interest is vested in two or more persons jointly, one only of such persons shall be registered as representing such estate or interest.

Person not to be liable for supplying liquor to private friends without charge.

30. No person keeping a house licensed under this or the principal Act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends bonâ fide entertained by him at his own expense.

Additional retail license may be granted at special sessions for licensing.

31. An additional retail license to sell beer for consumption off the premises may be granted at any special sessions for licensing purposes to the holder of a strong beer dealer's wholesale excise license, in the same manner and subject to the same conditions in and subject to which it might be granted at any general annual licensing meeting.

Definitions and Repeal.

Definitions.

32. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them: that is to say,

"The metropolitan district."

"The metropolitan district" means the area in that behalf mentioned in the schedule hereto.

"Town."

"Town" means an urban sanitary district as described for the purposes of the Public Health Act, 1872; and any collection of houses adjacent to a town as so defined shall, for the purpose of the provisions of this Act with respect to the closing of premises, be deemed to be part of such town after it has been declared so to be by an order of the county licensing committee having jurisdiction in the place where such houses are situate: Provided that no urban sanitary district, whether including such adjacent houses or not, shall be deemed a town, unless it contains one thousand inhabitants.

"Populous place."

"Populous place" means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a a populous place.

At a meeting especially convened for that purpose in manner provided by any regulations in that behalf, or in default of such regulations by the clerk of the peace, as soon as may be after the passing of this Act, and not later than the first day of September one thousand eight hundred and seventy-four, the county licensing committee shall consider all the cases within their jurisdiction with respect to which it is incumbent upon them to make orders in pursuance of this section, and they shall make orders accordingly, and shall specify therein the boundaries of such towns or populous places.

The county licensing committee may adjourn any meeting held in pursuance of this section, and may also at any subsequent meeting especially convened for that purpose make with respect to any town or populous place within their jurisdiction any like order not restrictive of any order previously made.

Provided that as soon as may be after the publication of each census the county licensing committee shall, at a meeting to be specially convened for the purpose, revise the orders then in force within their jurisdiction, constituting areas either parts of towns or populous places, and may alter or cancel any of the said orders or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of this Act.

Digitized by Google

"Occasional license." "Occasional license" means a license to sell beer, spirits, or wine granted in pursuance of the thirteenth section of the Act passed in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter twenty-two, and section five of the Act of the twenty-seventh year of the reign of Her present Majesty, chapter eighteen, and the Acts amending the same in relation to the licenses therein mentioned, or of any of such Acts.

"A new license." "A new license" means a license for the sale of any intoxicating liquor granted at a general annual licensing meeting in respect of premises in respect of which a similar license has not theretofore been granted.

Repeal. 33. There are hereby repealed the sections of the principal Act relating to the following matters; that is to say,

(1.) Sections nineteen to twenty-two, both inclusive, relating to adulteration, and the first schedule to the principal Act;

(2.) Section twenty-four, relating to hours of closing; and

(3.) Section thirty-five, relating to entry on premises by constables; and

(4). So much of sections five, six, thirteen, fourteen, sixteen, seventeen, and twenty-eight as relates to the records of convictions on licenses, and of section seventy-four as contains the definition of a town for the purposes of the provisions with respect to closing and of a new license.

(5) The last paragraph of section fifty-six, beginning with the words "In a county the justices" to the end of the section.

Provided that the repeal enacted in this Act shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed:

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed:

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any enactment hereby repealed.

SCHEDULE.

Metropolitan District.

The City of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius of which is four miles from Charing Cross.

Cap. L.

An Act to amend the Married Women's Property Act (1870.) [30*th July* 1874.]

WHEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment:

Be it enacted, &c.: . . . . .

Husband and wife may be jointly sued for her debts before marriage. 1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt.

Extent to which husband liable. 2. The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets herein-after specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned.

If husband without assets he shall have judgment for costs. 3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

Joint and separate judgment against husband and wife for debt. 4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

Assets for which husband liable. 5. The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows:

(1.) The value of the personal estate in possession of the wife, which shall have vested in the husband.

(2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:

(3.) The value of the chattels real of the wife which shall have vested in the husband and wife:

(4.) The value of the rents and profts of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received:

(5.) The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person:

(6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors:

Provided that when the husband after marriage pays any debt of his wife, or has a jugdment *bonâ fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

Extent of Act. 6. This Act shall not extend to Scotland.

Short title. 7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874."

Digitized by Google

CAP. LI.

An Act to amend the Law respecting the Proving and Sale of Chain Cables and Anchors.

[30*th July* 1874.]

WHEREAS it is expedient to amend the Act of the thirty-fourth and thirty-fifth years of Her Majesty Queen Victoria, chapter one hundred and one, intituled "An Act to amend the law respecting the proving and sale of Chain Cables and Anchors:"

Be it therefore enacted, &c.: . . .

Construction and commencement of Act. 1. This Act shall be construed as one with the Chain Cables and Anchors Acts, 1864 and 1871, and together with those Acts may be cited as the Chain Cables and Anchors Acts, 1864 to 1874, and may be cited separately as the Chain Cables and Anchors Act, 1874, and shall take effect from the first day of September, one thousand eight hundred and seventy-four.

Fees to be paid into and expenses out of Mercantile Marine Fund. 2. All fees paid to the Board of Trade, and all fees and other sums received by the Trinity House as their licensee in pursuance of the Chain Cables and Anchors Acts, 1864 to 1874, shall be carried to the Mercantile Marine Fund; and all expenses of the Board of Trade and Trinity House incurred under the Chain Cables and Anchors Acts, 1864 to 1874, and the salary and allowances payable to an inspector, shall be paid out of the Mercantile Marine Fund.

No chain cable or anchor exceeding 168lbs. weight to sold without being tested. 3. After the commencement of this Act a maker of or dealer in anchors and chain cables shall not sell or contract to sell, nor shall any person purchase or contract to purchase, for the use of any British ship, any chain cable or any anchor exceeding in weight one hundred and sixty-eight pounds which has not been previously tested and stamped in accordance with the Chain Cables and Anchors Acts, 1864 to 1874. Any person who acts in contravention of this section shall be deemed to be guilty of a misdemeanour.

Contract for sale to imply a warranty. 4. Every contract for the sale of a chain cable shall, in the absence of an express stipulation to the contrary (proof whereof shall lie on the seller), be deemed to imply a warranty that the cable has been before delivery tested and stamped in accordance with the Chain Cables and Anchors Acts, 1864 to 1874. In case of dispute the proof of such testing and stamping shall be on the seller.

Cables and anchors of alleged unseaworthy ships to be tested. 5. Whenever any ship is surveyed or detained by the Board of Trade under the Merchant Shipping Act, 1873, on the ground of alleged unseaworthiness, the Board may direct an inquiry into the condition of the cables and anchors, and if they have not been tested according to the Chain Cables and Anchors Acts, 1864 to 1874, may make such further order as they think requisite previous to her release.

34 & 35 Vict. c. 101, s. 6, repealed. Test approved by Board of Trade to be substituted. 6. Section six of the Act of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter one hundred and one, shall be repealed, and in lieu thereof any test approved of by the Board of Trade as a test equal or superior to the tests required by the said Act may be substituted for such tests; provided that every chain is tested to a tensile and breaking strain not less than that known as the Admiralty test.

Superior tests may be substituted in certain cases. 7. Any test approved by the Board of Trade as a test superior to the tensile and breaking test required by the said Act may, in any particular case or class of cases, be substituted for such test; and in such case or class of cases chains and anchors tested according to the test so approved shall be deemed to be tested according to the Chain Cables and Anchors Acts, 1864 to 1874, and the said test shall be noted on a certificate.

Acts specified in Schedule repealed in part. 8. The Acts specified in the Schedule to this Act are hereby repealed from the commencement of this Act to the extent in the third column of that Schedule mentioned, without prejudice to anything done or suffered or any right acquired before the said day under the enactments hereby repealed.

SCHEDULE.

Session and Chapter	Title	Extent of Repeal
27 & 28 Vic. c. 27.	The Chain Cable and Anchor Act, 1864.	Section five from "all such fees" inclusive down to the end of the section, and in section six the words "out of moneys to be provided by Parliament for the purpose."
35 & 36 Vic. c. 73.	The Merchant Shipping Act, 1872.	Section twelve.

CAP. LII.

An Act to make regulations for preventing Collisions in the Sea Channels leading to the River Mersey. [30*th July* 1874.]

CAP. LIII.

An Act to amend the Law relating to the Payment of Revising Barristers.

[30*th July* 1874.]

CAP. LIV.

An Act to amend the Law respecting the Liability and Valuation of Certain Property for the purpose of Rates. [7*th August* 1874.]

CAP. LV.

An Act for dissolving Magdalen Hall, in the University of Oxford, and for incorporating the Principal, Fellows, and Scholars of Hertford College; and for vesting in such College the lands and other property now held in trust for the benefit of Magdalen Hall.

[7*th August* 1874.]

CAP. LVI.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending the thirty-first day of March one thousand eight hundred and seventy-five, and to appropriate the Supplies granted in this Session of Parliament. [7*th August* 1874.]

Digitized by Google

CAP. LVII.

An Act for the further Limitation of Actions and Suits relating to Real Property.

[*7th August* 1874.]

WHEREAS it is expedient further to limit the times within which actions or suits may be brought for the r covery of land or rent, and of charges thereon:

Be it enacted, &c.: . . . . .

No land or rent to be recovered but within 12 years after the right of action accrued.

1. After the commencement of this Act no person shall make an entry or distress, or bring an action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same.

Provision for case of future estates.

2. A right to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent: But if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within twelve years next after the time when the right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those two periods shall be the longer; and if the right of any such person to make such entry or distress, or to bring any such action or suit, shall have been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit, to recover such land or rent.

Time limited to six years when person entitled to the particular estate out of possession, &c.

In cases of infancy, coverture, or lunacy at the time when the right of action accrues, then six years to be allowed from the termination of the disability or previous death.

3. If at the time at which the right of any person to make an entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities herein-after mentioned, (that is to say,) infancy, coverture, idiotcy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of twelve years, or six years, (as the case may be,) herein-before limited shall have expired, make an entry or distress, or bring an action or suit, to recover such land or rent, at any time within six years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under any such disability, or shall have died (whichever of those two events shall have first happened).

No time to be allowed for absence beyond seas.

4. The time within which any such entry may be made, or any such action or suit may be brought as aforesaid, shall not in any case after the commencement of this Act be extended or enlarged by reason of the absence beyond seas during all or any part of that time of the person having the right to make such entry, or to bring such action or suit, or of any person through whom he claims.

Thirty years utmost allowance for disabilities.

5. No entry, distress, action, or suit shall be made or brought by any person who at the time at which his right to make any entry or distress, or to bring an action or suit, to recover any land or rent, shall have first accrued, shall be under any of the disabilities herein-before mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

In case of possession under an assurance by a tenant in tail, which shall not bar the remainders, they shall be barred at the end of 12 years after that period, at which the assurance, if then executed, would have barred them.

6. When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person or any other person whosoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue or be in such possession or receipt for the period of twelve years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of twelve years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail.

Digitized by Google

Mortgagor to be barred at end of 12 years from the time when the mortgagee took possession or from the last written acknowledgment.

7. When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such action or suit shall be brought but within twelve years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgageees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Money charged upon land and legacies to be deemed satisfied at the end of 12 years if no interest paid or acknowledgment given in writing in the meantime.

8. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given.

Act to be read with 3 and 4 W. 4, c. 27, of which certain parts are repealed, and other parts to be read in reference to alteration by this Act.

9. From and after the commencement of this Act all the provisions of the Act passed in the session of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter twenty-seven, except those contained in the several sections thereof next hereinafter mentioned, shall remain in full force, and shall be construed together with this Act, and shall take effect as if the provisions hereinbefore contained were substituted in such Act for the provisions contained in the sections thereof numbered two, five, sixteen, seventeen, twenty-three, twenty-eight, and forty respectively (which several sections, from and after the commencement of this Act, shall be repealed), and as if the term of six years had been mentioned, instead of the term of ten years, in the section of the said act numbered eighteen, and the period of twelve years had been mentioned in the said section eighteen instead of the period of twenty years; and the provisions of the Act passed in the session of the seventh year of the reign of His late Majesty King William the Fourth, and the first year of the reign of Her present Majesty, chapter twenty-eight, shall remain in full force, and be construed together with this Act, as if the period of twelve years had been therein mentioned instead of the period of twenty years.

7 W. 4 and 1 Vict. c. 28 to be read with this Act.

Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same.

10. After the commencement of this Act no action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an expressed trust, or to recover arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time which the same would be recoverable if there were not any such trust.

Short title.

11. This Act may be cited as the "Real Property Limitation Act, 1874."

Commencement of Act.

12. This Act shall commence and come into operation on the first day of January one thousand eight hundred and seventy-nine.

CAP. LVIII.

An Act to make further provision respecting the contribution out of moneys provided by Parliament towards the expenses of the Police Force in the Metropolitan Police District, and elsewhere in Great Britian. [7th August 1874.]

CAP. LIX.

An Act to facilitate the erection of Dwellings for Working Men on land belonging to Municipal Corporations. [7th August 1874.]

CAP. LX.

An Act to amend and enlarge the powers of the Acts relating to the Navigation of the River Shannon; and for other purposes relating thereto. [7th August 1874.]

WHEREAS an Act was passed in the session of Parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter sixty-seven, intituled "An Act "for the improvement of the navigation of the River Shannon," (in this Act called the Act of

5 & 6 W. 4. c. 67.

Digitized by Google

1835,) and by that Act Commissioners were appointed to carry the same into effect:

And whereas a further Act was passed in the session of Parliament held in the second and third years of the reign of Her present Majesty, chapter sixty-one, intituled "An Act for the improvement "of the navigation of the River Shannon," (in this Act called the Act of 1839,) whereby certain works were authorised to be constructed, subject to such alterations, additions, or reductions as might from time to time be found necessary:

2 & 3 Vict. c. 61.

And whereas by an Act passed in the session of Parliament held in the ninth and tenth years of the reign of Her present Majesty, chapter 86, intituled "An Act to extend and consolidate the "powers hitherto exercised by the Com-"missioners of Public Works in Ireland, and to appoint "additional commissioners," (in this Act called the Act of 1846,) it is amongst other things enacted, that from and after the thirtieth September, one thousand eight hundred and forty-six, the Commissioners of Public Works in Ireland for the time being should be the commissioners for the execution of the Acts of 1835 and 1839; and all the powers, authorities, and privileges, rights, titles, and interests, then or theretofore vested in the commissioners for the execution of the Acts of 1835 and 1839 should vest in and devolve upon, and should be respectively used, exercised, and enjoyed by the Commissioners of Public Works in Ireland for the time being, who should, for the purposes of the said Acts, be and be deemed to be in the place and stead of the persons theretofore being commissioners for the execution of the said Acts:

9 & 10 Vict. c. 86.

And whereas the works by the aforesaid Acts authorised have been generally carried into effect, but large tracts of land bordering on the said river still remain subject to injurious flooding, and it would be of great public and local advantage if further works were executed by which the said lands would be relieved, facilities afforded for the relief of other lands now subject to be injuriously flooded on tributaries of the said river, and the navigation at the same time improved:

Be it enacted &c. . . . . . .

Short title.

1. This Act may for all purposes be cited as "The Shannon Act, 1874," and the Shannon Acts of 1835, 1839, and 1846 may respectively be cited separately as the Shannon Act of 1835, 1839, and 1846, and all the Acts mentioned in this section may be cited under the short title of the Shannon Acts, 1835 to 1874.

Definition of terms.

2. The words "the Treasury" when used in this Act shall mean the Lords Commissioners of Her Majesty's Treasury, or any two or more of them.

The words "the Commissioners" shall mean the Commissioners of Public Works in Ireland for the time being.

The word "lands" shall have the meaning assigned to that word in section one hundred and fifty-nine of the five and six Victoria, chapter eighty-nine.

The word "person" in this Act shall comprehend all corporations sole or aggregate, or any number of persons united in partnership.

Commissioners of Public Works to be Commissioners for this Act.

3. The Commissioners shall carry into effect the objects and powers of this Act, having due regard in the execution of the works by this Act authorised to the prevention of injury to the lands situate on or near the Shannon below Worlds End.

Limits of works.

4. The works to be executed under the provisions of this Act shall be confined to the lower division of the said river Shannon between Athlone and Worlds End, and also in connexion therewith works at Athlone for the regulation of the water of Lough Ree.

Funds provided.

5. For the purposes of the works by this Act authorised the Lords Commissioners of Her Majesty's Treasury may from time to time direct to be issued, on the certificate of the Commissioners, out of the funds accruing under the provisions of the Acts twenty-four and twenty-five Victoria, chapter eighty-five, and twenty-nine and thirty Victoria, chapter seventy-three, and placed to the credit of the Commissioners from time to time with the Commissioners for the Reduction of the National Debt, the sum of one hundred and fifty thousand pounds, such sum to be a charge on the lands to be relieved from inundation or otherwise improved, to be secured and made repayable as hereinafter provided, and the remainder of the cost of the said works shall be defrayed by moneys to be provided from time to time by Parliament; provided always, that the entire cost of the said authorised works shall not exceed the sum of three hundred thousand pounds; and provided also, that half the amount of the moneys from time to time advanced in manner aforesaid shall be a charge on the said lands so to be improved as aforesaid.

Plans of proposed works to be submitted to Treasury, and valuation to be made of lands to be charged.

6. Previously to undertaking any works under this Act the Commissioners shall from time to time submit for approval of the Treasury plans, specifications, and estimates of the works proposed to be executed under this Act; and so soon as conveniently may be after such plans, specifications, and estimates have been so approved, the Commissioners shall cause to be deposited at the Shannon Navigation Office, Athlone, or elsewhere, as they may consider convenient, a survey and valuation of the lands contemplated to be relieved from inundation and improved under this Act, describing in general terms and by reference to maps or schedules, or otherwise as the Commissioners may think fit and proper, the lands contemplated to be relieved from inundation and improved under this Act, and specifying the proprietors of such lands respectively, and the respective amounts to be charged on the lands respectively of each proprietor under this Act.

The plans and specifications required by this section are hereinafter included under the term "plans," and the survey and valuation, including the specification of the amounts to be charged upon the lands, are hereinafter included in the term "valuation."

Valuation to be deposited for public inspection.

7. The Commissioners shall, as soon as may be after the passing of this Act, cause the valuation to be printed, and a copy to be deposited in their office, and another copy thereof to be deposited with the clerk of every union wherein the lands to be charged, or any part thereof, are situate, and such clerk of the union is hereby authorised and required to receive the same, and all persons shall have liberty to inspect the same on payment of sixpence; and when such copy has been so deposited the Commissioners shall cause notice thereof to be inserted in some one or more newspapers circulating in the district in the vicinity whereof the lands are situate; and the Commissioners shall by the same or a separate notice require all persons who may desire to object to the said valuation in respect of the description of the lands charged or of the sums charged thereon to lodge such objections at such place and before such time as is specified in such notice: and the Commissioners shall also in the said notice state that they will

Digitized by Google

proceed to hear any such objection which may be made, and finally settle the valuation at such time and place as may be specified in such notice.

Commissioners to attend and hear objections.

8. The Commissioners, or one of them, shall attend at the appointed time and place, and examine into the matter of any such objection, and hear all such proper evidence as may be offered to them or him in respect thereof, and make such alterations (if any) in such valuation as they or he think fit, and may adjourn such attendance from time to time and to such place as they shall think fit, and shall settle and sign such valuation.

Commissioners to give notice.

9. The Commissioners, when they have settled such valuation, shall cause notice of such settlement to be given in the "Dublin Gazette," and in some one or more newspapers circulating in the counties of Westmeath, Roscommon, King's County, County Tipperary, Galway, Clare, Limerick, and Longford, and by such notice the proprietors of the lands contemplated to be relieved from inundation and improved under this Act shall be called upon to transmit to the Commissioners in Dublin, in such form and subject to such regulations as the Commissioners may direct, their assent or dissent to the execution of the works under this Act.

Works not to be commenced until assent of proprietors had.

10. No works shall be commenced under this Act unless the reputed proprietors of two-thirds or more in value of the land proposed to be improved assent to the execution of the works by this Act authorised, and signify such assent in writing under their hands respectively to the Commissioners within six months from the date of the publication of such notice as aforesaid by the Commissioners in the "Dublin Gazette;" and the Commissioners shall, immediately upon the passing of this Act, take such steps as may seem to them desirable for obtaining such assent.

Incorporation of certain sections of 5 & 6 Vict. c. 89. (Irish Drainage Act), as to proprietors.

11. The twenty-third, twenty-fifth, twenty-sixth, and twenty-eighth sections of the Act fifth and sixth Victoria, chapter eighty-nine, are incorporated in this Act, and the definition of proprietor contained in section one hundred and fifty-nine of that Act shall apply to this Act.

Power to proceed with the works.

12. On receiving such assents as herein-before mentioned, it shall be lawful for the Commissioners to proceed with the works so approved by the Treasury, subject to such alterations or reduction therein as may from time to time be made therein, pursuant to the provisions in this Act contained.

To provide for alterations.

13. It shall be lawful for the Commissioners from time to time to make such alterations, additions, or reductions in or to the works sanctioned under this Act as may from time to time be approved by the Treasury.

Incorporation of Irish Drainage Act, 26 & 27 Vict. c. 88.

14. Subject to the provisions of this Act, sections from eighteen to thirty-one, both inclusive, of the Act of the twenty-sixth and twenty-seventh Victoria, chapter eighty-eight, under the head "General Powers of Drainage Boards," shall be incorporated with this Act, and all such powers shall and may be exercised by the Commissioners in carrying out the provisions of this Act; and such last-mentioned sections shall be read as if the word "Commissioners" had been inserted throughout such sections instead of the words "Drainage Board:" Provided nevertheless, that the arbitrator to be appointed under the said Act shall be appointed by the Treasury.

On completion of works Commissioners to prepare draft award.

15. As soon as conveniently may be after the works by this Act authorised have been completed, the Commissioners shall prepare a draft award, in which they shall set forth the several parcels or portions of land drained and improved, as referred to and specified in the survey and valuation herein-before mentioned, the respective areas of each of the said parcels, and the original and increased values thereof; and such award shall also specify the due proportion half-yearly chargeable in respect of each such parcel of land, of the amount by this Act directed to be charged, upon the lands for the drainage and improvement thereof by the works by this Act authorised and provided, and shall also specify the lands of the same denomination, and belonging to same proprietors, or settled to like uses, to be also held chargeable, with the amount in each case repayable as herein-after provided, and shall also set forth such other matters and things as to the Commissioners shall seem fit and proper.

A draft of the award to be printed and published, and a copy deposited with the clerk of the union.

16. When such draft award as aforesaid shall have been prepared, the Commissioners shall cause a copy thereof to be deposited with the clerk of each of the several unions wherein the lands drained and improved, or any part thereof, may be situated; and such clerks of unions are hereby authorised and required to receive the same; and the Commissioners shall cause notice of such lodgment to be inserted in one or more of the newspapers usually circulated in the counties or districts in which such several unions are situated once in each week for three successive weeks; and the Commissioners shall also in such notice require all persons being proprietors of lands charged as being improved, who may desire to object to such award, to lodge their objections at such time and place as shall be therein specified, and they shall also in the said notice state that they will proceed to hear and inquire into any objections which may be lodged at such time and place, or times and places, as shall in such notice be named.

Notice thereof to be posted at the usual places and inserted in newspapers, requiring persons objecting thereto to send in their objections.

Commissioners or one of them to examine into objections.

17. The Commissioners, or one of them, shall attend at such time and place, or times and places, so appointed, and shall examine into the matter of any objections to the award which shall have been lodged, and shall hear all proper evidence relative thereto, and may adjourn such attendance from time to time, and shall make such alteration as may to them seem proper, and finally settle said award: Provided always, that the whole amount by this Act directed to be charged on the lands which the works authorised are designed to relieve from injurious inundations shall, notwithstanding any alteration which on the hearing of any such objections it may be deemed proper to make, be so charged.

Award to be enrolled.

18. Such award when finally settled by the Commissioners, with proper schedules, map, or plan describing the lands therein to which such award shall relate, shall be enrolled in the Rolls Office of Her Majesty's High Court of Chancery in Ireland; and such award, when so finally settled and enrolled, shall be binding and conclusive on all parties; and a copy thereof, certified by the proper officer of Her Majesty's Rolls Office, shall be conclusive evidence that all the requisitions of this Act in relation thereto were complied with.

Digitized by Google

Lands to become chargeable with rentcharge.

19. The several lands mentioned in the said award shall from the date thereof become charged with the payment to Her Majesty of an annual rentcharge of five pounds for every one hundred pounds charged on the said lands respectively, and so in proportion for every lesser amount, to be payable for the term of thirty-five years; such rentcharge to be paid by equal half-yearly payments on the fifth day of April and tenth day of October in every year, the first of such payments to be made on the first of such days which shall happen after the date of said award: Provided always, that where the gross sum chargeable by the said award upon any particular parcel or denomination of land shall not exceed the sum of one hundred pounds, it shall be lawful for the Commissioners by the said award to fix and determine the instalments by which such sum, together with interest at the rate of four pounds per cent. per annum from the date of such award, shall be repaid; and such instalments shall be chargeable and recoverable in like manner as the rentcharge aforesaid.

Priority of rentcharge.

20. Every such rentcharge or instalment shall take priority of all charges and incumbrances whatsoever or whensoever made, and of all rent payable out of the said lands, save and except quitrents and rentcharges in lieu of tithes, and also save all charges prior in date (if any) created under the authority or provisions of any Act of Parliament heretofore passed; and section one of an Act passed in the twenty-ninth Victoria, chapter twenty-six, intituled "An Act to secure the repayment of public "moneys advanced for the drainage and improvement of lands and other like objects in Ireland," shall extend to and include charges created under the provisions of this Act.

Rentcharge upon other lands of the same proprietors.

21. The rentcharge aforesaid, charged by virtue of this Act upon any lands improved under this Act, shall be held to be chargeable upon such other lands being part of the same denomination or townland, and belonging to the same proprietor, or settled to the like uses as may, by the award of the Commissioners, be made chargeable therewith, subject as to such last-mentioned lands to the full amount of all incumbrances affecting the same at the date of such award.

Rentcharge to be paid to the Commissioners

22. Any rentcharge payable under this Act shall be paid to the Commissioners, or to such persons and in such manner as the Treasury may from time to time appoint, and the receipt of the Commissioners or their accountant, or any other persons to whom any rentcharge directed to be paid, shall be a sufficient discharge for the same.

Incorporation of certain sections of 10 Vict. c. 32. For recovery of rentcharge. And as to tenants paying for landlords. Proprietors charging increased rent.

23. The thirty-ninth, fortieth, forty-second, forty-third, forty-fifth, forty-sixth, foryty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-sixth, and fifty-seventh sections of the Act tenth Victoria, chapter thirty-two, being an Act to facilitate the improvement of landed property in Ireland, and section one of the Act twelve and thirteen Victoria, chapter fifty-nine, and the second section of the Act thirty-five and thirty-six Victoria, chapter thirty-one, shall be deemed to be incorporated in this Act, save that every act in any of said sections directed to be done by or to the Paymaster of Civil Service shall be done by or to the Commissioners, and shall be as effectual to all intents and purposes as any such act would have been if done by or to the Paymaster under the provisions of the said last-mentioned Act.

Incorporation of certain provisions of 2 & 3 Vict. c. 61.

24. The Act of 1839 shall, except where its provisions are inconsistent with or repugnant to the provisions of this Act, be incorporated therewith as one Act, and all the powers, authorities, and privileges of the Commissioners mentioned in that Act as to the execution of works, the care, conservancy, and maintenance of the River Shannon, and of the works connected therewith, imposing, demanding, receiving, and enforcing payment of tolls, making bye-laws, or otherwise howsoever, shall vest in the Commissioners for the purposes of this Act.

Cap. LXI.

An Act for granting Compensation to Officers of the Royal (late Indian) Ordnance Corps.

[*7th August* 1874.]

WHEREAS it is expedient to grant compensation, in manner herein-after mentioned, to officers of the Royal (late Indian) Ordnance Corps:

Be it therefore enacted, &c.: . . .

Short Title.

1. This Act may be cited for all purposes as "The Royal (late Indian) Ordnance Corps Act, 1874."

Compensation to officers of the Royal (late Indian) Ordnance Corps

2. Subject as herein-after mentioned, the Army Purchase Commissioners acting under the Regulation of the Forces Act, 1871, in this Act referred to as the Commissioners, shall have power to consider the claims on retirement of any officers, who on the first day of November one thousand eight hundred and seventy-one were serving in any one of the corps following; that is to say,

The Royal (late Bengal) Artillery,
The Royal (late Bengal) Engineers,
The Royal (late Madras) Artillery,
The Royal (late Madras) Engineers,
The Royal (late Bombay) Artillery, or
The Royal (late Bombay) Engineers;

and to grant to any of the said officers who have retired since the said first day of November, or who may hereafter be permitted to retire, a compensation equal to the sums they would have received according to the custom, if any, of their corps, as or in the nature of a bonus for such retirement had they retired from their regiment on the said day, after deducting such sums (if any) as they may have received from the Indian revenues in respect or on account of such bonus.

Condition precedent to payment of compensation.

3. Compensation shall not be granted in pursuance of this Act to any officer of any of the said corps until arrangements have been made to the satisfaction of the Commissioners, and in such manner as they may direct, for payment or securing payment into the receipt of the Exchequer, for the use of the public, by or on account of the corps to which such officer belongs, of any available sums, securities, or obligations constituting or standing to the account of any sinking fund or other fund, by whatever name known, formed after the amalgamation of the Indian with the British army, for the purpose of securing to every existing officer of such corps a bonus on retirement.

Any trustees or other persons having in their possession or under their control any such sinking or other fund as is in this section mentioned, or any sums, securities, or obligations constituting the same, are hereby empowered (but are not required unless they think it expedient so to do) to pay the same into the

Digitized by Google

Exchequer for the use of the public; and they shall not be restrained from so doing by any court of law or equity whatsoever.

Adjustment of Accounts.

4. Any such trustees or other persons as aforesaid, before paying into the Exchequer such fund as aforesaid belonging to any corps, may, with the assent of the Commissioners, repay to officers in such corps any sums paid by them to retiring officers for the purpose of making good to such last-mentioned officers any deficiencies in the customary amounts receivable by them in respect of bonus on retirement; and the Commissioners, in estimating the amount of compensation payable to any officer of any corps under this Act may take into account, as against such officer, the amount of any bonus which such officer may have failed to pay to any retiring officer of his corps in respect of the customary amount receivable by such last-mentioned officer in respect of bonus on retirement.

Certificate of Commissioners to be indemnity to trustees and others.

5. The Commissioners shall grant a certificate to any trustees or other persons dealing in manner authorised by this Act with any fund belonging to any of the said corps, and such certificate shall indemnify any person dealing with such fund against all actions and legal proceedings whatsoever which might have been brought against him in respect of such dealings, and against all claims whatsoever of persons interested in the fund so dealt with; and such fund shall be discharged from all claims of the persons so interested therein.

Powers of Commissioners applicable for purposes of this Act.

6. All powers vested in the Commissioners by the said Regulation of the Forces Act, 1871, for or in relation to their proceedings under that Act, shall apply to their proceedings under this Act, and may be exercised by them for ascertaining any matter or fact, or doing any act required to be ascertained or done by them for the purposes of this Act, in the same manner in all respects as if their proceedings under this Act were proceedings under the said Regulation of the Forces Act, 1871.

Provision for expenses of compensating officers.

7. All expenses incurred by the Commissioners in carrying into effect this Act shall be defrayed out of moneys provided by Parliament.

CAP. LXII.

An Act to amend the Law as to the Contracts of Infants. [*7th August* 1874.]

WHEREAS it is expedient to amend the law as to the contracts of infants, and as to the ratification made by persons of full age of contracts made by them during infancy, and as to necessaries:

Be it therefore enacted, &c.: . . . .

Contracts by infants, except for necessaries, to be void.

1. All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void: Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

No action to be brought on ratification of infant's contract.

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

Short title.

3. This Act may be cited as The Infants Relief Act, 1874.

CAP. LXIII.

An Act to facilitate the re-arrangement of the Boundaries of Archdeaconries and Rural Deaneries. [*7th August* 1874.]

CAP. LXIV.

An Act to further alter and amend the Law of Evidence in Scotland, and to provide for the recording, by means of Short-hand Writing, of Evidence in Civil Causes in Sheriff Courts in Scotland. [*7th August* 1874.]

CAP. LXV.

An Act to enable Her Majesty to provide for the Support and Maintenance of His Royal Highness Prince Leopold George Duncan Albert on his coming of age. [*7th August* 1874.]

CAP. LXVI.

An Act to enlarge the Jurisdiction of the Civil Bill Courts in Ireland in respect to the recovery of Balances due on partnership Accounts, and in respect of Actions involving Questions of Title to corporeal and incorporeal Hereditaments. [*7th August* 1874.]

WHEREAS it is expedient to enlarge the jurisdiction of the Civil Bill Courts in Ireland in respect to the recovery of Balances due on partnership accounts, and in respect of actions involving questions of title to corporeal or incorporeal hereditaments:

Be it enacted, &c.: . . . . . .

Balances of partnership accounts, whether ascertained or not at the time of the issuing process, not exceeding £40, and actions involving title to corporeal or incorporeal hereditaments, may be brought in the civil bill court, but decrees in the latter cases shall not be evidence of title in other actions.

1. The chairmen of every county in Ireland shall have jurisdiction to try by civil bill actions for the recovery of any debt or demand not exceeding forty pounds alleged to be due as the balance of a partnership account, whether the balance shall have been ascertained or not previous to the issuing of the civil bill; and such chairmen shall, in addition to any jurisdiction in respect of lands and hereditaments which they already possess, also have jurisdiction to try by civil bill actions in which the title to any corporeal or incorporeal hereditament shall come in question, when the value of the land in dispute, or in respect of which an easement or license is claimed, or on, through, over, or under which such easement or license is claimed, shall not exceed twenty pounds by the year as valued under the Acts relating to the valuation of rateable property in Ireland; but the decision of the chairmen in any action in which the title to any

Digitized by Google

corporeal or incorporeal hereditament shall be in question shall not be evidence of title between the parties or their privies in any other action relating to any other corporeal or incorporeal hereditament, although the same may depend in the whole or in part on the same title: Provided however, that this section shall not extend to any action in which title to any fishery or right of fishing shall come in question.

Proceedings in cases involving title to corporeal or incorporeal hereditaments may be stayed in the civil bill court and ordered to be heard in the superior courts by order of the judge.

2. The defendant in any civil bill in which the title to a corporeal or incorporeal hereditament shall be in question may, at any time after the service of the civil bill on him, apply to a judge of one of Her Majesty's Superior Courts of Common Law in Ireland for a summons to the plaintiff to show cause why such action shall not be tried in one of the Superior Courts of Common Law in Ireland on the ground that the title to lands or hereditaments of greater annual value than twenty pounds as before defined would be affected by the decision in such action, or on any other ground which may make it more proper to have the case tried in any of such Courts; and on the hearing of such summons the judge may, if he think expedient, order, on such terms as he may think proper to impose, that the proceedings in the civil bill court shall be discontinued, and that such action shall be tried in one of the Superior Courts of Common Law in Ireland.

When the Act shall come into force, and how it is to be construed.

3. This Act shall come into force on the first day of December one thousand eight hundred and seventy-four, and shall be construed as one Act with the Act of the fourteenth and fifteenth year of Her Majesty, chapter fifty seven, and the several Acts amending or altering the same.

CAP. LXVII.

An Act to regulate and otherwise deal with Slaughter-houses and certain other Businesses in the Metropolis. [*7th August* 1874.]

CAP. LXVIII.

An Act to amend the Law relating to Attorneys and Solicitors. [*7th August* 1874.]

CAP. LXIX.

An Act to amend the Laws relating to the sale and consumption of Intoxicating Liquors in Ireland. [*7th August* 1874.]

WHEREAS it is expedient to amend the provisions of the Licensing Act, 1872, which extend to Ireland; which provisions are in this Act referred to as the principal Act:

35 & 36 Vic., c. 94.

Be it enacted, &c.: . . . . . .

Preliminary.

Construction and short title of Act. 35 & 36 Vict. c. 94.

1. This Act and the principal Act shall, so far as is consistent with the respective tenors of such Acts, be construed as one Act, and may be cited together as "The Licensing Acts (Ireland), 1872–74;" but this Act may, if necessary, be cited separately as "The Licensing Act (Ireland), 1874."

Early-closing Licenses, Licenses, and Excise Licenses.

Early-closing licenses.

2. Where, on the occasion of any application for a certificate for a new license, or the transfer or renewal of a license which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to cause to be inserted in his license a condition that he shall close the premises in respect of which such license is or is to be granted one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall cause the said condition to be inserted in such certificate, and the same shall be inserted in any license granted in pursuance thereof.

The holder of a license in which such condition is inserted (in this Act referred to as an early-closing license) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of the principal Act, and the provisions of this Act and the principal Act shall apply to the premises as if such earlier hour were the hour at which the premises are required to be closed.

The applicant for an early-closing license may obtain from the Commissioners of Inland Revenue any license granted by such Commissioners which he is entitled to obtain in pursuance of any such certificate as aforesaid, upon payment of a sum representing six sevenths of the duty which would otherwise be payable by him for a similar license not limited to such early closing as aforesaid. In calculating the six sevenths fractions of a penny shall be disregarded.

The notice which a licensed person is required by section eleven of the principal Act to keep painted or fixed on his premises shall, in the case of an early-closing license, contain such words as the licensing justices may order for giving notice to the public that an early-closing license has been granted in respect of such premises.

Remission of duty in case of six-day and early-closing license.

3. A person who takes out a license containing conditions rendering such license a six-day license as well as an early-closing license shall be entitled to a remission of two sevenths of the duty.

Occasional license required at fairs and races.

4. Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races, without an occasional license authorising such sale, shall, notwithstanding anything contained in any Act of Parliament to the contrary, be deemed to be a person selling or exposing for sale by retail intoxicating liquor at a place where he is not authorised by his license to sell the same, and be punishable accordingly.

Provided that this section shall not apply to any person selling or exposing for sale intoxicating liquors in premises in which he is duly authorised to sell the same throughout the year, although such premises are situate within the limits aforesaid.

Occasional licenses,—extension of time for closing.

5. Whereas by the twentieth section of the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter thirty-three, it is provided that the hours during which an occasional license shall authorise the sale of any beer, spirits, or wine shall extend from sunrise until one hour after sunset: Be it enacted, that the said section shall be construed as if in place of the words "sunrise until one hour after sunset" there were inserted the words "such hour, not "earlier than sunrise, until such hour, not later than "ten o'clock at night, as may be specified in that behalf

Digitized by Google

"in the consent given by the justice for the granting of "such occasional license."

Offences on premises with occasional license.

6. For the purpose of so much of the principal Act as relates to offences against public order, that is to say, sections twelve to eighteen, both inclusive, and the sections for giving effect to the same, a person taking out an occasional license shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional license shall be deemed to be licensed premises, and to be the premises of the person taking out such license.

Restrictions as to licenses under 5 & 6 W. 4. c. 39. s. 7.

7. From and after the passing of this Act it shall not be lawful for any person under the authority of any license granted under the authority of section seven of the Act of the session of the fifth and sixth years of the reign of His late Majesty King William the fourth, intituled "An "Act to exempt certain retailers of spirits to a small "amount from the additional duties on licences, and to "discontinue the excise and survey on wine, and the "use of permits for the removal thereof," to sell or expose for sale by retail any intoxicating liquors elsewhere than within the part or parts of the theatre or other place of public entertainment which shall be specified in such license, or to sell intoxicating liquors to persons other than those employed in or bonâ fide attending the performances in such theatre or other place of public entertainment, or to sell or expose intoxicating liquors at any time other than the time of such performances, or during thirty minutes immediately preceding the commencement or immediately succeeding the termination of such performances; and any sale or exposure for sale in contravention of any of the provisions of this enactment shall be deemed to be a sale or exposing for sale by retail of intoxicating liquor by a person not duly licensed to sell the same within the meaning of the principal Act, and shall subject the person making the same to the penalties and forfeitures of that Act.

Provided always, that no part of such theatre or other place of public entertainment which shall, during the performances in the same, be accessible to persons other than those employed or attending performances therein, shall be included in any such license.

Certificates required previously to grant of wholesale beer dealer's license.

8. It shall not be lawful for any officer of excise in Ireland to grant a wholesale beer dealer's license, or to grant a renewal or transfer of any such license to any person unless such person shall produce a certificate to the effect and as required by section three of "The Beerhouses (Ireland) Act, 1864," with respect to the grant, renewal, or transfer of the license to sell beer by retail therein mentioned.

All applications for such certificates shall be made in the manner and subject to the like conditions as to appeals against the same and otherwise (so far as the same are applicable) as are prescribed by "The Beerhouses (Ireland) Act, 1864," in relation to applications for certificates under the said Act, as the same are amended by this Act.

Provisions of sect. 82 of principal Act extended

9. The provisions of section eighty-two of the principal Act, relating to the grant of new excise licenses and of renewals of excise licenses to certain persons therein described, shall extend to the transfer of excise licenses, and the said provisions so extended shall not be limited to the case of such persons, but shall extend and apply to all such transfers and grants when made to any other persons: Provided always, that in the case of a new excise license or transfer of an excise license under this section the certificate shall be to the good character of the person applying for the same and to the suitability of the premises.

Notice of intended application for license.

10. Every person intending to apply for a new license or for the transfer of a license, instead of serving notice, as hitherto required by the Act of the session of the third and fourth years of the reign of King William the Fourth, chapter sixty-eight, section two, upon the churchwardens of the parish or union wherein the premises sought to be licensed are situate, shall, on some day not more than four and not less than two weeks before the intended application is to be heard, cause to be inserted or advertised in some paper circulating in the place in which such premises are situate a notice conformable to the requirements of the said section two.

Exemption from closing in respect of markets, fairs, and certain trades.

11. In the police district of Dublin metropolis, the chief commissioner or the assistant commissioner of police, and in any petty sessions district two or more justices of the peace in petty sessions, upon its being proved to his or their satisfaction that it is necessary or desirable so to do for the accomodation of any considerable number of persons attending any public market or fair, or following any lawful trade or calling, may, on payment of a fee of two shillings and sixpence, grant (if he or they so think fit) to any licensed person, in respect of premises in the vicinity of such market or fair, or of the place where the persons follow such lawful trade or calling, an order, in this Act termed an exemption order," exempting such person from the provisions of this Act with respect to the closing of his said premises on such days, and during such time (except between the hours of one and two of the clock in the morning), and upon such terms as may be specified in such order.

In the police district of Dublin metropolis, such chief or assistant commissioner granting an exemption order shall forthwith send the particulars of such order to the divisional justices; and such commissioner shall cause an entry of the particulars of such exemption order to be made in the register of licenses; and elsewhere than in the police district of Dublin metropolis, the justices granting an exemption order shall cause the particulars thereof to be forthwith entered by the clerk of petty sessions in the register of licenses.

The holder of an exemption order shall not be liable to any penalty for not closing his premises on such days and during such times as may be specified in such order; but he shall not be exempt from any other penalty under the principal Act, or this or any other Act, or otherwise.

A notice, in such form as may be prescribed by such commissioner or justices respectively, stating the days and hours during which the premises are permitted to be open under such exemption order, shall be and be kept affixed in a conspicuous position outside the premises; and if the holder of the exemption order makes default in affixing or keeping affixed such notice in manner aforesaid during the time or any part of the time for which his exemption is granted, he shall be liable to a penalty not exceeding five pounds.

Every person who affixes or keeps affixed to his premises any such notice when he does not hold an exemption order under this section shall be liable to a penalty not exceeding ten pounds.

Any such commissioner or justices aforesaid may at any time (if it seem fit to him or them) withdraw an

Digitized by Google

exemption order under this section, or alter the same by way of extension or restriction, as he or they may deem fit, but not so as to render any person liable to any penalty for anything done under such order before the holder was informed of such withdrawal or alteration.

Times for Grant of Certificates.

Power to Lord Lieutenant and Privy Council to fix times for grant of certificates.

12. It shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland at any time within six months after the passing of this Act, by and with the advice and consent of the Privy Council, by order to be published in the Dublin Gazette, to constitute one of the general or quarter sessions of the peace now usually holden in and for the several divisions of counties or ridings, counties of cities, and counties of towns, cities, towns, and boroughs to be the annual licensing quarter sessions for such divisions of counties and ridings, and for such counties of cities, counties of towns, cities, towns, and boroughs respectively, and with the like advice and consent, by order to be published in the Dublin Gazette, to appoint for each petty sessions district and for the police district of Dublin metropolis a time for holding annual licensing petty sessions for each such district.

From and after the publication in the Dublin Gazette of such orders respectively, and the constitution and appointment thereby of annual licensing quarter sessions and of annual licensing petty sessions, the provisions following shall apply:

As to quarter sessions certificate.

1. Where under the provisions of any Act now in force or hereafter to be passed, the production of a certificate of justices in quarter sessions assembled, or of a recorder of any city, town, or borough is required previous to the grant of any license by an officer of excise, such certificate shall (save as herein-after provided) not be granted except at an annual licensing quarter sessions: Provided always, that in case any license shall, under the authority of the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and fourteen, be transferred to any person, and in such other cases as may seem fit to such justices or recorder, a certificate may, notwithstanding the preceding provisions, be granted at any general or quarter sessions (other than the annual licensing quarter sessions), and in like manner as heretofore; but any license granted in pursuance of any such last-mentioned certificate shall only continue in force until the annual licensing quarter sessions held next after the grant of such certificate, unless at such annual licensing quarter sessions such certificate shall be confirmed, and in case such certificate shall not be then confirmed the license granted in pursuance thereof shall not be renewed.

As to petty sessions certificate.

2. Where under the provisions of this Act, or any Act now in force or hereafter to be passed, the production of a certificate by justices presiding at petty sessions, or of a divisional justice in the police district of Dublin, is required previous to the grant or transfer of any license or of an excise license or of a wholesale beer dealer's license by an officer of excise, such certificate shall not (save as herein-after provided) be granted except at an annual licensing petty sessions: Provided always, that in such cases as may seem fit to such justices sitting in petty sessions, or to such divisional justice, and in all cases in which a certificate is required from such justice or justices for the transfer of a license or of an excise license or of a wholesale beer dealer's license, a certificate may, notwithstanding the preceding provisions, be granted at any time other than that fixed for annual licensing petty sessions, and in like manner as heretofore; but any license granted in pursuance of any such certificate shall only continue in force until the annual licensing petty sessions held next after the grant of such certificate, unless at such annual licensing petty sessions such certificate shall be confirmed, and in case such certificate shall not be then confirmed, the license or excise license or wholesale beer dealer's license granted in pursuance thereof shall not be renewed.

Temporary continuance of licenses or excise licenses forfeited without disqualification of premises.

13. Where any licensed person or spirit grocer is convicted for the first time of any one of the following offences:

1. Making an internal communication between the premises of such licensed person or spirit grocer and any unlicensed premises;
2. Selling spirits without a spirit license;
3. Any felony;

and in consequence either becomes personally disqualified or has his license forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the quarter sessions or petty sessions (in which last term is included, with respect to the police district of Dublin metropolis, the court of a police magistrate) for the division, place, or district in which such premises are situate holden next after the expiration of one calendar month after such endorsement, according as the certificate, upon production of which such license or excise license was obtained, was granted at quarter sessions or petty sessions.

Where such quarter sessions or petty sessions shall be the annual licensing quarter sessions or the annual licensing petty sessions, application may be made for a renewal of such license to some person other than the person convicted, and such renewal may be granted or refused in pursuance of the enactments relating thereto: Provided, that where such quarter sessions or petty sessions shall not be the annual licensing quarter sessions or the annual licensing petty sessions, application for a transfer of such license to some person other than the person convicted may be made and granted or refused in like manner and on the same conditions, and for the same time, as if the person convicted had removed from such premises, and the person applying for such grant was his assignee.

Provisions on annual renewal of certificate.

14. Where a person licensed to sell intoxicating liquors to be consumed on the premises applies for a certificate for the renewal of his license, the following provisions shall have effect:

He need not attend in person at the court unless he is required by the justices or police authority so to attend, for some special cause personal to himself.

The justices shall not entertain any objection to the signing of such certificate, or receive any evidence with respect to same, unless a written notice of intention to oppose be served on the applicant not

Digitized by Google

later than seven days before the holding of such session, stating in general terms the grounds on which the renewal of such license is to be opposed.

The justices may, notwithstanding that no notice of objection has been served, if objection is made in court, adjourn the signing of the certificate to a future day, and require the attendance of the applicant.

The justices shall not receive any evidence with respect to the signing of such certificate which is not given on oath in open court.

Register of Licenses.

Amendment of sects. 10 and 11 of 3 & 4 Will. 4. c. 68.

15. Whereas by section ten of the Act of the session of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter sixty-eight, provision is made that every person who shall obtain a license shall within six days next after he shall have obtained such license deliver or cause to be delivered to the clerk of the peace of the county, city, or town in which the house mentioned in such license is situate a note in writing, signed by him or on his behalf, in which shall be specified the Christian and surname and place of abode of such person, and other the particulars in said section mentioned; and by section eleven of the said Act provision is made for the entry by such clerk of the peace in a list or register to be kept by him of the particulars specified in every such note, and it is expedient to amend the said sections: Be it therefore enacted, that, in addition to the particulars required by said section ten of the said Act, every such note shall contain the name and address of the owner of the house in which intoxicating liquors are licensed to be sold by the person by or on whose behalf such note shall be signed, and the same shall be in the form in the Schedule (A.) to this Act annexed, and the clerk of the peace to whom such note shall be delivered, in the said list or register to be kept by him as aforesaid shall enter the name and address of every such owner in addition to the particulars prescribed by said section eleven.

The clerk of the peace of every county, city, and town shall from time to time transmit to the clerk of petty sessions of each petty sessions district within such county, city, or town, and in Dublin to the chief clerk of the Metropolitan Police Court, a copy of every entry made by him in pursuance of the said Act and this Act relating to any house or place in such district.

Register of licenses to be kept.

16. There shall be kept in every petty sessions district by the clerk of petty sessions of such district a register, to be called the "Register of Licenses," in such form as may be prescribed by the Chief Secretary to the Lord Lieutenant of Ireland, containing the particulars from time to time transmitted to such clerk of petty sessions by the clerk of the peace in manner aforesaid, and also the particulars of all certificates given in such district by the justices under the provisions of any Act now in force or hereafter to be passed, or of this Act, and requiring the production of any certificate previous to the grant, transfer, or renewal of a license or excise license, or wholesale beer dealer's license, the premises in respect of which they were granted, the names and address of the owners of such premises, and the names of the holders for the time being of such certificates. There shall also be entered on the register all forfeitures of licenses or of excise licenses, all exemption orders, all disqualifications of premises, records of convictions, and other matters relating to the licenses and excise licenses in force in such district.

Every person applying for any such certificate as aforesaid shall state the name and address of the owner of the premises in respect of which such certificate is granted, and such name shall be endorsed on the certificate, and the person whose name is so stated shall, subject as herein-after mentioned, be deemed, for the purposes of the principal Act and this Act, the owner of the premises.

A court of summary jurisdiction in any petty sessions district may, on the application of any person who proves to the court that he is entitled to be entered as owner of any premises in such district in place of the person appearing on the register to be the owner, make an order substituting the name of the applicant, and such order shall be obeyed by the clerk of petty sessions of such district, and a corresponding correction may be directed to be made on the certificate and license or excise license granted in respect of the premises of which such applicant claims to be the owner.

Any ratepayer, any owner of premises to which a license or excise license or wholesale beer dealer's license is attached, and any holder of a license or excise license within any petty sessions district, shall, upon payment of a fee of one shilling, and any officer of police and any officer of excise in such district, without payment, shall be entitled at any reasonable time to inspect and take copies of or extracts from any register kept in pursuance of this section; and the clerk of petty sessions and every other person who prevents the inspection or taking copies of or extracts from the same, or demands any unauthorised fee therefor, shall be liable to a penalty not exceeding five pounds for each offence.

The preceding provisions of this section shall apply to the police district of Dublin metropolis: Provided always, that the register in such district shall be kept by the Chief Clerk of the Dublin Metropolitan Police Court, and that the terms "petty sessions district," and "district," and "clerk of petty sessions," shall be construed to mean respectively the police district of Dublin metropolis, and the Chief Clerk of the Dublin Metropolitan Police Court.

Fee upon certificate in certain cases.

17. From and after the first day of September one thousand eight hundred and seventy-four there shall be paid a fee of five shillings upon every certificate given for the grant of a new license, new excise license, or new wholesale beer dealer's license, or for the transfer of any license, excise license, or wholesale beer dealer's license, by a divisional justice of the police district of Dublin metropolis, or by justices in petty sessions, and no other fee or stamp duty shall be payable in respect of any such certificate or the entry thereof.

Payment, &c. of Fees.

Payment of fees in Dublin.

18. All fees under this Act payable in Dublin shall be paid to the chief clerk of the metropolitan police court, and shall be paid and accounted for, and payment of the same may be enforced in like manner, subject to the same conditions, and by the like means in every respect as fines payable under the Acts regulating the powers and duties of justices of the peace for such district, and the same shall be applied towards defraying the expense of the police establishment of the said district.

Payment of fees in petty sessions district.

19. All fees under this Act payable in any petty sessions district shall not be received in money, but by stamps denoting the amount of the fees payable.

Every exemption order under this Act and every certificate given in any petty sessions district upon which a fee is by this Act made payable shall be printed

Digitized by Google

or written, or partly printed and partly written, upon paper bearing a stamp denoting the amount of such fee.

All the provisions of "The Petty Sessions Clerk (Ireland) Act, 1858," with respect to the documents enumerated in the Schedule C. to the said Act annexed, and to the payment of the fees in respect thereof, and to the stamps denoting the amount of such fees, and to the payment of fees, and to stamps, and the providing of and supply of the same, and the payment and accounting for the same, and enforcing the payment thereof, and generally with respect to all matters relating thereto, shall extend and be applicable with respect to all exemption orders under this Act and certificates given in petty sessions district upon which fees are by this Act made payable, and to all fees and stamps under this Act, in like manner in every respect as if such exemption orders, certificates, fees, and stamps were included amongst the documents, fees, and stamps mentioned in the said Petty Sessions Clerk (Ireland) Act, 1858.

Record of Convictions and Penalties.

Mitigation of penalties.

20. The sixty-seventh section of the principal Act is hereby repealed; and in lieu thereof be it enacted, that where any person holding a license or excise license is convicted of any offence against this or the principal Act, or against any of the Acts recited or mentioned therein, the Court may not, except in the case of a first offence, reduce the penalty to less than twenty shillings, nor shall the penalty, whether of excise or police, be reduced in any case to less than the minimum authorised by any other Act.

Record of convictions on licenses.

21. Where any licensed person or spirit grocer is convicted of any offence against the principal Act which by such Act was to have been or might have been endorsed upon the license or excise license, or of any offence against this Act, the court before whom the offender is brought shall cause the register of licenses in which the license or excise license of the offender is entered, or a copy of the entries therein relating to the license or excise license of the offender, certified in manner prescribed by this Act, to be produced to the court before passing sentence; and after inspecting the entries therein in relation to the license or excise license of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its sentence, whether it will or will not cause the conviction for such offence to be recorded on the license or excise license of the offender, and if it decide that such record is to be made, the same shall be made accordingly.

A declaration by the court that a record of an offence is to be made on a license or excise license shall be deemed to be part of the conviction or order of the court in reference to such offence, and shall be subject accordingly to the jurisdiction of the court of appeal.

A direction by the court that a conviction for an offence is to be recorded on the license or excise license of the offender shall, for the purposes of the principal Act, be deemed equivalent to a direction or requirement by the Act that such conviction is to be recorded; and all the provisions of the principal Act importing that convictions are required or directed by the Act to be recorded on the license or excise license of an offender shall be construed accordingly.

Record of conviction for adulteration.

22. Where a licensed person or a spirit grocer is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licenses, and may be directed to be recorded on the license or excise license of the offender in the same manner as if the conviction were for an offence against the principal Act, and when so recorded shall have effect as if it had been a conviction for an offence against the principal Act.

Regulations as to entry on Premises.

Constable to enter on premises for enforcement of Act.

23. Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises and on any premises kept by a spirit grocer, and on any premises in respect of which an occasional license is in force.

Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds.

Search warrant for detection of liquors sold or kept contrary to law.

24. Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor, and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited.

When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises on which he seizes or from which he removes any such liquor as aforesaid, and if he has reasonable ground to suppose that the name or address given is false may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant, and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Digitized by Google

Miscellaneous.

Drunken person may be detained if incapable of taking care of himself.

25. Every person who, in any highway or other public place, whether a building or not, is so drunk as to be incapable of taking care of himself, may be detained by any constable until he can, with safety to himself, be discharged, but if so detained he shall be summoned in due course to answer for such offence, and he shall not by such discharge be relieved from the liability to any penalty to which he is subject.

Substitution of licensing justices for Commissioners of Inland Revenue as respects certain notices.

26. Whereas by section eleven of the principal Act it is provided that every licensed person shall cause to be painted or fixed, and shall keep painted or fixed, on the premises in respect of which his license is granted, in a conspicuous place and in such form and manner as the Commissioners of Inland Revenue may from time to time direct, his name, with such additions as in the said Act mentioned: And whereas it is expedient to substitute in the said section the licensing justices for the Commissioners of Inland Revenue: Be it therefore enacted,

That in the said eleventh section the expressions "licensing justices" shall be deemed to be substituted for the expression "Commissioners of Inland Revenue," and the word "justices" for the word "Commissioners."

Penalty on person found on premises during closing hours.

27. If during any period during which any premises are required under the provisions of the principal Act to be closed any person is found on such premises, he shall, unless he satisfies the court that he was an inmate, servant, or a lodger on such premises, or a bonâ fide traveller, or that otherwise his presence on such premises was not in contravention of the provisions of the principal Act with respect to the closing of licensed premises and premises kept by a spirit grocer, be liable to a penalty not exceeding forty shillings.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of the principal Act to be closed, and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or such evidence, apprehend him without warrant, and carry him as soon as practicable before a justice of the peace.

Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds.

Every person who by falsely representing himself to be a traveller or a lodger buys or obtains or attempts to buy or obtain at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of the principal Act shall be liable to a penalty not exceeding five pounds.

Saving as to bonâ fide travellers.

28. If in the course of any proceedings which may be taken against any person licensed to sell any intoxicating liquor to be consumed on the premises for infringing the provisions of the principal Act relating to the closing of premises, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a bonâ fide traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a bonâ fide traveller, and further that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a bonâ fide traveller, it shall be lawful for the justices to direct proceedings to be instituted against such purchaser under the next preceding section of this Act.

A person for the purposes of this Act and the principal Act shall not be deemed a bonâ fide traveller unless the place where he lodged during the preceeding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare.

Supply of intoxicating liquors after hours to private friends.

29. No person keeping a house licensed for the sale of any intoxicating liquor to be consumed on the premises shall be liable to any penalty for supplying intoxicating liquors after the hours of closing to private friends bonâ fide entertained by him at his own expense.

As to jurisdiction of justices under 17 & 18 Vict., c. 103.

30. Wherever "The Towns Improvement (Ireland) Act, 1854," or any Local Act incorporating the said Act in whole or in part, is in force in any town or place, any person empowered for the purposes of the said Act or of such Local Act to act as a justice of the peace within the boundaries of such town or place shall, notwithstanding anything in the principal Act to the contrary, have all and the same jurisdiction, power, and authority to hear and determine charges for offences committed within the boundaries of such town or place against section twelve of the principal Act as any justice of the peace having jurisdiction in that behalf, and may for such purpose sit alone or, in his own court, together with any justice or justices of the peace, according as the offence against the said section may be tried by one or by two or more justices, or any justice or justices in petty sessions of the peace.

The penalty imposed by such justice or justices, or by the justices in petty sessions in every such town or place as aforesaid, and in every town in which the Act of the session of the ninth year of the reign of King George the Fourth, chapter eighty-two, is in force for any such offence committed within the boundaries of such town or place, shall be enforced as penalties are by the Towns Improvement (Ireland) Act, 1854, or such Local Act, or such Act of the ninth year of King George the Fourth, chapter eighty-two, respectively directed to be enforced, and shall be applied in manner prescribed by the Towns Improvement (Ireland) Act, 1854, for the purposes of such of the said Acts as is in force within such town or place.

Nothing in this section shall apply to the police district of Dublin metropolis.

Amendment of s. 52 of principal Act as to release from custody in case of appeal.

31. Sub-section four of section fifty-two of the principal Act is hereby repealed, and in lieu thereof the following provision shall be substituted; viz.,

When the appellant is in custody, and shall enter into such recognizances with sureties approved by the justice in manner by said Act provided, or shall give such other security as by said Act provided, the justice shall release him from custody.

Summons in police district of Dublin metropolis.

32. In the police district of Dublin metropolis a divisional justice may issue a summons for any offence under the principal Act or this Act, or any Act relating to the sale of any intoxicating liquor, upon any information or

Digitized by Google

complaint, either on oath or not, or in writing or not, as such justice shall see fit.

License to be produced in court.

33. Every holder of a license, excise license, wholesale beer dealer's license, or order of exemption made under this Act, who on being required by any recorder or court of quarter sessions on the hearing of any appeal, or by a divisional justice or justice of the peace on the hearing of any summons or complaint, shall not produce and deliver such license, excise license, wholesale beer dealer's license, or order to be read and examined by such recorder, court, or justice respectively, shall be subject to a penalty not exceeding ten pounds, whether it shall or shall not be stated in any summons that such production will be required.

Liability in respect of distinct licenses.

34. Every holder of any excise license along with any other license or licenses, and every holder of several licenses, shall be subject to the provisions of the principal Act and this Act in respect of each such license.

Evidence of licenses, orders, and convictions.

35. Every entry in any register of licenses of any license, excise license, wholesale beer dealer's license, certificate, or exemption order, and of any conviction ordered to be recorded on a license or on an excise license, shall for every purpose be evidence of such license, excise license, wholesale beer dealer's license, certificate, exemption order, and conviction respectively, and every entry in any book kept in a police court or in any petty sessions order book of any conviction or order under the principal Act or this Act, or either of them, and any copy of such entry purporting in every such case (except that of a petty sessions order book) to be signed and certified as a true copy by the person to whose custody such register or book is intrusted, and in the case of a petty sessions order book purporting to be certified by a justice of the peace, pursuant to "The Petty Sessions (Ireland) Act, 1851," section twenty-one, and form (I a) in the schedule thereto, shall for every purpose be evidence of such conviction and order respectively; and any such entry or any such copy of such entry of a conviction ordered to be recorded on a license or excise license, which license or excise license shall not be produced when required by any recorder, court of quarter sessions, divisional justice, or justice of the peace, shall be conclusive evidence that such conviction was duly recorded on such license or excise license.

Evidence of license.

36. Any copy or certificate of any license, or of any excise license, or of any wholesale beer dealer's license, purporting to be signed and certified as a true copy or certificate by any officer in that behalf appointed by the Commissioners of Inland Revenue, shall for every purpose be conclusive evidence of such license or excise license.

Definitions.

37. In the principal Act and in this Act the following terms have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant thereto; namely,

"Towns."

"Town" shall mean and include—

Any parliamentary or municipal borough;

Any town having commissioners under an Act passed in the session of Parliament held in the ninth year of the reign of King George the Fourth, intituled "An Act to make provision "for the lighting, cleansing, and watching of "cities and towns corporate, and market towns "in Ireland, in certain cases;"

Any town having municipal commissioners under an Act passed in the session of Parliament held in the third and fourth years of the reign of Her present Majesty Queen Victoria, intituled an "An Act for the regulation of "municipal corporations in Ireland;"

Any town having town commissioners or commissioners under the Towns Improvement Act, 1854, or under any Local and Personal Act:

"License."

"License" shall mean any license for sale of any intoxicating liquor granted by an officer of excise in Ireland upon production, in the police district of Dublin metropolis, of a certificate of the recorder of the city of Dublin, or of a divisional justice, and elsewhere of a certificate of any recorder of a city or borough, or of justices, under the provisions of any Act now or hereafter requiring such certificate, but shall not include an excise license as defined by section eighty-one of the principal Act, or a wholesale beer dealer's license, as hereinafter defined:

"Wholesale beer dealer's license."

"Wholesale beer dealer's license" shall mean a license to any person not being a brewer of beer, authorising the sale of strong beer only in casks containing not less than four and a half gallons imperial measure, or in not less than two dozen reputed quart bottles at one time, to be drunk or consumed elsewhere than on the premises of such person:

"Occasional license."

"Occasional license" shall mean a license to sell beer, spirits, or wine granted in pursuance of the 13th section of the Act of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter twenty-two, and section five of the Act of the session of the twenty-seventh year of the reign of Her present Majesty, chapter eighteen, and the Acts amending the same in relation to the licenses therein mentioned, or of any of such Acts:

"New license," &c.

"New license," "new excise license," and "new wholesale beer dealer's license" shall mean respectively a license, excise license, and wholesale beer dealer's license granted in respect of premises in respect of which a similar license has not theretofore been granted, or, if granted, has been annulled or has not been in force during the preceding six months:

"Licensing justices."

The term "licensing justices" shall mean as to licenses granted in pursuance of certificates granted at quarter sessions, and as to renewals or transfers of such licenses, the justices or authority empowered to grant such certificates at quarter sessions, and as to other licences, excise licenses, and wholesale beer dealers licenses the justices or justice empowered to grant certificates for the same respectively:

"Register of licenses."

"Register of licenses" shall mean the list or register directed to be kept by this Act:

"Clerk to the licensing justices."

The term "clerk to the licensing justices" shall mean the person who keeps the register of licenses:

And the principal Act shall be construed as if the meanings by this Act assigned to the terms "license," "licensing justices," "register of licenses," and "clerk to the licensing justices" were respectively substituted in the seventy-seventh section of the Licensing Act, 1872, for the respective meanings thereby assigned to the same terms.

Digitized by Google

Repeal.

38. From and after the commencement of this Act there shall be repealed the sections of the principal Act relating to the following matters; that is to say,

(1.) Sections nineteen to twenty-two, both inclusive, relating to adulteration, and the first schedule to the principal Act;

(2.) Section thirty-five, relating to entry on premises by constables; and

(3.) So much of sections five, six, thirteen, fourteen, sixteen, seventeen, seventy-eight, eighty-three, and eighty-four as relates to the records of convictions on licenses;

(4.) The last paragraph of section fifty-six, beginning with the words "In a county the justices," to the end of the section; and also section fifteen of the Act of the session of the fifty-fifth year of the reign of King George the Third, chapter one hundred and four, except so far as the same applies to spirituous liquors which shall be used and consumed in the house, shop, or premises in which the same are sold.

Provided that the repeal enacted in this Act shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed:

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed:

(3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence against any enactment hereby repealed.

SCHEDULE (A.)

Form of Notice.

To the Clerk of the Peace for the county [*or* city *or* town] of

Take notice, I have obtained a [license, early-closing license, *or* six-day license, *as the case may be*] to sell spirits, beer, and cider by retail up to the day of 18 , and I require you to enter my name and the description of my house in the Registrar of Licenses as follows:—

Christian name of trader.
Surname of same.
Place of abode of same.
Description or sign of house and premises.
Name of townland [*or in cities, towns, or villages*, name of street and number therein].
Petty sessions district where house situate.
Christian name of owner of house.
Surname of same.
Address of same.

Dated day of 18
Trader's name.

CAP. LXX.

An Act to amend the Law relating to the Valuation of Rateable Property in Ireland.

[*7th August* 1874.]

WHEREAS by an Act passed in a session of Parliament held in the fifteenth and sixteenth years of the reign of Her present Majesty, chapter sixty-three, and one other Act passed in the seventeenth year of the reign of Her said Majesty, chapter eight, and one other Act passed in the twenty-third year of the reign of Her said Majesty, chapter four, various provisions were made for the annual revision of the valuation of rateable property in Ireland, and for payment of the expenses thereof, and it is expedient to amend said Acts as herein-after mentioned:

15 & 16 Vict. c. 63.
17 Vict. c. 8.
23 Vict. c. 4.

Be it enacted, &c.: . . . .

The Lords Commissioners of Treasury to fix salaries and allowances.

1. The Commissioner of Valuation, and all other persons acting in the execution of the said Acts, shall, anything in the said Acts, or any of them, to the contrary notwithstanding, be paid out of moneys to be voted by Parliament such salary and allowances for travelling and other expenses as the Lords Commissioners of Her Majesty's Treasury shall think fair and reasonable and from time to time direct, and shall be entitled to such superannuation or other allowance, and upon such conditions as are provided by the "Superannuation Act, 1859," for persons who shall have served in an established capacity in the permanent Civil Service of the State.

Counties to repay the portions of expense of annual revision mentioned in schedule.

2. Each county shall repay to the said Commissioners, in respect of the expense of such annual revision incurred from and after the first day of July one thousand eight hundred and seventy-four, the annual sum stated in relation to such county in the schedule to this Act annexed; said sum to be presented and levied by the respective grand juries for each county, in equal moieties, at the spring and summer assizes in each year, save in the county of Dublin, in which county the annual amount to be repaid shall be presented by the finance committee in one sum at the usual time for making presentments for said county, and shall be levied by equal moieties in each year.

Grand juries to present.

3. The grand juries of the respective counties in Ireland, and the finance committee for the county of Dublin, shall and they are hereby required (without application to presentment sessions) to present, levy, and raise in manner aforesaid the respective sums stated in the schedule to this Act annexed as payable by each county; and in case the grand jury of any county, or the finance committee of the county of Dublin, shall refuse or neglect to make any such presentment, the judge or judges presiding at the assizes or presenting term at which such grand jury or finance committee shall have so refused or neglected, or at any subsequent assize or presenting term, shall order the amount to be placed on the levy, and raised as if the same had been duly presented; and when and so soon as any sum so presented or ordered as aforesaid shall be levied and raised, the same shall be paid over by the treasurer of each county to the supply account of Her Majesty's Paymaster General at the Bank of Ireland, or shall be brought to the public account in such other manner as the Lords Commissioners of Her Majesty's Treasury may from time to time direct.

Repeal of portions of existing Acts.

4. From and after the passing of this Act the following portions of the said recited Acts shall be and the same are hereby repealed, save as to any act heretofore done thereunder, and save as to the presenting, levying, and repayment by the respective counties and cities of one moiety of all sums expended previous to the first day of July next in carrying the provisions of the said Acts, or any of them, into execution; that is to say, fifteen and sixteen Victoria, chapter sixty-three, sections thirty-six, thirty-seven, thirty-eight, thirty-nine, and forty; twenty-three Victoria, chapter four, sections five and eight.

Commencement and short title of Act.

5. This Act shall take effect from the first day of July one thousand eight hundred and seventy-four, and may be cited for all purposes as the "Valuation (Ireland) Amendment Act, 1874;" and the unrepealed portions of the said recited Acts, and this Act, shall be construed and be deemed and taken as one Act.

Digitized by Google

SCHEDULE.

Showing the Annual Sums payable by Counties from and after the 1st July, 1874, in respect of Annual Revision.

Counties.	For Annual Revision.	Counties.	For Annual Revision.
Province of Leinster:—	£	Province of Connaught:—	£
Carlow - - - -	75	Galway - - - -	440
Drogheda, Town of - - -	20	Galway, Town of - - -	30
Dublin - - - -	380	Leitrim - - - -	190
Dublin City - - -	200	Mayo - - - -	350
Kildare - - - -	150	Roscommon - - -	230
Kilkenny - - - -	185	Sligo - - - -	210
Kilkenny City - - -	25		
King's County - - -	145	Total for Connaught - -	£1,450
Longford - - - -	140		
Louth - - - -	105		
Meath - - - -	180	Province of Ulster:—	
Queen's County - - -	145	Antrim, including Borough of Belfast -	430
Westmeath - - -	165	Armagh - - - -	215
Wexford - - - -	195	Carrickfergus, Town of - -	10
Wicklow - - - -	175	Cavan - - - -	200
		Donegal - - - -	230
Total for Leinster - - -	£2,285	Down, including Borough of Belfast -	395
		Fermanagh - - -	180
Province of Munster:—		Londonderry - - -	205
Clare - - - -	255	Monaghan - - -	140
Cork - - - -	505	Tyrone - - - -	270
Cork City - - - -	75		
Kerry - - - -	265	Total for Ulster - - -	£2,275
Limerick - - - -	240		
Limerick City - - -	40	Total for Ireland - -	£8,000
Tipperary (North Riding) - -	180		
Tipperary (South Riding) - -	205		
Waterford - - - -	190		
Waterford City - - -	35		
Total for Munster - - -	£1,990		

Cap. LXXI.

An Act to authorise "The Lough Corrib Navigation Trustees" to dispose of part of the Navigation in the district of Loughs Corrib, Mask, and Curra. [*7th August* 1874.]

WHEREAS an Act was passed in the session of Parliament holden in the nineteenth and twentieth years of Her Majesty, chapter sixty-two, intituled "An Act to "provide for the maintenance of navigations made "in connexion with drainage, and to make further "provision in relation to works of drainage in "Ireland:"

And whereas under and by virtue of the provisions of the said Act the trustees of any navigation therein mentioned are empowered to dispose of such navigation in manner therein provided:

And whereas it is expedient to enlarge the powers of disposal thereby given, so far as the same affect the Lough Corrib Navigation Trustees, as herein-after provided:

Be it therefore enacted, &c.:

Power to Navigation Trustees to dispose of navigation.

1. It shall be lawful for the Lough Corrib Navigation Trustees, by and with the consent of the grand juries of the counties of Galway and Mayo, and of the county of the town of Galway, signified by resolutions of such grand juries at any assizes, to let or lease, sell, convey, transfer, and assign to any person or persons willing to become tenant of, or to purchase the same, subject to such terms and conditions as the Lord Lieutenant in Council may from time to time direct, all that part of the said navigation consisting of the channel or canal, with the locks, weirs, materials, and other works, with all rights and appurtenances thereunto belonging, situate between Lough Mask and Lough Corrib, or any portion or portions thereof.

Receipts of three or more trustees to be sufficient discharges.

2. The receipts of the said trustees under their seal and the hands of any three or more of them for any purchase moneys thereof shall be sufficient discharges for the same, and such moneys shall be paid to the treasurers of the respective counties which or any baronies or townlands in which contributed to the expense of the construction of such navigation, in the proportions in which such counties, baronies, and townlands contributed thereto, to be placed by such treasurers respectively to the credit of their respective counties or such baronies or townlands therein as aforesaid.

Conditions of lease or sale.

3. Save as in and by any such lease or conveyance may be provided, the person or persons so leasing or purchasing any portion of said navigation shall not be liable or subject to any of the control, restrictions, or conditions in said recited Act mentioned.

Digitized by Google

CAP. LXXII.

An Act to explain and amend the Fines Act (Ireland), 1851, and for other purposes relating thereto. [*7th August* 1874.]

WHEREAS by section ten of the Fines Act (Ireland), 1851, provisions were made for the estreat of recognizances, and doubts have arisen as to whether the said provisions extend to sureties as well as to principal parties, and it is expedient to remove the said doubts:

And whereas quarterly and monthly returns of proceedings in petty sessions, and of the appropriation of fees, fines, and penalties, are now by law required to be made by clerks of petty sessions in Ireland, and by reason of such monthly returns such quarterly returns are unnecessary, and it is expedient that the same should cease to be made:

And whereas it is expedient to make provision for the recovery of penalties and with respect to offences in certain cases:

Be it therefore enacted, &c.: . . . . .

Short title. 1. This Act may be cited for all purposes as the Fines Act (Ireland), 1851, Amendment Act, 1874, and the said Act and this Act may be cited together for all purposes as "The Fines Acts (Ireland), 1851–1874."

Meaning of section 10 of Fines Act (Ireland), 1851, explained. 2. It is hereby declared that the provisions of section ten of the Fines Act (Ireland), 1851, extend and authorise the assistant barrister, recorder, or chairman therein mentioned, whenever he orders that any recognizance which shall have been entered into by any person or persons as surety or sureties for any principal party shall be forfeited, in such order to state with respect not only to such principal party but also to such surety or sureties the amounts of such forfeiture, and to direct a warrant or warrants to issue to levy such amounts respectively from such surety or sureties in like manner as other penal sums are directed to be levied by the said Act.

Repeal of 6 & 7 W. 4. c. 34. s. 4. 3. From and after the passing of this Act section four of the Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty William the Fourth, chapter thirty-four, relating to quarterly returns by clerks of petty sessions, shall be and the same is hereby repealed.

Application of penalties to town of Galway. 4. Every penalty recovered in respect of offences committed within the limits of the Galway Town Improvement Act, 1853, against section twelve of the Licensing Act, 1872, as applied to Ireland, shall be applied as follows:—One half of such penalty shall go to the informer, and the remainder to the town commissioners, and if the town commissioners be the informers, they shall be entitled to the whole of said penalty.

Mode of recovering penalties, &c. in certain cases. 5. Where by any Act now in force or hereafter to be passed it is enacted that penalties, offences, or proceedings thereunder may be recovered, prosecuted, or taken in a summary manner, and no further provision with respect thereto is contained in such Act, then such penalties, offences, and proceedings shall be recoverable, may be prosecuted, or taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

CAP. LXXIII.

An Act to amend the Law relating to the Payment to and Repayment by the Commissioners for the Reduction of the National Debt of Moneys received in and to the accounts relating to the Post Office Savings Bank. [*7th August* 1874.]

CAP. LXXIV.

An Act to amend the Law respecting certain Receipts and Expenses connected with Private Lunatic Asylums in Ireland. [*7th August* 1874.]

WHEREAS under the Private Lunatic Asylums (Ireland) Act, 1842, and the Act amending the same, the moneys received for licenses to keep a private lunatic asylum in Ireland are required to be paid by the clerks of the peace to the inspectors of lunatics, and to be accounted for by such inspectors, and certain expenses are directed to be paid out of such moneys, and in case of a deficiency out of the Consolidated Fund, and it is expedient to make other provision with respect to the said moneys and expenses:

5 & 6 Vict. c. 123. 8 & 9 Vict. c. 107. s. 23.

Be it therefore enacted, &c.: . . . . .

Construction and short title of Act. 1. This Act shall be construed as one with the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and twenty-three, (which Act may be cited as the Private Lunatic Asylums (Ireland) Act, 1842,) and this Act together with that Act may be cited as "The Private Lunatic Asylums (Ireland) Acts, 1842 and 1874;" and this Act may be cited separately as the Private Lunatic Asylums (Ireland) Act, 1874.

Accounting for money for licenses and payment of expenses charged thereon. 2. All moneys paid for a license to keep a house for the reception of lunatics granted in pursuance of the Private Lunatic Asylums (Ireland) Act, 1842, shall be accounted for and paid into the receipt of the Exchequer, and carried to the Consolidated Fund by such persons and in such manner as the Commissioners of Her Majesty's Treasury may from time to time direct.

All fees, travelling expenses, and allowances directed by the Private Lunatic Asylums (Ireland) Act, 1842, to be paid by the inspectors, and all travelling and other expenses incurred by the inspectors in the execution of that Act, shall, where the amount or scale thereof has been sanctioned by the Commissioners of Her Majesty's Treasury, be paid out of moneys provided by Parliament.

Repeal. 3. The Act mentioned in the schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned: Provided that this repeal shall not affect anything done or suffered before the passing of this Act under the enactments hereby repealed; and that anything done before the passing of this Act with the sanction of the Commissioners of Her Majesty's Treasury, or of Her Majesty's Paymaster-General, which would have been lawful if this Act had then passed, shall be deemed to have been lawful and duly done.

Digitized by Google

SCHEDULE.

ACT REPEALED.

Session and Chapter	Title	Extent of Repeal
5 & 6 Vict. c. 123.	An Act for amending until the first day of August one thousand eight hundred and forty-five, and until the end of the then next session of Parliament, the law relating to private lunatic asylums in Ireland.	Sections one, nine, ten, and forty-one.

CAP. LXXV.

An Act to explain the Vaccination Act, 1871. [*7th August* 1874.]

WHEREAS by section five of the Vaccination Act, 1871, it is enacted, amongst other things, that, subject to the provisions of that Act, the Local Government Board shall have the same powers with respect to guardians and vaccination officers in matters relating to vaccination as they have with respect to guardians and officers of guardians in matters relating to the relief of the poor, and may make rules, orders, and regulations accordingly:

34 & 35 Vict. c. 98. s. 5.

And whereas doubts are entertained whether the Local Government Board are empowered under the said Act to make rules, orders, and regulations with respect to the proceedings to be taken by the guardians or their officers for the enforcement of the provisions of the Vaccination Acts, 1867 and 1871:

Be it therefore enacted, &c.: . . .

Rules under 34 & 35 Vict. c. 98. to extend to proceedings and expenses.

1. The powers conferred by the said recited section shall be deemed to extend to and include the making of rules, orders, and regulations prescribing the duties of guardians and their officers in relation to the institution and conduct of the proceedings to be taken for enforcing the provisions of the said Acts, and the payment of the costs and expenses relating thereto, and rules, orders, and regulations under this Act shall be deemed to be made under the said section.

Short title.

2. This Act may be cited as The Vaccination Act, 1874.

CAP. LXXVI.

An Act to continue various expiring Laws. [*7th August* 1874.]

CAP. LXXVII.

An Act respecting Colonial and certain other Clergy. [*7th August* 1874.]

CAP. LXXVIII.

An Act to amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [*7th August* 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser:

Be it enacted, &c.: . . . .

Forty years substituted for sixty years as the root of title.

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

Rules for regulating obligations and rights of vendor and purchaser.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

Trustees may sell, &c., notwithstanding rules.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Legal personal representative may convey legal estate of mortgaged property.

4. The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust.

Bare legal estate in fee simple to vest in executor or administrator.

5. Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee.

Married woman who is a bare trustee may convey, &c.

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole.

Digitized by Google

Protection and priority by legal estates and tacking not to be allowed.

7. After the commencement of this Act no priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every court to this provision, although the person claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideratien and without notice: Provided always, that this section shall not take away from any estate, right, title, or interest any priority or protection which but for this section would have been given or allowed thereto as against any estate or interest existing before the commencement of this Act.

Non-registration of will in Middlesex, &c. cured in certain cases.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him, shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions, or objections, or compensation, &c.

9. A vendor or purchaser of real or leasehold estate in England or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Extent of Acts.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

CAP. LXXIX.

An Act for the better management and regulation of Foyle College in the City of Londonderry, and for vesting in the governing body of such College the present schoolhouse and premises belonging to such College, and for vesting the right of appointment of head-master of such College in the Bishop of Derry and Raphoe and the Governor of the Honourable the Irish Society. [*7th August* 1874.]

CAP. LXXX.

An Act to amend the Laws relating to the Royal Irish Constabulary. [*7th August* 1874.]

WHEREAS it is expedient further to amend the laws relating to the Royal Irish Constabulary:

Be it therefore enacted, &c.: . . . .

Preliminary.

Interpretation of terms.

1. The following terms in this Act have the meanings hereinafter assigned to them; (that is to say,)

"Lord Lieutenant" means the Lord Lieutenant or other chief governor or governors of Ireland:

"Constabulary force" means the Royal Irish Constabulary:

"Members of the constabulary force" means inspector general, deputy inspector general, assistant inspector general, commandant of the depôt, surgeon, veterinary surgeon, and every county inspector, sub-inspector, barrack master of the depôt, head constable, constable, acting constable, and sub-constable of the constabulary force:

"Head and other constables" means every head constable, constable, acting constable, and sub-constable of the constabulary force:

The term "county" shall extend to and include county of a city, county of a town, county of a town and city, city and county and borough, in which there is a grand jury or town council exercising the powers of a grand jury as to presentments:

Power to Lord Lieutenant to fix revised salaries for constabulary force.

2. It shall be lawful for the Lord Lieutenant, notwithstanding the limitations in any Act contained, to fix and appoint such revised annual salaries as to him may from time to time seem proper, subject to the conditions herein-after specified, to be paid in such manner and subject to such regulations and provisions as he may direct, to the several persons herein-after mentioned; (that is to say,)

1. To the inspector general, to the deputy inspector general, to the three assistant inspectors general, one being styled commandant of the depôt, and to the barrack master, such annual salaries respectively as the Commissioners of Her Majesty's Treasury may approve:
2. To the surgeon of the force, an annual salary not exceeding four hundred pounds:
3. To the inspector of constabulary for the town of Belfast, an annual salary not exceeding six hundred pounds:
4. To each county inspector of the first class, an annual salary not exceeding three hundred and fifty pounds:
5. To each county inspector of the second class, an annual salary not exceeding three hundred pounds:
6. To each sub-inspector of the first class, an annual salary not exceeding two hundred and twenty-five pounds:
7. To each sub-inspector of the second class, an annual salary not exceeding one hundred and sixty-five pounds:
8. To the head constable major, an annual salary not exceeding one hundred and four pounds:
9. To each head constable of the first class, an annual salary not exceeding ninety-one pounds:
10. To twelve head constables of the first class, of long service or superior merit, but ineligible for further promotion, an addition to their respective salaries under this Act of ten pounds per annum each:
11. To each head constable of the second class, an annual salary not exceeding eighty-three pounds four shillings:
12. To twelve head constables of the second class, of long service or superior merit, but ineligible for further promotion, an addition to their respective salaries under this Act of ten pounds per annum

Digitized by Google

13. To each constable, an annual salary not exceeding seventy-two pounds sixteen shillings:
14. To sixty constables, of long service or superior merit, but ineligible for promotion, an addition to their respective salaries under this Act of four pounds per annum each:
15. To each acting constable, an annual salary not exceeding sixty-seven pounds twelve shillings:
16. To each sub-constable of twenty years service and upwards, an annual salary of sixty-two pounds eight shillings:
17. To each sub-constable of fourteen years and under twenty years service, an annual salary of fifty-nine pounds sixteen shillings:
18. To each sub-constable of eight years and under fourteen years service, an annual salary of fifty-seven pounds four shillings:
19. To each sub-constable of four years and under eight years service, an annual salary not exceeding fifty-four pounds twelve shillings:
20. To each sub-constable of six months and under four years service, an annual salary not exceeding fifty-two pounds:
21. To each sub-constable of less than six months service, a salary at a rate not exceeding thirty-nine pounds per annum:

Such salaries to take effect from and after the first day of July one thousand eight hundred and seventy-four, and to continue to be paid until the first day of July one thousand eight hundred and seventy-five, and to be in addition to the good service pay at present authorised, viz., to five county inspectors, fifty pounds per annum each; to six sub-inspectors of the first class, thirty pounds per annum each; and to twenty-three sub-inspectors whether of the second or third class, twelve pounds per annum each.

Superannuation. 3. It shall be lawful for the Lord Lieutenant, under the conditions herein-after mentioned, to direct that any head or other constable appointed after the tenth day of August one thousand eight hundred and sixty-six may be superannuated, and receive a gratuity or yearly pension not exceeding the proportion of his salary stated in the scale herein-after mentioned; and it shall be lawful for the Commissioners of Her Majesty's Treasury, or any two or more of them, upon the recommendation of the Lord Lieutenant, to direct that any officer of the constabulary force, that is to say, any inspector general, deputy inspector general, assistant inspector general, commandant of the depôt, surgeon, veterinary surgeon, county inspector, barrack master of the depôt, or sub-inspector appointed after the tenth day of August one thousand eight hundred and sixty-six, may be superannuated, and may receive a gratuity or yearly pension not exceeding the proportion of his salary stated in the scale herein-after mentioned; that is to say,

1. A gratuity of one month's salary for each year's service when such service has exceeded five years and been less than fifteen years:
2. On completion of fifteen years service, an annual pension of fifteen fiftieths of the salary may be granted, and an increase of one fiftieth for each successive year up to thirty years service completed.
3. After thirty years service, or after the person to be superannuated has attained the age of sixty years, the pension to be equal to thirty fiftieths of the salary, or to a larger proportion in cases of extraordinary merit or good conduct; provided that the particulars constituting such merit or conduct shall be set forth in the authority granting the pension, and that if the pension exceeds the amount which might have been granted for length of service only, it shall not be granted without the consent in writing of the Commissioners of Her Majesty's Treasury.
4. For injuries received at any time in the actual performance of duty, a pension may be granted of an amount in proportion to the injury received, not exceeding the full salary; provided that the grounds of disability shall be fully set forth in the authority granting the pension, and that if the pension exceeds the amount which might have been granted for length of service only, it shall not be granted without the consent in writing of the Commissioners of Her Majesty's Treasury.

Nothing herein contained shall entitle any member of the constabulary force absolutely to any superannuation allowance, nor prevent him from being dismissed or discharged for misconduct or other sufficient cause without superannuation allowance; and no surgeon hereafter appointed, and no veterinary surgeon who is not required by the terms of his appointment to give up private practice, shall be entitled to any pension or retiring gratuity under this Act.

No such pension of gratuity shall be granted in any case except on the certificate of the surgeon of the force, or such other competent medical officer or officers as the Lord Lieutenant shall name for the purpose, that the person is incapable from infirmity of mind or body to discharge the duties of his situation and that such infirmity is likely to be permanent, and the certificate of the inspector general (or in the case of the inspector general's superannuation, then on the certificate of the chief secretary to the Lord Lieutenant), that he has served with diligence and fidelity: Provided that any member of the force who shall have served thirty years, or who has attained the age of sixty years or upwards, may upon his petition, be superannuated without such medical certificate.

Saving rights. Save as by this Act expressly provided, the provisions of an Act passed in the session of Parliament held in the tenth and eleventh years of Her present Majesty, chapter one hundred, intituled "An "Act to regulate the superannuation allowances of the "Constabulary Force in Ireland, and the Dublin "Metropolitan Police," shall apply to the members of the constabulary force in Ireland appointed before the tenth day of August one thousand eight hundred and sixty-six, as fully and effectually as if this Act had not passed: Provided always, that any member of the constabulary force appointed as last aforesaid may be superannuated, if he so elect, according to the scale and on the conditions prescribed by this Act.

All pensions and gratuities granted to members of the constabulary force after the passing of this Act shall be computed according to the manner prescribed for the computation of superannuation allowances by section twelve of the Act of the session of the fourth and fifth years of the reign of His late Majesty William the Fourth, chapter twenty-four.

In calculating any superannuation which shall be granted according to the scale and on the conditions prescribed by this Act to members of the constabulary force, whether appointed before or after the tenth day of August one thousand eight hundred and sixty-six, the term salary shall include all allowances for lodging, house rent, and servant: Provided always, that the allowance in respect of lodging or house rent shall not exceed one-sixth of the actual salary and other emoluments.

Digitized by Google

Forfeiture of pension for misconduct.

4. Such pension shall be granted only upon the condition that it becomes forfeited, and may be withdrawn by the Lord Lieutenant in any of the following cases:

1. On conviction of the grantee for any indictable offence:
2. On his knowingly associating with suspected persons, thieves, or other offenders:
3. On his refusing to give information and assistance to the police whenever in his power for the detection and apprehension of criminals, and for the suppression of any disturbance of the public peace:
4. If it shall be discovered that the pension or retiring allowance of such person was granted upon statements or pretences which were to his knowledge false, or if he enter into or continue to carry on any business, occupation, or employment which shall be in the opinion of the Lord Lieutenant disgraceful or injurious to the public, or in which he shall make use of the fact of his former employment in the constabulary force in a manner which the Lord Lieutenant considers to be discreditable and improper.

Rate of charge upon counties for extra constabulary.

5. Section 12 of an Act passed in the session of Parliament held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, intituled "An Act to amend an "Act to consolidate the laws relating to the Constabu-"lary Force in Ireland," shall be and the same is hereby repealed; and in lieu thereof be it enacted, that where one moiety of the costs and expenses of any constabulary force is chargeable to any county, or any part or district of a county, or any county of a city or county of a town, or borough or town in Ireland, there shall be charged to each such county, or part or district thereof, or county of a city or county of a town, or any such borough or town, such sum or sums as may be due at the rates per annum following:

For each sub-inspector, one moiety of the sum of one hundred and eighty-four pounds and seven shillings:

For each head-constable, one moiety of the sum of eighty-six pounds and twelve shillings.

Provided always, that it shall be lawful for the Lord Lieutenant, with the approval of the Commissioners of Her Majesty's Treasury, from time to time to fix and determine the further rates of charge to be paid by every such county, or part or district thereof, or county of a city or county of a town, or borough or town, on an average of the entire force of constables, acting constables, and sub-constables in Ireland, regard being had to the rate of pay sanctioned by this Act, and to the cost of clothing, medical attendance, barrack accommodation, fuel, local travelling expenses, and extra pay of such constables and other constables when absent from quarters.

And in all cases where, under the laws now in force, the whole of the costs and expenses of any constabulary force is chargeable to any county, or any part or district of a county, or any county of a city or county of a town, or any borough or town in Ireland, there shall be charged to each such county, or part or district of such county, or county of a city, county of a town, borough, or town, per annum, the full cost of such constabulary force, calculated in the manner last mentioned.

Rate of charge upon public companies for constabulary protection.

6. From and after the passing of this Act, in all cases where members of the constabulary force shall be required to keep the peace in the neighbourhood of railway works or other public works in Ireland, the costs and expenses of such members, calculated according to the rates in the preceding section mentioned, shall be charged upon the company or other parties carrying on such railway or other public works; and all sums so charged shall be payable to the inspector general, who shall pay over the same to Her Majesty's Exchequer in like manner as any other money payable thereto.

Canteen.

7. When any head or other constable shall hold any canteen under proper authority of the inspector general, it shall be lawful for any two justices within their respective jurisdictions to grant a certificate authorising the grant or transfer of any beer, wine, or spirit license to such persons without regard to time of year or to the notices required by any Act in respect of such licenses, and the Commissioners of Inland Revenue, or their proper officers within their respective districts, shall, upon production of such certificates, grant licenses as aforesaid; and any such constable so holding a canteen and having such license may sell therein victuals and intoxicating liquors as empowered by such license, without being subject to any penalty or forfeiture; and so much of any Act as provides that any head or other constable who shall sell any beer, wine, or spirituous liquors shall be subject to any disqualification, loss of salary, or any other penalty, shall not apply to any such constable as aforesaid.

Two shillings per week to men in Belfast and Londonderry.

8. It shall be lawful for the Lord Lieutenant (if he shall so think fit) to order and direct that two shillings per week shall be paid by way of special allowance to head and other constables whilst serving in the town of Belfast and in the borough of Londonderry, with a view to meet the extra expense to which the men serving therein respectively are subject as compared with the remainder of the constabulary force; and the said additional sums shall be paid in like manner and out of the like funds as the pay of such head and other constables.

As to unclaimed money and goods found or stolen.

9. When any money or goods shall be found and shall be delivered over to any constable, or when any goods or money charged to be stolen or unlawfully obtained, and of which the owner shall be unknown, shall be in the hands of any constable, it shall be lawful for the inspector general, after the expiration of twelve calendar months during which no owner shall have appeared to claim the same, to sell or dispose of such goods or money, and pay over such money or proceeds to Her Majesty's Exchequer in like manner as any other money payable thereto.

Amendment of 6 & 7 W. 4. c. 13. s. 18. as to disabilities of members of constabulary force.

10. The disabilities imposed by the eighteenth section of the Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty William the Fourth, chapter thirteen, shall not (except as to being elected or sitting as a member of the House of Commons) be taken or held to be applicable to any clerk in the office of the inspector general.

Estimate of charge to be presented to Parliament.

11. The Lords Commissioners of Her Majesty's Treasury shall cause to be submitted to Parliament annually an estimate of the sum which will from time to time be required to defray the expenditure which under this Act will be chargeable on moneys to be provided by Parliament.

Digitized by Google

Constabulary force fund.

12. From and after the passing of this Act the fund called the "Reward Fund," established under an Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty William the Fourth, intituled "An "Act to consolidate the laws relating to the Constabu-"lary Force in Ireland," shall be called by the new name of the "Constabulary Force Fund," and all enactments relating to the said reward fund shall be read and interpreted as if throughout the said enactments, wherever the police reward fund is mentioned or any reference to the same occurs, the said new name were substituted; and the said enactments shall be construed with the modification following (that is to say,)

A deduction shall be made of such amount per cent. on the salary of each member of the constabulary force, not exceeding one and a half per cent. on the said salary, as the inspector general may with the approval of the Lord Lieutenant from time to time order and direct.

Repeal of enactments.

13. From and after the passing of this Act the enactments specified in the first column of the schedule to this Act annexed shall, to the extent specified in the second column of the said schedule, be and the same are hereby repealed.

Provided that such repeal shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed; or

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed.

Short Title.

14. This Act may be cited for all purposes as "The Constabulary (Ireland) Act, 1874."

SCHEDULE.

Session and Number of Act	Extent of Repeal
2 & 3 Vict. c. 75. -	Section fifteen from "and provided further," to the end of that section.
11 & 12 Vict. c. 72. -	Section six from "and shall be absent" to "more than five days," both inclusive.

CAP. LXXXI.

An Act to provide for the abolition of certain offices connected with the Great Seal, and to make better provision respecting the office of the Clerk of the Crown in Chancery. [*7th August* 1874.]

CAP. LXXXII.

An Act to alter and amend the laws relating to the Appointment of Ministers to Parishes in Scotland. [*7th August* 1874.]

CAP. LXXXIII.

An Act for delaying the coming into operation of the Supreme Court of Judicature Act, 1873. [*7th August* 1874.]

WHEREAS it is expedient to extend the time appointed for the commencement of the Supreme Court of Judicature Act, 1873:

Be it enacted, &c.: . . . . . .

Repeal of 36 & 37 Vict. c. 66. s. 2.

1. The second section of the Supreme Court of Judicature Act, 1873, is hereby repealed.

Commencement of Supreme Court of Judicature Act, 1873.

2. The Supreme Court of Judicature Act, 1873, except any provisions thereof directed to take effect on the passing of the said Act, shall commence and come into operation on the first day of November one thousand eight hundred and seventy-five, and the said first day of November one thousand eight hundred and seventy-five shall be taken to be the time appointed for the commencement of the said Act.

Short title of Act.

3. This Act may be cited for all purposes as the Supreme Court of Judicature (Commencement) Act, 1874.

CAP. LXXXIV.

An Act to regulate the Incorporation of the Commissioners of Her Majesty's Works and Public Buildings, and for other purposes relating thereto. [*7th August* 1874.]

CAP. LXXXV.

An Act for the better administration of the Laws respecting the regulation of Public Worship. [*7th August* 1874.]

CAP. LXXXVI.

An Act to amend the Law relating to the Irish Reproductive Loan Fund. [*7th August* 1874.]

WHEREAS in the year one thousand eight hundred and twenty-two a large sum of money was subscribed in England for the purpose of relieving the distress arising from scarcity of food in Ireland, and the residue of such sum after affording relief in such distress, under the name of the "Irish Reproductive Loan Fund" was vested in a charitable association called the "Irish Reproductive Loan Fund Institution," to be held by them on trust to lend the same at interest to the industrious poor in the ten counties of Clare, Cork, Galway, Kerry, Leitrim, Limerick, Mayo, Roscommon, Sligo, and Tipperary, in Ireland, certain proportions of the said fund being appropriated to each of the said counties:

11 & 12 Vict. c. 115.

And whereas in the year one thousand eight hundred and forty-eight, by an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter one hundred and fifteen, intituled "An Act to vest in Her Majesty the "property of the Irish Reproductive Loan Fund Insti-"tution, and to dissolve the said Institution," the said institution was dissolved, and the said Irish Reproductive Loan Fund was transferred to and vested in Her Majesty upon trust, to be applied and disposed of for such charitable purposes and objects of public utility not otherwise provided for in whole or in part by local rate or assessment (including the instruction in and the promotion of agricultural science) in the ten several counties aforesaid, as the Lord Lieutenant or other chief

Digitized by Google

governor or governors of Ireland, with the assent of the Commissioners of Her Majesty's Treasury, or any three or more of them, should from time to time direct and appoint, certain portions being appropriated to each county as in the said Act mentioned:

And whereas it is expedient that the said Irish Reproductive Loan Fund should be transferred to the care of a public body in Ireland, and should be disposed of by way of loan instead of by way of absolute grant:

And whereas certain of the said counties, that is to say, the counties of Clare, Cork, Galway, Kerry, Leitrim, Limerick, Mayo, and Sligo, in this Act referred to as "maritime counties," abut upon the sea, and it is expedient that such portion of the said fund as is appropriated to the said maritime counties should be capable of being advanced by way of loan for the purpose of aiding the fisheries on the said coast:

And whereas the said Irish Reproductive Loan Fund, with the exception of certain outstanding debts which are not therein specified, consists at the date of the passing of this Act of the particulars specified in the first part of the schedule hereto, distributed under the three heads of—

(1.) The county trust and agricultural school fund;
(2.) The fishery fund; and
(3.) The London fund for management:

And whereas the several funds aforesaid are in this Act included under the title of the Irish Reproductive Loan Fund, and it is intended that such funds should form one fund only under such title as aforesaid, and that such one fund should be appropriated to the ten counties herein-before mentioned in the proportions specified in the second part of the said schedule:

Be it enacted, &c.: . . . . . .

Short title of Act.

1. This Act may be cited for all purposes as "The Irish Reproductive "Loan Fund Act, 1874."

Transfer of property to the Commissioners of Public Works in Ireland.

2. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may form part of the said Irish Reproductive Loan Fund, or may be vested in Her Majesty or any other person whatsoever, as part or on account of the said fund, shall from and after the passing of this Act pass to and vest in the Commissioners of Public Works in Ireland, subject to all debts and liabilities affecting the same.

Power to recover property.

3. The Commissioners for Public Works in Ireland, in this Act referred to as the Commissioners, may enforce any remedies for the recovery of any portion of the said Irish Reproductive Loan Fund which Her Majesty, her heirs and successors, might have enforced if this Act had not passed, and notwithstanding the passing of this Act, it shall be lawful for Her Majesty to use, on behalf of the said Commissioners, any remedies for the recovery of the said fund or any part thereof which it would have been lawful for Her Majesty to have used if this Act had not passed.

Application of fund by Commissioners.

4. The Commissioners shall hold the said Irish Reproductive Loan Fund on trust to dispose of the same by way of loan with a view to carry into effect the purposes of this Act.

The purposes of this Act shall be deemed to be such purposes or objects of public utility not otherwise provided for in whole or in part by local rate or assessment, including the instruction in and the promotion of agricultural science in the ten counties aforesaid, as the said Commissioners may think fit, with this addition, that in the case of the said maritime counties the purposes of this Act shall be deemed to include all or any of the following things, in this Act referred to as fishery purposes; that is to say,

(1.) The building, purchase, or repairs of vessels, boats, and gear for fishery purposes; and
(2.) The purchase, erection, or repairs of houses and sheds for the curing of fish; and
(3.) The purchase of materials to be used for the purposes of oyster cultivation.

Regulations as to loans by Commissioners.

5. The following restrictions shall be imposed on the Commissioners making loans under this Act:

(1.) As between the ten counties aforesaid, the fund in the hands of the Commissioners under this Act shall be deemed to be appropriated in the proportions specified in the second part of the schedule hereto; and
(2.) In making loans for fishery purposes the maximum amount lent in any one year in any one county shall not exceed one quarter of the sum standing at the end of the previous year to the credit of that county; and
(3.) The aggregate amount of loans for the time being advanced in any county for fishery purposes, and outstanding at any one time under this Act, shall not exceed one half of the sum standing to the credit of the county in the second part of the schedule to this Act; and
(4.) There shall be charged by way of interest, in respect of loans, such interest (if any) not exceeding three pounds ten shillings per cent., as the Commissioners may from time to time, with the approval of the Lord Lieutenant in council, determine.

Subject as aforesaid, and to such rules as are hereinafter mentioned, the Commissioners shall make loans for fishery purposes to such persons and upon such security as the inspectors of Irish fisheries may from time to time recommend.

The recommendation of the said inspectors shall be testified by writing under their hands signed by all the said inspectors, specifying such particulars in respect of the loan, and especially the persons to whom and the security (personal or otherwise) on which the loan is to be made, as the Commissioners may require.

In the case of all loans other than loans for fishery purposes, the Commissioners shall take such security, personal or otherwise, as they may from time to time think sufficient.

Recovery of loans by Commissioners.

6. All moneys due to the Commissioners on account of loans made by them under this Act, including any costs and charges incurred in respect of such loans, may be recovered summarily in manner provided by the Summary Jurisdiction Acts.

"The Summary Jurisdiction Acts" mean within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

The power given by this section shall be deemed to be in addition to and not in derogation of any other powers to which the Commissioners may be entitled at common law or in equity of recovering any moneys due to them; and the Commissioners may use any such powers accordingly.

Digitized by Google

Investment of moneys by Commissioners.

7. All moneys for the time being in the hands of the Commissioners under this Act, and not employed by them in loans, may be invested by them in such Government or real securities as they may from time to time think expedient.

Certificate of amount due.

8. A certificate, purporting to be under the seal of the Commissioners, and to be signed by one of them, stating the amount due to the Commissioners from any person in respect of any loan made to him under this Act, together with interest thereon, shall, until the contrary is proved, be evidence of the amount due and of the liability of the party therein named to pay the same.

Recovery of unexpended balance where undertakings not completed.

9. If during any time while any part of a loan under this Act remains unpaid the Commissioners are satisfied that the borrower is not carrying into effect the undertaking for which the loan was made, they may recover forthwith the loan and all moneys due to them in respect thereof.

Power of Lord Lieutenant in council to make regulations.

10. The Lord Lieutenant in council may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters:

(1.) The mode in which loans are to be made under this Act, the amount of such loans, the securities to be given therefor, and the conditions on which such loans will be made; and

(2.) The circulation of information as to the mode in which loans are to be applied for and made in pursuance of this Act; and

(3.) As to any other matter or thing, whether similar or not to those above-mentioned, in respect of which it may be expedient to make rules with a view to more completely carry into effect the purposes of this Act.

Any rules made in pursuance of this section shall, in so far as they are not inconsistent with this Act, be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted therein, and shall be judicially noticed; and it shall be the duty of the Commissioners and of the inspectors of fisheries to conform to any rules so made.

Power of Commissioners to receive gifts for fishery purposes.

11. The Commissioners may receive any gifts made to them by deed, will, or otherwise, of property, whether real or personal, to be applied for fishery purposes as defined by this Act, and may apply the same accordingly for the benefit of any maritime county or counties specified by the giver, or if no particular county or counties are specified, for the benefit of all the said maritime counties in the proportions mentioned in the second part of the schedule hereto.

Accounts to be rendered by Commissioners.

12. The Commissioners shall, once at the least in every year, render to the Commissioners of Her Majesty's Treasury at such time and in such manner as they may direct, an account of their receipts and expenditure during the preceding year, made up to the thirty-first day of December, and of the mode in which such receipts have been derived and expenditure incurred, together with a statement of the amount (if any) remaining in their hands at the date of such account; also of the amount of loans outstanding, and of the amount (if any) of principal and interest in arrear in respect of any loans; and the Commissioners of Her Majesty's Treasury shall submit to Parliament such account or a summary thereof, in such form as they think expedient.

Definition of "Lord Lieutenant."

13. The expression "Lord Lieutenant" in this Act includes the lords justices or other chief governors or governor of Ireland for the time being.

SCHEDULE.

PART I.

PARTICULARS OF THT IRISH REPRODUCTIVE LOAN FUND.

	Consols			Cash		
	£	s.	d.	£	s.	d.
County Trusts - - -	28,875	0	0	688	18	6
Agricultural School Fund -	191	6	2	65	15	3
London Fund for Management	11,468	19	3	114	6	4
Fishery Fund - - -	1,526	6	8	105	2	0
£	42,061	12	1	974	2	1

PART II.

—	Consols: County Trusts	Consols: London Fund for Management and Agricultural School Fund	Consols: Fishery Fund	Consols: Tota Consols	Cash: County Trusts	Cash: London Fund for Managment and Agricultural School Fund	Cash: Fishery Fund	Cash: Total Cash
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
County: Maritime Counties. Clare - -	575 0 0	1,203 16 5	180 9 6	1,959 5 11	39 12 2	18 11 10	12 8 6	70 12 6
Cork - -	2,875 0 0	1,696 5 2	254 5 11	4,825 11 1	56 2 10	26 3 11	17 10 3	99 17 0
Galway -	4,300 0 0	1,492 15 8	223 15 10	6,016 11 6	46 12 8	23 1 1	15 8 2	85 1 11
Kerry - -	10,150 0 0	1,220 14 2	183 0 1	11,553 14 3	253 17 11	18 17 1	12 12 0	285 7 0
Leitrim -	800 0 0	422 11 9	63 7 1	1,285 18 10	47 8 3	6 10 6	4 7 3	58 6 0
Limerick -	800 0 0	1,346 1 2	201 15 11	2,347 17 1	42 16 9	20 15 9	13 17 11	77 10 5
Mayo - -	1,300 0 0	1,981 6 0	297 0 7	3,578 6 7	63 1 5	30 12 0	20 9 1	114 2 6
Sligo	1,225 0 0	817 14 1	122 11 9	2,165 5 10	71 13 1	12 12 7	8 8 10	92 14 6
Roscommon	4,025 0 0	950 16 4	—	4,975 16 4	14 14 8	14 13 8	—	29 8 4
Tipperary -	2,825 0 0	528 4 8	—	3,353 4 8	52 18 9	8 3 2	—	61 1 11
	28,875 0 0	191 6 2 } 11,468 19 3 } 11,660 5 5	1,526 6 8	42,061 12 1	688 18 6	65 15 3 } 114 6 4 } 180 1 7	105 2 0	974 2 1

Digitized by Google

CAP. LXXXVII.

An Act to amend the Endowed Schools Acts. [*7th August* 1874.]

CAP. LXXXVIII.

An Act to amend the Law relating to the Registration of Births and Deaths in England, and to consolidate the Law respecting the Registration of Births and Deaths at Sea. [*7th August* 1874.]

CAP. LXXXIX.

An Act to amend and extend the Sanitary Laws. [*7th August* 1874.]

CAP. XC.

An Act to declare the Validity of Orders of the Education Department with respect to United School Districts, and to make better Provision with respect to such Orders. [*7th August* 1874.]

CAP. XCI.

An Act to amend the Law relating to the Council of the Governor-General of India. [*7th August* 1874.]

CAP. XCII.

An Act to provide for the transfer to the Admiralty and the Secretary of State for the War Department of Alderney Harbour and certain Lands near it. [*7th August* 1874.]

CAP. XCIII.

An Act to amend the Law relating to Public Health in Ireland. [*7th August* 1874.]

Be it enacted, &c.: . . . . . .

Preliminary.

Short Title. 1. This Act may be cited for all purposes as the Public Health (Ireland) Act, 1874.

Sanitary Authorities.

Urban and rural sanitary districts. 2. From and after the passing of this Act Ireland shall be divided into sanitary districts to be called respectively—

(1.) Urban sanitary districts; and

(2.) Rural sanitary districts;

and such urban and rural sanitary districts shall respectively be subject to the jurisdiction of local authorities, in this Act called urban sanitary authorities and rural sanitary authorities, invested with the powers in this Act mentioned.

Description of urban sanitary districts and urban sanitary authorities. 3. Urban sanitary districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban sanitary authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

TABLE above referred to.

Urban Sanitary District	Urban Sanitary Authority
The City of Dublin - - - - - - -	The Right Honourable the Lord Mayor, Aldermen, and Burgesses acting by the Town Council.
Towns corporate, with exception of Dublin - - - - -	The Mayor, Aldermen, and Burgesses acting by the Town Council.
Towns, the population of which according to the last Parliamentary census exceeds six thousand, having Commissioners appointed by virtue of an Act made in the ninth year of the reign of George the Fourth, intituled "An "Act to make provision for the lighting, cleansing, and watching of cities "and towns corporate and market towns in Ireland in certain cases."	The Commissioners.
Towns, the population of which according to the last Parliamentary census exceeds six thousand, having Municipal Commissioners under 3 & 4 Vict. c. 108.	The Municipal Commissioners.
Towns, the population of which according to the last Parliamentary census exceeds six thousand, having Town Commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103).	The Town Commissioners.
Towns or townships having Commissioners under Local Acts.	The Town or Township Commissioners.

Description of rural sanitary districts and rural sanitary authorities. 4. The area of every poor law union, with the exception of those portions (if any) of the area which are included in urban sanitary districts, shall form a rural sanitary district, and the guardians of the union shall, as such, be the rural sanitary authority of such district, subject to the following conditions; that is to say,

(1.) No elective guardian of any electoral division belonging to such union, and forming, or being wholly included within an urban sanitary district shall act or vote in any case in which guardians of such union act or vote in their capacity of members of the rural sanitary authority:

(2.) Where part of an electoral division belonging to a union forms or is situated in an urban sanitary district, the Local Government Board may, by order, divide such electoral division into separate wards and determine the number

Digitized by Google

of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the electoral division lying within the rural sanitary district; but until such order has been made the guardian or guardians of such electoral division may act and vote as members of the rural sanitary authority in the same manner as if no part of such electoral division formed part of or was situated in an urban sanitary district:

(3.) An ex-officio guardian resident in any electoral division, or part thereof, belonging to such union which forms or is situated in an urban sanitary district, shall not act or vote in any case in which guardians of such union act or vote in their capacity of members of the rural sanitary authority unless he is the owner or occupier of property situated in the rural sanitary district of a value to qualify him as an elective guardian for the union.

Power to alter sanitary districts.

5. The Local Government Board shall have power, by provisional order, to separate from a rural sanitary district any town or district wholly situate therein, the population of which according to the then last Parliamentary census exceeds six thousand, and to constitute it an urban sanitary district, or to include it in any adjoining urban sanitary district, subject as such to all the provisions of this Act affecting urban sanitary districts; and the said Board shall likewise have power, by provisional order, to add any town or township hereby constituted an urban sanitary authority to the rural sanitary district in which it is situate, to be subject thereafter to all provisions of this Act affecting rural sanitary districts. No such provisional order shall be made except upon petition from such town, township, or district, in accordance with the provisions of "The Local Government (Ireland) Act, 1871," as amended by "The "Local Government Board (Ireland) Act, 1872," with respect to the incorporation with or separation from any town of any district: Provided always, that the said provisions shall for such purposes be read as if the expression "sanitary authority" were therein substituted for the expression "governing body;" nor shall any such provisional order take effect until confirmed by Parliament in manner prescribed by the said provisions.

First meeting of sanitary authority.

6. The first meeting of a sanitary authority under this Act shall be held within sixty days after the passing of this Act, on such day as may be directed by order of the Local Government Board in each case.

Powers and duties of sanitary authority.

7. Subject to the provisions of this Act, except as hereinafter is excepted, and from and after the day appointed for the first meeting of a sanitary authority in pursuance of this Act, there shall be transferred and attach to such sanitary authority, to the exclusion of any other authority which may have previously exercised or been subject to the same, all powers, right, duties, capacities, liabilities, and obligations within such district exercisable or attaching by and to the sewer authority under the Sewage Utilization Acts, and by and to the nuisance authority under the Nuisances Removal Acts, and by and to the local authority under the Common Lodging Houses Acts, the Artisans and Labourers Dwellings Act, and the Bakehouse Regulation Act, as the said Acts are respectively varied or amended by any Act or any local Act or any provisional order in force within such district, or by and to any of the said authorities under any of such Acts as aforesaid: Provided always, that in any urban sanitary district the urban sanitary authority shall, subject to the provisions of this Act, continue to act in execution of any Act or local Act or provisional order in force within such district immediately before the passing of this Act, and in the execution of which at such time the body by this Act constituted such urban authority was acting; and provided further, that in any rural sanitary district there shall be transferred and attach to the rural sanitary authority, to the exclusion of any other authority which may have previously exercised or been subject to the same, all powers, rights, duties, capacities, liabilities, and obligations with respect to sanitary matters under any Act, local Act, or provisional order in force within such district, or any part of the same, immediately before the passing of this Act; but, save as aforesaid, such Act, local Act, or provisional order shall continue in full force and effect, and shall be carried into execution by the same authority and in the same manner in every respect as if this Act had not been passed. If any question arises as to what are sanitary matters within the meaning of this section, or as to any matter or thing affected by this section, the determination of the Local Government Board on any such question shall be conclusive.

Where the Baths and the Washhouses Acts and the Labouring Classes Lodging Houses Acts, or any of them, are in force within the district of any sanitary authority, such authority shall have all powers, rights, duties, capacities, liabilities, and obligations in relation to such Acts exercisable by or attached to the council, town commissioners, or other commissioners or persons acting in the execution of the said Acts, or any of them.

Where the Baths and Washhouses Acts are not in force within the district of any sanitary authority, such sanitary authority may adopt such Acts, and where the Labouring Classes Lodging Houses Acts are not in force within the district of any sanitary authority, such sanitary authority may adopt such Acts.

Powers relating to the treatment of disease vested in board of guardians of the union in which the sanitary authority is situate.

8. Under the provisions of the Diseases Prevention Act the execution of all powers relating to the treatment of disease, and the establishment and maintenance of hospitals, the conveyance of the sick, the disinfection of clothes or dwellings, and the interment of the dead, created by the said Act or any other Act, arising out of any order of the Local Government Board, shall vest exclusively in the board of guardians of the union in which the district of the sanitary authority is situate, and the expenses so incurred shall be charged on the poor rates as expenses arising under the Poor Law Acts, or the Medical Charities Act, as the case may be.

Transfer of property to sanitary authority, and effect of transfer of property and powers.

9. From and after the day appointed for the first meeting of the sanitary authority of a sanitary district, in pursuance of this Act, all such property, real and personal, including all interest, easements, and rights in, to, and out of property, real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in, any authority whose powers, rights, duties, capacities, liabilities, and obligations are transferred to the sanitary authority shall, so far as such property is applicable to and for the purposes of any such powers, rights, duties, liabilities, capacities, or obligations, pass to and vest in the sanitary authority, subject to all debts, liabilities, and

Digitized by Google

obligations exclusively affecting the property so transferred; and where any debts, liabilities, or obligations affect such property together with other property, then subject only to such part of such debts, liabilities, and obligations as shall bear to the whole amount of such debts, liabilities, and obligations the proportion which the property so transferred bears to the whole property affected by such debts, liabilities, and obligations.

All debts, liabilities, and obligations subject to which any such property has been transferred, or which previously to such transfer were incurred by the authority whose powers, rights, duties, liabilities, capacities, and obligations are so transferred in the exercise of such powers and rights, or in the discharge of such duties, or by reason of such liabilities and obligations, may be enforced against the sanitary authority to the same extent and in the same manner as they might have been enforced against the authority from which such transfer has taken place; and such last-mentioned authority shall be deemed to be discharged from such debts, liabilities, and obligations.

All property by this section transferred to a sanitary authority shall be held by it upon trust for the district or several places respectively within its jurisdiction to which such property belonged, or for the benefit of which such property was held previously to its transfer.

Sanitary officers and superintendent officers of health.

10. Every medical officer of a dispensary district shall be a sanitary officer for such district, or for such part thereof as he shall personally be in charge of, with such additional salary as the sanitary authority thereof may determine, with the approval of the Local Government Board; and every sanitary authority, whether urban or rural, shall appoint such other sanitary officers, including a medical superintendent officer of health when deemed necessary, as the Local Government Board shall in each case direct, with such salaries or additional salaries as the said sanitary authority shall determine, with the approval of the Local Government Board; and the said Board shall assign to the dispensary medical officers, and to the other sanitary officers, if any, and to the medical superintendent officer of health, if such an officer be appointed for the sanitary district, their respective duties and functions in the discovery or inspection or removal of nuisances, in the supply of pure water, in the making or repairing of sewers and drains, or in generally superintending the execution of the sanitary laws within the district.

Every such salary or additional salary so determined or approved shall be payable from such local fund as the Local Government Board shall indicate as properly chargeable therewith, and such part thereof as Parliament shall from time to time determine shall be recouped to such local fund out of moneys to be voted by Parliament; and the Local Government Board shall have the same powers with regard to the qualification, appointment, duties, regulation of salary, and tenure of office of every sanitary officer as they have in the case of the medical officer of a dispensary district: Provided, with regard to salaries or additional salaries, whereof any portion is to be recouped to any local fund from moneys voted by Parliament, the amount of any new salary, and the proportion between any existing salary and the addition thereto, shall be regulated according to a scale to be approved by the Commissioners of Her Majesty's Treasury.

Powers of inspectors of Local Government Board.

11. Inspectors of the Local Government Board may attend any meetings of sanitary authorities, or of committees of sanitary authorities, during the transaction of business arising under any of the provisions of the Sanitary Acts; and such inspectors shall, for the purposes of any inquiry directed by the said Local Government Board, in relation to witnesses and their examination, the production of papers and accounts, the inspection of places and matters required to be inspected, have for the purposes of the Sanitary Acts or Burial Grounds Acts or any of the said Acts similar powers to those which inspectors have under the Poor Law Acts and under the Medical Charities Act for the purposes of those Acts.

Expenses of urban sanitary authority.

12. All expenses incurred or payable by an urban sanitary authority under the Sanitary Acts shall, notwithstanding anything in the said Acts or any of them to the contrary, be defrayed as follows; that is to say,

(1.) In the case of the council of a borough, out of the borough fund or borough rate:

(2.) In the case of an urban sanitary authority being commissioners under any of the Acts specified in the first column of the table contained in section three or of any Local Act, out of any rate leviable by them as such commissioners throughout the whole of their district:

Provided that where an urban sanitary authority had before the passing of this Act power to levy throughout the whole of its district a rate or rates for paving, sewering, or other sanitary purposes, all expenses incurred by such authority in the performance of its duties under the Sanitary Acts shall be defrayed out of such rate or rates, except where at the time of the passing of this Act any such expenses were chargeable upon the borough fund or borough rate, in which case such expenses shall continue so chargeable: Provided also, that if application be made to the Local Government Board whereby it shall be alleged that it would be inequitable or inconvenient in the district of any urban sanitary authority that the said expenses should be borne as last aforesaid, the said Board may, after inquiry, by a provisional order, alter the incidence of such charge in respect of the whole or some of the expenditure referred to, as to them shall appear to be fair and equitable.

Expenses of rural sanitary authority.

13. The expenses incurred by a rural sanitary authority under the Sanitary Acts shall be divided into general expenses and special expenses.

General expenses, other than those chargeable upon owners and occupiers under the Sanitary Acts, shall be the expenses of the establishment and officers of the sanitary authority, and all other expenses not determined by this Act or the order of the Local Government Board to be special expenses.

Special expenses shall be the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, the providing, repairing, and cleansing public wells, the lighting where duly authorised, the charges or expenses arising out of or incidental to the possession of property transferred to the rural sanitary authority in trust for any district or contributory place, and all other expenses incurred or payable by the sanitary authority in or in respect of any contributory place within the district, and determined by the order of the Local Government Board to be special expenses.

When the rural sanitary authority makes any sewers or provides any water supply or executes any other work under the Sanitary Acts for the common benefit of any two or more contributory places within its district, it may apportion the expense of constructing any such work and of maintaining the same, in such

Digitized by Google

proportions as it thinks just, between such contributory places; and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

Ten or more ratepayers, or any number of persons liable to be rated to one fifth part of the whole rate, of any contributory place, if aggrieved by any such apportionment, may send or deliver a memorial to the Local Government Board stating their grounds of complaint, and the said Board may, after due inquiry, make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive upon all parties concerned.

General expenses shall be payable out of a common fund to be raised out of the poor rate of the electoral divisions or parts thereof in the district according to the rateable value of each electoral division or part thereof in manner herein-after mentioned.

Special expenses shall be a separate charge on some contributory place or places.

The following areas situated in a rural sanitary district shall be contributory places for the purposes of this Act; that is to say,

(1.) The dispensary district:
(2.) The electoral division:
(3.) The townland:

Provided that the Local Government Board shall have power to determine on what area of charge being a contributory place, or consisting of contributory places, any special expenses shall be chargeable, whether incurred after the passing of this Act or still due in respect of works executed before the passing of this Act.

Mode of raising contributions in rural sanitary district.

14. For the purpose of obtaining payment for special expenses from the several contributory places within its district, the board of guardians, being the rural sanitary authority, shall levy the same by a special poundage rate, to be added to the poor rate on such contributory places and to be collected therewith by the collectors of the poor rate and lodged to the credit of the guardians with the treasurer of the union; and the expenditure thereof shall be brought to account in such form and manner as the Local Government Board shall from time to time by any general order direct; and if not otherwise directed by such general order, the sums levied by such special poundage and placed to the credit of the board of guardians shall be applied by them in discharge of the special expenses incurred as aforesaid on account of such contributory places respectively.

Compulsory powers to purchase land for hospitals.

15. Every sanitary authority being a port nuisance authority under the provisions of an Act passed in the thirty-seventh year of Her Majesty, entitled "An Act to "amend the Sanitary Act, 1866, so far as the same "relates to the nuisance authorities of ports in Ire-"land," shall, with the consent in writing of the Local Government Board, be empowered to purchase, hire, or erect any building either within or without the district of such sanitary authority for the purpose of an hospital for the reception and treatment of persons affected by dangerous contagious disease, or to purchase land either within or without such district for the purpose of erecting the same, and for these purposes the Lands Clauses Acts are incorporated herewith: Provided always, that for the purposes of such incorporation the terms "special Act" and "promoters of the "undertaking" in the Lands Clauses Acts shall be construed to mean respectively the consent in writing of the Local Government Board, and any sanitary authority being such a port nuisance authority as aforesaid.

Incorporation of certain provisions of Lands Clauses Consolidation Act with Burial Grounds Act.

16. Whereas by the Burial Grounds (Ireland) Act, 1856, section eighteen, it is provided that the Lands Clauses Consolidation Act, 1845, excepting, among other provisions, the provisions of that Act "with respect to the purchase and "taking of lands otherwise than by agreement," shall be incorporated with the said Act, and it is expedient that those provisions of the Lands Clauses Acts should be incorporated with the said Burial Grounds Act: Be it enacted, that from and after the passing of this Act the provisions of the Lands Clauses Acts "with respect "to the purchase and taking of lands otherwise than by "agreement" shall be incorporated with the said Acts, and they are hereby incorporated therewith.

Provided always, that before putting in force any of the powers of the Lands Clauses Acts with respect to the purchase of lands otherwise than by agreement, any burial board shall do all acts, matters, and things, and proceed in manner prescribed by section four of the Local Government (Ireland) Act, 1871, in like manner in every respect as if such burial board were a governing body desiring to put the said provisions of the Lands Clauses Acts in force; and for such purposes the said section four is incorporated herewith, and for the purposes of such incorporation the terms "govern-"ing body" and "chief secretary" in the said section shall be construed to mean respectively "burial board" and "Local Government Board."

Justice not incapable to act in cases under Burial Grounds Acts by being member of burial board or liable to rate.

17. No justice of the peace shall be deemed incapable of acting as such in cases under the Burial Grounds Acts, by reason of his being a member of any body thereby declared to be the burial board to execute the said Acts, or by reason of his being a contributor or liable to contribute to any rate or fund out of which it is by the said Acts provided that all charges and expenses incurred in the execution of the said Acts, and not recovered as thereby provided, shall be defrayed.

Inquiries by board under 19 & 20 Vict. c. 98.

18. When and so often as representation with reference to a burial ground or burials shall have been made to the Local Government Board under the fifth section of the Burial Grounds (Ireland) Act, 1856, and the Local Government Board (Ireland) Act, 1872, inquiry may be directed by the Local Government Board in the place or district referred to therein, or otherwise, as may be thought fit, as to the genuineness of such representation, and in respect of the several matters relating thereto, after notice shall have been given as provided by said Act, and of the time, place, and subject of the inquiry; and it shall be lawful for one of the inspectors of the said Board, or other person appointed in that behalf by the Board, to hold such inquiry; and for the purposes of such and all other inquiries which the said Board shall see fit to direct, the several inspectors, or other persons appointed by the Board, shall have all and every the powers and authorities vested in or conferred on poor law inspectors by the nineteenth section of the Act of the tenth and eleventh years of the reign of Her present Majesty, chapter ninety; and upon receipt of the report of such inspector or other person as to the result of such inquiry, and of the evidence taken thereon, it shall be lawful for the said Board to take the same and the matter of such representation into consideration, and to make such order in relation thereto as to them may seem fit.

Digitized by Google

The twentieth section of the Act of the tenth and eleventh years of the reign of Her present Majesty, chapter ninety, is hereby incorporated with this section.

Union of Districts.

Formation of united district.

19. Where it appears to the Local Government Board, on the application of the sanitary authorities of any sanitary districts, or of any of such authorities, and after due inquiry, that it would be for the advantage of such sanitary districts, or any of them, or any parts thereof, or of any contributory places in any rural sanitary district or districts, to be formed into a united district for all or any of the purposes following; that is to say,

(1.) The procuring a common supply of water; or
(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or
(3.) For any other purposes of the Sanitary Acts or Burial Grounds Acts, or of any of the said Acts,

the said Local Government Board may, by provisional order, form such districts or contributory places into a united district.

Mode of forming united district.

20. The following enactments shall take effect in relation to making a provisional order forming a united district; that is to say,

(1.) Notice of the provisional order shall be published in some newspaper circulating in the district to which it relates, and in such other manner as the Local Government Board may direct:
(2.) All costs, charges, and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act:
(3.) The making of a provisional order shall be primâ facie evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with.

Governing body of united district.

21. The governing body of a united district shall be a joint board consisting of such ex-officio members and of such number of elective members as the Local Government Board may, by the provisional order forming the district, determine.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to acquire and hold lands for the purposes of its constitution without any license in mortmain.

No act or proceeding of a joint board shall be questioned on account of any vacancy or vacancies therein.

No defect in the qualification or election of any person or persons acting as a member or members of a joint board shall be deemed to vitiate any proceedings of such board in which he or they has or have taken part.

Any minute made of proceedings at a meeting of a joint board, if signed either at the meeting at which such proceedings took place or at the next ensuing meeting by any person purporting for the time being to be the chairman of the board, shall be receivable in evidence of such proceedings in all legal proceedings without further proof, and until the contrary is proved every meeting of a joint board where minutes have been so made of the proceedings shall be deemed to have been duly convened and held and all the members thereof to have been duly qualified.

No member of a joint board by being party to or executing in his capacity of member any contract or other instrument on behalf of the board, or otherwise exercising any of the powers given to the board, shall be subject individually to any action, suit, trial, prosecution, or other legal proceeding; and a joint board may apply any moneys from time to time coming into its hands for the purpose of paying any costs of legal proceedings or damages it may incur in the exercise of the powers granted to it: Provided that nothing in this section shall exempt any member of a joint board from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such joint board, and which such member authorised or joined in authorising.

Regulation as to constitution of joint board.

22. The provisional order forming a united district under this Act shall define the purposes for which such united distrtct is formed, and the powers, rights, duties, capacities, liabilities, and obligations under the Sanitary Acts which the joint board is authorised to exercise or perform or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to its meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property, with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.

Upon the constitution of a joint board the sanitary authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers or to perform any duties, or to be subject to any liabilities or obligations which the joint board is authorised to exercise or perform or is made subject to; nevertheless the said joint board may delegate to the sanitary authority of any component district the exercise of any of its powers for the performance of any of its duties, with the approval of the Local Government Board.

Expenses incurred by joint board, how to be defrayed.

23. Any expenses incurred by a joint board, in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund to be contributed by the component districts or contributory places in proportion to the rateable value of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being.

A joint board may borrow and take up at interest on the credit of such common fund any sums of money necessary for defraying any such expenses, subject to the regulations of the Local Government (Ireland) Act, 1871, with respect to borrowing under that Act, as the same are amended by this Act.

Payment of contributions to joint board.

24. For the purpose of obtaining payment from component districts of the sums to be contributed by them the joint board shall issue its precept to the sanitary authority of each component district stating the sum to be contributed by it and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board or to such person as the joint board may direct.

Digitized by Google

Any sum mentioned in a precept addressed by a joint board to a sanitary authority as aforesaid shall be a debt due from it, and may be recovered accordingly; such contribution, in the case of a rural sanitary authority, being deemed to be general expenses.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural sanitary district and the joint board were the sanitary authority thereof.

Use of sewer of subjacent district for outfall of district above it.

25. A sanitary authority unto whose district the district of another sanitary authority is subjacent may, by agreement with the last-mentioned authority and with the sanction of the Local Government Board given on the application of the first-named authority, after public inquiry, if the said Local Government Board think such inquiry necessary, cause the sewers of its district to communicate for the purpose of outfall with the sewers of the subjacent district, and for the purpose of reception, disinfection, distribution, and disposal of the sewage of such first-named authority by the authority of the subjacent disirict, or for all, any, or either of those purposes, upon such terms as to payment or otherwise, in such manner as to making and maintaining the outfall, and with and subject to such conditions, precautions, and restrictions as shall be agreed upon between the sanitary authorities, or in case of dispute shall be settled by the Local Government Board: Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the higher into the sewers of the subjacent district, and that the sewage of other districts or places shall not be permitted by the sanitary authority of the higher district to pass into their sewers so as to be discharged through such outfall into the sewers of the subjacent district without the consent of such last-mentioned district, and all expenses incurred in pursuance of this section by the said sanitary authorities, or either of them, shall be deemed to be expenses incurred by them respectively in performance of their duties under the Sanitary Acts, and be respectively payable accordingly out of the rates out of which such expenses are by this Act made payable, or out of moneys duly borrowed on the credit of such rates.

Repeal of Acts.

Repeal of Local Acts.

26. The Local Government Board may, on the application of the sanitary authority of any district, by provisional order wholly or partially repeal, alter, or amend any Local Acts, other than Acts for the conservancy of rivers, in force in such district, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals for their own pecuniary benefit, which relate to the same subject matters as the Sanitary Acts, and may in like manner extend the provisions of any such Local Act beyond the boundaries of the district comprised therein, or diminish the area to which any such Local Act shall apply.

Provisions as to the Acquisition of Property, &c.

Extension of Lands Clauses Acts to easements and rights.

27. Subject to the provisions of this Act, the powers of the Lands Clauses Acts may, where the same may be put in force with respect to the taking of land under the Sanitary Acts, be applied to all easements and rights in, over, under, or upon land, whether situated within or without the district of the sanitary authority.

Power to purchase water mills, dams, and weirs.

28. Subject to the provisions of this Act and of the Sanitary Acts, any sanitary authority may buy up any water mill, dam, or weir which interferes with the proper drainage of or the supply of water to its district, and may, for the purpose of supplying its district with water for drinking and domestic purposes, purchase either within or without its district any land covered with water, or any water or right to take or convey water; and for the purpose of buying up any of the properties aforesaid, the Lands Clauses Acts shall be incorporated with this section: Provided always, that before putting in force any of the powers of the Lands Clauses Acts with respect to the purchase of lands otherwise than by agrement for the purposes aforesaid, a sanitary authority shall do all acts, matters, and things, and proceed in manner prescribed by section four of the Local Government (Ireland) Act, 1871, in like manner in every respect as would be necessary in the case of a governing body desiring to put the said provisions of the Lands Clauses Acts in force; and for such purposes the said section four is incorporated herewith, and for the purposes of such incorporation the terms "governing body" and "chief secretary" in the said section shall be construed to mean respectively "sanitary authority" and "Local Government Board."

Act not to affect navigation of rivers or canals.

Saving as to rights.

29. Nothing in this Act contained shall enable any sanitary authority to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any such river or canal, or to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of Parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person.

Notices to owners and occupiers may be given in other months than November and December.

30. The notices which, by the fourth section of the Local Government (Ireland) Act, 1871, are required to be given in the months of November and December, may be given in the months of September and October, or of October and November, but no inquiry preliminary to the provisional order to which such notices refer shall be held in either of such two last-mentioned cases until the expiration of one month from the end of the second of the two months in which the notices are given.

Urban sanitary authority may let land or premises.

31. Any urban sanitary authority not heretofore empowered to do so, may let temporarily or for a term of years, with the consent of the Local Government Board, any land or premises which they may possess, as and when they can conveniently spare the same.

Miscellaneous.

Compensation to officers in certain cases.

32. If any officer of any body by this Act constituted the sanitary authority of any district is, by or in pursuance of this Act or of any provisional order made under the authority of this Act, removed from his office or deprived of the whole or part of the emoluments of his office, and is not employed in an office of equal value, and with equal

Digitized by Google

privileges, by such sanitary authority, the Local Government Board may by order award to such officer such compensation as the said Board may think just; and such compensation may be by way of annuity or otherwise, and shall be paid by the authority of the sanitary district in which such officer held his office out of the rates applicable to sanitary purposes within that district.

As to consent of Local Government Board required in certain cases.

33. Where in any Local Acts the consent, sanction, or confirmation of the Lord Lieutenant, the chief secretary of the Lord Lieutenant, or the Privy Council is required with respect to the borrowing of any money, to the giving effect to any byelaws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall, after the passing of this Act, be required instead of that of the authorities above named.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Washhouses Acts.

The powers vested in or exerciseable by one of Her Majesty's Principal Secretaries of State under the Markets and Fairs Clauses Act, 1847, so far as the same relate to Ireland, are hereby transferred to the Local Government Board, and may in Ireland be exercised by the Local Government Board.

The approval of the Local Government Board, and not that of the Lord Lieutenant, shall be required for the appointment and removal of analysts under the Act of the session of the twenty-third and twenty-fourth years of the reign of Her Majesty, chapter eighty-four, as amended by the Act of the session of the thirty-fifth and thirty-sixth years of the reign of Her Majesty, chapter seventy-four.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

Transfer of powers and duties of Board of Trade under Alkali Act, 1863, to Local Government Board.

34. It shall be lawful for the Lord Lieutenant, by Order in Council, at any time before the first day of January one thousand eight hundred and seventy-five, to direct that the powers and duties of the Board of Trade under the "Alkali Act, 1863," and any Act amending the same, shall be transferred to the Local Government Board; and from and after the date of such order, or if no such order shall be made then from and after the said first day of January one thousand eight hundred and seventy-five, the powers and duties of the Board of Trade under the said Acts shall be transferred to and be exerciseable and performed in Ireland by the Local Government Board; and "the Local Government Board for Ireland" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

Settlement of differences arising out of transfer of powers or property to sanitary authority.

35. Upon the application of any authority from whom or to whom any powers, rights, duties, capacities, liabilities, obligations, and property, or any of them, are transferred or alleged or claimed to be transferred in pursuance of this Act, upon the passing of this Act, or at any time thereafter by the operation of this Act, or of any provisional order made under the authority of this Act, or of any person affected by such transfer, the Local Government Board may by order settle any doubt or difference and adjust any accounts arising out of or incidental to such powers, rights, duties, capacities, liabilities, obligations, or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made or other act or thing to be done which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament.

Expenses of police officer acting under 29 & 30 Vict. c. 90. s. 16. provided for.

36. Where, under the directions of the Local Government Board, the chief officer of police in any place institutes proceedings under the sixteenth section of the Sanitary Act, 1866, he shall be entitled to recover from the sanitary authority in default all such expenses in and about such proceedings as he may incur, and as shall not be paid by the party proceeded against: Provided always, that in the construction of the said Act as amended hereby, the term chief officer of police shall mean in any place within the police district of Dublin Metropolis, either of the commissioners of police for the said district, and in any place elsewhere the sub-inspector of the Royal Irish Constabulary in whose district such place is situate.

Order against a defaulting sanitary authority may be enforced by mandamus.

37. When the Local Government Board shall have at any time made any order under the forty-ninth section of the Sanitary Act, 1866, limiting the time for the performance by any sanitary authority of its duty, such order may be enforced by writ of mandamus, notwithstanding the provision in the said section contained for the performance of the duty in the event of the continued default of the sanitary authority.

Payment to members of sanitary authority as counsel illegal.

38. Any payment to any member of a sanitary authority or burial board for acting as counsel, solicitor, attorney, or agent for such authority or board shall be illegal; and if any member of any such authority or board shall so act, or shall accept or hold any office or place of profit under such authority or board of which he is a member, or shall in any manner directly or indirectly be concerned in any bargain or contract entered into by or on behalf of such authority or board, or participate in the profits thereof, then and in every such case such person shall cease to be a member of such authority or board, and his office as such shall thereupon become vacant.

Duty of urban authority to cleanse streets, privies, and ashpits.

39. Every urban sanitary authority shall, when the Local Government Board by order so direct, make due provision for the proper cleansing of streets which such authority is obliged to maintain and repair, the removal of house refuse from premises, and the cleansing of earth closets, privies, ashpits, and cesspools within its district.

Penalty on neglect of sanitary authority to cleanse privies or ashpits.

If any sanitary authority having made such provision fail, without reasonable excuse, after notice in writing from the occupier of any house situated in such district requiring such authority to remove any house refuse, or to cleanse any earth closet, privy, cesspool, or ashpit belonging to such house, or used by the inmates or occupiers thereof, to cause the

Digitized by Google

same to be removed or cleansed, as the case may be, within seven days, the sanitary authority shall on summary conviction be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period of seven days.

Power of raising money on credit of rates.

40. Any sanitary authority may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by it in the performance of its duties under the Sanitary Acts, borrow and take up at interest any sums of money necessary for defraying any such costs, charges, and expenses, subject to the regulations in the Sanitary Acts.

An urban sanitary authority may borrow and take up at interest such money on the credit of all or any rates or rate out of which it is authorised by the Sanitary Acts to pay any expenses incurred by it for sanitary purposes, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon.

A rural sanitary authority may borrow and take up at interest such money, if intended to be applied to purposes constituting the general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if intended to be applied to purposes constituting the special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon.

The clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners shall, so far as the same are not inconsistent with the provisions of this Act, be incorporated with this Act; and in the construction of that Act "the special Act" shall mean this Act; "the commis-"sioners" shall mean any authority authorised to borrow by this Act; "the clerk of the commissioners" shall include any officer appointed for the purpose by any such authority.

The mortgagees or assignees of any mortgage made in pursuance of this Act may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

Power of raising money on credit of sewage land and plant.

41. Where any sanitary authority or joint board is possessed of any land, works, or other property in pursuance and for the purposes of the Sewage Utilization Act, 1867, such authority or joint board may borrow any moneys on the credit of such lands, works, or other property, and may mortgage such lands, works, or other property to any person advancing such moneys, in the same manner in all respects as if such sanitary authority or joint board were the absolute owner, both at law and in equity, of the lands, works, or other property so mortgaged. The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under the Sanitary Acts; but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three fourths of the purchase money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a sanitary authority or joint board by the Sanitary Acts. The sanitary authority or joint board may pay out of any rates leviable by it for sanitary purposes the interest on any moneys borrowed by such authority or joint board in pursuance of this section.

Limit of rating under Local Acts not to apply to expenses for sanitary purposes.

42. Any limit imposed on or in respect of any rate by any Local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by a sanitary authority for sanitary purposes.

Commissioners of Public Works in Ireland may lend to sanitary authority on security of rates.

43. The Commissioners of Public Works in Ireland may, with the consent of the Commissioners of Her Majesty's Treasury, on the recommendation of the Local Government Board, make any loan to any sanitary authority, for such objects as the Commissioners of Her Majesty's Treasury may deem to be sanitary improvements, in pursuance of any powers of borrowing conferred by the Sanitary Acts, whether for works already executed or yet to be executed; such loan to be repaid within a period not exceeding thirty or fifty years as provided by those Acts, and to bear interest at the rate of three and a half per centum per annum or such other rates as may, in the judgment of the said Commissioners, be necessary in order to enable the loan to be made without loss to the Exchequer, on the security of any fund or rate applicable to sanitary purposes, and without requiring any further or other security.

Provided as follows:

(1.) That in determining the time when a loan under this section shall be repayable the Commissioners of Public Works in Ireland shall have regard to the probable duration and continuing utility of the works in respect of which the same is required:

(2.) That in the case of any loan already made to any sanitary authority in pursuance of any powers conferred by the Sanitary Acts the Commissioners of Public Works in Ireland may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum:

(3.) That this section shall not extend to any loan under "The Sanitary Loans Act, 1869," required for the purpose of defraying the expenses incurred or to be incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of this Act.

Amendment of s. 60 of 17 & 18 Vict. c. 103.

44. Where in any town in which the Towns Improvement (Ireland) Act, 1854, is in force the provisions of that Act with respect to water have been adopted, the amount of any assessment under section sixty of the said Act may, notwithstanding the limitations in the said section contained amount to but shall not exceed the rate of two shillings in the pound.

Amendment of 34 & 35 Vict. c. 109 regarding loans.

45. The twenty-eighth section of the Local Government (Ireland) Act, 1871, shall extend to re-borrowing for the purpose of discharging previous loans, as well as to original loans, and be amended so that the following provision shall be substituted for that contained in the paragraph No. 3; namely,

The money so borrowed shall not at any time exceed, with the balances of all the outstanding loans of the

Digitized by Google

sanitary authority under the Sanitary Acts, in the whole, twice the net annual value of the premises assessable within the district in respect of which such money may be borrowed, and the time for which the money may be borrowed shall not exceed sixty years, instead of thirty years, as in the said section is declared:

Provided that where the proposed loan with such balances would exceed the net annual value of such premises the Local Government Board shall not give their sanction to the loan until a local inquiry shall have been held by one of their inspectors, and his report of the result of such inquiry shall have been received by them:

Provided also, that where a loan is effected to pay off an existing loan, the time for repayment shall not extend beyond the unexpired term of the period for which the original loan was contracted, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original borrowing.

The sixth section of the Local Government (Ireland) Act, 1871, and the eighth section of the Local Government Board (Ireland) Act, 1872, are hereby repealed, except so far as the same may apply to any proceedings commenced, but not completed at the passing of this Act.

Confirmation of provisional orders by Parliament.

46. The Local Government Board shall not make any provisional order under this Act unless public notice shall have been previously given by advertisement in two successive weeks in some newspaper published or circulating in the district to which such provisional order relates, and after hearing any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, until it has made, by one of its inspectors, a local inquiry of which public notice has been given and at which all persons interested have been permitted to attend and make objections.

The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such provisional order shall be of no force whatever unless and until it is confirmed by Parliament. If while the Bill confirming such order is pending in either House of Parliament, a petition is presented against any provisional order comprised therein, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioners shall be allowed to appear and oppose as in the case of a Bill for a special Act.

Any Act confirming any provisional order issued in pursuance of the Sanitary Acts, or any of them, may be repealed, altered, or amended by any provisional order made by the Local Government Board and duly confirmed by Parliament. The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament; but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament.

Costs of provisional orders.

47 The reasonable costs of any sanitary authority in respect of provisional orders made in pursuance of the Sanitary Acts, or any of such Acts, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for sanitary purposes by the sanitary authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board the sanitary authority may contract a loan for the purpose of defraying such costs.

Orders of the Local Government Board, how to be published.

48. Every order of the Local Government Board under the Sanitary Acts (unless otherwise prescribed by the said Acts) shall be published in such manner as that Board may direct; and every general order of the Local Government Board made in pursuance of the Poor Law Acts shall be published in the *Dublin Gazette*, and when so published shall take effect in like manner and shall be of as much force and validity as any general order made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single order of the said Board made in pursuance of the said last-mentioned Acts it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

Audit of accounts.

49. The accounts of every sanitary authority shall be made up in such form and to such day or days in every year as may be appointed by the Local Government Board in each case. The accounts of a sanitary authority shall be audited by such auditor of the accounts relating to the relief of the poor as the Local Government Board shall appoint for the purpose. An auditor shall, with respect to the accounts of sanitary authorities under this section, have the like powers, and be subject to the like obligations in every respect, as in case of the audit under the Local Government (Ireland) Act, 1871, as amended by the Local Government Board (Ireland) Act, 1872, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

Fourteen days notice of any audit under the said Acts or this Act shall be sufficient, anything in any Act to the contrary notwithstanding.

Sanitary authority may order destruction of infectious bedding, &c.

50. Every sanitary authority shall have power to direct the destruction of any bedding, clothing, or other articles which have been exposed to infection from any dangerous infectious disorder, and to give compensation for the same.

Regulations as to lodgings in every sanitary district.

51. The Local Government Board may, at its discretion, by notice to be published in the *Dublin Gazette*, declare the enactment contained in section thirty-five of the Sanitary Act, 1866, to be in force in the district of any sanitary authority, notwithstanding the restrictions in the said section contained; and from and after the publication of such notice the sanitary authority named therein shall be empowered to make regulations in respect of the matters in that section mentioned, but such regulations shall not be of any validity unless and until they are confirmed by the Local Government Board.

Regulations made under the said section may extend to ventilation of rooms, paving and drainage of premises, and to notices to be given and precautions to be taken in case of any infectious or contagious disease.

Notices of common lodging houses and slaughter-house to be affixed on premises.

52. The keeper of every common lodging house which is registered under the Common Lodging Houses Acts, and the owner or occupier of every slaughter-house causing the same to be licensed or registered, as the case may be, under the Sanitary Acts, shall, when required to do so by the sanitary authority registering or licensing the same,

Digitized by Google

cause a notice with the words "Registered Lodging "House," or "Licensed or Registered Slaughter-"house," as the case may be, to be affixed on some conspicuous place on the outside of the premises where the same can be seen by any inspector or officer of the sanitary authority.

Such notice shall be affixed within one month after the registration or license, as the case may be, and shall be continued undefaced and legible so long as the premises are used for the purpose.

Every person who shall make default in this respect, or shall neglect or refuse to affix or renew such notice after requisition in writing from the sanitary authority, shall be liable to a penalty not exceeding five pounds for every offence, and of ten shillings for every day that the neglect shall continue after conviction.

Provision for polluted water in wells and pumps.

53. If it shall be represented to any sanitary authority that within their district the water in any well, public or private, or supplied from any public pump, is so polluted as to be injurious to health, such authority may apply to any justices having jurisdiction within their district, in petty sessions assembled, for an order to remedy the same, and thereupon such justices shall summon the person occupying the premises to which the well belongs, if it be private, and as regards any public well or pump, such person (if any) as shall be alleged in the application to be interested in the same, and shall either dismiss the application or make such an order in the case, by directing the well or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or providing otherwise, as shall appear to them to be requisite to prevent injury to the health of persons drinking the water.

For the purposes of such inquiry, the said justices may cause the water to be analysed at the cost of the sanitary authority applying.

And all the expenses incurred by such authority in and about the procuring of this order, and in carrying it into execution, shall be charged upon the funds applicable to their general expenditure, but, in the case of a rural sanitary authority, shall be deemed to be special expenses within the meaning of the Sanitary Acts.

Provided that where the order is made in respect of any private well, any person aggrieved thereby may appeal against the same in the manner provided by the ninety-third section of the Towns Improvement (Ireland) Act, 1854, and with the same incidents and consequences

Where the justices dismiss the application, they may, if they think fit, award such costs to the person summoned as to them shall appear to be reasonable.

Hospital when to be deemed within district.

54. For the purposes of the twenty-sixth section of the Sanitary Act, 1866, every hospital or place for the reception of the sick which shall be declared by an order of the Local Government Board to be situated within a convenient distance of the district of any sanitary authority for the purposes of that section shall be deemed to be within the district of such sanitary authority.

Where a justice shall make an order under that section for the removal of a sick person to a hospital or other place, he shall address it to such police or other officer as he shall consider expedient; and every person wilfully disobeying the order, or obstructing the execution of the same, shall be guilty of an offence punishable on summary conviction before two justices, and be liable to a penalty not exceeding ten pounds.

Extension of right of complaint under Nuisances Removal Acts (1873).

55. The right of complaint given by the thirteenth section of the twenty-third and twenty-fourth years of the reign of Her Majesty, chapter seventy-seven, shall extend to nuisances in any place, whether on private or public premises, and may be exercised by any inhabitant in such place, or any owner of premises situated therein, or any other person aggrieved or injuriously affected thereby.

The provisions of the Nuisances Removal Act for England (Amendment) Act, 1863, to extend to milk.

56. The second section of the Nuisances Removal Act for England (Amendment) Act, 1863, shall extend to milk in the same manner as if the word "milk" had been introduced after the word "flour" wherever the word "flour" occurs in the said section; and the justice who, under the said section, is empowered to convict the offender therein described may be other than the justice who may have ordered the article to be disposed of or destroyed.

Warrant may be granted by a justice to search for unsound food.

57. On complaint made by a medical officer of health or by any inspector or other officer of a sanitary authority upon oath, any justice may grant a warrant to any such officer to enter any building or part of a building or other place in which the complainant has reasonable ground for believing that any animal, carcase, meat, poultry, game, fish, fruit, vegetables, corn, bread, flour, or milk, intended for sale for the food of man, which is so diseased, unsound, or unwholesome as to be unfit for the food of man, is kept or concealed, and to search for, seize, and carry away any such animal, carcase, meat, poultry, game, fish, fruit, vegetables, corn, bread, flour, or milk, in order to have the same dealt with in manner provided by law; and any person obstructing any such officer in performance of any duty under this section shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

Justices may make an order for the vaccination of any child under 14 years.

58. If any registrar, or any officer appointed by the guardians to enforce the provisions of the Acts relating to vaccination in Ireland, shall give information in writing to a justice of the peace that he has reason to believe that any child under the age of fourteen years, being within the union or district for which the informant acts, has not been successfully vaccinated, and that he has given notice to the father or mother of the said child, or to the person having the care, nurture, or custody of such child, to procure its being vaccinated, and that this notice has been disregarded, the justice may summon such father or mother or person to appear with the child before him at a certain time and place, and upon the appearance, if the justice shall find, after such examination as he shall deem necessary, that the child has not been vaccinated, nor has already had the smallpox, he may, if he see fit, make an order under his hand and seal directing such child to be vaccinated within a certain time; and if at the expiration of such time the child shall not have been so vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall be proceeded against summarily, and, unless he can show some reasonable ground for his omission to carry the order into effect, shall be liable to a penalty not exceeding twenty shillings.

Provided that if the justice shall be of opinion that the person is improperly brought before him, and shall refuse to make any order for the vaccination of the

Digitized by Google

child, he may order the informant to pay to such person such sum of money as he shall consider to be a fair compensation for his expenses and loss of time in attending before the justice.

Penalty on false representations with respect to infectious disease.

59. If any owner or occupier or person employed to let for hire, or to show for the purposes of letting for hire, any house or part of a house, when questioned by any person negociating for the hire of such house or part of a house as to the fact of there being in such house, or having within three months previously been therein, any person suffering from an infectious, contagious, or epidemic disease, knowingly makes a false answer to such question, the person so answering falsely shall be guilty of an offence punishable on summary conviction, and, at the discretion of the justices having cognizance of the case, be liable to be imprisoned, with or without hard labour, for a period not exceeding one month, or to pay a penalty not exceeding twenty pounds.

Penalty on breach of rules made under sect. 52 of 29 & 30 Vict. c. 90.

60. Any person wilfully neglecting or refusing to obey or carry out or obstructing the execution of any rule, order, or regulation made by the Local Government Board under section fifty-two of the Sanitary Act, 1866, shall be guilty of an offence punishable on summary conviction, and be liable to a penalty not exceeding fifty pounds.

Legal Proceedings.

Legal position of sanitary authority.

61. Subject to the provisions of this Act, every sanitary authority shall, as respects the service of notices in pursuance of the Sanitary Acts by or on behalf of or on such authority, and as respects all legal proceedings, matters, and things to be taken or done in pursuance of the Sanitary Acts by or on behalf of or to such authority, stand in the same position in all respects in which previously to the passing of this Act any authority stood whose powers, rights, duties, capacities, liabilities, and obligations are transferred to such authority; and for the purposes of this section a joint board shall be deemed to be a sanitary authority.

Notices how to be signed.

62. Every notice required to be given on behalf of a sanitary authority shall be deemed to be sufficient on their behalf, if it be written or printed, and purports to be signed by the clerk or acting clerk of such authority.

Powers given by this Act to be cumulative.

63. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act, local Act, provisional order, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed.

Recovery of penalties.

64. Any penalty recoverable under the provisions of this Act shall be recoverable in a summary way, with respect to the police district of Dublin Metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district, and with respect to other parts of Ireland before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same; and all such penalties, when recovered by or on behalf or at the instance of any sanitary authority, or any officer of such authority, shall be paid to such sanitary authority, and by the same applied in aid of their expenses under the Sanitary Acts; and, save as aforesaid, all such penalties shall be applied in manner directed by "The "Fines Act (Ireland), 1851," and any Act amending the same.

Appointments under 35 & 36 Vict. c. 69. exempt from stamp duty.

65. Whereas by an Act passed in the second year of Her Majesty, entitled "An Act for the more effectual relief of "the destitute poor in Ireland," it was enacted that no instrument made in pursuance of that Act nor the appointment of any paid officer engaged in the administration of the laws for the relief of the poor or in the management or collection of the poor rate shall be charged or chargeable with any stamp duty whatever, and it is expedient to extend such exemptions from stamp duty to instruments and to appointments made in pursuance of the provisions of the Local Government Board (Ireland) Act, 1872: Be it enacted, that no instrument made in pursuance of the provisions of the said last-mentioned Act, and no appointment which has been or shall hereafter be made of any paid officer engaged in the administration of the provisions thereof, shall be charged or chargeable with any stamp duty whatever.

Definitions.

Definitions.

66. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

"Borough" means any place for the time being subject to the Act of the session of the third and fourth years of the reign of King William the Fourth, chapter one hundred and eight, intituled "An Act for the regulation of municipal corpora-"tions in Ireland," and any Act amending the same:

"Local Government Board" means the Local Government Board for Ireland:

"Person" includes any body of persons, whether corporate or unincorporate:

"Labouring Classes Lodging Houses Acts" means 29 & 30 Vict. c. 44 (Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867):

"Artisans and Labourers Dwellings Act" means 31 & 32 Vict. c. 130 (Artisans and Labourers Dwellings Act, 1868):

"Bakehouse Regulation Act" means 26 & 27 Vict. c. 40 (Bakehouse Regulation Act, 1863):

"Diseases Prevention Act" means 18 & 19 Vict. c. 116 (Diseases Prevention Act, 1855), as amended by 23 & 24 Vict. c. 77, (An Act to amend the Acts for the removal of nuisances and the prevention of diseases); as the same are amended and extended to Ireland by 29 & 30 Vict. c. 90:

"Baths and Washhouses Acts" means 9 & 10 Vict. c. 87 (An Act for promoting the voluntary establishment in boroughs and certain towns in Ireland of public baths and washhouses):

"Burial Grounds Acts" means the Burial Grounds (Ireland) Act, 1856, as the same is amended by the 23 & 24 Vict. c. 76:

"Common Lodging Houses Acts" means 14 & 15 Vict. c. 28 (Common Lodging Houses Act, 1851); 16 & 17 Vict. c. 41 (Common Lodging Houses Act, 1853), as amended by 23 Vict. c. 26:

"Sewage Utilization Acts" means 28 & 29 Vict. c. 75 (The Sewage Utilization Act, 1865); 29 & 30 Vict. c. 90 (The Sanitary Act, 1866); 30 & 31 Vict. c. 113 (The Sewage Utilization Act, 1867); and 31 & 32 Vict. c. 115 (The Sanitary Act, 1868); and 32 & 33 Vict. c. 100 (The Sanitary

Digitized by Google

Loans Act, 1869) as applied to Ireland by 34 & 35 Vict. c. 109, and 35 & 36 Vict. c. 69:

"Nuisances Removal Acts" means 18 & 19 Vict. c. 121 (The Nuisances Removal Act for England, 1855); 23 & 24 Vict. c. 77 (An Act to amend the Acts for the removal of nuisances and the prevention of diseases); 26 & 27 Vict. c. 117 (The Nuisances Removal Act for England (Amendment) Act, 1863); 29 & 30 Vict. c. 41 (The Nuisances Removal Act (No. 1), 1866); 29 & 30 Vict. c 90 (The Sanitary Act, 1866) as amended by 32 & 33 Vict. c. 108; and the Sanitary Act, 1868, as applied to Ireland by 34 & 35 Vict. c. 109, and 35 and 36 Vict. c. 69:

"Sanitary Acts" means all the above-mentioned Acts and this Act, and includes any amendments of such Acts, and with respect to any urban sanitary district, includes any Act, local Act, or provisional order relating to the same subject matters as the above-mentioned Acts in force within such district:

"Sanitary purposes" means any objects or purposes of the Sanitary Acts:

"Sanitary authority" means either "urban or rural "sanitary authority:"

"Lands Clauses Acts" means and includes the Lands Clauses Consolidation Act, 1845, as the same is amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland) 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railway Traverse Act:

"Poor Law Acts" means 1 & 2 Vict. c. 56, and the Acts amending the same:

"Medical Charities Acts" means 14 & 15 Vict. c. 68, and the Acts amending the same.

Cap. XCIV.

An Act to amend the Law relating to Land Rights and Conveyancing, and to facilitate the Transfer of Land, in Scotland.
[*7th August* 1874.]

Cap. XCV.

An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. [*7th August* 1874.]

Cap. XCVI.

An Act for further promoting the Revision of the Statute Law by repealing certain Enactments which have ceased to be in force or have become unnecessary.
[*7th August* 1874.]

Digitized by Google

INDEX

TO

THE PUBLIC GENERAL STATUTES,

37° & 38° VICTORIÆ.

Digitized by Google

Digitized by Google

INDEX

TO THE

PUBLIC GENERAL STATUTES,

37° & 38° VICTORIÆ,

Showing whether they relate to the whole or to any part of the United Kingdom, viz.:—

E.	*signifies that the Act relates to*	England (and Wales, if it so extend).
S.	" "	Scotland exclusively.
I.	" "	Ireland exclusively.
E. & I.	" "	England and Ireland.
E. & S.	" "	England and Scotland.
U.K.	" "	Great Britain and Ireland (and Colonies, if it so extend).
C.	" "	The Colonies, or any of them.

A.

	Cap.	Relating to
ACTS OF PARLIAMENT. *See* EXPIRING LAWS CONTINUANCE. STATUTE LAW REVISION. TURNPIKE ACTS CONTINUANCE.		
ALDERNEY HARBOUR; to provide for the Transfer to the Admiralty and the Secretary of State for the War Department of Alderney Harbour and certain Lands near it (page 55)	92	E.
ALKALI ACT, 1863, AMENDMENT; to amend the Alkali Act, 1863, (26 & 27 Vict. c. 124) - - - - - (p. 19)	43	U.K.
ANCHORS; to amend the law respecting the proving and sale of Chain Cables and Anchors - - - - (p. 31)	51	U.K.
ANNUAL TURNPIKE ACTS CONTINUANCE; to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - -. (p. 66)	95	E. & S.
ANNUITY TO PRINCE LEOPOLD; to enable Her Majesty to provide for the Support and Maintenance of His Royal Highness Prince Leopold George Duncan Albert on his coming of age - - - (p. 37)	65	U.K.
APOTHECARIES ACT AMENDMENT; to amend the Act 55 Geo. 3. c. 194, "for better regulating the Practice of Apothecaries in England and Wales" - - (p. 12)	34	E.
APPLICATION OF AIDS. *See* CONSOLIDATED FUND.		
APPOINTMENTS UNDER POWERS; to alter and amend the Law as to Appointments under powers not exclusive - - (p. 12)	37	U.K.
ARCHDEACONRIES; to facilitate the re-arrangement of the Boundaries of Archdeaconries and Rural Deaneries . - (p. 37)	63	E.
ASSISTANT JUDGE FOR MIDDLESEX; to amend the Law respecting the payment of the Assistant Judge of the Court of the Sessions of the Peace for the county of Middlesex, and his deputy, and the Chairman of the Second Court at such Sessions (p. 2)	7	E.
ATTORNEYS AND SOLICITORS; to amend the Law relating to Attorneys and Solicitors (p. 38)	68	E.
——— to amend the Colonial Attornies Relief Act (20 & 21 Vict. c. 39) - (p. 13)	41	C.

B.

	Cap.	Relating to
BAR ADMISSION STAMP; to amend The Stamp Act, 1870 (33 & 34 Vict. c. 97), in regard to the Stamp Duty payable by Advocates in Scotland on admission as Barristers in England or Ireland, and by Barristers in England or Ireland on admission as Advocates in Scotland - - (p. 7)	19	U.K.
BARRISTERS, REVISING; to amend the Law relating to the Payment of Revising Barristers - - - - - (p. 31)	53	E.
BENGAL AND MADRAS CIVIL FUNDS; to make provision for the transfer of the assets and liabilities of the Bengal and Madras Civil Service Annuity Funds, and the Annuity Branch of the Bombay Civil Fund, to the Secretary of State for India in Council - - - - (p. 2)	12	C.
BETTING; to amend the Act 16 & 17 Vict. c. 119, "for the Supression of Betting Houses" (p. 2)	15	U.K.
BIRTHS AND DEATHS REGISTRATION; to amend the Law relating to the Registration of Births and Deaths in England, and to consolidate the Law respecting the Registration of Births and Deaths at Sea (p. 55)	88	E.
BISHOP OF CALCUTTA; to extend to the present Bishop of Calcutta the Regulations made by Her Majesty as to the leave of absence of Indian Bishops - (p. 2)	13	C.
BOARD OF TRADE ARBITRATIONS, &c.; to amend the powers of the Board of Trade with respect to inquiries, arbitrations, appointments, and other matters under special Acts, and to amend the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), so far as regards the reference of differences to the Railway Commissioners in lieu of Arbitrators - - (p. 12)	40	U.K.
BOMBAY CIVIL FUND. *See* BENGAL AND MADRAS CIVIL FUNDS.		
BUILDING SOCIETIES; to consolidate and amend the Laws relating to Building Societies - - - - (p. 13)	42	U.K.

C.

	Cap.	Relating to
CANADIAN STOCK; to make provision respecting the Stamp Duty on Transfers of Stock of the Goverment of Canada - (p. 10)	26	U.K.

Digitized by Google

C—*con.*

Subject	Cap	Relating to
CATTLE DISEASE; to amend the Acts 29 & 30 Vict. c. 4 and 33 & 34 Vict. c. 36, relating to Cattle Disease in Ireland - (p. 1)	6	I.
CHURCH PATRONAGE; to alter and amend the Laws relating to the Appointment of Ministers to Parishes in Scotland (p. 52)	82	S.
CHURCHES AND CHAPELS EXEMPTION; to provide for the Exemption of Churches and Chapels in Scotland from Local Rates and Assessments - - - (p. 7)	20	S.
CIVIL BILL COURTS; to enlarge the Juris- of the Civil Bill Courts in Ireland in respect to the recovery of Balances due on partnership Accounts, and in respect of Actions involving Questions of Title to corporeal and incorporeal Hereditaments (p. 37)	66	I.
CLERGY COLONIAL; respecting Colonial and certain other Clergy - (p. 48)	77	U.K.
CLERK OF THE CROWN IN CHANCERY; to provide for the abolition of certain offices connected with the Great Seal, and to make better provision respecting the office of the Clerk of the Crown in Chancery (p. 52)	81	E.
COLLISIONS AT SEA; to make regulations for preventing Collisions in the Sea Channels leading to the River Mersey (p. 31)	52	E.
COLOMBO HARBOUR; to empower the Public Works Loan Commissioners to advance a sum of money, by way of loan, for the improvement of the harbour of Colombo in the colony of Ceylon - - (p. 10)	24	C.
COLONIAL COURTS JURISDICTION; to regulate the Sentences imposed by Colonial Courts where jurisdiction to try is conferred by Imperial Acts - - - (p. 10)	27	C.
COMMISSIONERS of LAND TAX; to appoint additional Commissioners for executing the Acts for granting a Land Tax and other rates and taxes - - - (p. 7)	18	E.
COMMISSIONERS OF POLICE, DUBLIN. *See* MAGISTRATES, &c.		
COMMISSIONERS OF WORKS AND PUBLIC BUILDINGS; to regulate the Incorporation of the Commissioners of Her Majesty's Works and Public Buildings, and for other purposes relating thereto - (p. 52)	84	U.K.
CONJUGAL RIGHTS (SCOTLAND); to amend the Conjugal Rights (Scotland) Amendment Act, 1861 (24 & 25 Vict. c. 86) (p. 10)	31	S.
CONSOLIDATED FUND; to apply a sum (£1,422,797 14s. 6d.) out of the Consolidated Fund, to the service of the years ending 31st March, 1873, and 1874 (p. 1)	1	U.K.
——— to apply the sum of £7,000,000 out of the Consolidated Fund to the service of the year ending the 31st March, 1875 (p. 1)	2	U.K.
——— to apply the sum of £13,000,000 out of the Consolidated Fund to the service of the year ending the 31st March, 1875 (p. 2)	10	U.K.
——— to apply a sum out of the Consolidated Fund to the service of the year ending the 31st March, 1875, and to appropriate the Supplies granted in this Session of Parliament - - - (p. 31)	56	U.K.
CONSTABULARY, IRISH; to amend the Laws relating to the Royal Irish Constabulary (p. 49)	80.	I.
CONTRACTS OF INFANTS; to amend the Law as to the Contracts of Infants - (p. 37)	62	U.K.
COUNCILS, INDIA; to amend the Law relating to the Council of the Governor General of India - - - - (p 55)	91	C.
COURT OF JUDICATURE. *See* SUPREME COURT OF JUDICATURE.		
CUSTOMS AND INLAND REVENUE; to grant certain Duties of Customs and Inland Revenue; to repeal and alter other Duties; and to amend the Laws relating to Customs and Inland Revenue. [Customs Duties on Sugar, and on Tea; Income Tax and Inhabited House Duties; Excise Duties in respect of Horses and Horse Dealers; Excise Duties on Sugar and Sugar used in brewing] - - - (p. 3)	16	U.K.
CUSTOMS (ISLE OF MAN); to consolidate and amend the Duties of Customs in the Isle of Man - - - - (p. 25)	46	U.K.

D.

Subject	Cap	Relating to
DRAINAGE, &c., OF LANDS; to amend the Drainage and Improvement of Lands Act (Ireland), 1863 (26 & 27 Vict. c. 88) (p. 10)	32	I.

E.

Subject	Cap	Relating to
EAST INDIA LOAN; to enable the Secretary of State in Council of India to raise money in the United Kingdom for the Service of the Government of India - (p. 1)	3	U.K.
ELEMENTARY EDUCATION; to authorise an Advance out of the Consolidated Fund of the United Kingdom to the Public Works Loan Commissioners, for enabling them to make Loans to School Boards in pursuance of the Elementary Education Act, 1873, 36 & 37 Vict. c. 86. - - (p. 2)	9	U.K.
——— to provide for the exception of the Borough of Wenlock from the category of boroughs under The Elementary Education Act, 1870, 33 & 34 Vict. c. 75 (p. 12)	39	E.
——— to declare the Validity of Orders of the Education Department with respect to United School Districts, and to make better provision with respect to such Orders. [East and West Looe, Cornwall; Bersham, Denbigh; Hutton, Cranswick, E.R. York; Mickleton, Gloucester; Brecon; Narberth, Pembroke; Newtown and Llanllwchaiarn, Montgomery.] - - (p. 55)	90	E.
ENDOWED SCHOOLS; to amend the Endowed Schools Acts, 32 & 33 Vict. c. 56. and 36 & 37 Vict. c. 87. [Transfer of Powers to Charity Commissioners.] - (p. 55)	87	E.
EVIDENCE, LAW OF; to further alter and amend the Law of Evidence in Scotland, and to provide for the recording, by means of Shorthand Writing, of Evidence in Civil Causes in Sheriff Courts in Scotland (p. 37)	64	S.
EXPIRING LAWS CONTINUANCE; to continue various expiring Laws. *See* p. 54 *post* (p. 48)	76	U.K.

F.

Subject	Cap	Relating to
FACTORIES; to make better provision for improving the health of women, young persons, and children employed in manufactures, and the education of such children, and otherwise to amend the Factory Acts (p. 20)	44	U.K.
FINES; to explain and amend The Fines Act (Ireland), 1851 (14 & 15 Vict. c. 90), and for other purposes relating thereto (p. 47)	72	I.

Digitized by Google

F—*con.*

	Cap.	Relating to
Foyle College; for the better management and regulation of Foyle College in the city of Londonderry, and for vesting in the governing body of such College the present schoolhouse and premises belonging to such College, and for vesting the right of appointment of head-master of such College in the Bishop of Derry and Raphoe and the Governor of the Honourable the Irish Society - - - - (p. 49)	79	I.

G.

	Cap.	Relating to
Game Birds; for altering the shooting season for Grouse and certain other Game Birds in Ireland - - - (p. 2)	11	I.

H.

	Cap.	Relating to
Harbour Dues, Isle of Man; to make provision for the taking of Harbour Dues in the Isle of Man - - (p. 2)	8	E.
Herring Fishery Barrels; to remove the Restrictions contained in the British White Herring Fishery Acts in regard to the use of Fir Wood for Herring Barrels (p. 10)	25	E. & S.
Hertford College, Oxford; for dissolving Magdalen Hall, in the University of Oxford, and for incorporating the Principal, Fellows, and Scholars of Hertford College; and for vesting in such College the lands and other property now held in trust for the benefit of Magdalen Hall - (p. 31)	55	E.
Hertford, County of, &c.; for altering the boundaries between the liberty of St. Alban and the rest of the county of Hertford; and for making better provision for the transaction of County Business, and the Administration of Justice at Quarter Sessions in that county - - (p. 25)	45	E.
Holyhead Old Harbour Road; to transfer parts of the Holyhead Old Harbour Road from the Board of Trade to the Local Board of Health of the town of Holyhead; and for other purposes - - (p. 10)	30	E.
Hosiery Manufacture; to provide for the payment of Wages without Stoppages in the Hosiery Manufacture - (p. 25)	48	E.

I.

	Cap.	Relating to
Improvement of Lands; to amend the Drainage and Improvement of Lands Act (Ireland), 1863 (26 & 27 Vict. c. 88) (p. 10)	32	I.
Industrial and Reformatory Schools; to extend the Powers of Prison Authorities in relation to Industrial and Reformatory Schools, and for other purposes relating thereto - - - - (p. 25)	47	E. & S.
Intoxicating Liquors; to amend the Laws relating to the sale and consumption of Intoxicating Liquors - - (p. 25)	49	E. & I.
——— to amend the Laws relating to the sale and consumption of Intoxicating Liquors in Ireland - . (p. 38)	69	I.
Ireland, Acts relating exclusively to. *See*— Cattle Disease. Civil Bill Courts. Drainage, &c., of Lands. Fines. Four Courts Marshalsea. Foyle College. Game Birds. Irish Reproductive Loan Fund. Juries. Licensing. Lough Corrib Navigation. Magistrates, &c. Private Lunatic Asylums. Public Health. Rateable Property Valuation. Royal Irish Constabulary. Shannon Navigation.		
Irish Reproductive Loan Fund; to amend the Law relating to the Irish Reproductive Loan Fund - - - - (p. 52)	86	I.
Irish Society. *See* Foyle College.		

J.

	Cap.	Relating to
Judicature, Supreme Court of; for delaying the coming into operation of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66) - - (p. 52)	83	E.
Juries; to further amend the Law relating to Juries in Ireland - - (p. 10)	28	I.

L.

	Cap.	Relating to
Land Tax Commissioners; to appoint additional Commissioners for executing the Acts for granting a Land Tax and other rates and taxes - - - (p. 7)	18	E.
Land Transfer, &c.; to amend the Law relating to Land Rights and Conveyancing, and to facilitate the Transfer of Land in Scotland - - - - (p. 66)	94	S.
Limitation of Actions; for the further Limitation of Actions and Suits relating to Real Property - - - (p. 32)	57	E. & I.
Loans. *See* Colombo Harbour. Public Works Loan (School Boards).		
Lough Corrib Navigation; to authorise "The Lough Corrib Navigation Trustees" to dispose of part of the Navigation in the district of Loughs Corrib, Mask, and Curra (p. 46)	71	I.
Lunatic Asylums; to amend the Law respecting certain Receipts and Expenses connected with Private Lunatic Asylums in Ireland - - - - (p. 47)	74	I.

M.

	Cap.	Relating to
Magistrates, &c.; to amend the Acts 6 & 7 Will. 4. c. 13, 16 & 17 Vict. cap. 60, and 22 & 23 Vict. c. 52, regulating the Salaries of Resident Magistrates in Ireland and the Salaries of the Chief Commissioner and Assistant Commissioner of Police of the Police District of Dublin Metropolis (p. 7)	23	I.
Marine Mutiny; for the Regulation of Her Majesty's Royal Marine Forces while on shore - - - - (p. 1.)	5	U.K.
Marshalsea, Dublin; for the Discontinuance of the Four Courts Marshalsea (Dublin), and the removal of Prisoners therefrom - - - - (p. 7)	21	I.
Marriages Legalization; to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint Paul's Church at Pooley Bridge, in the parish of Barton (Westmorland) - - (p. 2.)	14	E.
——— to render valid Marriages heretofore solemnized in the Chapel of Ease called Saint John the Evangelist, at Bentley, in the parish of Shustock (Warwick) (p. 7)	17	E.
Married Women's Property; to amend the Married Women's Property Act, 1870 (33 & 34 Vic. c. 93) - - (p. 30)	50	E. & I.

Digitized by Google

M—*con.*

	Cap.	Relating to
METROPOLITAN POLICE, &c.; to make further provision respecting the contribution out of moneys provided by Parliament towards the expenses of the Police Force in the Metropolitan Police District, and elsewhere in Great Britain - - - (p. 33)	58	E. & S.
MILITIA; to amend the Law relating to the Militia - - - - (p. 10)	29	U.K.
MUTINY; for Punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters - (p. 1)	4	U.K.

P.

PERSONATION; to render Personation, with intent to deprive any person of Real Estate or other property, Felony - (p. 12)	36	U. K.
POST OFFICE SAVINGS BANKS; to amend the Law relating to the Payment to and Repayment by the Commissioners for the Reduction of the National Debt of Moneys received in and to the accounts relating to the Post Office Savings Bank - (p. 47)	73	U. K.
PUBLIC HEALTH; to amend the Law relating to Public Health in Ireland - (p. 55)	93	I.
PUBLIC WORSHIP REGULATION; for the better administration of the Laws respecting the regulation of Public Worship - (p. 52)	85	E.
PURCHASER. *See* VENDOR AND PURCHASER.		

R.

RATEABLE PROPERTY VALUATION; to amend the Law respecting the Liability and Valuation of certain Property for the purpose of Rates - - - - (p. 31)	54	E.
——— to amend the Law relating to the Valuation of Rateable Property in Ireland (p. 45)	70	I.
REVENUE OFFICERS DISABILITIES; to relieve Revenue Officers from remaining Electoral Disabilities - - - - (p. 8)	22	U.K.
ROYAL MARINES; for the regulation of Her Majesty's Royal Marine Forces while on Shore - - - - - (p. 1)	5	U.K.
ROYAL ORDNANCE CORPS; for granting Compensation to Officers of the Royal (late Indian) Ordnance Corps - - (p. 36)	61	U. K.

S.

	Cap.	Relating to
SANITARY LAWS AMENDMENT; to amend and extend the Sanitary Laws - (p. 55)	89	E.
SETTLED ESTATES; to extend the Powers of the Leases and Sales of Settled Estates Act (19 & 20 Vict. c. 120.) - - (p. 11)	33	E. & I.
SHANNON NAVIGATION; to amend and enlarge the powers of the Acts, 5 & 6 Will. 4, c. 67, 2 & 3 Vict. c. 61, and 9 & 10 Vict. c. 86, relating to the Navigation of the River Shannon; and for other purposes relating thereto - - (p. 33)	60	I.
SLAUGHTER-HOUSES, &c.; to regulate and otherwise deal with Slaughter-Houses and certain other Businesses in the Metropolis (p. 38)	67	E.
STATUTE LAW REVISION; for further promoting the Revision of the Statute Law by repealing certain Enactments [42 Geo. 3. to 7 Will. 4. & 1 Vict.] which have ceased to be in force or have become unnecessary. (p. 12)	35	U.K.
——— for further promoting the Revision of the Statute Law by repealing certain Enactments [1 & 2 Vict. to 7 & 8 Vict.] which have ceased to be in force or have become unnecessary - - - (p. 66)	96	U.K.
STRAITS SETTLEMENTS; to extend the Jurisdiction of Courts of the Colony of the Straits Settlements to certain Crimes and Offences committed out of the Colony (p. 12)	38	C.

U.

UNITED SCHOOL DISTRICTS. *See* ELEMENTARY EDUCATION.

V.

VACCINATION ACT AMENDMENT; to explain The Vaccination Act, 1871 (34 & 35 Vict. c. 98) - - - - - (p. 48)	75	E.
VENDOR AND PURCHASER, LAW OF; to amend the Law of Vendor and Purchaser, and further to simplify Title to Land (p. 48)	78	E. & I

W.

WORKING MEN'S DWELLINGS; to facilitate the erection of Dwellings for Working Men on land belonging to Municipal Corporations - - - - - (p. 33)	59	E.

Y.

YOUNG PERSONS. *See* FACTORIES.

Printed and Published by the Proprietor, JOHN FALCONER, 53, Upper Sackville-street, Dublin.

4941 023

Digitized by Google

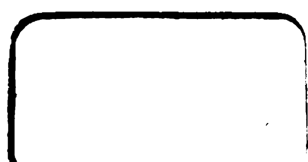
Digitized by Google

ACME
BOOKBINDING CO. INC.

JUL 6 1985

100 CA[illegible] [illegible]EET
CHARLESTOWN, MASS

Digitized by Google


Digitized by Google